

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 537 Home-Based Businesses

SPONSOR(S): Business & Professions Subcommittee, Donalds and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 778

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	7 Y, 3 N, As CS	Wright	Anstead
2) State Affairs Committee	13 Y, 7 N	Moehrle	Williamson
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Constitution grants local governments broad home rule authority, and county and municipal governments may exercise those powers of self-government that are provided by general or special law. As such, general law and home rule authority determines whether local governments are able to regulate businesses, and to what degree. Currently, some local governments have ordinances specific to regulating home-based businesses, or businesses which operate out of a residence. Some local governments regulate the types of businesses that may be carried on at a residence and others regulate the space in which business may occur.

The bill provides that local governments may not enact or enforce any ordinance, regulation, or policy, or take any action to license or otherwise regulate a home-based business in a manner that is different from other businesses in a local government's jurisdiction.

In order to be considered a home-based business, the bill requires that:

- the business operates, in whole or in part, from a residential property;
- the employees of the home-based business reside in the residence, except for up to two employees that do not reside at the residence. However, employees of the home-based business that do not primarily work at the residential dwelling are not required to reside in the dwelling;
- parking for the business activities of the home-based business complies with local zoning requirements;
- the use of the residential property is consistent with the uses of the residential areas that surround the property, but incidental and short term business uses and activities are permitted; and
- the activities of the home-based business are secondary to the property's use as a residential dwelling.

The bill provides that home-based businesses will only be subject to applicable business taxes in the county and municipality where the home-based business is located.

The bill allows a party to challenge any local government action regulating home-based businesses. The prevailing party is entitled to recover reasonable attorney fees and costs.

The bill has an indeterminate fiscal impact on local governments and does not appear to have a fiscal impact on the state.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Government Authority

The Florida Constitution grants authority for broad home rule by local governments. Non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.²

Likewise, municipalities³ have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform functions, provide services, and exercise any power for municipal purposes, except as otherwise provided by law.⁴

A “special district” is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.⁵ Special districts are created by general law,⁶ special act,⁷ local ordinance,⁸ or rule of the Governor and Cabinet.⁹ A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.¹⁰

A “dependent special district” is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district’s governing body are removable at will by the governing body of a single county or municipality, or the district’s budget is subject to the approval of the governing body of a single county or municipality.¹¹ An “independent special district” is any district that is not a dependent special district.¹²

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.¹³ Counties and municipalities may levy a business tax.¹⁴

¹ Art. VIII, s. 1(f), Fla. Const.

² Art. VIII, s. 1(g), Fla. Const.

³ A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term “municipality” may be used interchangeably with the terms “town,” “city,” and “village.”

⁴ Art. VIII, s. 2(b), Fla. Const. *See also* s. 166.021(1), F.S.

⁵ *See Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545 (Fla. 2019).

⁶ Section 189.031(3), F.S.

⁷ *Id.*

⁸ S. 189.02(1), F.S.

⁹ S. 190.005(1), F.S. *See, generally*, s. 189.012(6), F.S.

¹⁰ *2018 – 2020 Local Gov’t Formation Manual*, p. 62.

<https://myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf> (last visited Dec. 19, 2019).

¹¹ S. 189.012(2), F.S.

¹² S. 189.012(3), F.S.

¹³ S. 205.022(5), F.S.

¹⁴ Ss. 205.033 and 205.043, F.S.

Revenue Sources Based on Home Rule Authority

Pursuant to home rule authority, local governments may impose proprietary fees, regulatory fees, and special assessments to pay the cost of providing a facility or service or regulating an activity. A regulatory fee should not exceed the regulated activity's cost and is generally required to be applied solely to the regulated activity's cost for which the fee is imposed.¹⁵

Businesses and Occupations

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.¹⁶ If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.¹⁷ For example, Florida law currently preempts local regulation with regard to the following:

- assessing local fees associated with providing proof of licensure as a contractor, or providing, recording, or filing evidence of workers' compensation insurance coverage by a contractor;¹⁸
- assessing local fees and rules regarding low-voltage alarm system projects;¹⁹
- tobacco and nicotine products;²⁰
- firearms, weapons, and ammunition;²¹
- employment benefits;²²
- polystyrene products;²³
- public lodging establishments and public food service establishments;²⁴ and
- disposable plastic bags.²⁵

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances.²⁶ For example, Florida law specifically authorizes regulations relating to:

- zoning and land use;²⁷
- the levy of "reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter";²⁸
- the levy of local business taxes;²⁹
- building code inspection fees;³⁰
- tattoo establishments;³¹
- massage practices;³²
- child care facilities;³³
- taxis and other vehicles for hire;³⁴ and
- waste and sewage collection.³⁵

¹⁵ EDR, *supra* note 12, at 9.

¹⁶ Art. VIII, s. 1(f), Fla. Const.; Art. VII, s. 9(a), Fla. Const.; Art. VIII, s. 2(b), Fla. Const.; s. 166.021(1), F.S.

¹⁷ *Id.*; Wolf and Bolinger, *supra* note 17.

¹⁸ S. 553.80(7)(a)5.c., F.S.

¹⁹ S. 489.503(14), F.S.

²⁰ Ch. 569, F.S., and s. 386.209, F.S.

²¹ S. 790.33(1), F.S.

²² S. 218.077, F.S.

²³ S. 500.90, F.S.

²⁴ S. 509.032, F.S.

²⁵ S. 403.7033, F.S.

²⁶ *Supra* note 16.

²⁷ S. 125.01(1)(h), F.S.

²⁸ S. 166.221, F.S.

²⁹ Ch. 205, F.S.

³⁰ S. 166.222, F.S.

³¹ S. 381.00791, F.S.

³² S. 480.052, F.S.

³³ S. 402.306, F.S.

³⁴ S. 125.01(1)(n), F.S.

³⁵ S. 125.01(1)(k), F.S.

Home-based Business Regulations

Currently, some local governments have ordinances specific to regulating home-based businesses, or businesses which operate out of a residence. Some local governments regulate the types of businesses that may be carried on at a residence and others regulate the space in which business may occur. Examples include:

- In Volusia County, home-based businesses are required to occupy no more than 25 percent of the habitable floor area of the residence;³⁶
- In Tampa, home-based businesses may not be conducted in any accessory building;³⁷
- In Naples, home-based businesses are not allowed to conduct retail, wholesale, or warehousing activities at the residence;³⁸ and
- In Gainesville, a home-based business may not have more than one automobile used for the home-based business parked on the premises within view of surrounding properties. Such automobile may not have more than two signs, not exceeding two square feet in area, each mounted flat against or painted along the sides.³⁹

Effect of the Bill

The bill provides that local governments may not:

- prohibit, restrict, regulate, or license home-based businesses in a manner that is different from other businesses in a local government's jurisdiction; or
- enact or enforce any ordinance, regulation, or policy, or take any action to license or otherwise regulate a home-based business in violation of the provisions in the bill.

In order to be considered a home-based business, the bill requires that:

- the business operates, in whole or in part, from a residential property;
- the employees of the home-based business reside in the residence, except that up to two employees that do not reside at the residence may work at the residence. However, other employees of the home-based business that do not primarily work at the residence are not required to reside in the residence;
- parking related to the business activities of the home-based business complies with local zoning requirements;
- as viewed from the street, the use of the residential property is consistent with the uses of the residential areas that surround the property. However, incidental and short term business uses may be conducted at the residence; and
- the activities of the home-based business are secondary to the property's use as a residential dwelling.

The bill allows a home-based business that operates from a residential property to operate in an area zoned for residential use.

Home-based businesses will only be subject to applicable business taxes in the county and municipality where the home-based business is located.

The bill allows a party to challenge any local government action regulating home-based businesses. The prevailing party is entitled to recover reasonable attorney fees and costs incurred in challenging or defending the action, including reasonable appellate attorney fees and costs.

³⁶ Volusia County, FL., Ch. 72, art. II, div. 8, s. 72-283.

³⁷ Tampa, FL., Ch. 27, art. VI, div. 2, s. 27-282.5.

³⁸ Naples, FL., Ch. 56, art. III, s. 56-92.

³⁹ Gainesville, FL., Ch. 30, art. V, div. 2, s. 30-5.37.

B. SECTION DIRECTORY:

Section 1 Creates s. 559.955, F.S., relating to requirements for home-based businesses.

Section 2 Provides an effective date of July 1, 2020.

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:

Indeterminate. The bill provides that home-based businesses will only be subject to applicable business taxes in the county and municipality where the home-based business is located.

2. Expenditures:

Indeterminate. The bill allows a party to challenge any local government action regulating home-based businesses. The prevailing party is entitled to recover reasonable attorney fees and costs incurred in challenging or defending the action, including reasonable appellate attorney fees and costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more home-based businesses to operate more freely and efficiently.

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 prohibits local governments, except the county and municipality where the home-based business is located, from collecting business taxes from home-based businesses. However, an exemption may apply given that laws having an insignificant fiscal impact are exempt from the requirements of Art. VII, s. 18 of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither requires nor provides authority for agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill allows a “party” to bring a claim against a local government for certain actions against home-based businesses. It would be more precise to replace “party” with “home-based business,” or “substantially affected person.”

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Business & Professions Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS removed the following provisions from the bill:

- The total state preemption on the regulation and licensing of home-based businesses;
- Requirements relating to the Florida Building Code, traffic, noise, waste, and recycling; and
- Legislative findings.

The PCS added the following provisions to the bill:

- Authority to bring a legal challenge against any local government action related to home-based businesses, including attorney fees and costs for the prevailing party;
- A prohibition on local governments from regulating home-based businesses differently than other businesses;
- Clarification that home-based businesses are only subject to applicable business taxes where the home-based business is located; and
- Clarification that home-based businesses may have employees, which do not primarily work or reside at the residence.

This analysis is drafted to the committee substitute as approved by the Business & Professions Subcommittee.