HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTSC 13-07 Relating to Economic Development
SPONSOR(S): Finance & Tax Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

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

SUMMARY ANALYSIS

The proposed committee bill contains several provisions designed to encourage economic development within Florida:

Cigarette Tax Distribution
The bill delays the sunset date of the 1 percent cigarette tax distribution to the Sanford-Burnham Medical Research Institute from June 30, 2021, to June 30, 2033. This distribution will help to fund a biomedical research program at the Institute.

Rotary Wing Aircraft Sales Tax Exemption
The bill reduces the maximum takeoff weight threshold for rotary wing aircraft to qualify for an exemption from sales and use tax on the parts and labor used in repair and maintenance. The bill would reduce the threshold to 2,000 pounds, equalizing treatment between rotary and fixed-wing aircraft.

Spring Training Franchise Retention
The bill creates a sales tax distribution to local governments for the purpose of constructing or renovating Major League Baseball spring training facilities. The bill provides the Department of Economic Opportunity procedures to administer the certification of such local governments.

Qualified Target Industry and Qualified Defense and Space Contractor Tax Refunds
The bill removes the individual company total refund cap for both the Qualified Target Industry and Qualified Defense and Space Contractor tax refund programs.

New Markets Development Program
The bill increases by $15 million the total amount of tax credits available for the New Markets Development Program, from $163.8 million to $178.8 million. The annual tax credit cap is increased by $3 million, from $33.6 million per fiscal year to $36.6 million per fiscal year.

Florida Wine Manufacturers
The bill allows Florida wineries currently licensed as manufacturers of wine to also be licensed as distributors, under certain circumstances, for the limited purpose of distributing Florida wine and Florida wine products. Also, some funds are shifted from the Viticulture Trust Fund to the Plant Industry Trust Fund.

Sales Tax Holiday
The bill creates a three day sales tax holiday beginning August 2, exempting certain clothing and shoes valued at $75 or less, school supplies valued at $15 or less, and personal computers for non-commercial use valued at $750 or less.

Several of the bill's component parts will produce impacts to state and local government revenue. See FISCAL ANALYSIS section for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

<u>Cigarette Tax Distribution</u>

<u>Current Situation</u>

Chapter 210, F.S., provides for the taxation of tobacco products. Taxes are imposed on the sale of cigarettes and other non-cigar tobacco products in Florida. For cigarettes of a common size, the tax rate is $0.339 per pack. Additionally, a $1.00 surcharge per pack of common size cigarettes is imposed. For other tobacco products, the tax is at 25 percent of wholesale price, with an additional surcharge of 60 percent of wholesale price. The cigarette tax is collected by the Department of Business and Professional Regulation and deposited into Cigarette Tax Collection Trust Fund.

Section 210.20(2), F.S., provides for monthly distribution from the cigarette tax (not the surcharge) as follows:

Distribution from total collections:

- 8 percent to General Revenue Service Charge[1]; and
- 0.9 percent to the Alcoholic Beverage and Tobacco Trust Fund[2].

Distribution from remaining collections (until June 30, 2013):

- 2.9 percent to Revenue Sharing Trust Fund for Counties;
- 29.3 percent to Public Medical Assistance Trust Fund;
- 1.47 percent to Board of Directors of the H. Lee Moffitt Cancer Center and Research Institute (Moffitt); and
- The remainder of funds to General Revenue.

Beginning July 1, 2013, the Moffitt distribution will be increased to 2.75 percent (through June 30, 2033), and an additional distribution of 1 percent will be made to the Biomedical Research Trust Fund, to be annually appropriated (up to $3 million annually) for the Department of Health and the Sanford-Burnham Medical Research Institute to work in conjunction for the purpose of establishing activities and grant opportunities in relation to biomedical research (through June 30, 2021).

The Sanford Burnham Medical Research Institute, which has campuses in La Jolla, CA and Lake Nona, FL, performs research on the molecular causes of disease and develops treatments. Its main research programs focus on cancer, neurodegeneration, diabetes, and infectious, inflammatory, and childhood diseases. It is particularly well known for stem cell research. Its Diabetes and Obesity Research Center, which also studies cardiovascular disease, is based in Lake Nona.

<u>Proposed Changes</u>

The bill changes the end date for the distribution to the Biomedical Research Trust Fund from June 30, 2021 to June 30, 2033.

<u>Rotary Wing Aircraft Sales Tax Exemption</u>

<u>Current Situation</u>

[1]Section 215.20, F.S.
[2]Section 210.02, F.S.

Rotary wing aircraft may be defined as any aircraft that is supported in flight by rotors on a substantially vertical axis.[3] In general, rotary wing aircraft include helicopters, gyroplanes, and certain types of compound rotorcraft. Helicopters are considered high-value items because of their mobility, operational flexibility, and their capacity to provide rapid response.

Taxable Repair and Maintenance Work

Chapter 212, F.S., imposes a sales or use tax on the installation, repair, or maintenance of tangible personal property. This tax is applicable to the entire amount charged by the repairperson, which includes parts, equipment and labor. If the repair or maintenance of tangible personal property requires only labor, such charges are not taxable.[4]

Aircraft Repair and Maintenance Labor Charges

Section 212.08(7)(ee), F.S., provides a tax exemption for labor charges related to the maintenance and repair of qualified aircraft and aircraft with maximum takeoff weight of more than 2,000 pounds.[5] With respect to rotary wing aircraft, current law limits the exemption to aircraft with maximum takeoff weight of 10,000 pounds or less.

Parts and Equipment used in Aircraft Repair and Maintenance

Section 212.08(7)(rr), F.S., provides a tax exemption for equipment, parts, and replacement engines installed on qualified aircraft and aircraft with more than 2,000 pounds maximum takeoff weight. In order to qualify for the exemption, the aircraft must be repaired or maintained in Florida. This exemption is not applicable to rotary wing aircraft with maximum certified takeoff weight of 10,300 pounds or less.

<u>Proposed Changes</u>

The bill expands tax exemptions available for rotary wing aircraft that are repaired or maintained in the state. Specifically, the bill will exempt rotary wing aircraft with maximum takeoff weight exceeding 2,000 pounds from the sales and use tax imposed on repair maintenance charges related to labor, parts, and installed equipment. This change will allow helicopters to qualify for exemptions in ss. 212.08(7)(ee) and 212.08(7)(rr), F.S., under the same maximum takeoff weight requirements as currently applied to airplanes.

<u>Spring Training Franchise Retention</u>

<u>Current Situation</u>

Section 288.11621, Florida Statutes, defines a process by which the Department of Economic Opportunity (the department) may certify local governments to receive a distribution from state sales tax of $41,667 per month ($500,000 per year) for a period of up to 30 years. The funds may be used to acquire, construct, reconstruct, or renovate a facility for a baseball spring training franchise, pay debt service on bonds issued for those purposes, or, in some instances, assist a spring training franchise in moving from one local government to another. Funds must be expended within 48 months of the receipt of the initial payment, and the acquisition, construction, reconstruction, or renovation must be completed within 24 months of starting.

In order to be certified, the department must verify that:

- The local government applying owns or will own the facility or the land on which the facility is or will be located;

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[3] As defined by the International Civil Aviation Organization, http://www.icao.int/Pages/default.aspx, last visited March 15, 2013.
[4] Department of Revenue, Sales and Use Tax on Repair of Tangible Personal Property, http://dor.myflorida.com/dor/forms/, last visited March 14, 2013.
[5] "Qualified Aircraft" means any aircraft having a maximum certified takeoff weight of less than 10,000 pounds and equipped with twin turbofan engines that meet Stage IV noise requirements that is used by a business operating as an on-demand air carrier under Federal Aviation Administration Regulation Title 14, chapter I, part 135, C.F.R, that owns or leases and operates a fleet of at least 25 of such aircraft in this state.

- The applicant has a certified copy of a signed agreement with a spring training franchise to use the facility for at least 20 years, and to reimburse the state for any state funds expended under this section if the franchise relocates prior to the end of the agreement;
- The applicant has made a commitment to pay for at least 50% of the cost of acquisition, construction, reconstruction, or renovation of the facility;
- The applicant has demonstrated that the facility will attract paid attendance of at least 50,000 annually; and
- The facility is located in a county that levies a tourist development tax.

The department is required to evaluate the applications on a competitive basis, using the following criteria:

- The projected impact on the local economy;
- The amount of local matching funds dedicated to the project;
- The potential for the facility to serve multiple purposes;
- The intended use of the funds;
- The length of time that a franchise has held spring training in the applicant's community;
- The amount of time the facility has been used by any team for spring training;
- The amount of time remaining in the agreement for the franchise to use the facility;
- The net increase in total recreational space that the facility would represent; and
- The location of the facility in a brownfield, enterprise zone, or community redevelopment area.

The department is authorized to certify up to 10 facilities at any given time. Upon certification, the applicant and the department must enter into an agreement specifying:

- The amount of state incentive funding to be distributed;
- The criteria that must be met in order for the applicant to remain certified;
- That the department may recover state incentive funds if the applicant is decertified;
- The information that the applicant must report to the department; and
- Any other provision deemed prudent by the department.

An applicant may not be certified for more than one spring training franchise at a time. Also specified are the contents to be included in an annual report by the applicant to the department, and a process by which an applicant may be decertified. Current law also authorizes the Auditor General to conduct audits to ensure that the funds are being used as required by law, and if an audit finds that this is not the case, the Department of Revenue may pursue recovery of the funds.

The applicants currently certified are as follows[6]:

Certified Applicant	Team	Date of First Payment	Total Distributed (as of 1/8/2013)
Clearwater	Philadelphia Phillies	Feb. 2001	$6.0M

[6] Department of Economic Opportunity, *Spring Training Baseball*

Dunedin	Toronto Bluejays	Feb. 2001	$6.0M
Indian River County	Los Angeles Dodgers	Feb. 2001	$6.0M
Osceola County	Houston Astros	Feb. 2001	$6.0M
Lakeland	Detroit Tigers	Feb. 2001	$5.6M
Charlotte County	Tampa Bay Rays	Mar. 2007	$3.0M
Bradenton	Pittsburgh Pirates	Mar. 2007	$3.0M
Sarasota	Cincinnati Red/ Baltimore Orioles	Mar. 2007	$3.0M
St. Lucie County	New York Mets	Mar. 2007	$1.6M
Lee County	Minnesota Twins	N/A	N/A

Proposed Changes

The bill creates s. 288.11631, F.S., which mostly mirrors the provisions of s. 288.11621. The differences between the sections include:

Certification Process

- The agreement must be for a minimum of the length of the term of the bonds issued for the construction or renovation of the facility, or if no such bonds are issued, at least 20 years;
- There is no limit to the number of applicants which may be certified;
- The net increase in recreational areas represented by the facility are not considered in the evaluation process; and
- The amount of state funding provided in the agreement between the applicant and the department may not exceed $20 million, or if the applicant hosts 2 or more franchises, $40 million.

Use of Funds

- Funds provided as a result of certification under this section may not be used to acquire or reconstruct a facility, or to assist a franchise in moving from one local government to another.

Upon certification under this new section, the bill amends s. 212.20, F.S., to direct the Department of Revenue to distribute $55,555 monthly ($666,660 annually) to the applicant from sales tax revenues. In the event the applicant hosts more than one franchise, the distribution will be $111,110 monthly ($1,333,320 annually). An applicant which has already been certified and receiving a distribution under current law may also be certified to receive funding under this new section.

The bill specifies that the distribution shall begin 60 days after certification, or July 1, 2016, whichever is later.

Qualified Target Industry and Qualified Defense and Space Contractor Tax Refunds

Current Situation

Qualified Target Industry Tax Refund

The Qualified Target Industry Tax Refund (QTI) was established in 1995. Tax refunds are made to qualifying, pre-approved businesses creating new jobs within Florida's target industries. All QTI projects include a performance-based contract with the state, which outlines specific milestones that must be achieved and verified by the state prior to payment of refunds.

This incentive requires that 20 percent of the award comes from the local city or county government, but that may be reduced by one-half for a qualified target industry business located in the counties of Bay, Escambia, Franklin, Gadsden, Gulf, Jefferson, Leon, Okaloosa, Santa Rosa, Wakulla or Walton. The reduction in local match is determined by the Department of Economic Opportunity and based on a determination that the project facilitates economic development, growth, or new employment within the previously referenced counties, and is in the best interest of the state.

The program also requires that a project must propose to create at least 10 new jobs, or in the case of a business expansion must result in a net increase in employment of at least 10 percent at that business. The jobs proposed to be created or retained must pay an average annual wage of at least 115% of the average private sector wage in the area where the business is located, or the statewide private sector average wage. The statewide private sector average wage being used currently is $40,555[7].

The amount of the refund is based on the average wages paid by the business, number of jobs created, and where in the state the eligible business chooses to locate or expand. The minimum tax refund is $3,000 per employee, and the maximum amount is $11,000 per employee over the term of the incentive agreement. Jobs created in rural communities and enterprise zones, as well as those paying higher annual average wages, are eligible for more incentives.

Since the inception of the QTI program, 1,134 applications have been approved, 967 contracts have been executed, and 97 agreements have been completed. Of those 967 projects, 335 remain active, meaning they are eligible to receive refunds through the QTI program. These 335 projects have committed to create 45,157 jobs cumulatively. The 97 completed agreements cumulatively created 19,694 new jobs, above the initial commitment to create 19,094. In fiscal year 2011-2012, $58,063,500 in QTI incentives were awarded.[8]

Qualified Defense and Space Contractor Tax Refund

The Qualified Defense and Space Contractor Tax Refund (QDSC) was established in 1996. Tax refunds are made to qualifying, pre-approved businesses bidding on new competitive contracts or consolidating existing defense or space contracts. This incentive is a partnership between the State and local community—20 percent of the award comes from the local city or county government. All QDSC projects include a performance-based contract with the State of Florida, which outlines specific milestones that must be achieved and verified by the State prior to payment of refunds.

Like QTI, the program requires that jobs created by a QDSC project have an average annual wage of at least 115% of the average private sector wage in the area where the business is located, or the statewide private sector average wage.

The amount of the refund is based on the average wages paid by the business, number of jobs created, and where in the state the eligible business chooses to locate or expand. The minimum tax refund is $3,000 per employee, and the maximum amount is $8,000 per employee over the term of the incentive agreement.

Since the QDSC project's inception, 22 QDSC applications have been approved, 15 contracts, have been executed, and 5 projects have been completed. Of those 15 executed contracts, 6 remain active. These 6 projects have committed to create 418 cumulative jobs. The 5 completed projects cumulatively created 1,521 new jobs, exceeding their commitment to create 795 new jobs. In fiscal year 2011-2012, $2,180,000 in QDSC incentives were awarded.[9]

QTI/QDSC Program Limits

[7] Enterprise Florida Inc., *State of Florida Incentives Average Wage Requirements*; 2012
[8] Enterprise Florida, Inc, *2012 Annual Incentive Report*; 2012
[9] Enterprise Florida, Inc, *2012 Annual Incentive Report*; 2012

Sections 288.106 and 288.1045, Florida Statutes, set the criteria for the QTI and QDSC programs. Included in these criteria are limits on awards for qualified projects under both programs. The limits include:

- The QTI and QDSC programs limit applicants to 25 percent of the total tax refunds in any given fiscal year;
- The QDSC program limits applicants to $2.5 million in tax refunds in any given fiscal year;
- The QTI program limits applicants to $1.5 million in tax refunds in any given fiscal year or $2.5 million if the project is located within an enterprise zone;
- The QDSC program limits applicants to $7 million in tax refunds over all fiscal years;
- The QTI program limits applicants to $7 million in tax refunds over all fiscal years, or $7.5 million if the project is located within an enterprise zone.

Proposed Changes

The bill eliminates the maximum amount of tax refunds a business could receive over all fiscal years for the QTI and QDSC programs. The limits imposed on the percentage of total awards and dollar amounts a qualified project could receive in a single fiscal year would remain in effect.

New Markets Development Program

Current Situation

Federal New Markets Tax Credit[10]

Created by Congress in 2000, the Federal New Markets Tax Credit (NMTC) Program[11] permits taxpayers to receive a credit against federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs). The CDE must in turn invest the qualified equity investments in low-income communities. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a seven-year period. In each of the first three years, the investor receives a credit equal to five percent of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is six percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the seven-year period.

An organization wishing to receive allocations under the federal NMTC Program must be certified as a CDE by the U. S. Department of Treasury.[12] To qualify as a CDE, an organization must:

- Be a domestic corporation or partnership at the time of the certification application;
- Demonstrate a primary mission of serving, or providing investment capital for low-income communities or low-income persons; and
- Maintain accountability to residents of low-income communities through representation on a governing board of or advisory board to the entity.

Since the Federal NMTC Program's inception, the CDFI Fund has made 664 awards allocating a total of $33 billion in tax credit authority to CDEs through a competitive application process.[13]

How Florida's New Markets Development Program Works

[10] Federal New Markets Tax Credit Program, Overview, http://cdfifund.gov/what_we_do/programs_id.asp?programID=5 (last visited February 14, 2013).
[11] The Federal New Markets Tax Credit Program was enacted as P.L. 106-554, Community Tax Relief Act of 2000 and signed into law on December 21, 2000.
[12] The Community Development Financial Institutions Fund is the entity within the U.S. Department of Treasury that administers the federal New Markets Tax Credit Program. The CDFI Fund was created for the purpose of promoting economic development through investment in and assistance to community development financial institutions. U.S. Department of Treasury, Community Development Financial Institutions Fund, About the CDFI Fund, http://cdfifund.gov/who_we_are/about_us.asp (last visited February 14, 2013).
[13] *See supra* note 1.

Mirrored after the federal program, Florida's New Markets Development Program, established by the Legislature in 2009,[14] encourages "capital investment in rural and urban low-income communities by allowing taxpayers to earn credits against specified taxes by investing in qualified community development entities that invest in qualified active low-income community businesses to create and retain jobs."[15]

Under the program, federally-certified Community Development Entities (CDEs), which have entered into allocation agreements with the U.S. Department of Treasury, have the ability to apply to the Department of Economic Opportunity (DEO) for a certification of Florida tax credits. The CDE must show that it is prepared to invest capital into qualified businesses in Florida's low-income communities. The certification process includes proof of the CDE's eligibility, identification of its investors, description of the investments to be raised by the CDE, information regarding how the investments will be used, and a description of the CDE's efforts to partner with local community-based groups.

DEO is also authorized to request additional information needed to verify continued certification. DEO certifies qualified applications on a first-come, first-served basis. Once DEO certifies a CDE's qualified equity investment, the CDE has 30 days to raise its investment capital (the qualified equity investment) and then 12 months to invest a minimum of 85 percent of the purchase price in qualified low-income investments. Thereafter, the CDE must annually report to DEO information including:[16]

- Audited financial statements;
- The industries for the investments;
- The counties investments were made in;
- The number of jobs created; and
- Verification that the average wages paid are at least equal to 115 percent of the federal poverty income guidelines for a family of four.

Any failure by a CDE to follow either Florida or federal law may result in the state recapturing tax credits claimed, together with interest and penalties.[17]

Tax Credits

The New Markets Tax Credit Program (NMTC) allows a tax credit to be taken against the corporate income tax found in s. 220.11, F. S. or the insurance premium tax found in s. 624.509, F.S. This credit may be claimed after the investment has been made and held for a minimum of two years. Therefore, no credit can be claimed in the first two years. In year three the credit is worth seven percent of the investment, and from the fourth year through the seventh year the credit is worth eight percent.

As in the federal program, over seven years this credit totals 39 percent of the total investment. Therefore, a qualified taxpayer with a qualified investment approved for both the federal and state program could receive 78 percent of the purchase price of the investment in tax credits over seven years. In addition to the tax credits that are received, the investor also has the potential to receive benefit from the results of the investment and eventual return of their principal.

Any unused portion of the tax credit may be carried forward for future tax years; however, all tax credits expire on December 31, 2022.[18] The program has a cap of $163.8 million on the total of tax credits allowed to be allocated to all investments or $33.6 million in tax credits in a single state fiscal year.[19] The transfer or sale of tax credits is not permitted; however, a tax credit may travel with the purchase of an investment to a new owner.[20]

<u>Proposed Changes</u>

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[14] Chapter 2009-50, L.O.F.
[15] Section 288.912, F.S.
[16] Section 288.9918, F.S.
[17] Section 288.9920, F.S.
[18] Section 15, ch. 2009-50, L.O.F.
[19] Section 288.914(3)(c), F.S. *See* s. 16, ch. 2012-32, L.O.F.
[20] Section 288.9916(2), F.S.

The bill increases the total amount of tax credits available to be allocated for the New Markets Development Program from $163.8 million to $178.8 million and increases the amount of tax credits that the state may award in a single fiscal year from $33.6 million to $36.6 million.

Florida Wine Manufacturers

Current Situation

Chapters 561-565 and 567-568, F.S., provide for the regulation of sales of alcoholic beverages in Florida. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of alcoholic beverages.

Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, distributor, and retailer. Manufacturers may only sell to distributors, who in turn may only sell to retailers. The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state sales tax is collected at the retail level.

Section 561.24, F.S., prohibits anyone licensed as a manufacturer of wine from also being licensed as a distributor. That prohibition does not apply to any winery that is certified as a Florida Farm Winery by the Department of Agriculture and Consumer Affairs pursuant to s. 599.004, F.S. To be certified as a Florida Farm Winery, a winery must satisfy the following requirements of that section:

- Produce or sell less than 250,000 gallons of wine annually of which 60 percent of the wine produced is made from state agricultural products.
- Maintain a minimum of 5 acres of owned or managed land in Florida which produces commodities used in the production of wine.
- Be open to the public for tours, tastings, and sales at least 30 hours each week.
- Make annual application to the department for recognition as a Florida Farm Winery, on forms provided by the department.
- Pay an annual application and registration fee of $100.

Section 599.012, F.S., provides that fifty percent of the revenue collected on excise taxes on wine produced from products grown in this state will be deposited in the Viticulture Trust Fund for the purpose of developing and coordinating the implementation of the State Viticulture Plan, promotion of viticulture products grown in Florida, and providing grants for viticulture research.

Proposed Changes

The bill allows any manufacturer of Florida wine or Florida wine products that are made solely from agricultural products grown in this state to be licensed as distributors for the limited purpose of distributing Florida wine and Florida wine products.

The bill also directs fifty percent of the revenue from excise taxes on wine or wine products made from agricultural products that are not grapes to the Plant Industry Trust Fund for disease research.

Sales Tax Holiday

Current Situation

Chapter 212, F.S, imposes a 6 percent tax on the retail sale of tangible personal property,[21] which includes books, clothing, footwear, wallets, bags, school supplies, and computers.

In addition, county governments may impose discretionary sales surtaxes (e.g., indigent care and trauma center surtax, county public hospital surtax, school capital outlay surtax).[22] County discretionary

[21] Sections 212.02(19) and 212.05(1)(a)1.a., F.S.
[22] Section 212.055, F.S.

sales surtaxes (commonly called “local option sales taxes”) apply to all transactions in the county which are subject to the state sales tax.[23]

History of Sales Tax Holidays:

Since 1998, the Legislature has enacted eleven temporary periods (commonly called “sales tax holidays”) during which certain clothing, footwear, books and school supply items were exempted from the state sales tax and county discretionary sales surtaxes.[24]

The length of the exemption periods has varied from 3 to 10 days. The type and value of exempt items has also varied. Clothing and footwear has always been exempted. In seven holidays such items valued at $50 or less were exempted. Twice, items valued at $100 or less were exempt. Books valued at $50 or less were exempt in five periods. School supplies were included in the most recent seven holidays, with the value threshold increasing from $10 to $15.

The following table summarizes the history of the “back to school” sales tax holidays:

Dates	Length	TAX EXEMPTION THRESHOLDS				Appropriation/ DOR
		Clothing/ Footwear	Wallets/ Bags	Books	School Supplies	
August 15-21, 1998	7 days	$50 or less	N/A	N/A	N/A	$200,000
July 31-August 8, 1999	9 days	$100 or less	$100 or less	N/A	N/A	$200,000
July 29-August 6, 2000	9 days	$100 or less	$100 or less	N/A	N/A	$215,000
July 28-August 5, 2001	9 days	$50 or less	$50 or less	N/A	$10 or less	$200,000
July 24-August 1, 2004	9 days	$50 or less	$50 or less	$50 or less	$10 or less	$206,000
July 23-31, 2005	9 days	$50 or less	$50 or less	$50 or less	$10 or less	$206,000
July 22-30, 2006	9 days	$50 or less	$50 or less	$50 or less	$10 or less	$206,000
August 4-13, 2007	10 days	$50 or less	$50 or less	$50 or less	$10 or less	$224,110
August 13-15, 2010	3 days	$50 or less	$50 or less	$50 or less	$10 or less	$250,304
August 12-14, 2011	3 days	$75 or less	$75 or less	N/A	$15 or less	$218,905
August 3-5, 2012	3 days	$75 or less	$75 or less	N/A	$15 or less	$226,284

Tax Information Publications:

Since 2004, the Department of Revenue has published a Tax Information Publication (TIP) for each sales tax holiday.[25] A TIP provides detailed information about the sales tax holiday, including instructions and specific examples, for dealers who collect the tax.

<u>Proposed Changes</u>

The bill provides for a 3 day sales tax holiday beginning August 2, 2013, at 12:01 a.m. and ending August 4, 2013, at 11:59 p.m. During the sales tax holiday, the following items that cost $75 or less are exempt from the state sales tax and county discretionary sales surtaxes:

- Clothing (defined as an “article of wearing apparel intended to be worn on or about the human body,” but excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs);
- Footwear (excluding skis, swim fins, roller blades, and skates);

[23] Section 212.054(2)(a), F.S.
[24] Chapters 98-341, 99-229, 2000-175, 2001-148, 2004-73, 2005-271, 2006-63, 2007-144, and 2010-93, L.O.F.
[25] *See, e.g.* Florida Department of Revenue, *2004 Sales Tax Holiday*, TIP# 04A01-05 (June 10, 2004); *2005 Sales Tax Holiday*, TIP# 05A01-02 (June 1, 2005), *2006 Sales Tax Holiday*, TIP# 06A01-04 (June 9, 2006), and *2007 Sales Tax Holiday*, TIP# 07A01-07 (June 15, 2007).

- Wallets; and
- Bags (including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags).

During the sales tax holiday, the bill also exempts “school supplies” that cost $15 or less per item. “School supplies” are defined as pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, protractors, compasses, and calculators.

The bill also exempts personal computers and related accessories purchased for noncommercial home or personal use with a sales price of $750 or less. This would include tablets, laptops, monitors, input devices, and non-recreational software. Furniture and devices or software intended primarily for recreational use are not exempted.

The bill provides that the sales tax holiday does not apply to sales within a theme park, entertainment complex, public lodging establishment, or airport. Thus, sales in these locations will be subject to taxation during the sales tax holiday.

The bill also provides a nonrecurring General Revenue appropriation to offset the Department of Revenue’s cost to administer the tax holiday.

B. SECTION DIRECTORY:

Section 1. Amending s. 210.20, F.S., revising the sunset date for certain cigarette tax distributions

Section 2. Amending s. 212.08, F.S., lowering the weight threshold for rotary wing aircraft

Section 3. Amending s. 212.20, F.S., creating a monthly distribution to certain spring training facilities

Section 4. Amending s. 288.1045, F.S., removing the cap on total refunds for the Qualified Defense and Space Contractor Tax Refund program

Section 5. Amending s. 288.106, F.S., removing the cap on total refunds for the Qualified Target Industry program

Section 6. Creating s. 288.11631, F.S., providing requirements and procedures for the retention of spring training facilities program

Section 7. Amending s. 288.9914, F.S., increasing the total cumulative amount of credits that may be approved under the New Markets program

Section 8. Providing for a sales tax holiday on certain items, effective upon becoming law

Section 9. Appropriating funds to administer the sales tax holiday

Section 10. Amending s. 599.008, F.S., allowing certain Florida wine manufacturers to be licensed as distributors

Section 11. Amending s. 599.012, F.S., directing certain revenues to the Plant Industry Trust Fund to be used for plant disease research

Section 12. Providing an effective date of July 1, 2013, except where otherwise noted

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS

2. Expenditures:

   The Department of Revenue estimates it will cost $235,695 to administer the sales tax holiday. These costs are due to the need to provide a Tax Information Publication to sales tax dealers throughout the state. The bill contains a nonrecurring appropriation to the department to offset this cost.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill is designed to encourage economic development throughout Florida.

D. FISCAL COMMENTS:

The Revenue Estimating Conference has adopted an estimate for the rotary wing aircraft exemption weight threshold change and for the Sales Tax holiday period. Other impacts in the table below are staff estimates. Estimates are in millions of dollars.

2013-14 Fiscal Year	General Revenue		State Trust Funds		Local		Total	
	Cash	Recur.	Cash	Recur.	Cash	Recur.	Cash	Recur.
Cigarette Tax Distribution (1)	-	-	-	-	-	-	-	-
Rotary Wing Aircraft	(1.1)	(1.0)	(*)	(*)	(0.2)	(0.2)	(1.3)	(1.2)
Spring Training (2)	-	(3.3)	-	-	-	-	-	(3.3)
Qualified Defense and Space Contractor	-	-	-	-	-	-	-	-
New Markets (3)	-	(3.0)	-	-	-	-	-	(3.0)

Florida Wine (4)	-	-	-	-	-	-	-	-
Sales Tax Holiday	(28.3)	-	(*)	-	(6.4)	-	(34.7)	-
TOTALS	(29.4)	(7.3)	(*)	(*)	(6.6)	(0.2)	(36.0)	(7.5)

(1) Fiscal impact will begin in FY 2022-23. Approximately $2.5 million will annually be shifted to State Trust Funds out of General Revenue.
(2) Negative cash impact begins in FY 2015-16 and will increase over time as additional applicants are certified.
(3) Negative cash impact begins in FY 2015-16.
(4) Expanding the number of Florida wine manufacturers that can be distributors is expected to result in increased excise tax revenues by an unknown amount. This may or may not offset the negative effect on revenues to the Viticulture Trust Fund resulting from the shift in funds to Plant Industry Trust Fund directed by the bill.
(*) An insignificant impact of less than $50,000 annually

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 the bill is expected to result in a reduction in local option sales taxes on those items included in the sales tax holiday and the expansion of the rotary wing aircraft sales tax exemption. However, an exemption may apply because negative impact to local government taxing authority may be below the threshold for an insignificant fiscal impact on local governments

2. Other:

The provisions of the bill which exempt in-state Florida wine manufacturers from the prohibition on being licensed as both a manufacturer and a distributor of wine may raise the issue of the U.S. Constitution's limits on a state's ability to discriminate in favor of in-state businesses. The court has found that the Commerce Clause[26], with narrow exceptions, does not allow states to enact laws requiring "differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." Oregon Waste Systems, Inc. v. Department of Environmental Quality of Ore., 511 U.S. 93, 99 (1994).

In 2005, in Granholm v. Heald, 125 S.Ct. 1885 (2005), the Supreme Court held that Michigan and New York statutes which allowed some in-state wineries to ship directly to customers while out-of-state wineries were required to sell through distributors (Michigan and New York both used a three tier manufacturer-distributor-retailer system that is similar to Florida's) violated the Commerce Clause. Neither state was able to show that the differential treatment of in-state producers "advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." New Energy Co. of Ind. v. Limbach, 486 U.S. 269, 278 (1988).

B. RULE-MAKING AUTHORITY:

The Department of Revenue is granted emergency rulemaking authority to administer the sales tax holiday.

[26] U.S. Const. art. 1, s. 8, cl. 3.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES