

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4025 Local Business Taxes
SPONSOR(S): O'Toole and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 760

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee		Aldridge	Langston
2) Economic Affairs Committee			

SUMMARY ANALYSIS

The local business tax authorized under Chapter 205, F.S., represents the taxes 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. This tax does not refer to any regulatory fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection.

The bill repeals Chapter 205, F.S., and makes conforming changes to Florida statutes.

The bill has an effective date of July 1, 2012.

The Revenue Estimating Conference estimates the bill would have no impact on state government revenues and would have a negative recurring impact on local government revenues of \$156.4 million dollars beginning in FY 2012-13.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Brief Background

The local business tax, authorized in Chapter 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.¹ This tax does not refer to any regulatory fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection.²

Prior to 1972, the state imposed an occupational license tax and shared the revenues with the counties. Municipalities levied their own occupational license taxes pursuant to local ordinance or resolution. Counties had no authority to levy an occupational license tax until October 1, 1972, when Chapter 72-306, Laws of Florida, repealed the state tax and authorized both counties and cities to impose an occupational tax at the state or city rate then in effect. In 1980, the legislature authorized counties and municipalities to increase rates by a specified percentage based upon the rates then in effect.³ In 1986, the legislature authorized Miami-Dade, Broward, Monroe and Collier counties to increase their rates by an additional 50%, with the proceeds being dedicated to specified economic development activities.⁴

Effective January 1, 2007, the legislature changed the name of the Local Occupational License Tax to the Local Business Tax.⁵ This was done in response to some individuals representing that the fact that they had obtained an “occupational license” under Chapter 205, F.S., conferred upon them some type of official proof of their competency to perform various repairs and services. The name change was intended to clarify that the payments made under Chapter 205, F.S., were taxes and not some type of regulatory fee.

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 as defined by law.⁶ The public notice must contain the proposed classifications and rates applicable to the business tax.⁷ A number of other conditions for levy are imposed on counties and municipalities.⁸

For purposes of Chapter 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.⁹ These institutions are more particularly defined and limited in statute.¹⁰ 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

¹ Sections 205.033 and 205.042, F.S.

² Section 205.022(5), F.S.

³ Chapter 80-274, L.O.F.

⁴ Chapter 86-298, L.O.F.

⁵ Chapter 2006-152, L.O.F.

⁶ Sections 205.033 and 205.042, F.S.

⁷ Id.

⁸ Sections 205.033 and 205.043, F.S.

⁹ Section 205.022(1), F.S.

¹⁰ Id.

name the document is issued has complied with the provisions of Chapter 205, F.S., relating to the business tax.¹¹

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.¹² 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.¹³ 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.¹⁴ All business tax receipts are sold by the appropriate tax collector beginning July 1st of each year.¹⁵ 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.¹⁶ In several situations, administrative penalties are also imposed.¹⁷

New Tax Levies

A county or municipality that has not yet adopted a business tax ordinance or resolution may adopt a business tax ordinance pursuant to s. 205.0315, F.S. 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 a local business tax.¹⁸ If no adjacent local government has implemented a local business tax, 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 a local business tax, in counties or municipalities that have a comparable population.¹⁹

Tax Base/Rate Restructuring

Currently, counties and municipalities with an existing local business tax may not reclassify businesses, professions, and occupations.²⁰ However, those counties and municipalities that underwent a reclassification and rate structure revision pursuant to s. 205.0535, F.S., prior to October 1, 1995, or during a window of time available from July 1, 2007, through October 1, 2008, for certain municipalities may, every other year, increase or decrease by ordinance the rates of business taxes by up to 5 percent.²¹ However, an increase may not be enacted by less than a majority plus one vote of the governing body.²² A county or municipality is not prohibited from decreasing or repealing any authorized local business tax.²³

Exemptions

Chapter 205, F.S., provides several exemptions and exclusions from local business taxes. 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.²⁴ There is an optional partial exemption for

¹¹ Section 205.022(2), F.S.

¹² Section 205.045, F.S.

¹³ Id.

¹⁴ Id.

¹⁵ Section 205.053, F.S.

¹⁶ Id.

¹⁷ Id.

¹⁸ Section 205.0315, F.S..

¹⁹ Id.

²⁰ Section 205.0535, F.S.

²¹ Section 205.0535(4), F.S.

²² Id.

²³ Id.

²⁴ Section 205.022(1), F.S.

businesses located in enterprise zones.²⁵ 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.²⁶ There are also exemptions for persons engaged in specified farming activities,²⁷ certain nonresident persons regulated by the Department of Professional Regulation,²⁸ certain employees of businesses that are required to pay a local business tax,²⁹ certain disabled persons, the aged, and widows with minor dependents,³⁰ disabled veterans of any war or their unremarried spouses,³¹ and certain mobile home setup operations.³² Charitable, religious, fraternal, youth, civic, service, or other similar organization that make occasional sales or engage 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 are also exempt.³³

Regulatory Provisions

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.

