

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 503 Limitation on Local Fees for Virtual Offices

SPONSOR(S): Fabricio

TIED BILLS: IDEN./SIM. BILLS: SB 578

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	14 Y, 0 N	Roy	Darden
2) Ways & Means Committee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The Florida Constitution grants local governments broad home rule authority. Non-charter county governments may exercise those powers of self-government that are provided by general or special law. Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors. Municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide municipal services, and exercise any power for municipal purposes except when expressly prohibited by law.

Counties can levy and collect taxes, both for county purposes and for the provision of municipal services within a municipal services taxing unit, in a manner provided by general law. A municipality can raise amounts of money which are necessary for the conduct of municipal government and may enforce that receipt and collection in a manner prescribed by ordinance not inconsistent with general law.

The bill prohibits a county, municipality, or local governmental entity from adopting or maintaining in effect any ordinance or rule that has the effect of imposing a "tax, charge, fee, or other imposition" on a virtual office. For the purposes of this prohibition, the bill defines:

- A "tax, charge, fee, or other imposition" as any amount or in-kind payment of property or services, regardless of whether such amount or in-kind payment is designated as a user fee, privilege fee, occupancy fee, or rental fee; and
- A "virtual office" as an office that provides communications services, such as telephone or facsimile services, and address services without providing dedicated office space.

The bill does not appear to have a fiscal impact on state government, but may have an indeterminate negative fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Ordinances

The Florida Constitution grants local governments broad home rule authority. Non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.² Municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide municipal services, and exercise any power for municipal purposes except when expressly prohibited by law.³ A local government enactment may be inconsistent with state law if the:

- State Constitution preempts the subject area;
- Legislature preempts the subject area; or
- Local enactment conflicts with a state statute.

Local governments exercise these powers by adopting ordinances. The adoption or amendment of a regular ordinance, other than an ordinance making certain changes to zoning, may be considered at any regular or special meeting of the local governing body.⁴ Notice of the proposed ordinance must be published at least 10 days before the meeting in a newspaper of general circulation in the area; state the date, time, and location of the meeting, the title of the proposed ordinance, and locations where the proposed ordinance may be inspected by the public; and advise that interested parties may appear and speak at the meeting. Municipal ordinances must also be read by title or in full on at least two separate days.⁵ Ordinances may only encompass a single subject and may not be revised or amended solely by reference to the title.⁶

Local Government Revenue Sources

Governments obtain revenue necessary to fund their operations and pay necessary expenses from a variety of sources. The nature of these revenue sources and the purpose for which such revenue may be used varies. Among the sources of governmental revenue are taxes, various fees and assessments, charges for goods or services, fines and penalties, gifts, grants and intergovernmental transfers and borrowing.⁷

In an overarching sense, all of these sources of revenue share some common attributes. They are all sources of revenue available to governments to be spent for their operations. They all represent a diversion of resources from the private sector to the public sector of the economy. There are also important legal, economic and practical differences between these revenue sources and the purposes for which the funds that they generate may be used. For example, some levies are often government exactions of money to pay for governmental goods or services that are either unrelated or only distantly related to the activity, person, or entity being taxed. Alternatively, there may be some direct “benefit” to

¹ Art. VIII, s. 1(f), Fla. Const.

² Art. VIII, s. 1(g), Fla. Const.

³ Art. VIII, s. 2(b); *see also* s. 166.021(1), F.S.

⁴ *See* ss. 125.66(2)(a) and 166.041, F.S. In addition to general notice requirements, a local government must provide written notice by mail to all property owners before adopting a zoning change involving less than 10 contiguous acres. Ss. 125.66(4)(a) and 166.041(3)(c)1., F.S. If a zoning change involves 10 or more contiguous acres, the local government must conduct two public hearings, advertised in a newspaper, before adopting the ordinance. Ss. 125.66(4)(b) and 166.041(3)(c)2., F.S.

⁵ S. 166.041(3)(a), F.S.

⁶ S. 125.67 and 166.041(2), F.S.

⁷ *See generally* Joseph Bishop-Henchman, *How Is the Money Used? Federal and State Cases Distinguishing Taxes and Fees*, Tax Foundation (Mar. 27, 2013), <https://taxfoundation.org/blog/how-money-used-federal-and-state-cases-distinguishing-taxes-and-fees> (last visited Jan. 27, 2024).

the payer, but there is limited or no ability to avoid the levy. The lines differentiating between these revenue sources are not always clear.⁸

Counties can levy and collect taxes, both for county purposes and for the provision of municipal services within a municipal services taxing unit, in a manner provided by general law.⁹ A municipality can raise amounts of money which are necessary for the conduct of municipal government and may enforce that receipt and collection in a manner prescribed by ordinance not inconsistent with general law.¹⁰

Effect of Proposed Change

The bill prohibits a county, municipality, or local governmental entity from adopting or maintaining in effect any ordinance or rule that has the effect of imposing a “tax, charge, fee, or other imposition” on a virtual office. For the purposes of this prohibition, the bill defines:

- A “tax, charge, fee, or other imposition” as any amount or in-kind payment of property or services, regardless of whether such amount or in-kind payment is designated as a user fee, privilege fee, occupancy fee, or rental fee; and
- A “virtual office” as an office that provides communications services, such as telephone or facsimile services, and address services without providing dedicated office space.

B. SECTION DIRECTORY:

Section 1: Creates s. 125.01035, F.S., prohibiting counties, municipalities, and local government entities from imposing a tax or other imposition on virtual offices.

Section 2: Creates s. 166.272, F.S., prohibiting municipalities from levying a tax or other imposition on virtual offices.

Section 3: Provides an effective date of July 1, 2024.

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 Estimate Conference estimated the bill to have an indeterminate negative fiscal impact on local government revenues, as the bill prohibits local governments from levying on or collecting a tax, charge, fee, or other imposition with respect to the utilization of a virtual office space but no local government has been identified as being potentially impacted.¹¹

⁸ See *City of De Land v. Fla. Pub. Serv. Co.*, 119 Fla. 819, 823, (1935) (“What controls our judgment in cases...involving the attempted imposition of taxes of the character here...is the underlying reality of the tax ordinance rather than the form or label of the challenged tax.”); *City of Gainesville v. State*, 863 So. 2d 138, 144-45 (Fla. 2003) (when determining whether a charge is an assessment or fee, the name of the charge is only one factor to consider among a list of factors).

⁹ S. 125.01(1)(r), F.S.

¹⁰ S. 166.201, F.S.

¹¹ Revenue Estimating Conference, *Limitation on Local Fees for Virtual Offices*,

http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2024/_pdf/page176-177.pdf (last visited Jan. 29, 2024).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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 prohibits counties and municipalities from levying certain tax, charges, fees, and other imposition on virtual offices. However, an exception may apply, as 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 provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.