



**CITY OF BURIEN
AGENDA BILL**

Agenda Subject: Discussion of and Possible Motion to Approve Draft 2012 Legislative Priorities		Meeting Date: October 10, 2011
Department: City Manager	Attachments: 1. <u>Draft 2012 Legislative Priorities</u> 2. <u>Executive Summary from the "Small Business Tax Simplification" Report and Letter to Governor</u> 3. <u>Bill Analysis re: HB 1299 and HB 1300</u>	Fund Source: N/A Activity Cost: N/A Amount Budgeted: N/A Unencumbered Budget Authority: N/A
Contact: Lisa Clausen		
Telephone: (206) 248-5515		
Adopted Initiative: Yes X No	Initiative Description: Develop and advance state and federal legislative agendas	
PURPOSE/REQUIRED ACTION: The purpose of this agenda item is for the City Council to continue their discussion of the proposed "Draft 2012 Legislative Priorities" and possibly take action to approve the priorities.		
BACKGROUND (Include prior Council action & discussion): At the Council meeting on September 19 the City Manager presented the draft 2012 legislative priorities, and Councilmembers raised questions concerning a few issue. For this agenda item staff is providing additional information to respond to the questions, and has adjusted the last draft priority to reflect the Mayor's statement that the pharmaceutical disposal issue is also a federal matter, not only a state issue (see Attachment 1). The "Executive Summary" and letter to the Governor included in Attachment 2 relate to the Business and Occupation (B&O) tax. The Executive Summary provides additional background information on the Department of Revenue's tax simplification report; based on this report the Governor is considering having the State collect all B&O taxes. In the letter, the five larger cities that collect B&O have informed the Governor of their concerns about a possible state take-over of local B&O tax collection. Burien's state advocate, Mike Doubleday, reports that the letter points out that cities are working to create a local government "one-stop portal" for B&O taxpayers to use for paying their local B&O taxes. This would simplify the process for businesses yet maintain local control over local revenues. Regarding the public records issue, the "Bill Analysis" documents found in Attachment 3 relate to legislation heard during the 2011 session, HB 1299 and HB 1300. Both measures sought to reduce the costs to local government of significant public records requests. The Association of Washington Cities continues to consider this a high priority. Meetings with members of Burien's legislative delegation, to review the City's legislative priorities, are scheduled to begin on October 18.		
OPTIONS (Including fiscal impacts): 1. Approve draft 2012 legislative priorities as presented. 2. Request changes to the draft 2012 legislative priorities and delay action until the next Council meeting.		
Administrative Recommendation: Continue discussion of the "Draft 2012 Legislative Priorities" and take action to approve the priorities.		
Committee Recommendation: N/A		
Advisory Board Recommendation: N/A		
Suggested Motion: Move to approve the Draft 2012 Legislative Priorities.		
Submitted by: Administration 		
City Manager 		
Today's Date: October 4, 2011	File Code: R:\CC\Agenda Bill 2011\101011cm-1-Draft2012legispriorities.docx	



**City of Burien
2012 Federal & State
Legislative Priorities
*DRAFT***

Promote Economic Development through Infrastructure

- Advocate for federal support and a state transportation revenue package to assist with the SR 518/Des Moines Memorial Drive interchange improvement project (\$15M in state funds), improving access and providing incentives for commercial development in the airport-affected Northeast Redevelopment Area (NERA). (Federal and State)
- Partner with the Port of Seattle to seek designation of the NERA as a pilot project eligible for \$5 million through a Federal Aviation Administration (FAA) Pilot Program, to conduct joint pre-construction activities needed to develop the NERA. (Federal)
- Work with other stakeholders in support of tax-increment financing (TIF) legislation, and/or additional Local Revitalization Financing (LRF) in a possible state jobs package, to enable a state investment in Burien and provide local flexibility to develop infrastructure and secure economic development in the NERA. (State)

Maintain and Strengthen City Services and Facilities

- Work to retain local control over city Business and Occupation (B&O) taxes. (State)
- Advocate for reform of the State Environmental Policy Act (SEPA), to facilitate efficient City service delivery and encourage high-quality development. (State)
- Work with other local jurisdictions to pursue equitable cost-recovery for responding to Public Records requests. (State)
- Maintain partnership efforts to improve the health of Puget Sound, including:
 - continuing federal and state support for shoreline protection plans through the work of the Puget Sound Partnership and U.S. Army Corps of Engineers (Federal and State);
 - creation of a pharmaceutical return program to prevent toxic prescription drugs from entering the Sound through inappropriate disposal practices. (Fed. & State)

EXECUTIVE SUMMARY

This report was developed in response to Executive Order 10-05, which charged the Department of Revenue (Department) with exploring, evaluating, and recommending tax simplification solutions to help small businesses by reducing the complexity of the state's tax system.

The Department has collected more than 1,100 comments, concerns, and suggestions from small businesses through outreach efforts.

From the majority of comments and concerns, the Department concluded that the greatest tax complexity problems faced by Washington's small businesses related to:

- Reporting business and occupation (B&O) tax.
- Reporting retail sales tax.
- Understanding the reporting and licensing requirements of multiple agencies.
- Understanding tax administration processes.

Outreach efforts

The Department used the following methods to solicit feedback and gather data:

- Face-to-face meetings across the state with small business owners, business associations, and tax practitioners.
- Surveys of small businesses.
- Face-to-face meetings across the state with city, county, and other local government officials.
- Survey and focus groups with the Department's front-line employees.

Small businesses' findings

Small businesses struggle with reporting B&O tax for two primary reasons:

- Many businesses have to report local B&O tax to one or more of at least 39 cities that impose and administer their own B&O tax.
- The state has a daunting 51 B&O tax classifications. A business must report under one or more classifications depending on its activity.

This creates complexity for small businesses as they attempt to distinguish different classifications, definitions, rates, credits, deductions, and exemptions. It also creates an extra burden to report and pay B&O taxes to multiple jurisdictions using multiple forms.

Small businesses face tremendous complexity with retail sales tax such as:

- Washington has 424 local taxing jurisdictions, each with a distinct reporting code and tax rate. When a transaction occurs, the business must be able to identify the correct local taxing jurisdiction to ensure the sale is coded properly and the correct amount of tax is collected. This information is subsequently reported on its returns.
- Businesses find it difficult to identify and apply deductions, exemptions, deferrals, and credits for retail sales tax.

Finally, small businesses struggle to understand which state and local agencies they must deal with as they navigate the complex maze of licensing and reporting requirements. They think of government as one entity and expect to be able to access information and fulfill their obligations through this entity.

Local governments' findings

Local governments provided feedback indicating that any tax simplification solutions must:

- Be revenue neutral (this was the top issue for local government).
- Allow for ongoing local authority and flexibility to:
 - Set tax rates.
 - Tailor deductions, credits, and exemptions to a specific city's tax base.
- Not impose greater administrative costs than what it takes for them to run similar programs today.

Department recommendation

Based on extensive feedback from small businesses, there is consensus that the top priority to simplify their tax burden is to have a single way to file taxes across the state. To meet this need the Department recommends centralizing administration of state and local B&O tax reporting as is done with sales tax reporting today. This would provide one of the greatest simplifications for small businesses with the least impact on local governments. The net result would be consolidated reporting of all state and local B&O and sales taxes.

The message from Washington's small businesses is clear: they want to do the right thing, but because of complexity and lack of uniformity across jurisdictions, they spend valuable time and money to understand what that is. By centralizing administration of state and local B&O tax reporting, Washington can relieve a significant burden for small business owners—freeing them to get back to the work of running their businesses.

In addition, the Department recommends continued work to address feedback on administrative processes and ongoing efforts to look at integration of state systems, working towards a goal of a single business portal for small businesses to use to interact with the state.

**Municipal Business Occupation Tax
(Gross Receipts)**

City	2009*	2010**
Seattle	157,247,639	160,000,000
Tacoma	23,960,169	26,000,000
Bellevue	18,528,944	24,200,000
Everett	14,163,851	14,749,748
Bellingham	10,806,426	11,000,000
Olympia	4,157,602	
Bremerton	3,110,671	
Issaquah	2,399,703	
Aberdeen	2,235,254	
Longview	2,062,412	
Lacey	1,763,330	
Tumwater	1,156,483	
Hoquiam	787,648	
North Bend	754,613	
Port Townsend	662,183	
Kelso	599,101	
Snoqualmie	584,156	
Des Moines	579,160	
Shelton	493,932	
Burien	481,782	
Bainbridge Isl.	459,332	
Yelm	455,228	
Westport	367,905	
Mercer Island	361,739	
Pacific	239,889	
Lake Forest Park	213,770	
Ocean Shores	203,110	
Raymond	192,090	
Algona	190,795	
Dupont	165,297	
Long Beach	116,439	
Everson	94,339	
Granite Falls	47,077	
Darrington	25,712	
Ruston	12,660	
Roy	11,552	
Cosmopolis	801	
Rainier	Not Found	

Grand Total 249,692,794

2009

Sum of Big 5	224,707,029
% of total	90%

*2009 revenues from State Auditor's Office Local Government Financial Reporting System

**2010 revenues are estimates from city staff

Ilwaco not included. They implemented B&O in 2010



September 28, 2011

Governor Christine O. Gregoire
Legislative Building, Suite 200
PO Box 40002
Olympia, WA 98504-0002

Dear Governor Gregoire:

We are writing to thank you for meeting with us on September 22 to discuss the Department of Revenue's (DOR's) proposal for state administration of the local B&O tax. We appreciate the opportunity to speak with you regarding this most important revenue source that represents a local control issue for our cities.

In this letter we are reiterating and summarizing the points we made in the meeting and inviting DOR staff to a meeting hosted by cities to further explore the next steps regarding this issue.

We would like to summarize a few of the points we made at the meeting:

- **Cities want to simplify the B&O tax filing system:** We all agree that simplifying local B&O tax filing for businesses is beneficial, but we hope we do not have to undermine local control in the process. We would also note that very few businesses file local B&O taxes in multiple cities. We have been working with Rep. Hunter and others for over a year to explore a local B&O online portal, where local businesses can register and pay their B&O tax at one location.
- **Cities are managing the local B&O tax well:** Cities are managing our B&O tax well, as evidenced by the very few complaints we receive from our business communities. Furthermore, we each tailor our B&O tax to reflect our community's needs. For example:
 - Seattle imposes a lower rate for businesses engaged in international finance.
 - Tacoma has a \$250,000 minimum threshold: businesses earning less than \$250,000 in gross revenues have zero local tax liability.
 - Bellevue has a \$145,000 minimum threshold: currently 82% of Bellevue businesses do not file a local B&O tax return.
 - Everett has a B&O tax credit for companies that bring new jobs into the city, a tax incentive for manufacturers, and maintains a low overall tax rate.
 - Bellingham grants a B&O tax exemption for health maintenance facilities in recognition of the sector's value in the community.
- **It is costly to incorporate city systems into the state system:** At a time when the state is struggling with a shortfall of \$2 billion and has made billions of dollars in cuts to date, we strongly question spending new money on what would be a costly project transferring administration of the cities' B&O tax to the state. A better option is working with cities in partnership to develop our local portal, which we believe would come online more quickly and with less expense.
- **Cities must have local control:** We strongly oppose transferring a local tax to state control. In fact, this appears to be without precedent, and a proposal to do so would require significant evidence of mismanagement to justify. No such evidence exists – instead, as we indicated, we are managing our B&O taxes well and tailoring them to the needs of our local business communities. Furthermore, there is over a decade of history with the Association of Washington Business seeking to undermine the municipal B&O tax, most notably the local B&O apportionment fight in 2003. This leads us to believe that state

administration inevitably creates a climate where certain organizations and legislators will soon seek to exempt and redefine the local B&O tax in a way that would cause significant additional revenue impacts to our jurisdictions, a prospect we cannot support. Cities cannot be supportive of ceding control of up to 20% of our general funds to state administration.

