

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4195 Local Business Taxes

SPONSOR(S): O'Toole

TIED BILLS: **IDEN./SIM. BILLS:**

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.

Prior to 1972, the state imposed an occupational license tax and shared the revenues with the counties. 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had no authority to levy an occupational license tax until October 1, 1972, when Chapter 72-306, Laws of Florida, repealed the state tax and authorized counties to impose an occupational tax at the state rate then in effect.

The bill repeals Chapter 205, F.S.

The bill has an effective date of July 1, 2011.

The Revenue Estimating Conference has not estimated the revenue impacts of this bill. Statewide local business tax collections in FY 2008-09 were \$149.5 million.

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 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

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Effective January 1, 2007, the legislature changed the name of the Local Occupational License Tax to the Local Business Tax.³ This was done in response to some individuals representing that the fact that they had obtained a “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.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 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.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 Chapter 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 receipt and collect

¹ Sections 205.033 and 205.042, F.S.

² Section 205.022(5), F.S.

³ Chapter 2006-152, L.O.F.

⁴ Sections 205.033 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.

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 1st of each year.¹³ 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.¹⁴ In several situations, administrative penalties are also imposed.¹⁵

Beginning October 1, 1995, 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.¹⁷ If no adjacent local government has implemented, 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, in counties or municipalities that have a comparable population.¹⁸

By October 1, 2008, any municipality that has adopted by ordinance a local business tax after October 1, 1995, may, by ordinance, reclassify businesses, professions, and occupations and may establish new rate structures, provided certain conditions have been met.¹⁹ If such conditions have been met, counties and municipalities may, every other year thereafter, increase or decrease by ordinance the rates of business taxes by up to 5 percent.²⁰ However, an increase may not be enacted by less than a majority plus one vote of the governing body.²¹ A county or municipality is not prohibited from decreasing or repealing any authorized local business tax.²² State law exempts, or allows local governments to exempt, certain individuals from all or some portion of local business taxes.²³ State law also regulates the issuance of local business tax receipts to certain individuals or businesses.²⁴

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.²⁵ 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.²⁶

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, F.S.

²⁰ Section 205.0535(4), F.S.

²¹ Id.

²² Id.

²³ Sections 205.054, 205.063, 205.064, 205.065, 205.162, 205.171, 205.191, 205.192 and 205.193, F.S.

²⁴ Sections 205.194, 205.196, 205.1965, 205.1967, 205.1969, 205.1971, 205.1973 and 205.1975, F.S.

²⁵ Section 205.033(4), F.S.

²⁶ Section 205.033(5), F.S.

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.²⁷ 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.²⁸

Total Revenues Collected

In fiscal year 2008-09, counties collected a total of \$31.8 million of local business tax revenue.²⁹ In that same fiscal year, municipalities collected a total of \$117.7 million of local business tax revenue.³⁰

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: 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 7: Renumbers specified subsections of s. 379.3761 and amends the same to delete a reference to local business taxes.

Section 8: Amends s. 482.071, F.S., to delete a reference to local business taxes.

Section 9: 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 10: Amends s. 489.127(1), F.S., to delete a reference to local business taxes.

Section 11: 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 12: Amends s.489.131, F.S., to delete a reference to local business taxes.

²⁷ Section 205.033(7), F.S.

²⁸ Section 205.033(6)(b), F.S.

²⁹ Figures obtained from the Office of Economic and Demographic Research's website. See <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/localbiztx.xls> (last visited April 2, 2011)

³⁰ Id.

Section 13: 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 14: Renumbers 489.537(9), F.S., and amends the same to delete a reference to local business taxes.

Section 15: Amends s. 500.511(3), to delete a reference to local business taxes.

Section 16: Amends s. 501.016, F.S., to delete a reference to local business taxes.

Section 17: 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 18: Amends s. 501.160, F.S., to delete a reference to local business taxes.

Section 19: Amends s. 559.939, F.S., to delete a reference to local business taxes.

Section 20. Provides an effective date of July 1, 2011.

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.³¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not yet estimated the revenue impacts of this bill. Statewide local business tax collections in FY 2008-09 were \$149.5 million.

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.

³¹ Department of Revenue Bill Analysis of HB 4195 dated March 29, 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