

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 609 Local Business Taxes
SPONSOR(S): Ways & Means Committee, Botana and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1144

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	16 Y, 7 N, As CS	Berg	Aldridge
2) Local Administration, Federal Affairs & Special Districts Subcommittee			
3) State 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 provides a limitation on the amount of revenue a local government may receive from local business taxes, based on the revenue that local government received in local fiscal year 2023-24. If a local government receives more in local business tax revenue than it did in FY 2023-24, the local government must proportionally reduce its tax rates and must issue refunds or credits to taxpayers. The bill provides guidance on how those refunds/credits must be calculated and when they must occur.

The bill requires local governments to include an affidavit in their annual financial audit report to the Auditor General attesting to compliance with the requirement to reduce rates and issue refunds, if needed. The Auditor General must follow up with any local governments not in compliance, and report those local governments to the Legislative Auditing Committee if the noncompliance continues.

The bill also makes conforming changes.

The bill has an effective date of July 1, 2024.

The Revenue Estimating Conference has not estimated the impact of the bill as amended.

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

Local Business Taxes

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”

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.

and are thereby excluded from paying local business taxes.²⁴ There is an optional partial exemption for 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

²⁴ Section 205.022(1), F.S.

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.

agency for the purpose of implementing a comprehensive economic development strategy through advertising, promotional activities, and other sales and marketing techniques.³⁷

Total Revenues Collected

In fiscal year 2019-20, the last year for which complete and final data is available, counties collected a total of \$28.5 million of local business tax revenue.³⁸ In that same fiscal year, municipalities collected a total of \$168.4 million of local business tax revenue.³⁹

Local Government Financial Reports and Audits

Annual Financial Reports

Florida law requires all units of local government to complete annual financial reports and annual financial audit reports. Each unit of local government must submit its annual financial report to the Department of Financial Services (DFS) within nine months of the completion of its fiscal year.⁴⁰ A unit of local government required to have a financial audit conducted must also file a copy of the audit report along with its annual financial report within the same time period.⁴¹ If a local government fails to file a completed annual financial report within the required period, DFS must notify the Legislative Auditing Committee.⁴²

Annual Financial Audits

Each county and each municipality with revenues or total expenditures and expenses exceeding \$250,000 must have an annual financial audit prepared by an independent certified public accountant, unless the district has been notified before the start of the fiscal year that the Auditor General will conduct a financial audit for that year.⁴³ Municipalities with revenues (or a total of expenditures and expenses) between \$100,000 and \$250,000 are required to conduct a financial audit every three years.⁴⁴ The financial audit must be performed according to specific statutory criteria and the rules of the Auditor General.⁴⁵

At the conclusion of the audit, the auditor must discuss with the statutorily designated person for each entity all of the auditor's comments that will be included in the audit report.⁴⁶ If the designated person is not available to discuss the auditor's comments, their discussion is presumed when the comments are delivered in writing to his or her office. The auditor is required to prepare an audit report in accordance with the rules of the Auditor General.⁴⁷ The audit report must be filed with the Auditor General within 45 days after delivery of the audit report to the governing body of the audited entity, but no later than nine months after the end of the audited entity's fiscal year.⁴⁸ The audit report must include a written statement describing corrective actions to be taken in response to each of the auditor's recommendations included in the audit report.

The Auditor General is required to notify the Legislative Auditing Committee of any audit report prepared pursuant section 218.39, F.S., which indicates that an audited entity has failed to take full

³⁷ Section 205.033(6)(b), F.S.

³⁸ Revenue Estimating Conference Workpapers for HB 609, Impact Conference dated December 8, 2023, available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2024/pdf/page36-39.pdf> (last visited January 27, 2024).

³⁹ Id.

⁴⁰ Section 218.32(1)(d), F.S.

⁴¹ Section 218.32(1)(f), F.S.

⁴² Section 218.32(1)(d) F.S.

⁴³ Section 218.39(1)(a) and (b), F.S.

⁴⁴ Section 218.39(1)(g), F.S.

⁴⁵ Section 218.39(2)-(7), F.S. See Report No. 2024-087, Review of Local Governmental Entity 2021-22 Fiscal Year Audit Reports (December 2023), at https://flauditor.gov/pages/pdf_files/2024-087.pdf (last visited January 30, 2024), for information regarding audits of local governments.

⁴⁶ Section 218.39(5), F.S.

⁴⁷ Section 218.39(7), F.S.

⁴⁸ Section 218.39(7), F.S.

corrective action in response to a recommendation that was included in the two preceding financial audit reports.⁴⁹

Legislative Auditing Committee

The Legislative Auditing Committee is a joint committee of the Florida Legislature, established by the Joint Rules of the Florida Legislature and Section 11.40, F.S., that is tasked with continuous oversight of government operations through the auditing and review activities of the Auditor General and the Office of Program Policy Analysis and Government Accountability (OPPAGA).⁵⁰ After receiving a notification from the Auditor General, the Legislative Auditing Committee may direct the governing body of the audited entity to provide a written statement to the committee explaining why full corrective action has not been taken or, if the governing body intends to take full corrective action, describing the corrective action to be taken and when it will occur.⁵¹ If the Legislative Auditing Committee determines that the written statement is not sufficient, it may require the chair of the governing body of the local governmental entity or the chair's designee, the elected official of each county agency or the elected official's designee, the chair of the district school board or the chair's designee, the chair of the board of the charter school or the chair's designee, or the chair of the board of the charter technical career center or the chair's designee, as appropriate, to appear before the committee.⁵² If the Legislative Auditing Committee determines that an audited entity has failed to take full corrective action for which there is no justifiable reason for not taking such action, or has failed to comply with committee requests made pursuant to this section, the committee may proceed in accordance with s. 11.40(2), F.S.⁵³

Section 11.40, F.S., governs the Legislative Auditing Committee, including the scope of its authority and actions it may take in specified circumstances. In the case of a local governmental entity or district school board, these actions include, but are not limited to, directing the Department of Revenue (DOR) and the Department of Financial Services (DFS) to withhold any funds not pledged for bond debt service satisfaction which are payable to such entity until the entity complies with the law.⁵⁴

Effect of Proposed Changes

Local Business Taxes

The bill revises s. 205.0535, F.S., to create a new limitation on the revenue a local government may receive from local business taxes under ch. 205, F.S. The bill provides that local fiscal year 2023-24 is the base year that future years are measured against. If revenues in a future year exceed the base year, the local government must proportionately reduce the local business tax rates so that the revenue raised from the local business tax will not exceed the base year. The local government must also provide refunds for the year that exceeded the base year, back to the businesses that paid the tax, so that the total revenue for that year aligns with the base year. The local government must also provide refunds for amounts received in the current year before the rates are reduced, of the difference between the rate collected and the adjusted rate.

These changes do not apply to a local government that levies a local business tax on the basis of gross receipts.⁵⁵

The bill also makes conforming changes to several other sections of ch. 205, F.S.

Local Government Financial Reports and Audits

⁴⁹ Section 218.39(8), F.S.

⁵⁰ Section 11.40, F.S., See *also*, Joint Legislative Auditing Committee, available at http://www.leg.state.fl.us/cgi-bin/View_Page.pl?File=about.cfm&Directory=committees/joint/Jcla/&Tab=committees (last visited January 30, 2024).

⁵¹ Section 218.39(8)(a), F.S.

⁵² Section 218.39(8)(b), F.S.

⁵³ Section 218.39(8)(c), F.S.

⁵⁴ Section 11.40(2)(a), F.S.

⁵⁵ The local business tax levied on the basis of gross receipts is found in s. 205.044, F.S., and is currently levied only by Panama City and Panama City Beach.

The bill creates a new s. 205.046, F.S., which requires the annual audit reports described above to include an affidavit signed by the chair of the governing board of the local government stating the local government has complied with the requirements of s. 205.0535, F.S., as revised by the bill. This affidavit must be contained in a separate document. If the local government has not complied, the affidavit must include a description of the noncompliance and corrective action taken by the local government to correct the noncompliance and to prevent such noncompliance in the future. The bill requires the Auditor General to request evidence of corrective action from each local government not in compliance with s. 205.0535, F.S., and for such local government to provide evidence of the initiation of corrective action within 45 days and evidence of completion of corrective action within 180 days after the date it is requested by the Auditor General. The Auditor General must notify the Legislative Auditing Committee if the local government does not take corrective action within the specified timeframe or fails to comply with the Auditor General's request.

Failure to comply with s. 205.0535, F.S., could therefore ultimately result in the Legislative Auditing Committee directing DOR and DFS to withhold any funds not pledged for bond debt service satisfaction which are payable to such local government entity until the entity complies with the law.⁵⁶ This would include revenue sharing monies that the state distributes to local governments.

B. SECTION DIRECTORY:

- Section 1: Amends s. 11.40, F.S., related to the types of hearings the Legislative Auditing Committee can schedule.
- Section 2: Amends s. 11.45, F.S., to add a reporting requirement for the Auditor General.
- Section 3: Amends s. 205.0315, F.S., to modify the statute to reflect new restrictions on the levy of local business taxes.
- Section 4: Amends s. 205.033, F.S., to modify the statute to reflect new restrictions on the levy of local business taxes.
- Section 5: Amends s. 205.043, F.S., to modify the statute to reflect new restrictions on the levy of local business taxes.
- Section 6: Amends s. 205.0535, F.S., to restrict the levy of local business taxes to no more than the taxes levied in fiscal year 2023-24, and to require refunds and rate reductions if that limitation is exceeded.
- Section 7: Amends s. 205.0536, F.S., conforming provisions to changes made by the bill.
- Section 8: Creates s. 205.046, F.S., to require a new affidavit as part of the audit of financial statements pursuant to s. 218.39, F.S.
- Section 9: Amends s. 215.97, F.S., conforming provisions to changes made by the bill.
- Section 10: Amends s. 218.32, F.S., conforming provisions to changes made by the bill.
- Section 11: Amends s. 489.537, F.S., conforming provisions to changes made by the bill.
- Section 12. Provides an effective date of July 1, 2024

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

⁵⁶ Section 11.45(2), F.S.
STORAGE NAME: h0609a.WMC
DATE: 1/31/2024

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not estimated the impact of the bill on local government revenues.

2. Expenditures:

Amounts collected in excess of the new limitation will be required to be refunded or credited to businesses, which may have an administrative cost.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons and businesses currently paying a local business tax would not pay more than they did in 2023-24 when paying the tax in future years.

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 if the bill requires the expenditure of funds to administer the refund and credit provisions of the bill. An exemption may apply if this results in an insignificant fiscal impact.

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may also apply because this bill eliminates the ability for counties and municipalities to collect more in local businesses taxes than they did in local fiscal year 2023-24, which may have the effect of reducing their authority to raise revenue. This aspect of the 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

On January 31, 2024, the Ways & Means Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed provisions that would have repealed Chapter 205, F.S., related to local business taxes.

- Replaced those provisions with provisions that will cap the revenue local governments may receive from local business taxes to no more than the revenue received in local fiscal year 2023-24, other than local governments that impose a local business tax levied upon gross receipts.
- Required the local government to calculate and adopt rate reductions and provide refunds if the revenue in any given year exceeds the revenue in 2023-24.
- Required an annual affidavit of compliance with any necessary reductions or refunds to be submitted to the Auditor General with existing annual financial reports.
- Required the Auditor General to identify any local governments not in compliance with these new requirements, and to notify the local government of the need to comply.
- Required the Auditor General to notify the Legislative Audit Committee of any local governments with persistent noncompliance.
- Made implementing and conforming changes.

This analysis is drafted to the committee substitute as approved by the Ways & Means Committee.