- **Cities are pursuing a portal project:** As mentioned, we are engaged with Rep. Hunter and other legislators in exploring a local one-stop online portal where our B&O taxpayers can go to register and pay their local B&O taxes. We have already spent a considerable amount of staff resources on the portal project, and we have just completed a \$150,000 feasibility study that concludes that the local portal project is viable. We are poised to move forward with further technical and governance work on this project. We see the local portal project as a potential win-win to address our mutual interest in tax simplification, while retaining local policy control, rate setting, and enforcement functions. Furthermore, we believe a local portal can be implemented more quickly and in a less costly manner than state administration. A partnership with the state will move the local portal project along more quickly.

To continue this discussion and to move ahead as expeditiously as possible, we propose to host a staff-to-staff meeting among cities and DOR as quickly as we can find an agreeable date. We are eager to move forward with simplifying the local B&O tax for our business communities.

Again, thank you for the September 22 discussion, and we look forward to working with your staff on this issue this fall.

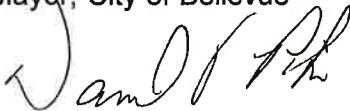
Sincerely,



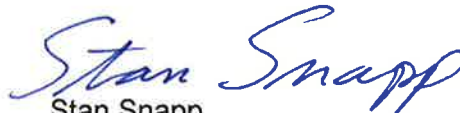
Don Davidson, DDS
Mayor, City of Bellevue



Conrad Lee
Deputy Mayor, City of Bellevue



Dan Pike
Mayor, City of Bellingham



Stan Snapp
Council President, City of Bellingham



Ray Stephanson
Mayor, City of Everett



Mike McGinn
Mayor, City of Seattle



Richard Conlin
Council President, City of Seattle



Marilyn Strickland
Mayor, City of Tacoma



Lauren Walker
Deputy Mayor, City of Tacoma

cc: Suzan DelBene, Director, WA State Department of Revenue
Jim Justin, Governor's office
Marty Loesch, Governor's office
Marty Brown, Budget Director, OFM
Julie Murray, OFM

Washington State
House of Representatives
Office of Program Research

**BILL
ANALYSIS**

**State Government & Tribal Affairs
Committee**

HB 1299

Brief Description: Regarding conferences for public records requests disputes.

Sponsors: Representatives Takko, Armstrong, Hunt, Nealey, Haigh, Angel and Rolfes.

Brief Summary of Bill

- Establishes under the Public Records Act (PRA) an informal procedure for the requester of a public record and the responding agency to confer for the purpose of dispute resolution and thus avoid litigation.

Hearing Date: 1/31/11

Staff: Thamas Osborn (786-7129).

Background:

The Public Records Act requires that state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally, and the exemptions narrowly, in order to effectuate a general policy favoring disclosure.

The PRA requires agencies to respond to public records requests within five business days. The agency must either provide the records, provide a reasonable estimate of the time the agency will take to respond to this request, or deny the request. Additional time may be required to respond to a request where the agency needs to notify third parties or agencies affected by the request or to determine whether any of the information requested is exempt. In effect, the law treats a failure to properly respond as denial. A denial of a public records request must be accompanied by a written statement of the specific reasons for denial.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

A person who is denied a public record or who believes an agency's time estimate for production is unreasonable may appeal the agency decision in the superior court of the county in which the record is maintained. The burden of proof rests with the agency to establish that its failure to produce the requested records is consistent with the statute that exempts or prohibits disclosure. If the person prevails in the court action, he or she must be awarded all costs of maintaining the action, including reasonable attorney fees. In addition, it is within the courts discretion to award such person an amount of not less than \$5 and not more than \$100 for each day he or she was denied the opportunity to inspect or copy the requested records.

Court actions against an agency for noncompliance with the records production requirements of the PRA are subject to a one year statute of limitations, after which no appeal may be filed. This one year limitation period begins to run either on:

- the date of an agency's claim of exemption; or
- the date of the last production of a record being provided by an agency on a partial or installment basis.

Summary of Bill:

Prior to filing court action alleging a violation of the PRA, the requester of a public record and the agency may confer in person or by telephone in an effort to resolve any dispute regarding the agency's production of the records. For court claims requiring an agency to show cause for refusal to produce a record, no such action may be commenced until 15 days after the conference. The one-year statute of limitation and daily penalties shall be tolled during this period. "Conference" means an in person meeting or telephone conversation between the agency and the person requesting the records.

The requestor or agency filing suit must include a certification that a conference was held or the reasons why a conference was not held. Neither party is required to initiate or participate in a conference and neither party has a right to file a court action based on the denial of a request for a conference.

If a requester or agency elects to file suit without conducting the conference, or if the lawsuit is filed before the 15 day post-conference waiting period, the court has the discretion to reduce or eliminate any award for costs, including daily penalties. Otherwise, the award of daily penalties and costs is mandatory. In making the discretionary decision to reduce or eliminate an award for costs or penalties, the court may consider the following nonexclusive factors:

- whether the requester had need to obtain the records in less than 15 days;
- whether a conference would have been futile;
- whether the agency's initial response was in bad faith; and
- whether the records request serves the public interest.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**State Government & Tribal Affairs
Committee**

HB 1300

Brief Description: Regarding the recovery of the costs of production and copying of public records.

Sponsors: Representatives Moeller, Armstrong, Takko, Nealey, Haigh, Hunt, Angel, Fitzgibbon and Darneille.

Brief Summary of Bill

- Authorizes a public agency to charge a person making a public records request for personnel costs incurred in responding to such request if the response requires the agency to expend more than five person hours in a calendar month.
- Prohibits an agency from charging personnel costs to the person requesting the records if the person authorizes the agency to complete the records request at a rate not exceeding five person hours per month.

Hearing Date: 1/31/11

Staff: Thamas Osborn (786-7129).

Background:

The Public Records Act (PRA) requires that state and local government agencies make all public records available for public inspection and copying unless they fall within certain statutory exemptions. The provisions requiring public records disclosure must be interpreted liberally, and the exemptions narrowly, in order to effectuate a public policy favoring disclosure.

The PRA requires agencies to respond to public records requests within five business days. The agency must either provide the records, provide a reasonable estimate of the time the agency will take to respond to this request, or deny the request. Additional time may be required to respond

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

to a request where the agency needs to notify third parties or agencies affected by the request or to determine whether any of the information requested is exempt. In effect, the law treats a failure to properly respond as denial. A denial of a public records request must be accompanied by a written statement of the specific reasons for denial.

A person making a public records request cannot be charged fees for the inspection of records or for an agency's efforts to locate records or making them available for copying. A reasonable charge may be charged by public agencies for the cost of providing copies and for the use of agency equipment for the copying of public records. Such charges may not exceed those necessary to reimburse the agency for the actual costs directly incident to such copying. An agency may not charge a per page cost greater than the actual per page cost as established and published by the agency.

Summary of Bill:

If a public agency expends more than five person hours in calendar month in order to produce public records in response to a request, the requester may be required to pay the agency for the personnel costs incurred during that month in order to complete search and copying tasks. A requester can avoid such costs by authorizing the agency to complete the records request at a rate of not more than five hours per month.

The personnel costs charged to the requester may not exceed the actual salary and benefit costs for the personnel required to perform the search, review, and copying tasks. Such costs shall not include the cost of attorney review or for the preparation of the exemption log. The requester must pay the costs before the records are disclosed. The public agency may require payment of up to a 10 percent deposit in advance of the records search.

Appropriation: None.

Fiscal Note: Requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.