Sections 205.196, 205.1965, 205.1967, 205.1969, 205.1971, 205.1973 and 205.1975, F.S., provide similar requirements for production of evidence of appropriate licensure prior to issuance of a business tax receipt for pharmacies and pharmacists, assisted living facilities, pest control, health studios, sellers of travel and telemarketing businesses, respectively.

Distribution of Revenues

The revenues derived from the business tax imposed by county governments, exclusive of the costs of collection and any 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.³⁴ 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.³⁵

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.³⁶ The proceeds of the additional county business tax imposed pursuant to s. 205.033(6), F.S., shall be 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.³⁷

²⁵ Section 205.054, F.S.

²⁶ Section 205.063, F.S.

²⁷ Section 205.064, F.S.

²⁸ Section 205.065, F.S.

²⁹ Section 205.066, F.S.

³⁰ Section 205.162, F.S.

³¹ Section 205.171, F.S.

³² Section 205.193, F.S.

³³ Section 205.192, F.S.

³⁴ Section 205.033(4), F.S.

³⁵ Section 205.033(5), F.S.

³⁶ Section 205.033(7), F.S.

³⁷ Section 205.033(6)(b), F.S.

Total Revenues Collected

In fiscal year 2008-09, counties collected a total of \$31.8 million of local business tax revenue.³⁸ In that same fiscal year, municipalities collected a total of \$127.0 million of local business tax revenue.³⁹

Effect of Proposed Changes

The bill would repeal Chapter 205, F.S., and would make conforming changes to Florida statutes to eliminate references to the chapter.

B. SECTION DIRECTORY:

Section 1: Repeals Chapter 205, F.S.

Section 2: Amends s. 202.24(2)(c), F.S., to delete a reference to local business taxes.

Section 3: Amends s. 213.0535(4)(a), F.S., to delete a reference to local business taxes.

Section 4: Amends s. 213.756(2)(b), F.S., to delete a reference to local business taxes.

Section 5: Amends s. 290.0057(1)(e), F.S., to delete a reference to local business taxes.

Section 6: Amends s. 337.401(3)(f), F.S., conforming provisions to changes made by the bill.

Section 7: Redesignates specified paragraphs in s. 376.84(1), F.S., and amends s. 376.84(1)(d), F.S., to delete a reference to local business taxes.

Section 8: Renumbers specified subsections of s. 379.3761, F.S., and amends the same to delete a reference to local business taxes.

Section 9: Amends s. 482.071, F.S., to delete a reference to local business taxes.

Section 10: Redesignates specified paragraphs in s. 482.242, F.S., and amends s. 482.242(1)(a), F.S., to delete a reference to local business taxes.

Section 11: Renumbers specified subsections of s. 489.119, F.S., and amends s. 489.119(4), F.S., to delete a reference to local business taxes and deletes an application requirement related to local business taxes.

Section 12: Amends s. 489.127(1), F.S., to delete a reference to local business taxes.

Section 13: Redesignates specified paragraphs in s. 489.128(1), F.S. and amends s. 489.128(1)(b), F.S., to delete a reference to local business taxes.

Section 14: Amends s.489.131, F.S., to delete a reference to local business taxes.

Section 15: Amends s. 489.516(3), F.S., to delete a reference to local business taxes.

Section 16: Renumbers specified subsections of s. 489.521, F.S., and amends the same to delete a reference to local business taxes.

Section 17: Amends s.489.5315, F.S., to delete a reference to local business taxes.

³⁸ Figures obtained from the Office of Economic and Demographic Research.

³⁹ Id.

Section 18: Redesignates specified paragraphs in s. 489.532(1), F.S. and amends s. 489.532(1)(b), F.S., to delete a reference to local business taxes.

Section 19: Amends s. 489.533(1)(q), F.S., conforming provisions to changes made by the bill.

Section 20: Renumbers 489.537(9), F.S., and amends the same to delete a reference to local business taxes.

Section 21: Amends s. 500.511(3), to delete a reference to local business taxes.

Section 22: Amends s. 501.016, F.S., to delete a reference to local business taxes.

Section 23: Redesignates specified paragraphs in s. 501.143(3), F.S. and amends s. 501.143(3)(b), F.S., to delete a reference to local business taxes.

Section 24: Amends s. 501.160, F.S., to delete a reference to local business taxes.

Section 25: Amends s. 507.13, F.S., to delete a reference to local business taxes.

Section 26: Amends s. 539.001, F.S., to delete a reference to local business taxes.

Section 27: Amends s. 559.939, F.S., to delete a reference to local business taxes.

Section 28. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Revenue indicates that this bill will have an insignificant operational impact on the Department.⁴⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimates the bill would have a negative recurring impact on local government revenues of \$156.4 million dollars beginning in FY 2012-13.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons currently paying a local business tax would no longer be required to do so.

D. FISCAL COMMENTS:

None.

⁴⁰ Department of Revenue Bill Analysis of HB 4025 dated September 16, 2011.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill eliminates the local businesses taxes authorized under Chapter 205, F.S. 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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES