

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 487 Local Business Tax

SPONSOR(S): Government Accountability Committee; Local, Federal & Veterans Affairs Subcommittee; Renner and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/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	14 Y, 0 N, As CS	Banner	Williamson

SUMMARY ANALYSIS

The bill creates an exemption from local business taxes for honorably discharged veterans and their spouses, unremarried surviving spouses of veterans, spouses of certain active duty military servicemembers', and low-income persons who engage in or manage a business, profession, or occupation. For low-income persons, the individual claiming the exemption must receive public assistance or have a household income less than 130 percent of the federal poverty level. A business with fewer than 100 people may be exempt from the business tax if an individual to whom an exemption would apply owns a majority interest in the business. The bill also specifies the procedure required to receive such exemption.

The bill allows any municipality that imposes a business tax on merchants measured by gross receipts from the sale of merchandise, services, or both, to continue imposing such tax.

The Revenue Estimating Conference has not reviewed the bill as amended. Based on prior Revenue Estimating Conference analyses of similar language, staff estimates the impact of the bill as amended to be approximately \$20 million annually, beginning in Fiscal Year 2017-2018. The bill is expected to have a negative impact on local government revenues.

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.

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 that 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 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 2013-2014,²³ 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 the 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.

Local Business Tax on the Gross Sales of Retail and Wholesale Merchants

The Cities of Panama City and Panama City Beach levy separate business taxes on the gross sale of all retail and wholesale merchants within the municipal jurisdiction. These municipalities are the only known local governments in Florida that levy a local business tax on the gross receipts of retail and wholesale merchants.³¹

For retail merchants, the City of Panama City imposes a tax of \$10 for each \$1,000 (i.e. 1 percent) of gross sales with a minimum tax of \$1.50 per month. The tax imposed on wholesale merchants is \$0.50 for each \$1,000 of gross sales, or major fraction thereof (i.e. 0.05 percent) with a minimum tax of \$1.50 per month. The tax only applies to the first \$5,000 collected by a merchant for any single item of merchandise.³²

The City of Panama City Beach imposes a tax of \$10 for each \$1,000 (i.e. 1 percent) of gross sales with a minimum tax of \$50 per year for retail merchants. The tax imposed on wholesale merchants is \$1.50 for each \$1,000 of gross sales, or major fraction thereof (i.e. 0.15 percent) with a minimum tax of \$50 per year.³³

Effect of Proposed Changes

The bill authorizes an exemption to the local business tax for honorably discharged veterans and their spouses, unremarried surviving spouses of honorably discharged veterans, active duty military servicemembers' spouses, and low-income persons receiving public assistance, as defined in s. 403.2554, F.S., or having a household income less than 130 percent of the federal poverty level. The exemption for the spouses of active duty military servicemembers requires a receipt of permanent change of station orders to the county or municipality.

The bill requires an individual to complete and sign, under penalty of perjury, a Request for Fee Exemption to be furnished by the local governing authority and to provide written documentation supporting the request. Additionally, the bill provides an exemption for businesses with fewer than 100 people, if an individual to whom an exemption may apply owns a majority interest in the business.

²⁸ Section 205.033, F.S.

²⁹ Section 205.033(5), F.S.

³⁰ Section 205.033(7), F.S.

³¹ Office of Economic and Demographic Research, *2016 Local Government Financial Information Handbook* at 148, available at <http://edr.state.fl.us/Content/local-government/reports/lgfih16.pdf> (accessed 4/24/2017).

³² *Id.*

³³ *Id.* The Fiscal Year 2016-2017 City of Panama City Beach budget identifies \$10.3 million of projected revenue from local business tax levies (the single largest revenue source) and no levy of ad valorem taxes. Panama City Beach Administration, *Budgets & Financial Statements*, Amended 2016/Adopted 2017 Budget, at 7, available at <http://www.pcbgov.com/home/showdocument?id=6254> (last accessed 4/24/2017).

The bill allows any municipality that imposes a business tax on the gross sales of all retail and wholesale merchants within the municipal jurisdiction to continue to impose such tax. The municipality may change, by ordinance, the definition of a merchant, but not the rate of the tax.

B. SECTION DIRECTORY:

- Section 1:** Creates s. 205.055, F.S., to exempt honorably discharged veterans, veterans' spouses, unremarried surviving spouses of honorably discharged veterans, active duty servicemembers' spouses, and low-income persons from paying the local business tax and specifies the procedures required to receive such exemption.
- Section 2:** Repeals s. 205.171, F.S., relating to exemptions for disabled veterans of any way or their unremarried spouse.
- Section 3:** Allows any municipality that imposes a business tax based on gross receipts from the sale of merchandise, services, or both, to continue imposing such tax.
- Section 4:** Provides an effective date of July 1, 2017.

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 Revenue Estimating Conference has not reviewed the bill as amended. Based on prior Revenue Estimating Conference analyses of similar language, staff estimates the impact of the bill as amended to be approximately \$20 million annually, beginning in Fiscal Year 2017-2018. The bill is expected to have a negative impact on local government revenues.

2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill 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 exemptions to local business taxes created by the bill for certain categories of individuals. The bill does not appear to qualify for an 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:

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. The strike-all amendment:

- Authorized counties and municipalities to continue to levy local business taxes adopted prior to January 1, 2017;
- Prohibited new county levies adopted after January 1, 2017;
- Eliminated the public notice requirement;
- Provided an exemption for low-income persons; and
- Expanded exemptions for veterans, veterans' spouses, and active duty military servicemembers' spouses.

On April 24, 2017, the Government Accountability Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute (CS). The strike-all amendment:

- Provided exemptions for honorably discharged veterans or their spouses, the unremarried surviving spouse of an honorably discharged veteran, the spouse of an active duty servicemember who has relocated due to permanent change of station order, and low-income persons.
- Exempted a business with fewer than 100 people if an individual to whom an exemption may apply owns a majority interest in the business.
- Allowed any municipality that imposes a business tax based on gross receipts from the sale of merchandise, services, or both, to continue to impose such tax.

This analysis is drafted to the committee substitute as approved by the Government Accountability Committee.