

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: PCS/CS/SB 330 (921336)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Community Affairs Committee; and Senator Steube

SUBJECT: Local Business Taxes

DATE: April 24, 2017

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|-----------------------|------------|--------------------------|
| 1. | <u>Present</u> | <u>Yeatman</u> | <u>CA</u> | <u>Fav/CS</u> |
| 2. | <u>Babin</u> | <u>Diez-Arguelles</u> | <u>AFT</u> | <u>Recommend: Fav/CS</u> |
| 3. | <u>Babin</u> | <u>Hansen</u> | <u>AP</u> | <u>Pre-meeting</u> |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 330 provides an exemption from the local business tax for:

- Veterans.
- Spouses and surviving spouses of veterans.
- Certain spouses of active servicemembers.
- Individuals who receive public assistance.
- Low-income individuals.
- Business entities when a controlling interest thereof is owned by an individual listed above.

Qualifying individuals must complete and sign a Request for Fee Exemption.

The bill is effective upon becoming a law.

The Revenue Estimating Conference estimates that the bill will reduce local business tax revenues by \$23.2 million beginning in Fiscal Year 2017-2018, with a recurring reduction of \$23.2 million.

This bill may be a mandate requiring a two-thirds vote of the membership of the Senate. See Section IV.A. of the analysis.

II. Present Situation:

Local Business Tax

The local business tax, authorized in ch. 205, F.S., means the fees charged and the method by which a local government authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction.¹ Counties and municipalities may levy a business tax.²

Eligibility Requirements

County and municipal governments are eligible to levy, by appropriate resolution or ordinance, a business tax for the privilege of engaging in or managing any business, profession, or occupation within their jurisdictions. If adopted by ordinance prior to January 1, 1995, a county, as defined in s. 125.011(1), F.S., (i.e., Miami-Dade County) or any adjacent county (i.e., Broward, Collier, and Monroe counties) is authorized to levy and collect an additional business tax up to 50 percent of the appropriate business tax imposed under s. 205.033(1), F.S.³

Administrative Procedures

To levy a business tax, the governing body must first give at least 14 days of public notice between the first and last reading of the resolution or ordinance by publishing a notice in a newspaper of general circulation within its jurisdiction.⁴ The public notice must contain the proposed classifications and rates applicable to the business tax.⁵ A number of other conditions for levy are imposed on counties and municipalities.⁶

For purposes of ch. 205, F.S., the terms “business,” “profession,” and “occupation” do not include the customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions in the state.⁷ These institutions are more particularly defined and limited in statute.⁸ The term “receipt” means the document that is issued by the local governing authority which bears the words “Local Business Tax Receipt” and evidences that the person in whose name the document is issued has complied with the provisions of ch. 205, F.S., relating to the business tax.⁹

The governing body of a municipality that levies the tax may request that the county in which the municipality is located issue the municipal receipt and collect the tax.¹⁰ The governing body of a county that levies the tax may request that municipalities within the county issue the county

¹ Section 205.022(5), F.S.

² Sections 205.033 and 205.043, F.S.

³ Section 205.033(6), F.S.

⁴ Sections 205.032 and 205.042, F.S.

⁵ *Id.*

⁶ Sections 205.033 and 205.043, F.S.

⁷ Section 205.022(1), F.S.

⁸ *Id.*

⁹ Section 205.022(2), F.S.

¹⁰ Section 205.045, F.S.

receipt and collect the tax.¹¹ However, before any local government issues any business receipts on behalf of another local government, appropriate agreements must be entered into by the affected local governments.¹² All business tax receipts are sold by the appropriate tax collector beginning July 1 of each year.¹³ The taxes are due and payable on or before September 30 of each year, and the receipts expire on September 30 of the succeeding year.¹⁴ In several situations, administrative penalties are also imposed.¹⁵

A county or municipality that has not adopted a business tax ordinance or resolution may adopt a business tax ordinance.¹⁶ The tax rate structure and classifications in the adopted ordinance must be reasonable and based upon the rate structure and classifications prescribed in ordinances adopted by adjacent local governments that have implemented s. 205.0535, F.S.¹⁷ If no adjacent local government has implemented s. 205.0535, F.S., or if the governing body of the county or municipality finds that the rate structures or classifications of adjacent local governments are unreasonable, then an alternative method is authorized. In such a case, the rate structure or classifications prescribed in the ordinance of the local government seeking to impose the tax may be based upon those prescribed in ordinances adopted by local governments that have implemented s. 205.0535, F.S., in counties or municipalities that have a comparable population.¹⁸

Prior to October 1, 2008, any municipality that adopted by ordinance a local business tax after October 1, 1995, could, by ordinance, reclassify businesses, professions, and occupations and establish new rate structures, provided certain conditions were met. If such conditions were met, counties and municipalities could, every other year thereafter, increase or decrease by ordinance the rates of business taxes by up to 5 percent. Any subsequent increase must be enacted by at least a majority plus one vote of the governing body.¹⁹ A county or municipality is not prohibited from decreasing or repealing any authorized local business tax. The governing body may adopt an ordinance by majority vote that repeals a local business tax or establishes new rates that decrease local business taxes and do not result in an increase in local business taxes for a taxpayer without having to establish an equity study commission.²⁰

Exemptions

State law exempts, or allows local governments to exempt, certain individuals from all or some portion of local business taxes.²¹ Customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions are excluded from the definition of “business,” “profession,” and “occupation” and are thereby excluded from

¹¹ *Id.*

¹² *Id.*

¹³ Section 205.053, F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Section 205.0315, F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 205.0535(4), F.S.

²⁰ Section 205.0535(5), F.S.

²¹ Sections 205.054, 205.063, 205.064, 205.065, 205.066, 205.067, 205.162, 205.171, 205.191, 205.192, and 205.193, F.S.

paying local business taxes.²² The delivery and transportation of tangible personal property by a business that is otherwise required to pay a local business tax may not be charged a separate local business tax for such delivery or transportation service.²³ There are also exemptions for persons engaged in specified farming activities,²⁴ certain nonresident persons regulated by the Department of Business and Professional Regulation,²⁵ certain employees of businesses that are required to pay a local business tax,²⁶ certain disabled persons, the elderly, and widows with minor dependents,²⁷ disabled veterans of any war or their unremarried spouses,²⁸ and certain mobile home setup operations.²⁹ A charitable, religious, fraternal, youth, civic, service, or other similar organization that makes occasional sales or engages in fundraising projects that are performed exclusively by the members where the proceeds derived from the activities are used exclusively in the charitable, religious, fraternal, youth, civic, and service activities of the organization is also exempt.³⁰

Regulatory Provisions

State law also regulates the issuance of local business tax receipts to certain individuals or businesses.³¹ Section 205.194, F.S., provides that any person applying for or renewing a local business tax receipt to practice any profession or engage in or manage any business or occupation regulated by the Department of Business and Professional Regulation, the Florida Supreme Court, or any other state regulatory agency, including any board or commission thereof, must exhibit an active state certificate, registration, or license, or proof of copy of the same, before such local receipt may be issued.

State law provides similar requirements for production of evidence of appropriate licensure prior to issuance of a local business tax receipt for pharmacies and pharmacists,³² assisted living facilities,³³ pest control,³⁴ health studios,³⁵ sellers of travel,³⁶ telemarketing businesses,³⁷ and household moving services.³⁸ However, out-of-state businesses that are conducting operations within the state solely to perform disaster-related work or emergency-related work during a disaster-response period are not subject to registration, filing, or remittance requirements, including requirements for local business taxes.³⁹

²² Section 205.022(1), F.S.

²³ Section 205.063, F.S.

²⁴ Section 205.064, F.S.

²⁵ Section 205.065, F.S.

²⁶ Section 205.066, F.S.

²⁷ Section 205.162, F.S.

²⁸ Section 205.171, F.S.

²⁹ Section 205.193, F.S.

³⁰ Section 205.192, F.S.

³¹ Sections 205.194, 205.196, 205.1965, 205.1967, 205.1969, 205.1971, 205.1973, and 205.1975, F.S.

³² Section 205.196, F.S.

³³ Section 205.1965, F.S.

³⁴ Section 205.1967, F.S.

³⁵ Section 205.1969, F.S.

³⁶ Section 205.1971, F.S.

³⁷ Section 205.1973, F.S.

³⁸ Section 205.1975, F.S.

³⁹ Section 213.055, F.S.

Distribution of Revenues

The revenues derived from the business tax imposed by county governments, exclusive of the costs of collection and credit given for municipal business taxes, are apportioned between the county's unincorporated area and the incorporated municipalities located within the county by a ratio derived by dividing their respective populations by the county's total population.⁴⁰ Within 15 days following the month of receipt, the apportioned revenues are sent to each governing authority; however, this provision does not apply to counties that have established a new rate structure pursuant to s. 205.0535, F.S.⁴¹

Authorized Uses of Revenues

The tax proceeds are considered general revenue for the county or municipality. Additionally, the county business tax proceeds may be used for overseeing and implementing a comprehensive economic development strategy through advertising, promotional activities, and other sales and marketing techniques.⁴² The proceeds of the additional county business tax imposed pursuant to s. 205.033(6), F.S., are distributed by the county's governing body to a designated organization or agency for the purpose of implementing a comprehensive economic development strategy through advertising, promotional activities, and other sales and marketing techniques.⁴³

Total Revenues Collected

According to a report published by the Office of Economic and Demographic Research (EDR), in Fiscal Year 2013-14, 33 counties collected a total of \$27 million of local business tax revenue. In that same fiscal year, 292 municipalities collected a total of \$143 million of local business tax revenue.⁴⁴

Certain local governments receive a sizable amount of revenue from the local business tax. At least seven municipalities received over \$7 million in revenue from the local business tax including:

- Panama City—\$8.6 million;
- Panama City Beach—\$10 million;
- Jacksonville—\$7 million;
- Tampa—\$10.2 million;
- Hialeah—\$9.3 million;
- Miami—\$7.6 million; and
- Orlando—\$8.1 million.

Miami-Dade County received \$11.6 million in revenue from the local business tax.

⁴⁰ Section 205.033(4), F.S.

⁴¹ Section 205.033(5), F.S.

⁴² Section 205.033(7), F.S.

⁴³ Section 205.033(6)(b), F.S.

⁴⁴ Office of Economic and Demographic Research, 2014 County and Municipal Revenues for the Local Business Tax, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm> (last visited April 6, 2017).

III. Effect of Proposed Changes:

Section 1 creates s. 205.055, F.S., to provide an exemption from the local business tax and any subsequent fees for the following individuals and businesses that meet the listed criteria below on or after July 1, 2017:

- A veteran, the spouse of a veteran, or the surviving spouse of a veteran;
- The spouse of an active military servicemember who has relocated to the county or municipality pursuant to a permanent change of station order;
- An individual who is receiving public assistance, as that term is defined in s. 409.2554, F.S.;⁴⁵
- An individual whose household income is less than 130 percent of the federal poverty level based on the current year's federal poverty guidelines; and
- A business whose controlling interest is owned by an exempt person.

In order to be entitled to the exemption, the individual must complete and sign, under penalty of perjury, a Request for Fee Exemption, furnished by the local governing authority, and must provide written documentation in support of his or her request.

Section 2 repeals s. 205.171, F.S., relating to exemptions from the local business tax for disabled veterans of any war or their unremarried spouses.

Section 3 provides that this act shall take effect on July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of Art. VII, s. 18 of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was \$2 million or less.^{46,47,48}

The mandates provision of Art. VII, s. 18 of the Florida Constitution, may apply because this bill reduces local government authority to raise revenue by exempting certain persons from the local business tax. This bill does not appear to qualify under any exemption or

⁴⁵ Section 409.2554(8), F.S., defines "public assistance" to mean money assistance paid on the basis of Title IV-E and Title XIX of the Social Security Act, temporary cash assistance, or food assistance benefits received on behalf of a child under 18 years of age who has an absent parent.

⁴⁶ FLA. CONST. art. VII, s. 18(d).

⁴⁷ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited April 6, 2017).

⁴⁸ Based on the Demographic Estimating Conference's population adopted on November 1, 2016. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited April 6, 2017).

exception. Therefore, the bill may qualify as a mandate, requiring a two-thirds vote of the membership of each chamber of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates that the bill will reduce local business tax revenues by \$23.2 million beginning in Fiscal Year 2017-2018, assuming the bill language exempts spouses of veterans.

B. Private Sector Impact:

Veterans, spouses of veterans, surviving spouses of veterans, certain spouses of active servicemembers, and low-income individuals will be exempt from the local business tax, if they complete and sign a Request for Fee Exemption.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 205.055 of the Florida Statutes.

This bill repeals section 205.171 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS/CS by Appropriations Subcommittee on Finance and Tax on April 13, 2017:

The committee substitute:

- Includes spouses of veterans in the list of exempt individuals; and
- Specifies that businesses are also exempt if the controlling interest thereof is owned by an exempt person.

CS by Community Affairs on March 22, 2017:

Removes provisions that:

- Prohibited municipalities and counties from levying a local business tax that was not adopted before a certain date;
- Limited the rate of the local business tax; and
- Set maximum limits of certain transfer fees.

- B. **Amendments:**

None.