

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 537 Home-Based Businesses

**SPONSOR(S):** Business & Professions Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Business & Professions Subcommittee		Wright	Anstead

### 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. For example, the local business tax allowed under general law and levied by counties and municipalities 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.

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 which may be carried on at a residence, and others regulate the space in which business may occur.

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

- the business operates, in whole or in part, from a residential property.
- the employees of the home-based business must 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.
- 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 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.

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 does not have a fiscal impact on state government and has an indeterminate fiscal impact on local governments.

The bill has an effective date of July 1, 2020.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Local Government Authority

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.<sup>1</sup> 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.<sup>2</sup>

Likewise, municipalities<sup>3</sup> 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.<sup>4</sup>

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law,<sup>5</sup> special act,<sup>6</sup> local ordinance,<sup>7</sup> or by rule of the Governor and Cabinet.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> An "independent special district" is any district that is not a dependent special district.<sup>11</sup>

##### 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.<sup>12</sup> Counties and municipalities may levy a business tax.<sup>13</sup>

##### Revenue Sources Based on Home Rule Authority

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<sup>1</sup> Art. VIII, s. 1(f), Fla. Const.

<sup>2</sup> Art. VIII, s. 1(g), Fla. Const.

<sup>3</sup> 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."

<sup>4</sup> Art. VIII, s. 2(b), Fla. Const. See also s. 166.021(1), F.S.

<sup>5</sup> Section 189.031(3), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> S. 189.02(1), F.S.

<sup>8</sup> S. 190.005(1), F.S. See, generally, s. 189.012(6), F.S.

<sup>9</sup> 2018 – 2020 Local Gov't Formation Manual, p. 62,

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

<sup>10</sup> S. 189.012(2), F.S.

<sup>11</sup> S. 189.012(3), F.S.

<sup>12</sup> S. 205.022(5), F.S.

<sup>13</sup> Ss. 205.033 and 205.043, F.S.

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.<sup>14</sup>

### Businesses and Occupations

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.<sup>15</sup> If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.<sup>16</sup> 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 worker's compensation insurance coverage by a contractor;<sup>17</sup>
- assessing local fees and rules regarding low-voltage alarm system projects;<sup>18</sup>
- tobacco and nicotine products;<sup>19</sup>
- firearms, weapons, and ammunition;<sup>20</sup>
- employment benefits;<sup>21</sup>
- polystyrene products;<sup>22</sup>
- public lodging establishments and public food service establishments;<sup>23</sup> and
- disposable plastic bags.<sup>24</sup>

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances.<sup>25</sup> For example, Florida law specifically authorizes regulations relating to:

- zoning and land use;<sup>26</sup>
- 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";<sup>27</sup>
- the levy of local business taxes;<sup>28</sup>
- building code inspection fees;<sup>29</sup>
- tattoo establishments;<sup>30</sup>
- massage practices;<sup>31</sup>
- child care facilities;<sup>32</sup>
- taxis and other vehicles for hire;<sup>33</sup> and
- waste and sewage collection.<sup>34</sup>

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<sup>14</sup> EDR, *supra* note 12, at 9.

<sup>15</sup> 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.

<sup>16</sup> *Id.*; Wolf and Bolinger, *supra* note 17.

<sup>17</sup> S. 553.80(7)(d), F.S.

<sup>18</sup> S. 489.503(14), F.S.

<sup>19</sup> Ch. 569, F.S., and s. 386.209, F.S.

<sup>20</sup> S. 790.33(1), F.S.

<sup>21</sup> S. 218.077, F.S.

<sup>22</sup> S. 500.90, F.S.

<sup>23</sup> S. 509.032, F.S.

<sup>24</sup> S. 403.7033, F.S.

<sup>25</sup> *Supra* note 16.

<sup>26</sup> S. 125.01(1)(h), F.S.

<sup>27</sup> S. 166.221, F.S.

<sup>28</sup> Ch. 205, F.S.

<sup>29</sup> S. 166.222, F.S.

<sup>30</sup> S. 381.00791, F.S.

<sup>31</sup> S. 480.052, F.S.

<sup>32</sup> S. 402.306, F.S.

<sup>33</sup> S. 125.01(1)(n), F.S.

<sup>34</sup> 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 which 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,<sup>35</sup>
- In Tampa, home-based businesses may not be conducted in any accessory building;<sup>36</sup>
- In Naples, home-based businesses are not allowed to conduct retail, wholesale or warehousing activities at the residence;<sup>37</sup> 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.<sup>38</sup>

### **Effect of the Bill**

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

- the business operates, in whole or in part, from a residential property.
- the employees of the home-based business must 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.
- the activities of the home-based business are secondary to the property's use as a residential dwelling.

The bill allows home-based businesses that operate from 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 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 outside of what is allowed in the bill.

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.

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

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

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<sup>35</sup> Volusia County, FL., Ch. 72, art. II, div. 8, s. 72-283.

<sup>36</sup> Tampa, FL., Ch. 27, art. VI, div. 2, s. 27-282.5.

<sup>37</sup> Naples, FL., Ch. 56, art. III, s. 56-92.

<sup>38</sup> Gainesville, FL., Ch. 30, art. V, div. 2, s. 30-5.37.

## 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.

2. Expenditures:

Indeterminate.

### 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:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES