

2021 Regular Session

HOUSE BILL NO. 562

BY REPRESENTATIVE BOURRIAQUE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TAX APPEALS/BOARD: Provides relative to the Louisiana Uniform Local Sales Tax Board and the Louisiana Sales and Use Tax Commission for Remote Sellers

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AN ACT

To amend and reenact R.S. 47:337.102(B)(3) and (5), (I)(1) and (3), and (K), and 340(A) and (E)(5), 1402(E)(1) and (2), 1404, 1406, and 1418(7)(d), to enact R.S. 47:338.223 and 1483(A)(2) and (3), and to repeal R.S. 47:340(I), relative to the administration and adjudication of state and local sales and use taxes; to provide relative to sales and use tax administration; to provide relative to the membership of the Louisiana Uniform Local Sales Tax Board; to provide for the selection of officers of the Louisiana Uniform Local Sales Tax Board; to provide for the funding of Louisiana Uniform Local Sales Tax Board; to provide for a strategic plan for the Louisiana Uniform Local Sales Tax Board; to provide for dedications related to the Louisiana Sales and Use Tax Commission for Remote Sellers; to provide for agreements relative to funding for the Louisiana Sales and Use Tax Commission for Remote Sellers; to provide for membership and qualifications of the Board of Tax Appeals; to provide for employees of the Board of Tax Appeals; to provide for certain Board of Tax Appeals employee salaries; to provide for expenditures for the Board of Tax Appeals; to provide for definitions; to provide for the collection of occupancy taxes; to provide for the payment of Board of Tax Appeals judgments; to provide for certain requirements and limitations; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

1 Section 1. R.S. 47:337.102(B)(3) and (5), (I)(1) and (3), and (K), 340(A) and (E)(5),  
2 1402(E)(1) and (2), 1404, 1406, and 1418(7)(d) are hereby amended and reenacted and R.S.  
3 47:338.223 and 1483(A)(2) and (3) are hereby enacted to read as follows:

4 §337.102. Louisiana Uniform Local Sales Tax Board; creation; membership;  
5 powers and duties

6 \* \* \*

7 B. Board membership and organization.

8 \* \* \*

9 (3) ~~The board member appointments provided for in Subparagraphs (B)(1)(e)~~  
10 ~~through (h) of this Section shall be made no later than August 31, 2017.~~ Employees,  
11 legal counsel, and vendors of a single parish collector's office shall not be eligible  
12 for appointment to the board. Members appointed to the board pursuant to  
13 Subparagraphs (B)(1)(e) through (h) of this Section shall serve at the pleasure of the  
14 respective appointing authority. The appointing authorities shall coordinate their  
15 appointments to the board in order that the board's membership is representative of  
16 the diverse regions of the state and to ensure that no two members represent a single  
17 parish.

18 \* \* \*

19 (5) The board ~~shall hold its organizational meeting no later than October 15,~~  
20 ~~2017, at which time it shall elect a chairman, vice chairman, and such other officers~~  
21 ~~as determined necessary at the first meeting by the board.~~

22 \* \* \*

23 I. Funding. (1) The board shall be funded through a dedication of a  
24 percentage of the total statewide collections of local sales and use tax on motor  
25 vehicles, as provided for in an agreement with local collectors and in accordance  
26 with the limitations provided in this Paragraph and the budgetary policy as provided  
27 in Paragraph (2) of this Subsection. Monies shall be payable monthly from the  
28 current collections of the tax. The dedication shall be considered a cost of collection  
29 and shall be deducted by the state and disbursed to the board prior to distribution of

1 tax collections to local taxing authorities. The dedication shall be in addition to any  
2 fee imposed by the office of motor vehicles for the collection of the local sales and  
3 use tax on motor vehicles. The amount to be disbursed to the board in any fiscal year  
4 after Fiscal Year 2018-2019 shall not, under any circumstances and notwithstanding  
5 any budget adopted by the board, exceed ~~the following~~:

- 6 (a) ~~In Fiscal Year 2017-2018, one-fifth of one percent of the collections.~~
- 7 (b) ~~In Fiscal Year 2018-2019, one-quarter of one percent of the collections.~~
- 8 (c) ~~In Fiscal Year 2019-2020 and each fiscal year thereafter, three-tenths of~~  
9 one percent of the collections.

10 \* \* \*

11 (3) If use tax collections pursuant to R.S. 47:302(K) ~~yields~~ yield insufficient  
12 revenue to fulfill the dedication made pursuant to R.S. 47:302(K)(7) for interagency  
13 transfers to the Department of State Civil Service, Board of Tax Appeals, and the  
14 Local Tax Division, and there is no means of financing available to satisfy the  
15 dedication pursuant to R.S. 47:340(E)(5), the board shall pay any remaining amount  
16 necessary to satisfy the dedication, which payment shall be made into the Local Tax  
17 Division Expense Fund within the first thirty days of the fiscal year. The board is  
18 also authorized to enter into an agreement with the Department of State Civil  
19 Service, Board of Tax Appeals, or the Local Tax Division to pay in a like manner an  
20 amount sufficient to compensate the Local Tax Division for workload increases.

21 \* \* \*

22 K. The board shall adopt a strategic plan for its operations, which shall  
23 include specific goals and objectives. ~~The plan shall be adopted by July 1, 2018. The~~  
24 strategic plan shall be updated not less than once every five fiscal years.

25 \* \* \*

26 §338.223. Collection and administration of occupancy taxes

27 A. All occupancy taxes administered or collected by the secretary of the  
28 Department of Revenue shall be subject to the provisions of Chapter 18 of this  
29 Subtitle.

1 B. All taxes levied pursuant to this Part may be collected as provided for in  
2 this Chapter and shall be subject to review pursuant to the provisions of this Chapter.

3 C. Any request for a refund of tax that was paid but not actually due shall be  
4 made in accordance with the provisions of this Chapter.

5 §340. Louisiana Sales and Use Tax Commission for Remote Sellers; members;  
6 powers

7 A. The duties of the commission shall be exercised and discharged under the  
8 supervision and direction of a commission with voting power and a non-voting  
9 executive director, all of whom shall be appointed and shall serve as provided in this  
10 Section.;

11 \* \* \*

12 E.

13 \* \* \*

14 (5)(i) If use tax collections pursuant to R.S. 47:302(K) yield insufficient  
15 revenue to fulfill the dedication for the adjudication of local sales and use tax matters  
16 that is made pursuant to R.S. 47:302(K)(7) for interagency transfers to the  
17 Department of State Civil Service, Board of Tax Appeals, Local Tax Division,~~and~~  
18 ~~there is no means of financing available to satisfy the dedication pursuant to R.S.~~  
19 ~~47:337.102(I)(3)~~, the remaining amount necessary to satisfy the dedication shall be  
20 considered an actual expense of this commission pursuant to Paragraph (3) of this  
21 Subsection, and payment of the interagency transfer due shall be made from local  
22 sales and use tax collections of the commission. The payments due pursuant to this  
23 Item shall be made within thirty days of the beginning of the fiscal year in  
24 accordance with the provisions of R.S. 47:337.102(I)(3).

25 (ii) A part of the interagency transfer due pursuant to Section 2 of Act No.  
26 198 of the 2014 Regular Session of the Legislature may be designated as an actual  
27 expense of the commission pursuant to Paragraph (3) of this Subsection, and  
28 payment of that designated part ~~may~~ agreed in writing between the board and the  
29 secretary or her designee shall be made from state sales and use tax collections of the

1 commission. The payments due pursuant to this Item shall be made within thirty days  
 2 of the beginning of the fiscal year.

3 \* \* \*

4 §1402. Membership of board; qualifications; appointment; term; vacancy; salary

5 \* \* \*

6 E.(1) Notwithstanding any provision of law to the contrary, a board member  
 7 shall continue to serve until a successor has been appointed. No member may be  
 8 removed except by (a) induction into office of a successor, duly appointed and  
 9 qualified pursuant to this Section, upon expiration of a term of office or (b) for good  
 10 cause shown, which shall be subject to judicial review.

11 (2) A member who has served on the board for ~~more than two and one-half~~  
 12 ~~terms occurring within~~ three consecutive terms shall be ineligible for reappointment  
 13 to the board until at least two years from the last day of his last appointment.  
 14 However, a member may be reappointed notwithstanding any other provision of law  
 15 to the contrary, if nominated pursuant to Subsection D of this Section, and service  
 16 pursuant to that Subsection is not counted for the purposes of any term or service  
 17 limitation.

18 \* \* \*

19 §1404. Employees of the board

20 A. The board shall appoint as its principal assistant a ~~secretary-clerk~~ clerk  
 21 who shall be custodian of its files and records, and one private secretary who may  
 22 also be the stenographer-reporter for the board. The board shall also appoint any  
 23 other employees necessary for the performance of the functions herein delegated.

24 B.(1) The board shall fix the salaries of the ~~secretary-clerk,~~ clerk and any  
 25 stenographer-reporter and.

26 (2) The board shall fix the salaries of other employees pursuant to  
 27 administrative rules.

28 \* \* \*

1 §1406. Expenditures

2 A. The board is authorized to make ~~such~~ expenditures (including  
3 expenditures for personal services ~~and for~~, law books, books of reference, and  
4 periodicals), as may be necessary to efficiently execute the functions vested in the  
5 board. ~~At~~ Subject to the provisions of this Subtitle related to the Local Tax  
6 Division, the expenditures of the board shall be allowed and paid; out of any monies  
7 appropriated for the purposes of the board. Any item funded pursuant to a written  
8 agreement for a particular service shall be included in any budget request or  
9 recommendation to the full extent of the funding provided for under the agreement.

10 B. The board's self-generated revenue from local cases filed with the board  
11 pursuant to the provisions of the Uniform Local Sales Tax Code shall be expended  
12 exclusively for the purposes of its Local Tax Division, and may be retained by the  
13 board and carried forward for such purposes.

14 \* \* \*

15 §1418. Definitions

16 For purposes of this Chapter, except when the context requires otherwise, the  
17 words and expressions defined in this Section shall have the following meanings:

18 \* \* \*

19 (7) "State collector" means any of the following:

20 \* \* \*

21 (d) Any other collector of state taxes or fees, or any other state agency where  
22 an agency action is appealable to the board or is related to state taxes or fees,  
23 including contracts.

24 \* \* \*

25 §1483. Payment of approved claims

26 A.

27 \* \* \*

28 (2) If the board approves a claim for an amount less than the amount claimed  
29 by the claimant, the board shall submit the new amount to the claimant.

1           (a) If the claimant accepts the new amount, the claim shall be approved as  
2           a judgment pursuant to the provisions of Paragraph (1) of this Subsection.

3           (b) If the claimant does not accept the new amount the claim shall be denied.

4           (c) Any denied claim shall be subject to the prohibitions provided for in R.S.  
5           47:1486. No other cause of action shall be maintained before the board or any court  
6           for a claim that has been approved and has been paid pursuant to the provisions of  
7           this Part.

8           (3)(a) Any amount agreed upon by both parties in a stipulated or consent  
9           judgment shall be submitted to the board pursuant to Paragraph (1) of this  
10           Subsection.

11           (b) Any stipulated or consent judgment submitted jointly by the claimant or  
12           counsel of the claimant and counsel appointed to represent the state of Louisiana not  
13           exceeding one hundred thousand dollars shall be paid in the same manner as  
14           provided for in Paragraph (B)(1) of this Section during the forty-five day period after  
15           the last day of the fiscal year, to the extent funds are available after payment of all  
16           other approved judgments for the fiscal year pursuant to Paragraph (B)(1) of this  
17           Section.

18   \*       \*       \*

19           Section 2. R.S. 47:340(I) is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 562 Engrossed   2021 Regular Session   Bourriaque

**Abstract:** Makes changes to the administration of state and local sales, use, and certain occupancy tax collections, specifically through the La. Uniform Local Sales Tax Board and the La. Sales and Use Tax Commission for Remote Sellers; makes changes to the membership of and employee status of the Board of Tax Appeals and makes changes to the procedures for payment of certain judgments against the state rendered by the Board of Tax Appeals.

Present law requires certain board member appointments for the La. Uniform Local Sales Tax Board (board) to be made no later than Aug. 31, 2017.

Proposed law repeals present law.

Present law requires the board to hold its organization meeting no later than Oct. 15, 2017.

Proposed law repeals present law.

Present law provides the board is funded through a dedication of a percentage of the total statewide collections of local sales and use tax on motor vehicles.

Proposed law retains present law, but provides the funding of the board through certain dedications shall be as provided for in agreements with local collectors.

Present law provides for funding of the board through a dedication of a percentage of the total statewide collections of local sales and use taxes on motor vehicles, not to exceed:

- (1) In Fiscal Year 2017-2018, one-fifth of 1% of the collections.
- (2) In Fiscal Year 2018-2019, one-quarter of 1% of the collections.
- (3) In Fiscal Year 2019-2020 and each fiscal year thereafter, three-tenths of 1% of the collections.

Proposed law repeals provisions of present law pertaining to specific fiscal years and retains present law that provides any budget adopted by the board shall not exceed three-tenths of 1% of the collections.

Present law provides that if tax collections yield insufficient revenue to fulfill dedications for interagency transfers to the Dept. of State Civil Service, Board of Tax Appeals, Local Tax Division the board shall pay any remaining amount necessary to satisfy the dedication. Further provides that the board is authorized to enter into an agreement with the Dept. of State Civil Service, Board of Tax Appeals or the Local Tax Division to pay an amount sufficient to compensate the Local Tax Division.

Proposed law retains present law and adds the stipulation that if tax collections yield insufficient revenue to fulfill the dedication and there is no means of financing available, the board shall pay any remaining amount necessary to satisfy the dedication.

Present law requires the board to adopt a strategic plan for operations. Proposed law retains present law.

Present law provides the strategic plan shall be adopted by July 1, 2018.

Proposed law repeals present law and provides the strategic plan shall be updated not less than once every five fiscal years.

Proposed law further provides that payments to fulfill the dedication for interagency transfers shall be made within 30 days of the beginning of the fiscal year.

Present law establishes the Board of Tax Appeals (BTA) and authorizes the BTA to make certain expenditures.

Proposed law provides that any BTA expenditure funded pursuant to a written agreement shall be included in any budget request or recommendation of the BTA.

Present law defines a state collector to include:

- (1) The secretary of the Dept. of Revenue and other duly authorized assistants.
- (2) The assistant secretary of the office of motor vehicles and duly authorized assistants.



- (3) The commissioner of alcohol and tobacco control.
- (4) Any other collector of state taxes or fees, or other state agency where an agency action is appealable to the BTA.
- (5) The agent or successor of any of the offices above when administering a state tax or fee.

Proposed law expands the present law definition of state collector to include state agencies in which the agency action is related to state taxes or fees, including contracts.

Present law provides for certain procedures for the payment of Board of Tax Appeals judgments against the state.

Present law provides that judgments issued by the BTA for the payment of a claim when the amount approved does not exceed \$20,000 shall be paid out of current tax collections without interest. Further limits the total amount of judgments paid in a fiscal year from current collections to two million dollars, unless a higher amount for that fiscal year is approved by the commissioner of administration and the Joint Legislative Committee on the Budget (JLCB).

Present law provides that when the BTA approves a claim against the state and the amount of the claim exceeds \$20,000 but is not more than \$250,000, the claim shall be submitted to the litigation subcommittee of JLCB for review. If the claim is approved by the litigation subcommittee, the approved claim shall be paid out of current tax collections following submission of the authorization to the secretary of the Dept. of Revenue.

Proposed law provides that if the BTA approves a claim for an amount less than the amount claimed by the claimant, the BTA shall submit the new amount to the claimant. Further provides that if the claimant accepts the new amount, the claim shall be approved as a judgment provided for in present law.

Proposed law provides that if the claimant does not accept the new amount, the claim shall be denied.

Proposed law provides that any denied claim shall be subject to prohibitions provided in present law (R.S. 47:1786). Further provides that no cause of action shall be maintained before the BTA or any court for a claim that has been paid pursuant to the provisions of proposed law.

Proposed law provides any amount agreed upon by both parties in a stipulated or consent judgment shall be submitted to the BTA pursuant to present law.

Proposed law provides that any stipulated or consent judgment submitted jointly not exceeding \$100,000, shall be paid in the same manner as certain judgments provided for in present law (R.S. 47:1483(B)(1)), during the 45 day period after the last day of the fiscal year, to the extent funds are available after payment of all other approved judgments for the fiscal year pursuant to present law.

(Amends R.S. 47:337.102(B)(3) and (5), (I)(1) and (3), and (K), 340(A) and (E)(5), 1402(E)(1) and (2), 1404, 1406, and 1418(7)(d); Adds R.S.47:338.223 and 1483(A)(2) and (3); Repeals R.S. 47:340(I))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Ways and Means to the original bill:

1. Add provisions relative to the collection and administration of certain occupancy taxes collected or administered by the Dept. of Revenue.
2. Add provisions relative to the collection and administration of certain occupancy taxes collected or administered by local governing authorities.
3. Change the requirement that Board of Tax Appeal (board) members who have served on the board for more than two and a half terms within three consecutive terms are ineligible for reappointment to a requirement that members who have served on the board for three consecutive terms are ineligible for reappointment.
4. Add provisions that allow the board to fix salaries of certain board employees pursuant to administrative rules.
5. Add provisions that any item funded pursuant to a written agreement for a particular service shall be included in any budget request or recommendation for the board.
6. Expand the definition of state collector to include any collector of state taxes or fees or any other state agency where an agency action is appealable to the board or is related to state taxes or fees including contracts.
7. Add provisions related to the payment of certain Board of Tax Appeal judgments, including procedures for a change in claim amount, denial of a claim, and the submission for payment of a claim in an amount not exceeding \$100,000.
8. Make technical changes