GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Consumer and Regulatory Affairs

Public Hearing on

Bill 24-301, the Business and Entrepreneurship Support to Thrive Amendment Act of 2021

Testimony of
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Before the
Committee of the Whole
Chairman Phil Mendelson
Council of the District of Columbia

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Good afternoon, Chairman Mendelson, members, and staff of the Committee of the Whole. I am Ernest Chrappah, the Director of the Department of Consumer and Regulatory Affairs (DCRA). My testimony today is about Bill 24-301, the “Business and Entrepreneurship Support to Thrive Amendment Act of 2021,” otherwise known as the BEST Act. I appreciate this opportunity to discuss this bill with the committee.

Mayor Bowser and DCRA support the overall mission of making it as easy as possible to do business in the District. As you know, DCRA is responsible for issuing and renewing basic business licenses in the District. As of February 3, 2022, there are 62,041 active business licenses in the District. Our agency has made progress in streamlining the basic business licensing process and reducing fees for certain applicants, and there are major initiatives underway at DCRA to improve the process even more. While we applaud the goals of the BEST Act and agree with many of the organizational improvements it makes, there are several elements of the bill that would be problematic for the agency. In my testimony, I will provide an overview of the basic business licensing process; highlight the reforms that Mayor Bowser and DCRA have made to make the process cheaper and easier for entrepreneurs; and go through each element of the bill to elaborate on the parts we agree with and the parts which we oppose, as well as address items that are missing from the legislation that the agency believes should be included.

**Overview of DCRA’s Basic Business Licensing (BBL) Process**

I would like to begin by explaining how to get a license to do business in the District. There are four basic steps to getting a basic business license. First, if a person’s business is operating as a corporate entity (such as a corporation, limited liability company, or partnership), they must register with DCRA’s Corporations Division. Second, a person must register with the
Internal Revenue Service (IRS) and the D.C. Office of Tax and Revenue (OTR) to get an Employer Identification Number (EIN) and a Clean Hands certification. Third, a person must obtain either a Home Occupation Permit (HOP) if the business will be located in a person’s primary residence (unless it is a short-term rental business) or a Certificate of Occupancy if the business will be operating out of an office location in the District. The final step is to visit DCRA’s office or utilize the “My DC Business Center” webpage at mybusiness.dc.gov to submit a basic business license application, the required supporting documentation, and payment. In addition to obtaining a basic business license, a person will need to get an endorsement to the basic business license. The type of endorsement and the supporting documents that are required for an endorsement will depend on the business’s activities and may require documentation from other agencies. For example, an applicant who wants to open a restaurant will require a basic business license with an endorsement of “Food Services” and must provide a D.C. Health Inspection Report in addition to the other required documents. I am happy to report that the turnaround time for receiving a basic business license is quite fast. For example, in Quarter 1 of FY22, 1,662 of the 1,836 businesses that applied online received their license from DCRA within one business day from the date that the required documents were submitted to DCRA—which is a rate of 91 percent.

**DCRA’s Progress on Basic Business Licensing Reform**

Next, I will turn to the progress that DCRA has already made on reforming the basic business licensing process. Recognizing the financial hardships many District residents and businesses have endured during the COVID-19 pandemic, Mayor Muriel Bowser is committed to keeping District licenses affordable. With that in mind, the Mayor included a number of major
fee reductions in the FY22 Budget Support Act for residents and businesses seeking to obtain or renew a basic business license.

First, DCRA reduced the fee to obtain or renew a general business license from $342 to $99. DCRA also reduced the licensing fee to start or renew an employment agency, employer paid personal service, and employment counseling business from $2,034 to $99. We received lots of positive feedback from the business community about these changes, with one company reaching out to tell us, “I think it is a wonderful thing that DCRA reduced the General Business License fee from $324.50 to $99. I am a small business owner and that will make a big difference in what we need to pay out to run our business. That is a big savings for my company and I really appreciate that DCRA is looking out for small businesses.” Another small business owner told us, “I was just about to apply for a new license when I heard about the new fee change being implemented. I think this is a wonderful idea during this pandemic, when so many people are looking at entrepreneurship for additional streams of income to combat the loss of jobs and select services due to COVID. I praise this department for making a small change that will result in a huge impact to residents and small business owners alike. Thank you for this!” DCRA is proud to hear these kinds of sentiments from residents and businesses which show their appreciation for our efforts.

Another license fee reduction relates to fees for occupational and professional licenses. Through the end of FY22, DCRA will not be charging application and examination fees for occupational and professional licenses. During this time, all occupational and professional license and renewal fees are reduced to $99, unless fees are lower already. And finally, DCRA instituted a corporate filing forgiveness program last summer that ran through the end of FY21, during which businesses with 50 employees or fewer whose corporate registration was revoked
due to a failure to file a biennial report were eligible to be reinstated without having to pay hundreds of dollars or more of filing fees or late fees for past due reports. All of these fee reductions demonstrate DCRA’s commitment to cutting fees for entrepreneurs, and we are proud of the fact that we have already made great strides in reducing costs for businesses.

DCRA also is in the process of proposing a six-month license period as an alternative to a two-year license for businesses who want the flexibility to operate during a shorter term without the financial burden of having to pay for a full two-year license. The goal is to help seasonal business owners and entrepreneurs who may be trying out a new business idea by allowing them to pay for a six-month license at a prorated amount that would be equal to 25% of the cost of a two-year license. We have heard from our customers that out-of-pocket expenses are a priority that needs to be addressed, and we have acted on this. Another initiative that is in the works is a project that DCRA is partnering with OCTO on to make the licensing process simpler and more intuitive, ultimately creating a one-stop destination for all license needs without having to navigate the websites of different agencies. I highlight these items to show that DCRA is well aware of the need to make it easier and cheaper for new and existing businesses to operate in the District, and our actions are a reflection of this fact.

Reducing the Number of BBL Categories

Turning now to the bill itself, I will start with the reduction of the number of basic business license categories. As part of DCRA’s successful Vision 2020 plan, the agency reorganized 128 business license types into 13 “primary” categories. The goal was to help BBL applicants navigate complex rules, which groups like the Institute for Justice have advocated for. This bill largely codifies the work DCRA has already accomplished, but there are a few technical concerns I want to share. For example, the 10 new categories in the bill (lines 430-439) are not
all defined in the amended Definitions section, § 47-2851.01 (lines 311-351). In fact, only 3 of the 10 categories are defined, which is confusing to the reader. DCRA cannot fully review these 10 categories to know whether they cover all of the previous categories, and thus, would recommend that the Council define the remaining categories or clarify that they should be defined in regulations.

Additionally, it appears that “endorsements” to a basic business license have been eliminated through the creation of these 10 categories. DCRA would like to confirm if this interpretation is correct, and if so, we want to note that endorsements are critical to DCRA and other DC government operations. Endorsements help in identifying license categories that require review and approval from sister agencies, such as DC Health or FEMS, before we issue or renew a license. Another reason why endorsements are important is because under the current scheme, a person only has to obtain one basic business license and then they can receive multiple endorsements to that license. For example, a movie theatre that serves food currently would need to obtain a basic business license with an Entertainment endorsement and a Food Services endorsement. But under this Act, a movie theatre that serves food would need to get two basic business licenses (one for Entertainment services and one for Food services). We would like to confirm whether this analysis is correct, and also request clarification as to whether the Council expects endorsements to be spelled out in regulations, or if the concept is being abolished entirely.

**Reducing Initial License Fees**

Next, I would like to discuss the reduction of initial license fees in the Act. Setting the basic business license fee at $49 for a 6-month license and $99 for a 2-year license (lines 440-443) would have a huge negative fiscal impact on agency operations. It appears that the $49 and
$99 amounts are inclusive of everything, whereas under the current scheme, there are separate fees for the application, the endorsement, and the license itself. It is not clear whether the Council is fully aware of the extraordinary effect that these drastically lower amounts will have on the agency. I would also like to note that currently there are some basic business licenses that are less than $99 such as combat sport referees who currently pay just $50. It is unclear if Council intended to increase the amount for these types of licenses.

Regarding the language in the Act that states that businesses with a gross annual revenue of greater than $2,000 and less than $10,000 do not have to pay a fee for a basic business license (lines 451-453), this would also have a considerable fiscal impact. Additionally, we have concerns about the fact that the Act allows people to self-certify that they qualify for this exemption (lines 456-458). Allowing people to self-certify that their business activity has a gross annual revenue of greater than $2,000 but less than $10,000 is ripe for abuse. It is unclear how a new business knows what their gross annual revenue will be ahead of time, and a significant number of businesses may think they fall under this category erroneously, resulting in a substantial loss of revenue for the agency.

Finally, regarding the amended § 47-2851.04 (“License application and fees”) in the Act (lines 440-472), this section is missing critical language which is in the current § 47-2851.04; namely, that license fees shall be deposited into the Basic Business License Fund established by § 47-2851.13. Moreover, it appears the Basic Business License Fund is repealed by the Act. By repealing § 47-2851.13 (“Establishment of Basic Business License Fund; disposition of license fees, penalties, and fines”) without putting this language elsewhere in Subchapter I-A of Chapter 28, the Council has essentially eliminated this special purpose revenue fund which we use to fund our licensing operations. The Basic Business License Fund generates approximately $12.5
million in revenue for the agency each fiscal year and, among other things, funds the salaries of 116 full-time employees. Eliminating this fund would have a huge impact on DCRA’s operations and this omission must be rectified should this bill move forward.

Calculating License Renewals

Moving on to license renewals, this bill creates a problematic structure for calculating license renewals by using a progressive fee structure based on annual revenue. Specifically, the Act states that renewal of an initial six-month license is $49 for a second six-month license; and after that, a person pays a renewal license fee of 1/10 of one percent of the business’s D.C. taxable income for the most recent taxable year. For a renewal of a two-year license, the Act sets the fee at 1/10 of one percent of the business’s D.C. taxable income for the most recent taxable year (lines 444-450).

Using taxable income to calculate license renewal fees is fraught with problems and is not a feasible way to issue license renewals, for the following reasons. First, the IRS and OTR have strict rules on the sharing of tax information, so it would be incumbent upon the applicant to provide this information to DCRA, which raises obvious verification and enforcement issues. Second, businesses regularly amend or adjust their tax returns for many reasons, including through an audit by the IRS or OTR, and businesses are permitted to make changes to their returns going back three years or more. This means that a business might be able to renew their license at a certain amount right now, but next year they might revise their taxes for previous years and not be eligible for the lower fee they were charged. Third, using taxable income is simply a bad metric given that large companies often have small taxable income. Fourth, the IRS filing deadlines likely will not align with basic business license renewal dates, which means that people would be eligible for a renewal rate that may not accurately reflect their earnings.
Lastly, the entire concept of using a percentage of a business’s taxable income to calculate a renewal amount will slow down the renewal process considerably given the extra amount of time staff will need to spend on these calculations and will require costly system enhancements.

Finally, I would like to point out that the Act fails to acknowledge or account for late renewal fees and expedited renewal fees, and how those would be calculated. It is not clear if the Council intended for late fees and expedited fees to be eliminated, or if this is simply an oversight in the Act.

**Removing Outdated and Duplicative Requirements**

Moving now to the elimination of outdated and duplicative requirements, DCRA agrees with how the bill repeals Subchapter I (“Specific Licensing Provisions”) of Chapter 28 of Title 47 of the D.C. Code, given that this subchapter currently has over 50 separate provisions, many of which are outdated or repealed. Cleaning up the outdated and duplicative requirements, will make Subchapter I-A (“General Provisions”) easier to understand. For example, we are in agreement with the way that § 47-2851.07 (“Issuance of licenses”) is amended in the Act, as it lines up almost exactly with the “The Steps to Obtaining a Basic Business License” page on DCRA’s website.

**Powers and Duties of DCRA**

Next, I will turn to the new language in amended § 47-2851.01b (“Powers and duties of the Department”) which says that regulations and policies promulgated by DCRA should have the goals of protecting the health, safety, economic interests and quality of life for everyone in the District; moving forward construction projects of property owners/builders safely, efficiently, and effectively; promoting entrepreneurship; and communicating clear, concise, consistent, and timely information that benefits customers and the community. These have always been the
goals of any regulation or policy that DCRA puts forth, and we see no issue with having it codified in the law.

**Transferring Sections Not Related to the Licensing Process to Other Parts of the Code**

Finally, I would like to address the great progress this bill makes in transferring sections of the code not directly related to the basic business licensing process from Chapter 28 of Title 47 to more appropriate sections of the D.C. Code. This is a long-overdue cleanup of Chapter 28, and we applaud the Council for embarking on this endeavor.

In closing, I want to emphasize the care and attention that went into DCRA’s analysis of this bill. While we agree with major components of the Act and applaud its laudable goals, I hope you will take into serious consideration several of its key elements which would be highly problematic for the agency. I hope my testimony has given insight into the rationale for each of our concerns, and I thank you for the opportunity to present this testimony. I am available for any questions that the committee may have.