

**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.)

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Prepared By: The Professional Staff of the Committee on Community Affairs

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BILL: SB 330

INTRODUCER: Senator Steube

SUBJECT: Local Business Taxes

DATE: March 21, 2017

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	<b>Pre-meeting</b>
2.			AFT	
3.			AP	

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**I. Summary:**

SB 330 prohibits the governing bodies of counties and municipalities from levying a local business tax that was not adopted before January 1, 2017. Counties and municipalities that levied a local business tax that was adopted prior to January 1, 2017, may continue to do so, but the tax may not exceed \$25 for any taxpayer. The bill also limits the amount that counties and municipalities may charge for the transfer of receipts for the local business tax.

The bill provides an exemption from the local business tax for specified veterans, spouses of veterans, the spouse of active servicemembers, and low-income individuals if the individual completes and signs a Request for Fee Exemption.

**II. Present Situation:**

**Local Business Tax**

The local business tax, authorized in ch. 205, F.S., represents 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. Counties and municipalities may levy a business tax, and the tax proceeds are considered general revenue for the local government.<sup>1</sup> This tax does not refer to any regulatory fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection.<sup>2</sup>

**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

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<sup>1</sup> Sections 205.033 and 205.043, F.S.

<sup>2</sup> Section 205.022(5), F.S.

within its jurisdiction. 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.<sup>3</sup>

### **Administrative Procedures**

In order 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.<sup>4</sup> The public notice must contain the proposed classifications and rates applicable to the business tax.<sup>5</sup> A number of other conditions for levy are imposed on counties and municipalities.<sup>6</sup>

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.<sup>7</sup> These institutions are more particularly defined and limited in statute.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> The governing body of a county that levies the tax may request that municipalities within the county issue the county receipt and collect the tax.<sup>11</sup> 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.<sup>12</sup> All business tax receipts are sold by the appropriate tax collector beginning July 1 of each year.<sup>13</sup> 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.<sup>14</sup> In several situations, administrative penalties are also imposed.<sup>15</sup>

A county or municipality that has not adopted a business tax ordinance or resolution may adopt a business tax ordinance.<sup>16</sup> The tax rate structure and classifications in the adopted ordinance must be reasonable and based upon the rate structure and classifications prescribed in ordinances

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<sup>3</sup> Section 205.033(6), F.S.

<sup>4</sup> Sections 205.032 and 205.042, F.S.

<sup>5</sup> *Id.*

<sup>6</sup> Sections 205.033 and 205.043, F.S.

<sup>7</sup> Section 205.022(1), F.S.

<sup>8</sup> *Id.*

<sup>9</sup> Section 205.022(2), F.S.

<sup>10</sup> Section 205.045, F.S.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Section 205.053, F.S.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Section 205.0315, F.S.

adopted by adjacent local governments that have implemented s. 205.0535, F.S.<sup>17</sup> 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.<sup>18</sup>

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.<sup>19</sup> A county or municipality is not prohibited from decreasing or repealing any authorized local business tax, and the governing body may adopt an ordinance by majority vote that repeals a local business tax or establishes new rates that decrease local business tax and do not result in an increase in local business taxes for a taxpayer without having to establish an equity study commission.<sup>20</sup>

### **Exemptions**

State law exempts, or allows local governments to exempt, certain individuals from all or some portion of local business taxes.<sup>21</sup> 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 paying local business taxes.<sup>22</sup> 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.<sup>23</sup> There are also exemptions for persons engaged in specified farming activities,<sup>24</sup> certain nonresident persons regulated by the Department of Business and Professional Regulation,<sup>25</sup> certain employees of businesses that are required to pay a local business tax,<sup>26</sup> certain disabled persons, the elderly, and widows with minor dependents,<sup>27</sup> disabled veterans of any war or their unremarried spouses,<sup>28</sup> and certain mobile home setup operations.<sup>29</sup> Charitable, religious, fraternal, youth, civic, service, or other similar organization that make occasional sales or engage in fundraising projects that are

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> Section 205.0535(4), F.S.

<sup>20</sup> Section 205.0535(5), F.S.

<sup>21</sup> Sections 205.054, 205.063, 205.064, 205.065, 205.066, 205.162, 205.171, 205.191, 205.192, and 205.193, F.S.

<sup>22</sup> Section 205.022(1), F.S.

<sup>23</sup> Section 205.063, F.S.

<sup>24</sup> Section 205.064, F.S.

<sup>25</sup> Section 205.065, F.S.

<sup>26</sup> Section 205.066, F.S.

<sup>27</sup> Section 205.162, F.S.

<sup>28</sup> Section 205.171, F.S.

<sup>29</sup> Section 205.193, F.S.

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 are also exempt.<sup>30</sup>

### **Regulatory Provisions**

State law also regulates the issuance of local business tax receipts to certain individuals or businesses.<sup>31</sup> 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 business tax receipt for pharmacies and pharmacists,<sup>32</sup> assisted living facilities,<sup>33</sup> pest control,<sup>34</sup> health studios,<sup>35</sup> sellers of travel,<sup>36</sup> telemarketing businesses,<sup>37</sup> and household moving services,<sup>38</sup> respectively. 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.<sup>39</sup>

### **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.<sup>40</sup> 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.<sup>41</sup>

### **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

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<sup>30</sup> Section 205.192, F.S.

<sup>31</sup> Sections 205.194, 205.196, 205.1965, 205.1967, 205.1969, 205.1971, 205.1973, and 205.1975, F.S.

<sup>32</sup> Section 205.196, F.S.

<sup>33</sup> Section 205.1965, F.S.

<sup>34</sup> Section 205.1967, F.S.

<sup>35</sup> Section 205.1969, F.S.

<sup>36</sup> Section 205.1971, F.S.

<sup>37</sup> Section 205.1973, F.S.

<sup>38</sup> Section 205.1975, F.S.

<sup>39</sup> Section 213.055, F.S.

<sup>40</sup> Section 205.033(4), F.S.

<sup>41</sup> Section 205.033(5), F.S.

economic development strategy through advertising, promotional activities and other sales and marketing techniques.<sup>42</sup> 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.<sup>43</sup>

### **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 \$142 million of local business tax revenue.<sup>44</sup>

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.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 205.032, F.S., to prohibit the governing body of a county from levying a local business tax that was not adopted before January 1, 2017. The governing body of a county may continue to levy a local business tax that was adopted before January 1, 2017, but the tax may not exceed \$25 for any taxpayer.

**Section 2** amends s. 205.042, F.S., to prohibit the governing body of a municipality from levying a local business tax that was not adopted before January 1, 2017. The governing body of a municipality may continue to levy a local business tax that was adopted before January 1, 2017, but the tax may not exceed \$25 for any taxpayer.

**Section 3** amends s. 205.033, F.S., to limit the amount of transfer fees for receipts which may be charged by a county for the local business tax. Specifically, transfer fees for receipts that are transferred to a new owner and receipts that are transferred from one location to another location in the same county are now capped at \$10 instead of \$25.

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<sup>42</sup> Section 205.033(7), F.S.

<sup>43</sup> Section 205.033(6)(b), F.S.

<sup>44</sup> 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 March 16, 2017).

**Section 4** amends s. 205.034, F.S., to limit the amount of transfer fees for receipts which may be charged by a municipality for the local business tax. Specifically, transfer fees for receipts that are transferred to a new owner and receipts that are transferred from one location to another location in the same municipality are now capped at \$10 instead of \$25.

**Sections 5 and 6** amend ss. 205.0535 and 205.054, F.S., to make conforming changes to the bill.

**Section 7** creates s. 205.055, F.S., to provide an exemption from the local business tax and any subsequent fees for the following individuals who meet the listed criteria below on or after July 1, 2016:

- A veteran or the surviving spouse of a veteran of the United States Armed Forces;
- 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.; and
- An individual whose household income is less than 130 percent of the federal poverty level based on the current year's federal poverty guidelines.

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

**Section 8** 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 9** provides that this act shall take effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Subsection (b) of section 18, Article VII 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.

The Revenue Estimating Conference estimated a negative recurring impact of \$152.8 million in 2017-2018; \$156.5 million in 2018-19; \$160.3 million in 2019-20; \$164.2 million in 2020-21; and \$168.3 million in 2021-22.

The county/municipality mandates provision of Article VII, Section 18 of the Florida Constitution, may apply because this bill reduces local government authority to raise revenue by capping to \$25 the amount that a county or municipality can levy under the local business tax. This bill does not appear to qualify under any exemption or exception.

If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Individuals in counties and municipalities may pay a lower local business tax rate.

**C. Government Sector Impact:**

Counties and municipalities that adopted a local business tax before January 1, 2017, will be limited to a maximum rate of \$25 for any taxpayer and may see a corresponding decrease in revenue.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Counties that adopted the business tax before January 1, 2017, may not exceed a rate of \$25 for any “single” taxpayer (Line 41). Municipalities that adopted the business tax before January 1, 2017, may not exceed a rate of \$25 for any taxpayer (Line 60). It is unclear if this is a meaningful or intended distinction.

**VIII. Statutes Affected:**

This bill substantially amends sections 205.032, 205.042, 205.033, 205.043, 205.0535, and 205.054 of the Florida Statutes.

This bill creates section 255.055 of the Florida Statutes.

This bill repeals section 205.171 of the Florida Statutes.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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