



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Date Introduced:	02/16/11	Bill No:	Assembly Bill 569
Tax Program:	Sales & Use Special Taxes	Author:	Berryhill
Sponsor:	Author	Code Sections:	Add Part 14 to Division 3 of Title 2 to the GC
Related Bills:		Effective Date:	01/01/12

BILL SUMMARY

Among its provisions, this bill would create a one-stop master license center for businesses to obtain and maintain the necessary state licenses to conduct business.

ANALYSIS

CURRENT LAW

Permits and Licenses. Under various provisions of the Revenue and Taxation Code (RTC), a variety of licenses are required for a business to engage in certain activities for programs administered by the Board of Equalization (BOE). For example RTC Section 6066 requires any person that engages in or conducts business as a seller in California must file an application for a seller’s permit for each place of business. Other required licenses include, but are not limited to, the following:

Tax Law	License Type	RTC Section
Motor Vehicle Fuel	Aircraft Jet Fuel Dealer	7396
	Train Operator	7403.1
	Supplier	7451
	Industrial User	7460
	Vendor Use Fuel Tax	8711
Use Fuel		
Diesel Fuel	Supplier	60131
	Pipeline	60135
	Exempt Bus Operator	60141
	Government Entity	60146
Alcoholic Beverage	Manufacturers, Winegrowers, Wholesalers, Importers, et. al.	32101
Cigarette & Tobacco Products	Distributor	30140
	Wholesaler	30155
Licensing Law	License Type	BPC Section ¹
Cigarette & Tobacco Products	Retailer	22972
Licensing Act of 2003	Wholesaler & Distributor	22975
	Cigarette Manufacturer & Importer	22979

¹ Business and Professions Code (BPC).

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.

The preceding table does not take into account the various fee programs that the BOE administers. These include, but are not limited to, the environmental fee; California tire fee; electronic waste recycling fee; and the underground storage tank maintenance fee.

Confidentiality. Under the Information Practices Act, Civil Code Section 1798.24 provides that no agency may disclose any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the information is disclosed to, among others, another agency where the transfer is necessary for the transferee agency to perform its constitutional or statutory duties, and the use is compatible with a purpose for which the information was collected and the use or transfer is accounted for, as specified.

Additionally, existing law generally prohibits the BOE and any person having an administrative duty or any person who obtains access to information contained in, or derived from, records of the BOE to make known in any manner whatever the business affairs, operations, or any other information pertaining to a taxpayer.

However, under existing law, the Governor may by general or special order, authorize examination by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person of the records maintained by the BOE. The law specifies that any information so obtained pursuant to the order of the Governor may not be made public except to the extent and in the manner that the order may authorize that it be made public.

The Public Records Act, or PRA (commencing with Section 6250 of the Government Code), provides for public access to any record maintained by a state and local agency, unless there is a statutory exemption that allows or requires the agency to withhold the record. The PRA requires an agency to determine within 10 days from the receipt of a request for records, whether the request, in whole or part, requests copies of disclosable public records in the possession of the agency. The agency is required to promptly notify the person making the request for public records of its determination. Any determination denying the request for public records, in whole or in part, must be in writing.

Generally, existing law specifies the specific governmental agencies in which confidential information may be disclosed and the purpose for which it may be disclosed.

PROPOSED LAW

This bill would add Part 14 (commencing with Section 15987) to Division 3 of Title 2 to the Government Code (GC) to implement the Business Master Licensing System Act (Act). The Act creates a Business Master License Center (Center) within the state and Consumer Services Agency (SCSA) which would have the following duties:

- Developing and administering a “one-stop” computerized system capable of issuing, renewing, storing, and exchanging master license information.
- Providing a license information service detailing the requirements to engage in business in this state, including a staggered master license renewal process.
- Identifying and incorporating appropriate licenses in the master license system.

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- Making recommendations to the Governor and the Legislature on licensing or inspection requirements.
- Working with other agencies to develop a system that permits participating agencies to share information generated from the master license system.

Affected Agencies. There are 18 specified state agencies, including the BOE, that must participate in the implementation of the Act. Additionally, any other state agency that the Secretary of the SCSA determines has licensing authority consistent with the purposes of the Act must also participate.

A valid license already in effect prior to the effective date² of this act adding this subdivision³ need not be registered under the master license system until the renewal or expiration date of that license.

Information Sharing. The licensing Center would compile and provide information to any person requesting it regarding the statutes and regulations requiring the license and pertaining to the regulatory program.

Regulatory agencies would also be provided information from the master application for their licensing and regulatory functions.

Master License Issuance. A person requiring a license that has been incorporated into the system must do the following:

- Submit a master application to the Center requesting the issuance of required licenses.
- Include with the application the amount of all fees and deposits required for each license, along with the master license administrative fee.
- Contest a denial of license, or conditions imposed, through the normal process established by statute or by the agency with the agency that has the authority for approving issuance of the license.

A state agency has responsibilities related to the issuance of the master license, these include the following:

- Retain authority for approving issuance and renewal of a requested license that requires a pre-licensing or renewal investigation, inspection, testing, or any discretionary judgmental review.
- Advise the Center within a reasonable time of the approval, denial, or status of a license application, after receiving notification from the Center of an application for license issuance or renewal.
- Address those applicants that contest the denial, or conditions imposed on, the issuance of a license, as provided in statute or by the agency, through the normal process.

² The word “date” was inserted for the reader’s convenience, but it is not in the bill.

³ The reference to “subdivision” appears to be a drafting error, since proposed Section 15987.10, and this Act, is being added to Part 14 of Division 3 of Title 2 of the Government Code.

The Center's duties related to the issuance of a master license would include the following:

- Issue those licenses for which no pre-licensing or renewal approval action is required by the regulatory agency, and the proper fee payment and completed application have been received.
- Immediately notify the regulatory agency that retains authority for approving issuance and renewal of a requested license that requires a pre-licensing or renewal investigation, inspection, testing, or any discretionary judgmental review.
- Issue a master license upon regulatory agency approval of a license and advise the applicant of the status of other requested licenses.

The Center will not issue or renew a master license to a person if any of the following occur:

- The person does not have a valid tax registration, if required.
- The person is a corporation delinquent in fees or penalties owing to the Secretary of State.
- The person is not validly registered under any statute giving corporate or business licensing responsibilities to the Secretary of State.
- The person has not submitted the total amount of fees and deposits required for the requested individual licenses, and the master license administrative fee required by this Act.

Fees. The Center will charge and collect a \$15 or \$9 master license administrative fee for each master license application or master renewal application, respectively. These fees shall be deposited into the Master License Fund, which this bill creates in the State Treasury, and upon appropriation by the Legislature shall only be used to administer the Center.

Any other license fee collected under the master license system, excluding the \$15 or \$9 master license administrative fee, will be deposited with the Treasurer. Upon issuance or renewal of the master license, the Treasurer will allocate the fees to the appropriate accounts, according to the applicable statutes for those agencies' licenses.

Master License Expiration Date. The Center will assign an expiration date for each master license, and all renewable licenses associated with that master license shall expire on that date. Additionally, the license fees will be prorated to accommodate the staggering of expiration dates.

This bill would become effective January 1, 2012.

COMMENTS

- 1. Sponsor and Purpose.** This bill is sponsored by the author and is intended to condense and centralize the licenses and permits businesses need, which will foster and promote a healthy environment for job growth.

- 2. Effect on current registrants.** Proposed GC Section 15987.10 provides that a valid license already in effect prior to the effective date of the Act⁴ does not need to be registered under the master license system until the renewal or expiration of that license. The California Cigarette and Tobacco Products Licensing Act of 2003 (Licensing Act) would be immediately affected by the bill. Under the Licensing Act 40,000 existing businesses associated with the manufacturing, importation, distribution, or retail sale of cigarette and/or tobacco products must annually renew their respective license with the BOE.

Since the majority of the BOE's licensed accounts are sales tax accounts, and since sales tax accounts do not need to be renewed, nor have an expiration date, this Act will primarily affect new registrants and not existing accounts. However, does the applicant for a master license have the option to add such licenses? Upon renewal of a master license, would the applicant be able to add a license not previously registered under the master license system?

In general, the BOE issues approximately 200,000 new business "licenses" (including registrations and permits) annually. However, a similar number of business licenses are closed out each year, and therefore the total number of licenses remains fairly static. In reference to the number of new business licenses, the amount assumes only "new" registrants or licenses; the BOE is unsure how many business owners who otherwise wish to visit a district office and apply in person for a license, or who prefer to file a paper application, would be affected. Additionally, to the extent a business has the option of choosing to add in existing licenses to be registered with the master license, the amount of businesses affected could change.

- 3. Not all tax or fee programs should be included in the Master License System.**

The BOE administers over 20 different tax and fee programs; some jointly with other state agencies. The Act defines a "license" as "the whole or part of any agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency regulation, to engage in any business activity."

While licenses associated with the sales tax and excise tax programs would appear to be appropriate for inclusion in the master license system, there are also a few fee programs that would also be necessary for an applicant to engage in a business activity in this state. Some of these fee programs include, but are not limited to, the environmental fee; California tire fee; and the electronic waste recycling fee.

Conversely, the use tax, a complimentary tax to the sales tax, which is generally paid by the purchaser who stores, uses, or consumes within the state any tangible personal property purchased from an out-of-state seller, does not appear to be appropriate for inclusion in the master license system. While the BOE registers use tax payers, these purchasers are required to pay a tax, not to be "licensed" with the BOE. Moreover, use tax payers may be individuals that are not engaged in a business activity within the state.

Some fee programs do not appear to be appropriate for inclusion in the master license system since these fee programs are jointly administered. The BOE would need to discuss these issues with the appropriate state agency which include, but are not limited to, the marine invasive species fee (State Lands Commission), and

⁴ The words "date" and "Act" have been used for the reader's convenience, but these terms are not in the bill.

the water rights fee (State Water Resources Control Board). The BOE is available to discuss with the author's office, or upon enactment of the Act, with the Secretary of the SCSA, the tax or fee programs that do not appear to be appropriate for inclusion in the master license system.

4. **BOE would maintain control over tax and fee programs.** For those licenses or registrations that are included in the master license system, the BOE would continue to maintain all aspects related to the change in business location, ownership, revocations, suspensions, or failure to register with the BOE. Since the Center would not be involved in the maintenance of the state agencies respective licenses, the BOE would reserve the right to approve or deny all master license applications. This would ensure that the statutory, regulatory, or procedural requirements for registration or licensure would be satisfied.
5. **Effects of revocation on a master license.** Since the Center will not be involved in the maintenance of the master license, what effect, if any, would an agency license suspension or revocation have on the master license? If an agency license is revoked, closed, or suspended, is the master license still valid? Does having a valid master license allow a business to continue to conduct business, even though the appropriate state agency responsible for enforcement of the laws of the state may have revoked their privilege to conduct business in the state? Is there an intent to share the master license information with the public or other state agencies? The BOE would be concerned with the master license information being made available to the public or other agencies since certain tax, fee, or licensing programs require the verification of a valid license as a condition of conducting certain transactions. Since the BOE currently provides online verification of certain licenses, any difference between the status of the agency license and the master license could be confusing to business owners and the public.
6. **Additional administrative concerns.** Proposed Section 15987.5 requires a person needing a license to submit a master application to the Center requesting the issuance of the required licenses. This would require potential business owners who otherwise wish to visit a BOE district office and apply in person for a license, or who prefer to file a paper application, to be redirected to the SCSA and/or the Center. Additionally, the BOE has been working on a long-term agency wide project to have the capability for all tax and fee programs to have returns and applications filed electronically. How will these innovations be integrated into the Center's processes?

Expiration date. Section 15987.7 states that all renewable licenses endorsed on the master license shall expire on the expiration date assigned to the master license. If the master license has an expiration date, but the BOE's license does not, is the business prohibited from operating without a valid master license? Can the business operate with only a valid BOE license? This is important because many of the BOE's licenses and registrations do not have expiration dates or renewal periods.

Prorated fees. This bill also proposes to prorate license fees to accommodate the staggering of expiration dates. Certain licenses issued by the BOE either can not have prorated fees or can not be assessed license fees that will not be used for administration of that program. Two such programs include the Licensing Act and the International Fuel Tax Agreement, which is administered in conjunction with the Use Fuel Tax Law and the Diesel Fuel Tax Law. In order to address this issue,

either additional statutory changes is needed, or these licensing programs would need to be excluded from the master license system.

- 7. Confidentiality issues.** This bill would require, on and after January 1, 2012, a person seeking to engage in any business activity in this state to submit a master license application. While this Act specifically provides for the sharing of master license information from the Center to the respective state agency, it does not prohibit the sharing of information from the Center to other state agencies, or to the public.

Currently, there are at least four tax or fee programs that have confidentiality or disclosure requirements that prohibit the disclosure of the registration information. For all other BOE tax and fee programs the registration information, which includes the account number, business name, business and mailing addresses, start and close-out dates, and account status, may be disclosed to the public. However, Civil Code Section 1798.69(a) prohibits the public disclosure of names and addresses of individuals (sole proprietors, married co-owners, and domestic partners) except to the extent necessary to verify resale certificates or to administer the tax and fee provisions of the RTC or as provided in Civil Code Section 1798.69(b).

- 8. Funding necessary for administrative start-up costs.** The provisions of this bill would be effective January 1, 2012, in the middle of the 2011-2012 fiscal year. The BOE would incur administrative start-up costs related to the programming costs, developing forms and publications, training staff, and revising the procedures, and/or creating regulations, related to master license applications and license issuance. Since these costs would not be identified in the BOE's 2011-12 budget, the BOE would need an adequate appropriation to cover these costs.

Staff will work with the author's office to address this issue as the bill progresses through the legislative process.

COST ESTIMATE

The BOE would incur non-absorbable costs developing and administering a computerized program that could identify and associate the master license account with the affected tax or fee programs, developing forms and publications to direct applicants to the Center, developing regulations regarding the processing/approval/denial of master license applications, training staff, and answering license related inquiries. Programming costs could also be affected by the process the Center implements to provide license information to the BOE, and to the extent that the BOE's electronic information would need to be accessible to the Center. A detailed cost estimate of this workload is pending.

REVENUE ESTIMATE

This bill would not affect the revenues collected for the state by the BOE.

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