

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 1063 Local Business Tax

**SPONSOR(S):** Finance & Tax Committee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Aldridge	Langston

### 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 proposed committee substitute for HB 1063:

- Prohibits any increases in local business tax rates beginning in local FY 2012-13.
- Phases out the local business tax by reducing the rates allowed to be levied over six years beginning in local FY 2013-14.
- Provides an option for certain counties and municipalities to continue levying local business taxes, provided that at least 25% of their local tax revenue in local FY 2012-13 comes from local business taxes. Additionally, counties and municipalities opting to continue levying local business tax under these conditions may not increase their ad valorem millage rates above those levied in local FY 2012-13, unless they discontinue levying their local business tax.
- Provides that certain counties and municipalities who have expressly and separately pledged their local business tax revenue stream as security for bonds or certificates issued before March 9, 2012, may continue to levy their local business tax to meet obligations required by such bonds or certificates. Revenues collected in excess of amounts necessary to meet obligations of bonds or certificates must be refunded to taxpayers in proportion to the amount of taxes paid by each taxpayer.

The Revenue Estimating Conference has not estimated the revenue impact(s) of the proposed committee substitute. Staff estimates that the bill will have no effect on state revenue and will have a negative impact on local revenue of \$22 million beginning in local FY 2013-14, increasing by that amount each year over six years as the rate reduction described above is phased in, with a total recurring negative local revenue impact of \$132 million.

The bill is effective upon becoming law.

**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, 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.<sup>1</sup> This tax does not refer to any regulatory fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup>

Effective January 1, 2007, the legislature changed the name of the Local Occupational License Tax to the Local Business Tax.<sup>5</sup> 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.<sup>6</sup> The public notice must contain the proposed classifications and rates applicable to the business tax.<sup>7</sup> A number of other conditions for levy are imposed on counties and municipalities.<sup>8</sup>

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.<sup>9</sup> These institutions are more particularly defined and limited in statute.<sup>10</sup> The term “receipt” means the document that is issued by the local governing

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<sup>1</sup> Sections 205.033 and 205.042, F.S.

<sup>2</sup> Section 205.022(5), F.S.

<sup>3</sup> Chapter 80-274, L.O.F.

<sup>4</sup> Chapter 86-298, L.O.F.

<sup>5</sup> Chapter 2006-152, L.O.F.

<sup>6</sup> Sections 205.033 and 205.042, F.S.

<sup>7</sup> Id.

<sup>8</sup> Sections 205.033 and 205.043, F.S.

<sup>9</sup> Section 205.022(1), F.S.

<sup>10</sup> Id.

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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> All business tax receipts are sold by the appropriate tax collector beginning July 1st of each year.<sup>15</sup> 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.<sup>16</sup> In several situations, administrative penalties are also imposed.<sup>17</sup>

### *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.<sup>18</sup> 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.<sup>19</sup>

### *Tax Base/Rate Restructuring*

Currently, counties and municipalities with an existing local business tax may not reclassify businesses, professions, and occupations.<sup>20</sup> 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.<sup>21</sup> However, an increase may not be enacted by less than a majority plus one vote of the governing body.<sup>22</sup> A county or municipality is not prohibited from decreasing or repealing any authorized local business tax.<sup>23</sup>

### *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”

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<sup>11</sup> Section 205.022(2), F.S.

<sup>12</sup> Section 205.045, F.S.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Section 205.053, F.S.

<sup>16</sup> Id.

<sup>17</sup> Id.

<sup>18</sup> Section 205.0315, F.S..

<sup>19</sup> Id.

<sup>20</sup> Section 205.0535, F.S.

<sup>21</sup> Section 205.0535(4), F.S.

<sup>22</sup> Id.

<sup>23</sup> Id.

and are thereby excluded from paying local business taxes.<sup>24</sup> There is an optional partial exemption for businesses located in enterprise zones.<sup>25</sup> 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.<sup>26</sup> There are also exemptions for persons engaged in specified farming activities,<sup>27</sup> certain nonresident persons regulated by the Department of Professional Regulation,<sup>28</sup> certain employees of businesses that are required to pay a local business tax,<sup>29</sup> certain disabled persons, the aged, and widows with minor dependents,<sup>30</sup> disabled veterans of any war or their unremarried spouses,<sup>31</sup> and certain mobile home setup operations.<sup>32</sup> 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.<sup>33</sup>

### *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.<sup>34</sup> 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.<sup>35</sup>

### *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.<sup>36</sup> 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

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<sup>24</sup> Section 205.022(1), F.S.

<sup>25</sup> Section 205.054, F.S.

<sup>26</sup> Section 205.063, F.S.

<sup>27</sup> Section 205.064, F.S.

<sup>28</sup> Section 205.065, F.S.

<sup>29</sup> Section 205.066, F.S.

<sup>30</sup> Section 205.162, F.S.

<sup>31</sup> Section 205.171, F.S.

<sup>32</sup> Section 205.193, F.S.

<sup>33</sup> Section 205.192, F.S.

<sup>34</sup> Section 205.033(4), F.S.

<sup>35</sup> Section 205.033(5), F.S.

<sup>36</sup> 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.<sup>37</sup>

### *Total Revenues Collected*

In fiscal year 2008-09, counties collected a total of \$31.8 million of local business tax revenue.<sup>38</sup> In that same fiscal year, municipalities collected a total of \$127.0 million of local business tax revenue.<sup>39</sup>

### **Effect of Proposed Changes**

The bill prohibits any increases in local business tax rates beginning in local FY 2012-13.

The bill phases out the local business tax by reducing the rates allowed to be levied over six years beginning in local FY 2013-14. However, the bill provides certain counties and municipalities an option to continue levying local business taxes, if at least 25 percent of their local tax revenue in local FY 2012-13 comes from local business taxes. Counties and municipalities opting to continue levying local business tax under these conditions may not increase their ad valorem millage rates above those levied in local FY 2012-13, unless they discontinue levying their local business tax.

The bill also provides that certain counties and municipalities imposing a local business tax as of March 9, 2012 and who have expressly pledged their local business tax revenue stream as security for bonds or certificates may continue to levy their local business tax until such bonds or certificates are paid off. The local business tax bond pledge must be an express and separate pledge of local business taxes to qualify. Expenditures of revenues from tax levies continued pursuant to this provision are limited to meeting obligations required by bonds or certificates that were issued before March 9, 2012. Revenues collected in excess of amounts necessary to meet obligations of bonds or certificates must be refunded to taxpayers in proportion to the amount of taxes paid by each taxpayer. No county or municipality may pledge as security, revenues derived from local business taxes imposed under ch. 205, F.S., for bonds or certificates issued after March 9, 2012.

### **B. SECTION DIRECTORY:**

- Section 1: Creates s. 205.0105, F.S., to phase out local business tax rates, with optional exceptions for certain counties and municipalities.
- Section 2: Repeals s. 205.0315, F.S., to delete a statutory provision that allowed certain counties and municipalities to impose a local business tax.
- Section 3: Creates a provision of law that permits certain counties and municipalities that had pledged their local business tax revenue stream as security for bonds or certificates to continue levying their local business taxes under specified conditions.
- Section 4: Amends s. 205.033(1)(b), F.S., to conform to the repeal of s. 205.0315, F.S., in section 2 of the bill.
- Section 5: Amends s. 205.043(1)(b), F.S., to conform to the repeal of s. 205.0315, F.S., in section 2 of the bill.
- Section 6: Provides an effective date of upon becoming law.

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<sup>37</sup> Section 205.033(6)(b), F.S.

<sup>38</sup> Figures obtained from the Office of Economic and Demographic Research.

<sup>39</sup> Id.

## 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 estimated the revenue impact(s) of the proposed committee substitute. Staff estimates that the bill will have no effect on state revenue and will have a negative impact on local revenue of \$22 million beginning in local FY 2013-14, increasing by that amount each year over six years as the rate reduction described above is phased in, with a total recurring negative local revenue impact of \$132 million.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some persons currently paying a local business tax would see their local business tax obligation reduced and ultimately eliminated.

### 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 likely phases out the local businesses taxes authorized under Chapter 205, F.S., by reducing authorized local business tax rates, except in certain specified circumstances. 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