

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 487 Local Business Tax
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee; Renner
TIED BILLS: IDEN./SIM. **BILLS:** SB 330

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	8 Y, 0 N, As CS	Banner	Miller
2) Ways & Means Committee	14 Y, 0 N	Dugan	Langston
3) Government Accountability Committee			

SUMMARY ANALYSIS

The bill prohibits a county or municipality from levying a local business tax that was adopted on or after January 1, 2017. Additionally, the bill eliminates the public noticing requirement for a resolution or ordinance to adopt a new local business tax.

The bill creates an exemption from local business taxes for low-income persons who engage in or manage a business, profession, or occupation. In order to qualify, the individual claiming the exemption must receive public assistance, as defined in s. 409.2554, F.S., or have a household income less than 130 percent of the federal poverty level. The bill specifies the procedure required to receive such exemption.

The bill expands the exemption for disabled veterans to include veterans, veterans' spouses, and active duty military servicemembers' spouses, and specifies the procedures required to receive such exemption.

The bill is expected to have a negative impact on local government revenues. Staff estimates that the prohibition of new levies after January 1, 2017 is indeterminate. The magnitude of the impact of the new exemptions is not known. The Revenue Estimating Conference has not yet evaluated the bill.

This bill appears to be a county or municipal mandate requiring a two-thirds vote of the membership to be enacted. See Section III.A.1 of the analysis.

The effective date of the bill is July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

In 1972, the Florida Legislature elected to stop administering occupational license taxes at the state level and gave the authority to local governments. Local governments were then authorized to levy occupational license taxes according to the provisions of the “Local Occupational License Act.”

In 2006, 368 of the 404 municipalities and 52 of the 67 counties in Florida had some sort of local occupational license tax in place. Although the local occupational license tax was designed to be purely revenue producing in nature, it had become, unintentionally, a measure of profession and business qualifications to engage in a specific activity. Chapter 2006-152, L.O.F., renamed the act as the “Local Business Tax Act” to reflect that the business or individual has merely paid a tax and it alone does not authenticate the qualifications of a business or individual. The legislation removed the term “occupational license” and added the terms “local business tax” and “local business tax receipt.”

Administrative Procedures

Under current law, a county or municipality may, by appropriate resolution or ordinance, impose a local business tax for the privilege of engaging in or managing a business, profession, or occupation within its jurisdiction.¹ This differs from fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection. Unless otherwise provided by law, these are deemed to be regulatory and in addition to, but not in lieu of, any local business tax imposed under the provisions of ch. 205, F.S.² “Business,” “profession,” and “occupation” do not include the customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable and nonprofit educational institutions in this state.³

Currently, the method for adopting a local business tax ordinance, revising the rate structure of such a tax, or reclassifying occupations within the tax structure is dependent on both the date of the adoption of the tax and the statute under which it was adopted.⁴ Municipalities wishing to revise their rate structure and classification must do so under s. 205.043, F.S., or adopt a new ordinance under s. 205.0315, F.S.

Section 205.043, F.S., requires local business taxes to be “based upon reasonable classifications” and “uniform throughout any class.” Rate structure revisions have been permitted under this section since October 1, 1980, subject to limitations on increases above the tax rate levied on October 1, 1971.

Section 205.0315, F.S., requires a local business tax ordinance adopted after October 1, 1995, to be based on the ordinances of adjacent local governments which adopted their ordinances under s. 205.0535, F.S. If no such government exists or the local government finds that the rate structure or classifications of the adjacent jurisdiction are unreasonable, then the local government may base its ordinance on that of a jurisdiction of comparable population which adopted an ordinance under s. 205.0535, F.S.

¹ Sections 205.032 and 205.042, F.S.

² Section 205.022(5), F.S.

³ Section 205.022(1), F.S.

⁴ Section 205.0315, F.S.

Section 205.0535, F.S., allows local governments that adopted a local business tax ordinance after October 1, 1995, to reclassify businesses, professions, and occupations and to establish new rate structures by October 1, 2008. The procedures for revising the classifications and rate structure included requiring a local government to establish an equity study commission to recommend a revised classification system and new rate structure.⁵ After consideration of the commission's recommendations, the local government had the authority to adopt, by majority vote, a new local business tax ordinance, subject to the following statutory limitations on the amount of the increase:⁶

- For receipts costing \$150 or less, 200 percent;
- For receipts costing more than \$150 but not more than \$500, 100 percent;
- For receipts costing more than \$500 but not more than \$2,500, 75 percent;
- For receipts costing more than \$2,500 but not more than \$10,000, 50 percent; and
- For receipts costing more than \$10,000, 10 percent.

A minimum business tax of up to \$25 is permitted and no receipt may be increased more than \$5,000.⁷ The total annual revenue generated by the new rate structure for the fiscal year following the fiscal year during which the rate structure is adopted may not exceed the sum of the revenue base and 10 percent of that revenue base.⁸

A local government which followed these procedures and adopted a new rate structure before the October 1, 2008, deadline is authorized to increase its local business taxes by up to 5 percent every other year by ordinance, if approved by a majority plus one of the governing body.⁹

Counties operating under a home-rule charter¹⁰ or any adjacent county are authorized to levy and collect an additional business tax up to 50 percent, if the business tax being imposed was adopted by ordinance prior to January 1, 1995.¹¹

Sections 205.033 and 205.043, F.S., stipulate the conditions under which counties and municipalities are authorized to levy a local business tax. When levying a new business tax, the county or municipality must first give at least 14 days of public notice of the resolution or ordinance by publishing a notice in a newspaper of general circulation within its jurisdiction. The public notice must contain the proposed classifications and rates applicable to the business tax.¹²

A municipality's governing body that levies the tax may request that the county in which the municipality is located issue the municipal receipt and collect the tax. A county's governing body that levies the tax may request that municipalities within the county issue the county receipt and collect the tax. However, before a local government issues any business receipts on behalf of another local government, appropriate agreements must be entered into by the affected local governments.¹³ All business tax receipts are sold by the appropriate tax collector beginning July 1st of each year. The taxes are due and payable on or before September 30th of each year, and the receipts expire on September 30th of the succeeding year. Under certain circumstances, administrative penalties are also imposed.¹⁴

⁵ Section 205.0535(2), F.S.

⁶ Section 205.0535(3)(a), F.S.

⁷ *Id.*

⁸ Section 205.0353(3)(b), F.S.

⁹ Section 205.0353(4), F.S.

¹⁰ Section 125.011(1), F.S.

¹¹ Section 205.033(6), F.S. This applies to business taxes imposed under s. 205.033(1), F.S.

¹² Sections 205.032 and 205.042, F.S.

¹³ Section 205.045, F.S.

¹⁴ Section 205.053, F.S.

Exemptions

Chapter 205, F.S., allows local governments to exempt certain individuals from all or some portion of local business taxes as well as to regulate the issuance of tax receipts to certain individuals or businesses. Such exemptions include the following:

- An exemption of 50 percent of the business tax levied when the permanent business location or branch office is located in an enterprise zone.¹⁵
- Vehicles used for the sale and delivery of tangible personal property at wholesale or retail from the place of business on which a business tax is paid.¹⁶
- An individual who engages in or manages a business, profession, or occupation as an employee of another person, excluding individuals acting in the capacity as an independent contractor.¹⁷
- An individual licensed and operating as a broker associate or sales associate under chapter 475, F.S.¹⁸
- All disabled persons physically incapable of manual labor, widows with minor dependents, and persons 65 years or older, with not more than one employee or helper, and who use their own capital only, not in excess of \$1,500.¹⁹
- An exemption of \$50 toward the local business tax for all honorably discharged members of the United States Armed Forces, who are also disabled from performing manual labor, and permanent residents of the state. The unmarried spouse of a deceased disabled veteran is also entitled to this exemption.²⁰
- Charitable and religious organizations.²¹
- A licensed mobile home dealer or mobile home manufacturer, or an employee of a dealer or manufacturer, who performs setup operations.²²

Tax Collections

Statewide, in Local Fiscal Year 2013-2014²³, total county levies of local business taxes were \$27.4 million²⁴ and total municipality levies of local business taxes were \$142.7 million.²⁵ Preliminary data for local fiscal year 2014-2015 indicate \$26.6 million²⁶ for county levies and \$120.8 million²⁷ for municipal levies.

Distribution of Tax Proceeds

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

¹⁵ Section 205.054, F.S.

¹⁶ Section 205.063, F.S.

¹⁷ Section 205.066, F.S.

¹⁸ Section 205.067, F.S.

¹⁹ Section 205.162, F.S.

²⁰ Section 205.171, F.S.

²¹ Sections 205.191 and 205.192, F.S.

²² Section 205.193, F.S.

²³ Local fiscal year 2014 is most current final data available. Local fiscal year 2015 data are preliminary since reporting by all municipalities has not yet been finalized.

²⁴ Office of Economic and Demographic Research, *County Revenues: LFY 1993-2015*, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/localbiztxco.xls> (accessed 3/18/2017).

²⁵ Office of Economic and Demographic Research, *Municipal Revenues: LFY 1993-2015*, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/localbiztxmu.xls> (accessed 3/18/2017).

²⁶ *Supra* note 23

²⁷ *Supra* note 24

dividing their respective populations by the county's total population.²⁸ Furthermore, within 15 days following the month of receipt, the apportioned revenues are sent to each governing authority.²⁹

Authorized Uses

Local business tax proceeds are considered general revenue for the local government. The proceeds of a county-imposed local business tax may be used for overseeing and implementing a comprehensive economic development strategy through advertising, promotional activities and other sales and marketing techniques.³⁰ 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.

Effect of Proposed Changes

The bill prohibits counties and municipalities from levying any new local business tax after January 1, 2017. Counties and municipalities may continue to levy a local business tax that was adopted prior to January 1, 2017. Additionally, the bill eliminates the public notice requirement for a resolution or ordinance to adopt a new local business tax.

The bill authorizes an exemption to the local business tax for low-income persons receiving public assistance, as defined in s. 403.2554, F.S., or a person whose household income is less than 130 percent of the federal poverty level.

The bill revises the current exemption for disabled veterans or their unremarried spouses to include all veterans, veterans' spouses, and active duty military servicemembers' spouses. The exemption for active duty military servicemembers' spouses requires a receipt of permanent change of station orders to the county or municipality. Receipts received pursuant to this exemption are not transferable and are required to be marked by the local governing authority as such (i.e., "Veteran Exempt Receipt – Not Transferable", etc.).

The bill is effective July 1, 2017.

B. SECTION DIRECTORY:

- Section 1:** Amends s. 205.032, F.S., to provide that a county may continue to levy a local business tax that was adopted prior to January 1, 2017; prohibits new county levies adopted after January 1, 2017; and eliminates the public notice requirement.
- Section 2:** Amends s. 205.042, F.S., to provide that a municipality may continue to levy a local business tax that was adopted prior to January 1, 2017; prohibits new municipality levies adopted after January 1, 2017; and eliminates the public notice requirement.
- Section 3:** Amends s. 205.162, F.S., to exempt low-income persons, as defined, from paying the local business tax and specifies the procedures required to receive such exemption.
- Section 4:** Amends s. 205.171, F.S., to revise the exemption to include veterans, veterans' spouses, and active duty military service members' spouses, as defined, and specifies the procedures required to receive such exemption.
- Section 5:** Provides an effective date of July 1, 2017.

²⁸ Section 205.033, F.S.

²⁹ Section 205.033(5), F.S.

³⁰ Section 205.033(7), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill is expected to have a negative impact on local government revenues. Staff estimates that the prohibition of new levies after January 1, 2017 is indeterminate. The magnitude of the impact of the new exemptions is not known. The Revenue Estimating Conference has not yet evaluated the bill.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill prohibits the levy of new local business tax and provides additional exemptions for low-income persons and servicemembers and their families. By doing so, the bill appears to promote business and industry in the state.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill reduces the authority that counties or municipalities have to raise revenues in the aggregate. The reduction in authority comes from the limits and exemptions for local business taxes created by the bill. 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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 21, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute (CS). The strike-all:

- authorizes counties and municipalities to continue to levy local business taxes adopted prior to January 1, 2017,
- prohibits new county levies adopted after January 1, 2017,
- eliminates the public notice requirement,
- provides an exemption for low-income persons, and
- expands exemptions for veterans, veterans' spouses, and active duty military servicemembers' spouses.

The analysis reflects the bill as amended.