HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTSC 13-05 Relating to revising Local Business Tax
SPONSOR(S): Finance & Tax Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee	15 Y, 0 N	Aldridge	Langston

SUMMARY ANALYSIS

The bill embodies concepts with an overarching purpose to replace the current local business tax structure in ch. 205, F.S., with a simplified version of the tax that is more consistent across various business types and among taxing jurisdictions. This is accomplished by:

1. Establishing a uniform classification system.
2. Establishing a flexible rate structure.
3. Grandfathering certain local taxing jurisdictions to allow taxation under the current structure to continue under specified circumstances.
4. Eliminating “overlap” of city and county taxes.
5. Retaining current local administration of the tax.
6. Providing that the new structure becomes effective October 1, 2014, providing for a transition process from the current structure to the new structure, and allowing taxing jurisdictions to replace the revenues raised under the prior system.

Based on a Revenue Estimating Conference estimate of the provisions of substantially similar language, this bill is expected to have no impact in FY 2013-14, the potential for a positive or negative total impact in FY 2014-15 and zero to a small negative indeterminate impact beginning in FY 2015-16 and thereafter, compared to current law.

The bill becomes effective October 1, 2014, except for a section related to transition and two sections with grandfathering provisions, which take effect July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Under ch. 205, F.S., a city or county may levy a local business tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. The tax proceeds are considered general revenue for the local government[1]. This tax does no refer to any regulatory fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection[2].

Based upon the most recent information available, approximately 30-40 counties and 270-290 cities levy a local business tax. In fiscal year 2010-11, these taxes generated $28.9 million for counties and $136.7 million for cities.

Uniform Classification System

Current Law

Generally speaking, under current law, there are few restrictions upon the nature of the classification system that may be used by a city or a county currently levying a local business tax. The tax must be "based upon reasonable classifications and must be uniform throughout any class."[3] However, cities and counties that are currently levying a local business tax are effectively restricted from reforming or altering their existing classification systems.[4] A city or county that has not yet adopted a local business tax may adopt a business tax.[5] In that circumstance, the classifications in the newly adopted ordinance must be reasonable and based upon the classifications prescribed in ordinances adopted by adjacent local governments that have implemented a local business tax. If no adjacent local government has implemented a local business tax, or if the governing body of the city or county finds that the classifications of adjacent local governments are unreasonable, then an alternative method is authorized. In such a case, the 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 cities or counties that have a comparable population.

Proposed Changes

The bill contains a new classification system with three classifications based upon the square footage of the "business floor space" of the premises upon which a business operates[6]. Those are:

- Less than 2,500 square feet;
- Between 2,500 square feet and 10,000 square feet; and
- More than 10,000 square feet

The classification a business falls under is determined based upon that portion of the premises that the business has exclusive control over, either though ownership or by lease. The term "business floor space" is defined as meaning the:

[1] Sections 205.033 and 205.042, F.S.
[2] Section 205.022(5), F.S.
[3] Sections 205.033 and 205.043, F.S.
[4] Section 205.0535, F.S.
[5] Section 205.0315, F.S.
[6] Found in section 2 of the bill.

[S]quare feet of an office or place of business and includes the proportionate share of the building service areas such as lobbies, corridors and other common areas in a building. The square footage shall be computed by measuring to the inside finish of permanent outer building walls and shall include space used by columns and projections necessary to the building. Business floor space does not include vertical penetrations through the building such as stairs, elevators, or heating, ventilation, air conditioning, utility, or telephone systems.

This classification system will be used throughout the state under the new structure with no differences between jurisdictions (unless one of the grandfathering provisions discussed below applies).

The new structure will retain the exemptions contained in current law, except for repealing a grandfathering provision contained in an exemption added to current law in 2011[7] related to employees. Under that exemption, an individual who engages in or manages a business, profession, or occupation as an employee of another person is not required to pay a local business tax.[8] That exemption currently provides that cities or counties that before October 13, 2010, had a classification system that actually resulted in individual employees paying a business tax may continue to impose such a tax in that manner. The new structure will eliminate this exception to the exemption.[9]

Flexible Rate Structure

Current Law

Currently, cities and counties 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 cities may, every other year, increase or decrease by ordinance the rates of business taxes by up to 5 percent. An increase may not be enacted by less than a majority plus one vote of the governing body. A city or county is not prohibited from decreasing or repealing any authorized local business tax.

As noted above, a city or county that has not yet adopted a local business tax currently may adopt a local business tax. The restrictions described above relating to a newly adopted classification system also apply to a newly adopted rate structure.[10]

Under current law, revenue increases attributed to the increases in the number of receipts issued are authorized.[11]

Proposed Changes

The bill allows rates to be set in order to achieve revenue neutrality (this is described in more detail in the “transition” discussion below). However, the rates allowed between the three classifications described above must stay within certain levels relative to the other classes.[12] Specifically, the rate for the classification for businesses between 2,500 square feet and 10,000 square feet can be equal to, but no more than, three times the rate for the under 2,500 square feet classification. Likewise, the rate for the over 10,000 feet classification can be equal to, but no more than, three times the rate for the classification of businesses between 2,500 and 10,000 square feet.

The bill retains the authority for, cities and counties, beginning in fiscal year 2016-17 and every other year thereafter to be able to increase their local business tax rates by up to 5 percent in an ordinance approved by a two-thirds majority of their governing body.[13]

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[7] Ch. 2011-78, L.O.F.
[8] Section 205.066(1), F.S.
[9] Found in section 14 of the bill.
[10] Section 205.0315, F.S.
[11] Section 205.0535(3)(c), F.S.
[12] Found in section 3 of the bill.
[13] Found in section 11 of the bill.

The bill also retains the authority for revenue increases attributed to the number of receipts issued. In other words, revenue increases that naturally result from normal growth of the number of businesses located within a city or county are authorized.[14]

Grandfathering

The bill contains two "grandfathering" provisions[15] that allow a city or a county imposing a local business tax as of September 30, 2014, to retain that tax under the current structure:

- Outstanding Bonds

  To meet all obligations to or for the benefit of holders of bonds or certificates that were authorized before March 1, 2013 and issued before March 15, 2013, and for which taxes levied pursuant to ch. 205, F.S., are expressly pledged or placed in trust by name; or

- Jurisdictions with Extraordinary Reliance on the Tax

  Any city or county whose business tax receipts in its 2012-13 fiscal year comprised at least 20 percent of the city's or county's total revenue derived from local taxes levied by the city or county in that fiscal year may continue to levy such tax in the same manner and with the same rates and classifications as are in effect on February 1, 2013, until September 30, 2018.

  However, any such county or municipality that in any local fiscal year through September 30, 2018, computes its proposed general county millage rate, general municipal millage rate, or any dependent special district millage rate above the level in effect for local fiscal year 2013-14, may not impose a local business tax after the September 30 following the computation of the proposed millage rate resulting in the increase unless either the local business tax has been approved and levied in accordance with the then current ch. 205, F.S., or a majority of the electors of the qualifying county or qualifying municipality voting in a general or special election has approved the continuation of the local business tax in the same manner and with the same rates and classifications as are were in effect on February 1, 2013. Such an election shall be held within the year immediately preceding the September 30 that follows the computation of the proposed millage increase and the ballot question and summary shall include a statement of the maximum amount of millage increase.

"Overlap" of City and County Taxes

Under current law, county local business taxes generally apply to businesses located throughout the county, including both incorporated and unincorporated portions of the county. The result is that a business located in a city may be required to pay one local business tax to the city and another local business tax to the county. The bill eliminates this "overlap" by providing that the county local business tax may only apply in the unincorporated portions of the county.

Administrative Processes

Current Law

Under current law, in order to levy a business tax, the governing body of the city or county must first give at least 14 days of public notice between the first and last reading of the resolution or ordinance by

[14] Found in section 11 of the bill.

[15] Found in sections 16 and 17 of the bill.

publishing a notice in a newspaper of general circulation within its jurisdiction as defined by law.[16] The public notice must contain the proposed classifications and rates applicable to the business tax. A number of other conditions for levy are imposed on cities and counties.[17]

The governing body of a city that levies the tax may request that the county in which the city is located issue the municipal receipt and collect the tax.[18] The governing body of a county that levies the tax may request that cities within the county issue the county receipt and collect the tax. 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. All business tax receipts are sold by the appropriate tax collector beginning July 1st of each year.[19] 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. In several situations, administrative penalties are also imposed.

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.

Proposed Changes

Under the bill, most of the administrative processes in current law are retained. Exceptions include a requirement under the new structure that the tax and any future rate increases be approved by a two-thirds majority of the governing body of the city or county in question.[20]

Transition

The bill provides for a transition from the current structure in ch. 205, F.S., for local business taxes, to the new structure as described above beginning October 1, 2014. Cities and counties are allowed to continue levying local business taxes pursuant to the provisions of ch. 205, F.S., until September 30, 2014. Local business taxes in effect on September 30, 2014 are not authorized beyond that date. Beginning October 1, 2014, all local business taxes must be approved and levied pursuant to, and in accordance with, the provisions of ch. 205, F.S., as amended by the bill. Cities and counties wishing to continue levying a local business tax are expressly allowed to adopt the required ordinance at any time after July 1, 2013, and schedule it to become effective beginning October 1, 2014.[21]

A mechanism is provided where cities and counties that transition from the old structure to the new structure must do so in a revenue neutral manner.[22] The bill accomplishes this by providing that those cities and counties that make the transition must not, in local fiscal year 2014-15, generate more than 105% of the revenue generated in the prior fiscal year under the previous tax structure. If that revenue threshold is crossed, the city or county must:

- Adjust the rates of their local business tax to the extent necessary to reduce revenues to the threshold amounts described above as soon as reasonably practicable; and

[16] Sections 205.033 and 205.042, F.S.
[17] Sections 205.033 and 205.043, F.S.
[18] Section 205.045, F.S.
[19] Section 205.053, F.S.
[20] Found in sections 5 and 7 of the bill.
[21] Primarily found in section 15 of the bill.
[22] Found in section 11 of the bill.

- The city or county must refund the revenue generated in excess of the threshold amounts described above on a prorata basis to the businesses that paid the local business tax. Such refunds may be granted as a credit against tax due in the subsequent year. Refunds unable to be granted because the business in question no longer exists or the city or county cannot locate the business or deliver the refund to the business shall be treated as unclaimed property pursuant to ch. 717, F.S.

Effective Date

Most of the bill becomes effective October 1, 2014, except for a provision related to transition[23] and the grandfathering provisions, which take effect July 1, 2013.[24]

B. SECTION DIRECTORY:

Section 1: Amends definitions in s. 205.022(3) and (5), F.S.

Section 2: Creates s. 205.025, F.S., providing classifications and a definition.

Section 3: Creates s. 205.027, F.S., providing a rate structure.

Section 4: Amends s. 205.0315, F.S., changing a date.

Section 5: Amends s. 205.032, F.S., changing the conditions by which the governing body of a county may levy a local business tax.

Section 6: Amends s. 205.033, F.S., changing the conditions by which the governing body of a county may levy a local business tax.

Section 7: Amends s. 205.042, F.S., changing the conditions by which the governing body of a municipality may levy a local business tax.

Section 8: Amends s. 205.043, F.S., changing the conditions by which the governing body of a municipality may levy a local business tax.

Section 9: Amends s. 205.045, F.S., rewording the provision that allows transfer of certain administrative duties between municipalities and counties by interlocal agreement.

Section 10: Amends s. 205.053, F.S., removing a reference to adoption of local business tax by resolution.

Section 11: Amends s. 205.0535, F.S., providing for reclassifications and rate structure revisions.

Section 12: Repeals s. 205.0536, F.S.

Section 13: Amends s. 205.054, F.S., removing references to adoption of local business tax by resolution and clarifying that an enterprise zone exemption authorized by the county only applies in the unincorporated portion of the county.

Section 14: Amends s. 205.066, F.S., removing and exception to an exemption.

Section 15: Creates a section of law that provides legislative intent; provides a transition process.

[23] Found in section 15 of the bill.
[24] Found in sections 16 and 17 of the bill.

Section 16: Creates a section of law that grandfathers the local business tax of certain counties or municipalities that have pledged local business tax revenues for the benefit of holders of certain bonds or certificates.

Section 17: Creates a section of law that grandfathers the local business tax of certain counties and municipalities that have an extraordinary reliance on local business tax receipts for public finance.

Section 18: Amends s. 489.537, F.S., to correct a reference.

Section 19: Provides for effective dates.

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:

   Based on a Revenue Estimating Conference estimate of the provisions of substantially similar language, this bill is expected to have no impact in FY 2013-14, the potential for a positive or negative total impact in FY 2014-15 and zero to a small negative indeterminate impact beginning in FY 2015-16 and thereafter, compared to current law.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The direct economic impact on specific businesses is unknown due to the wide variation in classification and rate structures currently in existence and uncertainty about the rate structures that individual counties and municipalities may have in the future. Many businesses will see their local business tax rate change, and the intent is for the overall transition to be revenue neutral, but the effect on individual businesses cannot be known at this time.

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 may reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989; however, an exemption may apply because such a reduction in authority, if present, may have an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES