

RÉSUMÉ DIGEST

HB 562

2021 Regular Session

Bourriaque

Present law requires the secretary of the Dept. of Revenue to annually provide for an interagency transfer of \$132,000 to the Dept. of State Civil Service, Board of Tax Appeals, to be expended exclusively for the purposes of its Local Tax Division. Present law further requires that amount to be increased by \$5,000 on the first day of each fiscal year.

Proposed law would have retained present law and changed the annual increase in the transfer of local funds to the Board of Tax Appeals from \$5,000 to \$12,000 on the first day of each fiscal year.

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Proposed law would have repealed present law.

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

Proposed law would have repealed present law.

Proposed law would have authorized the board to hold executive sessions for the purpose of discussing policy advice, private letter rulings, or other matters potentially involving confidential taxpayer information. Further would have provided that records and files of the board would be subject to the same confidentiality requirements as the state as provided for in 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 would have retained present law, but would have provided that the funding of the board through certain dedications would 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Proposed law would have repealed provisions of present law pertaining to specific fiscal years and would have retained present law that provides any budget adopted by the board shall not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 would have retained present law and added the stipulation that if tax collections yield insufficient revenue to fulfill the dedication and there was no means of financing available, the board would have paid any remaining amount necessary to satisfy the dedication.

Proposed law would have provided further that the payments to fulfill the dedication for interagency transfers would have been made within the first 30 days of the fiscal year.

Present law requires the board to adopt a strategic plan for operations by July 1, 2018.

Proposed law would have retained present law and provided that the strategic plan be updated not less than once every five fiscal years.

Proposed law would have added provisions relative to the collection and administration of certain occupancy taxes collected or administered by the Dept. of Revenue.

Proposed law would have added provisions relative to the collection and administration of certain occupancy taxes collected or administered by local governing authorities.

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

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

Proposed law would have provided that any surplus local revenue may be retained as provided for in present law or held in the local tax division expense fund exclusively for the purposes of the Local Tax Division.

Proposed law would have changed the requirement that BTA 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 full consecutive terms are ineligible for reappointment.

Proposed law would have added provisions that allowed the BTA to fix salaries of certain board employees pursuant to administrative rules. Proposed law would have provided that if a rule requires the equivalent of classified market rate adjustments, the adjustments be included in any budget requests or recommendations in the same manner as applicable for other state classified employees.

Proposed law would have provided that no provisions of law shall be construed to relieve a party of filing fees or case deposits for causes of actions.

Proposed law would have provided that any surplus local revenue provided for pursuant to present law (R.S. 47:302(K)(7) and 340(E)) may be retained or held in the local tax division expense fund exclusively for the purposes of the Local Tax Division.

Proposed law would have authorized the BTA to issue protective orders, including orders concerning any subpoena or other discovery.

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 would have expanded 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 BTA 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 would have provided 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 would have provided that if the claimant accepted the new amount, the claim would be approved as a judgment provided for in present law.

Proposed law would have provided that if the claimant does not accept the new amount, the claim would be denied.

Proposed law would have provided that any denied claim would be subject to prohibitions provided in present law (R.S. 47:1786). Would have further provided 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 would have provided 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 would have provided the BTA would issue an amended judgment when required to correct an error or upon joint application of both parties.

Proposed law would have provided that any stipulated or consent judgment submitted jointly not exceeding \$100,000, would 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 would be available after payment of all other approved judgments for the fiscal year pursuant to present law.

(Proposed to amend R.S. 47:302(K)(7)(b), 337.102(B)(3) and (5), (I)(1) and (3), and (K), 340(A) and (E)(5), 1402(E)(1) and (2), 1404, 1406, 1418(7)(d), and 1483(C); Proposed to add R.S. 47:337.102(C)(10), 338.223, 1408(D)(3), and 1483(A)(2) and (3); Proposed to repeal R.S. 47:340(I))

VETO MESSAGE:

"Please be advised that I have vetoed House Bill 562 of the 2021 Regular Session.

The Board of Tax Appeals is an independent agency within the Department of State Civil Service created to hear and decide disputes between taxpayers and the state or local collectors. House Bill 562 purports to be an omnibus bill addressing multiple administrative facets related to the Board of Tax Appeals. There are a few provisions of the omnibus bill that give cause for concern.

First, there is the 140% increase in the amount of the interagency transfer to the Board of Tax Appeals, Local Tax Division from the current collections of the tax under R.S. 47:302(K). House Bill 562 increases the interagency transfer from \$5,000 per fiscal year to \$12,000 per fiscal year. This in addition to the \$244,000 currently included in the annual transfer from the collections under R.S. 47:302(K), the flat 8.45% state and local use tax for purchases from catalogues and online retailers. With the creation of the Louisiana Sales and Use Tax Commission for Remote Sellers, the use tax collections have shifted from R.S. 47:302(K) and will continue to do so. The interagency transfer is now considered an actual expense of the Remote Sellers Commission so that any shortfall in the R.S. 47:302(K) collections will be covered by local sales and use tax collections of the Commission. Whether there is in fact a need for this level of increase in the amount of funding to the Board of Tax Appeals should be a part of the discussion during the development of the

Executive Budget. The Division of Administration had no knowledge of this proposed 140% increase in funding for the Board of Tax Appeals, Local Tax Division.

The next area of concern with the provisions of House Bill 562 is the mandatory payment provisions related to the interagency transfers. The payments due to the Board of Tax Appeals from current collections of local sales and use tax or state sales and use tax of the Remote Sellers Commission "shall be made within the first thirty days of the fiscal year". The nature of sales tax collection is monthly receipt while funding essential public services over the course of the fiscal year recognizing the limitations of monthly collections. This mandatory provision to remit the full amount of funding for the fiscal year within the first thirty days is an affront to the realities that every other agency and political subdivision face. Further, the payments are to offset what would be the filing fees paid to the Board of Tax Appeals by state and local governments over the course of the year. In essence, there is an upfront payment requirement before the year begins and no refund mechanism if the cost of services provided during the year is less than remitted.

Finally, the language in House Bill 562 appears to be an attempt at mandating the items to be included in the annual executive budget submission to the legislature. The Board of Tax Appeals is given authorization to fix the salaries of employees by administrative rule and if the rule requires the equivalent of a classified market rate adjustment, the salaries shall be included in any budget requests or recommendations. There is almost identical language in the bill related to any item funded pursuant to a written agreement and the requirement for inclusion in "any budget request or recommendation to the full extent of the funding". The determination of the expenditures to recommend for appropriation in the budget submission is a power delegated to the Governor in the Constitution. While the Board of Tax Appeals is constitutionally vested with jurisdiction over matters related to state and local taxes and fees, it is still an agency within the Department of Civil Service and a part of the Executive Budget. Statutory provisions of this nature are an infringement on the executive budget process.

For these reasons, House Bill 562 is vetoed and returned to the House of Representatives. I look forward to considering the funding provisions as a part of the budget submission process for the Board of Tax Appeals later this year."