



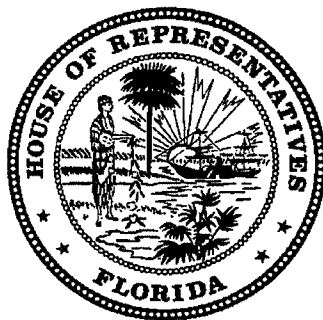
Finance and Tax Committee

Tuesday, February 21, 2012

3:00 p.m.

404 House Office Building

MEETING PACKET



Finance and Tax Committee

AGENDA

February 21, 2012

3:00 p.m.

404 House Office Building

I. Call to Order/Roll Call

II. **Consideration of the following bill(s):**

HB 1381 West Palm Beach Downtown Development Authority, Palm Beach County by Clemens

PCS for HB 1393 -- Taxation Of Transient Rentals

Workshop on the following:

CS/HB 595 Revitalizing Municipalities by Community & Military Affairs Subcommittee, Nuñez

HB 4099 Tax on Sales, Use, and Other Transactions by O'Toole

III. Closing Remarks and Adjournment


HB 1381

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1381 West Palm Beach Downtown Development Authority, Palm Beach County

SPONSOR(S): Clemens

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	14 Y, 0 N	Duncan	Hoagland
2) Finance & Tax Committee		Flieger SF	Langston 
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The West Palm Beach Downtown Development Authority (DDA) was created as an independent special district by ch. 67-2170, L.O.F. Section 3 of the DDA's charter establishes its boundaries within which the DDA is required to carry out activities such as analyzing economic conditions, formulating long-range plans, and making recommendations to the mayor, business leaders and residents actions for implementing downtown plans. Currently, the DDA is funded primarily through an ad valorem tax levied annually (1 mill), on all property within the downtown area as well as trolley advertising, sponsorships, and grants.

The bill modifies the boundaries of the DDA to remove a parcel of land from its boundaries.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The West Palm Beach Downtown Development Authority (DDA) was created as an independent special district by ch. 67-2170, L.O.F. Section 3 of the DDA's charter establishes its boundaries within which the DDA is required to perform the following functions:

- Prepare an analysis of the economic conditions and changes occurring in the downtown area, including the effect of factors such as metropolitan growth, traffic congestion, lack of adequate parking and other access facilities, and structural obsolescence and deterioration.
- Formulate long-range plans for improving the attractiveness and accessibility to the public of downtown facilities, promoting efficient use of such facilities, remedying the deterioration of downtown property values, and developing the downtown area.
- Recommend to the mayor and to downtown businesspersons and residents the actions deemed most suitable for implementing the downtown development plans, including removal, razing, repair, renovation, reconstruction, remodeling, and improvement of existing structures, addition of new structures and facilities, relocation of any existing structures and facilities, and changes in patterns of and facilities for getting to and from the area.
- Participate actively in the implementation and execution of downtown development plans, including the establishment, acquisition, construction, ownership, financing, leasing, licensing, operation, and management of public facilities deemed feasible and beneficial in effecting implementation. The DDA does not have any power or control over any city property unless and until it is assigned to the DDA by the city commission.
- Carry on all projects and undertakings authorized by law and within the limits of the powers granted to it by law, such additional public projects and undertakings related to the downtown area as the mayor may assign to it with its consent.

The DDA is actively involved in planning, marketing, serving, and developing the downtown. Principle services include retail recruitment and retention, community planning, community advocacy and quality of life services, consensus building, marketing, promotions, and events, trolley operations, and capital improvement project planning and implementation.¹

Section 8 of the DDA's charter authorizes the DDA to levy an ad valorem tax of 2 mills on all property in the downtown area for the purpose of financing its operations. Currently, the DDA levies 1 mill. The DDA also generates funds through trolley advertising, sponsorships, and grants.²

As of January 30, 2012, there are six active independent special districts categorized as downtown development/improvement entities authorized to levy an ad valorem tax in Florida.³

Effect of Proposed Changes

The bill modifies the boundaries of the West Palm Beach DDA to remove a parcel of land known as One Watermark Condominium⁴ from the boundaries of the DDA.

¹ West Palm Beach Downtown Development Authority, *DDA Work Plan, Fiscal Years 2010-2014*, August 2009, at 6, available at <http://www.westpalmbeachdda.com/5-year-plan> (last visited January 30, 2012).

² *Id.*

³ Department of Economic Opportunity, Division of Community Development, Special District Information Program, available at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/report.cfm> (last visited January 30, 2012).

⁴ Documentation from the Palm Beach County Delegation to Community & Military Affairs Subcommittee staff, *Summary Fact Sheet and City of West Palm Beach Resolution No. 331-11* via email January 19, 2012. On file with subcommittee staff.

B. SECTION DIRECTORY:

Section 1: Amends section 3 of section 3 of ch. 2003-380, L.O.F., relating to the boundaries of the West Palm Beach Downtown Development Authority.

Section 2: Provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 9, 2011

WHERE? *The Palm Beach Post*, published daily and Sunday, West Palm Beach County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

According to the economic impact statement, amending the boundaries of the DDA will result in approximately \$105,702 in decreased revenues available for downtown development.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

1 A bill to be entitled
2 An act relating to the West Palm Beach Downtown
3 Development Authority, Palm Beach County; amending
4 chapter 2003-380, Laws of Florida; revising the
5 development authority's boundaries; providing an
6 effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Section 3 of section 3 of chapter 2003-380,
11 Laws of Florida, is amended to read:

12 Section 3. Downtown area description.—The Downtown area
13 includes all lands lying within boundaries described as:

14
15 A parcel of land lying within the limits of the City
16 of West Palm Beach, Florida, being more particularly
17 described as follows:

18
19 BEGINNING at a point formed by the intersection of the
20 centerline of the Intracoastal Waterway channel in
21 Lake Worth and the Easterly extension of the
22 centerline of Okeechobee Boulevard; thence from said
23 POINT OF BEGINNING, LESS and EXCEPT the following
24 described parcel of land and all improvements lying
25 therein, to-wit: A parcel of land in Section 22,
26 Township 43 South, Range 43 East, in the City of West
27 Palm Beach, Florida, bounded as follows: On the North
28 by the Easterly extension of the centerline of 7th

29 Street (formerly Lee Court, and formerly 5th Avenue on
 30 MAP OF RAILWAY ADDITION recorded in Plat Book 1, Page
 31 58, of the Public Records of Palm Beach County,
 32 Florida); on the West by the Easterly right of way
 33 line of Flagler Drive; on the South by the Easterly
 34 extension of the South line of Lot 13, REVISED PLAT OF
 35 SUBDIVISION OF RAILWAY RESERVE, as recorded in Plat
 36 Book 8, Page 1, of said Public Records; and on the
 37 East by the City of West Palm Beach Bulkhead Line as
 38 established by Ordinance No. 602, dated November 26,
 39 1956. LESS and except that parcel of land deeded to
 40 the State of Florida, recorded in Official Record Book
 41 1110, Page 417, of the Public Records of Palm Beach
 42 County, Florida, Westerly along said centerline of
 43 Okeechobee Boulevard to its intersection with the
 44 centerline of South Dixie Highway, as shown on
 45 PHILLIPS POINT ADDITION OF WEST PALM BEACH, as
 46 recorded in Plat Book 1, Page 52, Public Records of
 47 Palm Beach County, Florida; thence Northerly along the
 48 centerline of South Dixie Highway to its intersection
 49 with the centerline of Hibiscus Street, as shown on
 50 POTTER ADDITION to West Palm Beach, as recorded in
 51 Plat Book 2, Page 42, Public Records of Palm Beach
 52 County, Florida; thence Westerly along the centerline
 53 of Hibiscus Street to its intersection with the main
 54 line track of the Florida East Coast Railroad; thence
 55 Northerly along the centerline of the main line track
 56 of the Florida East Coast Railroad to its intersection

57 | with a 14 foot alley, lying North of and adjacent to
58 | Block 62, Plat of MODEL LAND COMPANY ADDITION, as
59 | recorded in Plat Book 1, Page 106, Public Records of
60 | Palm Beach County, Florida; thence Westerly along said
61 | centerline of the 14 foot alley, to its intersection
62 | with the centerline of Georgia Avenue, as shown on
63 | HIGHLAND PARK LAND COMPANY ADDITION, as same as
64 | recorded in Plat Book 1, Page 122, Public Records of
65 | Palm Beach County, Florida; thence Southerly along the
66 | centerline of Georgia Avenue to its intersection with
67 | the centerline of Iris Street; thence Westerly along
68 | the centerline of Iris Street, to a point 62.00 feet
69 | West of the West line of Lot 9, Block 75, said
70 | HIGHLAND PARK LAND COMPANY ADDITION; thence Southerly
71 | along the line parallel to and 62.00 feet West of as
72 | measured at right angles to the West line of said Lot
73 | 9, Block 75, to its intersection with the centerline
74 | of an existing paved road, lying East of the location
75 | of the existing Connie Mack Ballfield, said existing
76 | paved road being the Northerly extension of Lake
77 | Avenue; thence Southerly along the centerline of said
78 | Lake Avenue, to its intersection with the centerline
79 | of Jasmine Street, as same as shown on said HIGHLAND
80 | PARK LAND COMPANY ADDITION; thence Southerly along the
81 | centerline of said Lake Avenue to its intersection
82 | with the centerline of Okeechobee Boulevard, said
83 | centerline also being the South line of Section 21,
84 | Township 43 South, Range 43 East, Palm Beach County,

85 Florida; thence Westerly along said centerline of
 86 Okeechobee Boulevard to its intersection with the
 87 centerline of the Seaboard Coast Line Railroad main
 88 line track; thence Northerly along the centerline of
 89 said Seaboard Coast Line Railroad to its intersection
 90 with the Easterly extension of the South line of a
 91 commercial Tract "A", as shown on CLEARWATER PARK, as
 92 recorded in Plat Book 33, Pages 120 and 121, Public
 93 Records of Palm Beach County, Florida; thence from
 94 said point of intersection, Southwesterly to a point
 95 formed by the intersection of the centerline of the
 96 existing Australian Avenue and the centerline of
 97 Okeechobee Boulevard; thence from said point of
 98 intersection, continue Northerly and Northwesterly
 99 along the centerline of Australian Avenue, as shown on
 100 the Plats of said CLEARWATER PARK and CLEARLAKE PARK,
 101 as same as recorded in Plat Book 30, Pages 149 and
 102 150, to its intersection with the centerline of First
 103 Street, as shown on said Plat of CLEARLAKE PARK;
 104 thence easterly along the centerline of said First
 105 Street, to its intersection with the centerline of the
 106 Seaboard Coast Line Railroad main line track; thence
 107 Northerly along the centerline of said Seaboard Coast
 108 Line Railroad main line track to its intersection with
 109 the centerline of the Florida East Coast spur track,
 110 as shown on the PLAT OF THE ORIGINAL TOWN SITE OF WEST
 111 PALM BEACH, recorded in Plat Book 1, Page 2, Public
 112 Records of Palm Beach County, Florida; thence Easterly

113 along the centerline of said Florida East Coast
 114 Railroad spur track, to its intersection with the
 115 centerline of Rosemary Avenue; thence Northerly along
 116 the centerline of Rosemary Avenue, to its intersection
 117 with the centerline of Third Street; thence Easterly
 118 along the centerline of Third Street to its
 119 intersection with the centerline of the Florida East
 120 Coast main line track; thence Northerly along the
 121 centerline of the Florida East Coast Railroad main
 122 line track, to its intersection with the centerline of
 123 Seventh Street; thence Easterly along the centerline
 124 of Seventh Street to its intersection with the
 125 centerline of North Railroad Avenue, as shown on
 126 BRELSFORD PARK, recorded in Plat Book 8, Page 21,
 127 Public Records of Palm Beach County, Florida; thence
 128 Northerly along the centerline of North Railroad
 129 Avenue to a point formed by the Westerly extension of
 130 the centerline of an alley, lying in Block 4, of said
 131 PLAT OF BRELSFORD PARK; thence Easterly along the
 132 centerline of said alley through Block 4, to a point
 133 formed by the intersection of the centerline of the
 134 North/South alley running through said Block 4 of said
 135 Plat of BRELSFORD PARK; thence Northerly along the
 136 centerline of said alleyway, to its intersection with
 137 the centerline of Eighth Street; thence Easterly along
 138 the centerline of Eighth Street, to its intersection
 139 with the centerline of North Flagler Drive; thence
 140 Northerly along the centerline of North Flagler Drive,

141 to its intersection with the Easterly extension of the
 142 North line of Lot 21, Block 8, revised Plat of GROVER
 143 CARLBERG ADDITION, as recorded in Plat Book 9, Page
 144 16, Public Records of Palm Beach County, Florida;
 145 thence Easterly along the line being the Easterly
 146 extension of the North line of said Lot 21, to its
 147 intersection with the centerline of the Intracoastal
 148 Waterway channel in Lake Worth; thence Southerly along
 149 the centerline of the Intracoastal Waterway channel to
 150 the POINT OF BEGINNING.

151

152 The annual tax levy made by section 8 shall hereafter apply to
 153 and extend to the entire area hereinabove described.

154 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1393 Taxation Of Transient Rentals

SPONSOR(S): Finance & Tax Committee

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Flieger <i>BF</i>	Langston <i>GL</i>

SUMMARY ANALYSIS

Legal disputes between online booking services and local governments have arisen regarding the various taxes levied on the rental of transient accommodations. PCS for HB 1393 clarifies the meaning of several terms used in the taxation of transient rental accommodations by the state and local governments. The bill amends s. 212.03, F.S., to clarify that the terms "total rental charged" as used in s. 212.03, F.S., "total consideration" as used in ss. 125.0104 and 125.0108, F.S., "consideration" as used in s. 212.0305, F.S., and "rent" as used in ch. 67-930, L.O.F., as amended, have the same meaning and that meaning only includes the amounts received by the operators or owners of the physical accommodations, not the service fees (or "markup") online travel companies receive for facilitating the booking of reservations.

The Revenue Estimating Conference (REC) estimates that the bill will have revenue impacts attributable to two distinct factors. First, clarifying that the markup received by online travel companies is not taxable will have no impact on state sales tax, but will have a negative impact on local government revenues. The negative impact will be indeterminate for fiscal years 2012-13 and 2013-14, eventually reaching a determinate level of -\$36.6 million beginning in FY 2014-15 and thereafter. The local government impact is indeterminate in the near term due to uncertainty as to the when ongoing litigation will be resolved and the resulting tax payments to local governments would otherwise occur.

A second factor considered by the REC is that the bill will provide substantially greater legal certainty regarding tax liability associated with different forms of business organization in the transient rentals industry. Consequently, there is an expectation that taxpayers will change their business practices over time in an attempt to qualify for the same treatment afforded online travel companies. The impacts on both state and local revenues are negative indeterminate with respect to both magnitude and timing, though the magnitude is potentially large.

The effective date of the bill is July 1, 2012.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Taxation of Transient Rentals

Transient rentals are rentals or leases of accommodations for 6 months or less and include stays in hotels, apartment houses, roominghouses, tourist or trailer camps, mobile home parks or recreational vehicle parks.¹

Currently, transient rentals are potentially subject to the following taxes:

1. Local Option Tourist Development Taxes: Current law authorizes five separate tourist development taxes on transient rental transactions. Section 125.0104(3)(a), F.S., provides that the local option tourist development tax is levied on the "total consideration charged for such lease or rental."
 - a. The tourist development tax may be levied at the rate of 1 or 2 percent.² Currently, 60 counties levy this tax at 2 percent; all 67 counties are eligible to levy this tax.³
 - b. An additional tourist development tax of 1 percent may be levied.⁴ Currently 43 counties levy this tax; only 56 counties are currently eligible to levy this tax.⁵
 - c. A professional sports franchise facility tax may be levied up to an additional 1 percent on transient rental transactions.⁶ Currently 35 counties levy this additional tax; all 67 counties are eligible to levy this tax.⁷
 - d. A high tourism impact county may levy an additional 1 percent on transient rental transactions.⁸ Only Broward, Monroe, Orange, Osceola and Walton counties have been designated as high tourism impact counties eligible to impose this tax, but only Orange, Osceola and Monroe counties impose the tax.⁹
 - e. An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.¹⁰ Out of 65 eligible counties, 20 levy this tax.¹¹
2. Local Option Tourist Impact Tax: The local option tourist impact tax under s. 125.0108, F.S., is levied at the rate of 1 percent of the total consideration charged. Only Monroe County is eligible and does levy this tax in areas designated as areas of critical state concern because they created a land authority pursuant to s. 380.0663(1), F.S.¹²
3. Local Convention Development Tax: The convention development tax under s. 212.0305, F.S., is imposed on the total consideration charged for the transient rental. Each county operating under a home rule charter, as defined in s. 125.011(1), F.S., may levy the tax at 3 percent (Miami-Dade County); each county operating under a consolidated government may levy the tax at 2 percent (Duval County); and each county chartered under Article VIII of the State Constitution that had a tourist advertising district on January 1, 1984, may levy the tax at up to 3

¹ These accommodations are defined in s. 212.02(10), F.S. See also Rule 12A-1.061(2)(f), F.A.C.

² Section 125.0104(3)(c), F.S.

³ Florida Legislative Committee on Intergovernmental Relations.

⁴ Section 125.0104(3)(d), F.S.

⁵ See fn. 3, supra.

⁶ Section 125.0104(3)(l), F.S.

⁷ See fn. 3, supra.

⁸ Section 125.0104(3)(m), F.S.

⁹ See fn. 3, supra.

¹⁰ Section 125.0104(3)(n), F.S.

¹¹ See fn. 3, supra.

¹² Id.

percent (Volusia County).¹³ No county authorized to levy this tax can levy more than 2 percent of the tourist development tax, excluding the professional sports franchise facility tax.¹⁴

4. **Municipal Resort Tax:** Certain municipalities may levy the municipal resort tax at a rate of up to 4 percent on transient rental transactions.¹⁵ The tourist development tax may not be levied in any municipality imposing the municipal resort tax. The tax is collected by the municipality. Currently only three municipalities in Miami-Dade County are eligible to impose the tax.
5. **State Sales Tax:** The state sales tax on transient rentals under s. 212.03, F.S., is levied in the amount of 6 percent of the "total rental charged" for the living quarters or sleeping or housekeeping accommodations in, from, or part of, or in connection with any hotel, apartment house, roominghouse, or tourist or trailer camp.

In general, the local taxes are adopted by ordinance, some of which must be approved by a referendum election of the voters of the county or area where the tax is to be levied. The local taxes on transient rentals are required to be remitted to the Department of Revenue (DOR) by the person receiving the consideration, unless a county has adopted an ordinance providing for local collection and administration of the tax.¹⁶ Further, the use of the proceeds from each tax may only be used as set forth in the authorizing statute.

Certain rentals or leases are exempt from the taxes; these include rentals to active-duty military personnel, full-time students, bona fide written leases for continuous residence longer than 6 months, and accommodations in migrant labor camps.¹⁷

Every person desiring to engage in or conduct business in this state as a dealer or to lease, rent, or let or grant licenses to use accommodations that are subject to tax under s. 212.03, F.S., must file with DOR an application for a certificate of registration for each place of business prior to engaging in such business.¹⁸ A separate application is required for each county where property is located. Agents, representatives, or management companies that collect and receive rent as the accommodation owner's representative are required to register as a dealer and collect and remit the applicable tax due on such rentals to the proper taxing authority.¹⁹

In addition to the certificate of registration, each newly registered dealer also receives an initial resale certificate from DOR. The resale certificate is renewed annually for dealers with an active sales tax account, and expires on December 31 each year.²⁰ An annual resale certificate allows registered dealers to make tax-exempt purchases or rentals of property or services for resale, including re-rental of transient rental property and resale of tangible personal property. The annual resale certificate may not be used to make tax-exempt purchases or rentals of property or services that:

- Will be used rather than resold or rented.
- Will be used before selling or renting the goods.
- Will be used by the business or for personal purposes.²¹

*Rental of Accommodations Online*²²

Some companies have websites that specialize in offering reservations of transient rental accommodations. These are generally independent third parties who act either as an agent or a merchant and are often referred to as "internet intermediaries" or some similar term. Travel agents

¹³ Id.

¹⁴ Section 125.0104(3)(b), (3)(l)4., and (3)(n)2., F.S.

¹⁵ Chapter 67-930, L.O.F., amended by chs. 82-142, 83-363, 93-286, and 94-344, L.O.F.

¹⁶ See e.g., ss. 125.0104(10) and 212.0305(5), F.S. Also known as "self-administering."

¹⁷ Section 212.03(7), F.S. See also ss. 125.0104(3)(a), 125.0108(1)(b), 212.0305(3)(a), F.S.

¹⁸ Section 212.18(3)(a), F.S.

¹⁹ Rule 12A-1.061(7), F.A.C.

²⁰ Section 212.18(3)(c), F.S.

²¹ Annual Resale Certificate for Sales Tax (Guidelines), at <http://dor.myflorida.com/dor/taxes/resale.html> (last visited 03/02/2011).

²² Information for this section was obtained from Interim Project 2005-131, Senate Committee on Government Efficiency Appropriations (Nov. 2004); and Issue Brief 2009-320, Senate Committee on Finance and Tax (Oct. 2008).

have been allowed computerized access to search hotel room inventories and to book discounted hotel rooms in the name of, and for the account of, other people (i.e., as intermediaries) since the 1970s.

When an internet intermediary facilitates accommodation reservations acting as an agent, the intermediary is acting as a middle-man between the customer and the accommodation owner to reserve a room. Generally, the customer reserves a room with a credit card, and does not pay the hotel bill until check-out, at which point taxes are charged. In these circumstances, at the time of reservation online, the customer is typically advised that taxes may or may not be included in the total cost listed on the website. The accommodation owner compensates the agent with a commission based on the room rate set by the hotel. With this method, the room rate is subject to tax without any reduction for the commission paid. Agents do not arrange in advance of the customer's transaction to purchase room inventory at the hotel.

Generally speaking, when an internet intermediary acts as a merchant, it enters into a contract with an accommodation owner to offer rooms to the public. The accommodation owner agrees to make rooms available for reservation at a negotiated rate.²³ The merchant agrees to pay the owner the negotiated room rate and to also forward money it collects from the customer to pay applicable taxes. The merchant advertises a room rate on the website with disclosures for separate charges for "taxes and service fees" or some similar designation. The internet intermediary is the merchant of record for reservation of the room, and it initiates a charge to the customer's credit card for the full room rate plus the disclosed line items. The consumer receives confirmation of the reservation from the merchant. When the accommodation owner sends the merchant an invoice for the room after the consumer's stay, the merchant pays the negotiated room rate and the tax due on that amount.

The issue of online reservations of accommodations by internet intermediaries has surfaced as a result of two main factors: 1) the increase in reservations of accommodations through websites; and 2) tax laws that were adopted before the existence of internet intermediaries. There has been some dispute and question as to the proper amount against which state and local transient rental taxes are levied.

The Markup/Facilitation Fee/Service Fee

Internet intermediaries argue that the tourist development tax is measured by the amount paid to the accommodation owner or operator for the right to use the transient accommodation (negotiated rate) and that the facilitation fee²⁴ is not subject to tax because it is not an amount paid to the owner (generally the difference between the retail rate paid by the customer and the negotiated rate paid by the internet intermediary). They argue that the taxable incident is not the isolated receipt of the rental payment, but the exercise of the taxable privilege – the assemblage of activities consistent with ownership. Under this line of reasoning, money received to facilitate a booking, process a reservation application, or provide a similar service, is not subject to tax when a company lacks an ownership interest in the accommodation. This position extends to the tax treatment of customer charges variously labeled as "tax reimbursements," "tax recovery charges," or "taxes and fees."

Local governments interpret the law such that internet intermediaries acting as merchants are sales tax dealers and that the total amount of each transaction is taxable. The internet intermediary acts in place of the accommodation owner in renting, leasing, or letting the real property, tangible personal property, and services as part of the accommodation. Local governments contend that dividing the sale of an accommodation reservation into discrete transactions ignores the sale's singular nature. They are concerned that allowing intermediaries to shoehorn customary accommodation services into the non-taxable category will erode the tax base.

When Taxes Should Be Remitted

Internet intermediaries argue that the tax is not due at the time money is paid by the consumer. Instead, it should be remitted by the hotel or facility, as owner of the accommodation, once the negotiated room charge is forwarded to the owner after the consumer's stay. Local governments argue

²³ The negotiated rate is also referred to as a discounted or wholesale price or rate.

²⁴ Also known as the "markup" or a "service fee." A facilitation fee generally involves money received to facilitate a booking, process a reservation application, or provide a similar service.

that transient rental tax is due at the time of collection, not later when the accommodation owner is paid the negotiated rate.

Florida Department of Revenue

DOR has not taken an official position on whether state sales and use tax is due on the amount collected and retained by internet intermediaries. The department has not taken a position on whether tax is due on the additional charges variously labeled as “tax reimbursements,” “tax recovery charges,” or “taxes and fees.” Additionally, DOR has not take a position on whether tax should be remitted at the time the customer pays for the reservation or after the room is actually occupied.

Local Litigation

In August 2010, Monroe County entered into a settlement agreement on behalf of 32 counties²⁵ in a federal class-action suit against certain online travel companies. As a result of the settlement order, the online travel companies paid \$6.5 million to the counties, and in return the counties released Orbitz, Expedia, and Travelocity from any obligation to pay or remit tourist development taxes on the full retail price for hotel accommodations from July 1, 2010 until July 1, 2012 (Priceline negotiated that they would have no obligation until July 1, 2013).²⁶ The participating counties agreed to dismiss all current claims against the online travel companies with prejudice, and are further precluded from suing or making attempt to collect such taxes from Expedia, Travelocity, and Orbitz until after July 1, 2012, and from Priceline until July 1, 2013.

In October 2011, Orange County approved a confidential settlement they reached with Expedia. Based on review of the county’s finances, media estimates place the settlement at roughly \$9 million. While the terms are confidential, reports indicate that the settlement was similar to that of the Monroe County, in that without admitting liability Expedia received an agreement that the county not assess tax for an agreed upon grace period.²⁷

Several other local jurisdictions have open litigation pending against online travel companies.²⁸

Proposed Changes

As described above, transient rentals are potentially subject to the following taxes:

- Local Option Tourist Development Taxes (imposed under s. 125.0104, F.S.)
- Local Option Tourist Impact Tax (imposed under s. 125.0108, F.S.)
- State Sales Tax (imposed under s. 212.03, F.S.)
- Local Convention Development Tax (imposed under s. 212.0305, F.S.)
- Municipal Resort Tax (imposed pursuant to Chapter 67-930, L.O.F.)

The bill amends s. 212.03, F.S. to clarify that in each of the above sections the terms “consideration,” “rental,” and “rents” all have the same meaning and that meaning is defined as the amount received by a person operating transient accommodations, or the owner of such accommodations, for the use of any living quarters or sleeping or housekeeping accommodations in, from, or part of, or in connection with any transient accommodation. A “person operating transient accommodations” is defined as the person who conducts the daily affairs of the physical facilities furnishing transient accommodations who

²⁵ The class action suit represented the following counties: Baker, Bradford, Citrus, Clay, Collier, Columbia, Duval, Franklin, Gadsden, Gilchrist, Glades, Hamilton, Hendry, Hernando, Highlands, Holmes, Indian River, Jackson, Jefferson, Lake, Levy, Madison, Martin, Miami-Dade, Monroe, Okeechobee, Putnam, St. Lucie, Santa Rosa, Sarasota, Sumter, Suwannee, and Taylor. The 15 defendants included: Expedia, Inc., Hotels.com, L.P., Hotwire, Inc., Hotels.com, and TravelNow.com, Inc. (the “Expedia parties”); priceline.com incorporated and Travelweb LLC (the “Priceline parties”); Travelocity.com LP and Site59.com (the “Travelocity parties”); and Orbitz, LLC and Trip Network Inc. d/b/a Cheaptickets.com (the “Orbitz parties”).

²⁶ *Monroe County v. Priceline, Inc. et al.* Master Settlement Agreement (Case No. 09-10004-CIV-MOORE/SIMONTON)(S.D. Fla. 2010) (on file with the Finance and Tax Committee, Florida House of Representatives).

²⁷ “Expedia details might stay secret from Orange taxpayers”, Orlando Sentinel, December 6, 2011,

http://articles.orlandosentinel.com/2011-12-06/business/os-mystery-settlement-expedia-20111206_1_expedia-settlement-talks-tax-information (accessed January 24, 2012)

²⁸ See, e.g., *Leon County vs. Expedia Inc.* (Case No. 37 2009 CA 004319); *Priceline.com Inc. vs. Osceola County*, (Case No: 37 2011 CA 000192); *Hotwire Inc. vs. Miami Dade County*, (Case No. 37 2009 CA 004977)

is responsible for providing any of the services commonly associated with operating the facilities furnishing transient accommodations, including providing physical access to such facilities, regardless of whether such commonly associated services are provided by unrelated persons. The terms do not include payments received by unrelated persons from the lessee, tenant or customer for facilitating the booking of reservations for or on behalf of the lessees, tenants or customers at transient accommodations. "Unrelated person" is defined as persons who are not related to the person operating transient accommodations, or the owner of such accommodations, within the meaning of s. 1504, s. 267(b), or s. 707(b) of the Internal Revenue Code of 1986, as amended. Those provisions would exclude, among other relationships, any company that owns at least 50% of the hotel (or is at least 50% owned by the hotel) and any two companies that share a common parent corporation that owns at least 80% of each of them from within the meaning of "unrelated persons."

B. SECTION DIRECTORY:

Section 1 amends s. 212.03, F.S., to providing definitions of various terms related to the taxation of transient rentals

Section 2 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill should eliminate much of the ongoing litigation between the online travel companies and local governments.

D. FISCAL COMMENTS:

The Revenue Estimating Conference (REC) estimates that the bill will have revenue impacts attributable to two distinct factors. First, clarifying that the markup received by online travel companies is not taxable will have no impact on state sales tax, but will have a negative impact on local government revenues. The negative impact will be indeterminate for fiscal years 2012-13 and 2013-14, eventually reaching a determinate level of -\$36.6 million beginning in FY 2014-15 and thereafter. The local government impact is indeterminate in the near term due to uncertainty as to the when ongoing litigation will be resolved and the resulting tax payments to local governments would otherwise occur.

A second factor considered by the REC is that the bill will provide substantially greater legal certainty regarding tax liability associated with different forms of business organization in the transient rentals industry. Consequently, there is an expectation that taxpayers will change their business practices over

time in an attempt to qualify for the same treatment afforded online travel companies. The impacts on both state and local revenues from these changes are negative indeterminate with respect to both magnitude and timing, though the magnitude is potentially large.

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 of the impact the bill has on local tourist development tax revenues. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

This bill is a proposed committee substitute for HB 1393. HB 1393 clarified that definition of various terms related to the taxation of transient rentals included amounts received by people licensed by the Department of Business and Professional Regulation. This substitute removes the provisions relating to licensure and clarifies the definitions of those terms to exclude payments to online travel companies from taxation.

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A bill to be entitled
 An act relating to taxation of transient rentals;
 amending s. 212.03, F.S.; defining the terms "total
 rental charged," "total consideration,"
 "consideration," and "rent" for purposes relating to
 the tax on sales, use, and other transactions, the
 tourist development tax, the tourist impact tax, the
 convention development tax, and the municipal resort
 tax on the rental of transient accommodations;
 providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (8) is added to section 212.03,
 Florida Statutes, to read:

212.03 Transient rentals tax; rate, procedure,
 enforcement, exemptions.-

(8) The terms "total rental charged" as used in this
 section, "total consideration" as used in ss. 125.0104 and
 125.0108, "consideration" as used in s. 212.0305, and "rent" as
 used in chapter 67-930, Laws of Florida, as amended, have the
 same meaning and mean the amount received by a person operating
 transient accommodations or the owner of such accommodations for
 the use of such accommodations in connection with any hotel,
 apartment house, roominghouse, timeshare resort, tourist or
 trailer camp, mobile home park, recreational vehicle park, or
 condominium. The term "person operating transient
 accommodations" means a person who is responsible for providing
 any of the services commonly associated with operating the

30 | transient accommodations facilities, including providing
 31 | physical access to such facilities, regardless of whether such
 32 | commonly associated services are provided by unrelated persons.
 33 | The terms "consideration," "rental," and "rents" do not include
 34 | payments received by unrelated persons from the lessee, tenant,
 35 | or customer for facilitating the booking of reservations for or
 36 | on behalf of the lessees, tenants, or customers at hotels,
 37 | apartment houses, roominghouses, timeshare resorts, tourist or
 38 | trailer camps, mobile home parks, recreational vehicle parks, or
 39 | condominiums in this state. The term "unrelated persons" means
 40 | persons who are not related to the person operating transient
 41 | accommodations or to the owner of such accommodations within the
 42 | meaning of s. 1504, s. 267(b), or s. 707(b) of the Internal
 43 | Revenue Code of 1986, as amended.

44 | Section 2. This act shall take effect July 1, 2012.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED ___ (Y/N)
ADOPTED AS AMENDED ___ (Y/N)
ADOPTED W/O OBJECTION ___ (Y/N)
FAILED TO ADOPT ___ (Y/N)
WITHDRAWN ___ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing PCB: Finance & Tax Committee
2 Representative Costello offered the following:

3
4 **Amendment (with directory and title amendments)**

5 Remove lines 18-43 and insert:

6 (8) For purposes of this section, ss. 125.0104, 125.0108,
7 and 212.0305, and chapter 67-930, Laws of Florida, as amended,
8 the business of renting, leasing, letting, or granting a license
9 to use transient rental accommodations includes any activity in
10 which a person offers information about the availability of
11 accommodations to a customer, arranges for the customer's
12 occupancy of the accommodations, establishes the total rent the
13 customer pays for the accommodations, or collects the rental
14 payments from the customer.

15 (9) (a) The terms "total rent" as used in this section,
16 "total consideration" as used in ss. 125.0104 and 125.0108,
17 "consideration" as used in s. 212.0305, and "rent" as used in
18 chapter 67-930, Laws of Florida, as amended, have the same
19 meaning and include:

Amendment No. 1

20 1. The total amount a customer pays for the right to
21 occupy a transient accommodation.

22 2. Charges that must be paid as a condition of the right
23 of occupancy, except for mandatory fees imposed for the
24 availability of communications services.

25 3. Charges paid by a customer to the person collecting the
26 rent or consideration as a condition of the right of occupancy,
27 even if the charges are separately stated or are for tangible
28 personal property or services provided by a third party.

29 4. Charges for the use of tangible personal property or
30 services as a condition of the right of occupancy, even if
31 separately stated.

32 (b) The department may adopt rules to exclude charges from
33 the definition of rent, total rent, consideration, and total
34 consideration which are:

35 1. Separately stated on the customer's bill; and

36 2. Are for the purchase of optional tangible personal
37 property and services that are withheld if the customer refuses
38 to pay the charge.

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D I R E C T O R Y A M E N D M E N T

Remove lines 14-15 and insert:

Section 1. Subsections (8) and (9) are added to section 212.03,
Florida Statutes, to read:

Amendment No. 1

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T I T L E A M E N D M E N T

Remove lines 3-10 and insert:
amending s. 212.03, F.S.; requiring that persons who engage in certain business activities related to transient rentals collect the tax; defining the terms "total rental charged," "total consideration," "consideration," and "rent" for purposes relating to the tax on sales, use, and other transactions, the tourist development tax, the tourist impact tax, the convention development tax, and the municipal resort tax on the rental of transient accommodations; authorizing the Department of Revenue to adopt rules to exclude certain charges; providing an effective date.

CS/HB 595

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 595 Revitalizing Municipalities
SPONSOR(S): Community & Military Affairs Subcommittee; Nuñez and others
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Community & Military Affairs Subcommittee, 13 Y, 2 N, As CS, Duncan, Hoagland. Row 2: 2) Finance & Tax Committee, Flieger, Langston. Row 3: 3) Economic Affairs Committee.

SUMMARY ANALYSIS

The Florida Legislature has created or authorized the creation of several programs and mechanisms to encourage businesses to operate in and provide jobs in distressed areas; and to assist local governments in financing infrastructure and capital projects that will result in revitalizing business and residential communities and creating jobs.

The bill creates the Municipal Revitalization Act ("the Act") in ch. 290, F.S., relating to urban redevelopment. The Act allows municipalities with a specified population that are located within an enterprise zone to designate a sales tax tax increment financing ("TIF") area to support the development of a retail development project by resolution. It also allows the governing bodies of the enterprise zone where the sales tax TIF area is located to receive from the state a portion of an annual increase in sales tax collections in the area.

The bill amends the provisions relating to the distribution formula under the Municipal Revenue Sharing Program, to require distributions to municipalities that have a sales tax increment redevelopment district prior to the final adjustment. The distributions must be made to the appropriate governing body for distribution.

The bill requires the Department of Revenue to determine monthly, the specific amount payable to each eligible designated redevelopment agency and the aggregate amount of sales tax revenue that is required for distribution, and transfer that amount from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities.

The Revenue Estimating Conference has estimated that this bill will have no impact on General Revenue or state trust funds in FY 2012-13, but the General Revenue impact will grow to a recurring annual -\$61.1 million as TIF areas come on line. The state trust fund impact will eventually be a recurring -\$1.0 million. Local government revenues will increase under the bill, but as with the state impacts will be zero in FY 2012-13. As TIF areas come on line the local government revenue gains are estimated to reach \$56.9 million annually.

The bill provides an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Redevelopment of distressed urban communities is primarily a local government responsibility. Local governments use the state's redevelopment programs in conjunction with other federal and local programs to help package deals for revitalizing distressed urban communities. While Florida's programs do not directly provide a large amount of funds, they are viewed as being useful in helping leverage other funding support and in demonstrating government commitment to revitalization. Florida's programs also are viewed as being useful in helping local governments get community and private sector buy-in on revitalization projects.¹

The Florida Legislature has created or authorized the creation of several programs and mechanisms to encourage businesses to operate in and provide jobs in distressed areas; and to assist local governments in financing infrastructure and capital projects that will result in revitalizing business and residential communities and creating jobs.

The Florida Enterprise Zone Program

The Florida Enterprise Zone Program was created in 1982 to encourage economic development in economically distressed areas of the state by providing incentives and inducing private investment. Currently, Florida has 62 enterprise zones.² The program is scheduled to be repealed on December 31, 2015.³

The Department of Economic Opportunity is responsible for approving applications for enterprise zones, and also approves changes in enterprise zone boundaries when authorized by the Florida Legislature. As part of the application process for an enterprise zone, the county or municipality in which the designation will be located also is responsible for creating an Enterprise Zone Development Agency and an enterprise zone development plan.

An Enterprise Zone Development Agency is required to have a board of commissioners of at least eight and no more than 13 members. The agency has the following powers and responsibilities:⁴

- Assisting in the development, implementation and annual review of the zone and updating the strategic plan or measurable goals;
- Identifying ways to remove regulatory burdens;
- Promoting the incentives to residents and businesses;
- Recommending boundary changes;
- Working with nonprofit development organizations; and
- Ensuring the enterprise zone coordinator receives annual training and works with Enterprise Florida, Inc.

An enterprise zone development plan (or strategic plan) must accompany an application. At a minimum this plan must:⁵

- Describe the community's goal in revitalizing the area;

¹Florida Legislature, Office of Program Policy Analysis and Government Accountability, Locals Find Urban Revitalization Programs Useful; More Centralized Program Information Would Be Helpful, Report No. 05-32, at 1(May 2005), *available at* <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/0532rpt.pdf>.

² Florida Department of Economic Opportunity, Division of Community Development, Florida Enterprise Zone Program, *Enterprise Zones: Square Miles and Population*, email (Revitalizing Municipalities) sent to House Community & Military Affairs Subcommittee staff on January 12, 2012.

³ Section 290.016, F.S.

⁴ Section 290.0056, F.S.

⁵ Section 290.0057, F.S.

- Describe how the community's social and human resources—transportation, housing, community development, public safety, and education and environmental concerns—will be addressed in a coordinated fashion;
- Identify key community goals and barriers;
- Outline how the community is a full partner in the process of developing and implementing this plan;
- Describe the commitment from the local governing body in enacting and maintaining local fiscal and regulatory incentives;
- Identify the amount of local and private resources available and the private/public partnerships;
- Indicate how local, state, and federal resources will all be utilized;
- Identify funding requested under any state or federal program to support the proposed development; and
- Identify baselines, methods, and benchmarks for measuring success of the plan.

Available Incentives

State Incentives - Florida's enterprise zones qualify for various incentives from corporate income tax and sales and use tax liabilities.⁶

Available **state sales tax incentives** for enterprise zones include:

- Building Materials Used in the Rehabilitation of Real Property Located in an Enterprise Zone:⁷
Provides a refund for sales taxes paid on the purchase of certain building materials, up to \$5,000 or 97 percent of the tax paid. If 20 percent or more of the permanent, full time employees of the business are residents of an enterprise zone the refund will be no more than the lesser of \$10,000 or 97 percent of the tax paid per parcel.
- Business Property Used in Enterprise Zones:⁸
Provides a refund for sales taxes paid on the purchase of certain equipment (tangible personal property such as office equipment, warehouse equipment, and some industrial machinery and equipment), up to \$5,000 or 97 percent of the sales tax paid. If 20 percent or more of the permanent, full time employees of the business are residents of an enterprise zone the refund will be no more than the lesser of 97 percent of the sales tax paid on the business property or \$10,000. The property must be used exclusively in the enterprise zone for at least three years.
- Enterprise Zone Jobs Credit against Sales Tax (Rural):⁹
For businesses located within a rural enterprise zone, this incentive provides a sales and use tax credit for 30 percent of the actual monthly wages paid to new employees who live within a rural county. If more than 20 percent of the employees are residents of an enterprise zone, the credit is 45 percent of the actual monthly wages paid.
- Enterprise Zone Jobs Credit against Sales Tax (Urban):¹⁰
For businesses located within an enterprise zone, this incentive provides a sales and use tax credit for 20 percent of the actual monthly wages paid to new employees who live within the enterprise zone. If more than 20 percent of the employees are residents of an enterprise zone, the credit is 30 percent of the actual monthly wages paid.

⁶ Section 290.007, F.S.

⁷ Section 212.08(5)(g), F.S.

⁸ Section 212.08(5)(h), F.S.

⁹ Section 212.096(2), F.S.

¹⁰ See s. 212.096, F.S.

- Community Contribution Tax Credit:¹¹
Provides 50 percent sales tax refund for donations made to local community development projects.
- Electrical Energy Used in an Enterprise Zone:¹²
Provides 50 percent sales tax exemption to qualified businesses located within an enterprise zone on the purchase of electrical energy. The exemption is only available if the municipality in which the business is located has passed an ordinance to exempt qualified enterprise zone businesses from 50 percent of the municipal utility tax.

Available **state corporate income tax incentives** for enterprise zones include:

- Enterprise Zone Jobs Credit against Corporate Income Tax (Urban and Rural):¹³
Provides a sales and use tax credit to qualified businesses located in an enterprise zone for 20 percent of the actual monthly wages paid to new employees who live within the enterprise zone. The percentage of the actual monthly wages paid could be greater than 20% under certain circumstances or if the business is located in a rural enterprise zone.
- Enterprise Zone Property Tax Credit:¹⁴
Provides a credit against Florida corporate income tax equal to 96 percent of ad valorem taxes paid on the new or improved property.
- Community Contribution Tax Credit:¹⁵
Provides a 50-percent credit on Florida corporate income tax or insurance premium tax, or a sales tax refund, for donations made to local community development projects.

Local Incentives - In addition to state incentives, some local governments offer the following local incentives as part of the Enterprise Zone Development Plan:¹⁶

- Reduction of occupational license fees.
- Ad valorem tax exemption on improved property.
- Local option economic development property tax exemption.
- Utility tax abatement.
- Façade/Commercial Rehabilitation Grants or Loans.
- Local funds for capital projects.
- Reduced building permit fees or land development fees.
- Reduction of specific local government regulations in the area.

Approximately \$20.0 million worth of local incentives were provided between October 2009 and September 2010. This amount represents an increase of approximately \$8.4 million more than the previous reporting period.¹⁷

¹¹ Section 212.08(5)(p), F.S.

¹² Section 212.08(15), F.S.

¹³ Section 220.181, F.S.

¹⁴ Section 220.182, F.S.

¹⁵ Sections 220.183, F.S. *See also* s. 624.5105, F.S.

¹⁶ Executive Office of the Governor, Office of Tourism, Trade & Economic Development, *Florida Enterprise Zone Annual Report, October 1, 2009 – September 30, 2010*, at 15 (March 2011), available at <http://www.floridaenterprisezones.com/Zones/Org1/uploads/2011EZAnnualReport.pdf> (last visited December 19, 2011). *See s.* 290.0135, F.S.

¹⁷ *Id.*

Square Miles and Population of Enterprise Zones

An area nominated by a county or municipality, or a county and one or more municipalities together, for designation as an enterprise zone is eligible for designation if it meets the following criteria:¹⁸

- The selected area does not exceed 20 square miles. The selected area must have a continuous boundary, or consist of not more than three noncontiguous parcels.
- The selected area does not exceed the following mileage limitation:
 - For communities having a total population of 150,000 persons or more, or for a rural enterprise zone, the selected area shall not exceed 20 square miles.
 - For communities having a total population of 50,000 persons or more but less than 150,000 persons, the selected area shall not exceed 10 square miles.
 - For communities having a total population of 20,000 persons or more but less than 50,000 persons, the selected area shall not exceed 5 square miles.
 - For communities having a total population of 7,500 persons or more but less than 20,000 persons, the selected area shall not exceed 3 square miles.
 - For communities having a total population of less than 7,500 persons, the selected area shall not exceed 3 square miles.
- The selected area suffers from pervasive poverty, unemployment, and general distress.
- To the greatest extent possible, the boundary of an area nominated must coincide with the boundaries of census geographic block groups.

Other Tax Credits Against the Sales and Use Tax include the following:¹⁹

- Credit for contributions to eligible nonprofit scholarship-funding organizations.²⁰

The amount taken against this credit from July 2011 – November 2011 was approximately \$1.4 million.
- Entertainment Industry Financial Incentive Program²¹

The amount taken against this credit from July 2011 – November 2011 was approximately \$5 million.
- Rural and Urban High Crime Area Credit. (Currently, this credit against the sales and use tax has not been taken by an entity.)

Revenue Sources Available to Fund Local Infrastructure²²

*Impact Fees*²³

- Charges imposed by local governments against new development to provide for capital facilities' costs made necessary by population growth.
- The majority of county and municipal government-imposed impact fees generate revenues to fund physical environment and transportation infrastructure.
- Revenue collections have decreased significantly in recent years due to the housing bust and local governments' efforts to freeze, reduce, or repeal impact fees in light of economic conditions.

¹⁸ Section 290.0055, F.S.

¹⁹ Florida Legislature, Office of Economic and Demographic Research, Email to House Community & Military Affairs staff, January 19, 2012.

²⁰ Section 212.1831, F.S.

²¹ Section 288.1254, F.S.

²² Florida Legislature, Office of Economic and Demographic Research, Economic Development Financial Reference Manual, at 5-8, (January 11, 2012), available at <http://edr.state.fl.us/Content/presentations/local-government/2012economicdevelopmentfinancialreferencemanual.pdf>.

²³ *Id.* at 5.

*Special Assessments*²⁴

- Charges imposed by local governments against property to fund the construction and maintenance of capital facilities and certain services.
- The majority of county and municipal government-imposed special assessments generate revenues to fund local services rather than capital facilities.
- Although still trending positive, revenue collections have slowed to recent years.

*Local Discretionary Sales Surtaxes*²⁵

- Eight separate levies that can be imposed by county governments or school districts to fund a variety of local infrastructure, public health, or public safety needs depending on the particular levy. The total tax rate varies by county from 1.5 percent to 3.5 percent.
- Proceeds from the following surtaxes generate revenues to fund physical environment and transportation infrastructure:
 - Charter County and Regional Transportation System Surtax
 - Local Government Infrastructure Surtax
 - Small County Surtax
 - School Capital Outlay Surtax
- As a sole method of authorization for several different surtaxes, voter approval in a countywide referendum may limit increased utilization of this funding.

*Local Option Fuel Taxes*²⁶

- Three separate levies, totaling a maximum of 12 cents per gallon on motor fuel (i.e., gasoline), that can be imposed by county governments to fund transportation infrastructure needs.²⁷

Revenue Sources Available to Fund Local Economic Development Efforts²⁸

*Convention Development Taxes*²⁹

- Three county governments (Duval, Miami-Dade, and Volusia) are eligible to levy a tax on transient rental transactions. The maximum tax rates are either 2 or 3 percent depending on the particular levy.
- Generally, the tax proceeds may be used for capital construction of convention centers and other tourist-related facilities as well as tourism promotion. However, the authorized uses vary by levy.

*Local Business Tax*³⁰

- County and municipal governments are eligible to levy the tax for the privilege of engaging in or managing any business, profession, or occupation within their respective jurisdictions.
- Although the tax proceeds are considered general revenue for the county or municipality, county business tax revenues may be used for overseeing and implementing a comprehensive economic development strategy.³¹

²⁴ *Id.* at 6.

²⁵ *Id.* at 7. See s. 212.055, F.S.

²⁶ *Id.* at 8.

²⁷ See ss. 336.021, 336.025, F.S.

²⁸ *Supra* note 18 at 9-11.

²⁹ *Id.* at 9. See ss. 212.0305(4)(a) and 212.0305(4)(c)-(e), F.S.

³⁰ *Id.* at 10. See ch. 205, F.S. Legislation has been filed for consideration during the 2012 session (SB 760, HB 1063, HB 4025, which would repeal the local business tax effective July 1, 2012. Florida Legislature, House of Representatives, *available at*, <http://myfloridahouse.gov/>.

³¹ *Id.* at 10. See s. 205.033(7), F.S.

Local Option Tourist Development Tax³²

- Eligible county government may impose up to five separate taxes on transient rental transactions. The ordinance levying and imposing the tax must be approved in a referendum election by a majority of the electors voting in such election.³³
- Generally, the tax proceeds may be used for capital construction of tourist-related facilities, tourist promotion, and beach and shoreline maintenance. However, the authorized uses vary by levy.

Economic Development Incentives Report - Annual Survey of Local Governments

In 2010,³⁴ the Legislature required local governments that have granted economic incentives in excess of \$25,000 during the local fiscal year to report to the Legislative Committee on Intergovernmental Relations or its successor,³⁵ annually by January 15, the economic incentives given to businesses during the local fiscal year. Municipalities having annual revenues less than \$250,000 are exempt from this requirement.

According to the Office of Economic and Demographic Research (EDR), 38 counties and 36 municipalities completed the survey for local FY 2009-10.³⁶ The survey results are as follows:

- Reporting counties issued \$84.4 million in incentives for economic development. (\$29.6 million in direct incentives³⁷ to 125 businesses; \$40.5 million in indirect incentives³⁸ to 62 businesses; \$12.7 million in fee or tax based incentives to 111 businesses; and \$1.5 million in below market leases/deeds.)
- Reporting municipalities issued \$60.7 million in incentives for economic development. (\$9.0 million in direct incentives to 71 businesses; \$1.5 million in indirect incentives to 29 businesses; \$36.8 million in fee or tax based incentives to 185 businesses; and \$13.3 million in below market leases/deeds to 45 businesses.)
- Indirect incentives given to local government entities or organizations supporting and promoting business investment or development in the amount of \$40.5 million were the most popular incentive issued by counties.
- Municipalities issued the most incentives in the form of fee and tax credits in the amount of \$36.8 million.

³² *Id* at 11.

³³ Section 212.0104(3), F.S.

³⁴ Sections 1 and 2, ch. 2010-147, L.O.F., codified at ss. 125.045(5) and 166.021(8)(e), F.S.

³⁵ The Legislative Committee on Intergovernmental Relations was not funded in FY 2010-11 and the committee ceased operations on June 30, 2010. Several of the committee's work products regarding local government finance have been continued by the Office of Economic and Demographic Research (EDR). Florida Legislature, Online Sunshine, *available at* http://www.leg.state.fl.us/cgi-bin/View_Page.pl?Directory=committees/joint/lcir/&File=index_css.html&Tab=committees (last visited January 13, 2012). EDR is a research arm of the Legislature principally concerned with forecasting economic and social trends that affect policy making, revenues, and appropriations. Florida Legislature, Office of Economic and Demographic Research, *available at* <http://edr.state.fl.us/Content/index.cfm>.

³⁶ See Florida Legislature, Office of Economic and Demographic Research. Economic Development Incentives, *available at* <http://edr.state.fl.us/Content/local-government/economic-development-incentives/index.cfm> (last visited January 13, 2012).

³⁷ "Direct incentives" are monetary assistance provided to a business from the county or municipality or through an organization authorized by the county or municipality. Such incentives include, but are not limited to, grants, loans, equity investments, loan insurance and guarantees, and training subsidies. Sections 125.045(5)(a)1 and 166.021(8)(e) 1.a., F.S.

³⁸ "Indirect incentives" are in the form of grants and loans provided to businesses and community organizations that provide support to businesses or promote business investment or development. Sections 125.045(5)(a)2. and 166.021(8)(e)1.b., F.S.

Municipal Revenue Sharing Program³⁹

The Revenue Sharing Act of 1972 was enacted to ensure a minimum level of revenue parity across units of local government. The Act also created the Revenue Sharing Trust Fund for Municipalities. The percentage of each revenue source transferred into the trust fund is as follows:

- 1.3409 percent of sales and use tax collections which represents 71.86 percent of total program funding.⁴⁰
- One-cent municipal fuel tax on motor fuel, which represents 28.11 percent of total program funding.⁴¹
- 12.5 percent of the state alternative fuel user decal fee collections, which represent 0.03 percent of total program funding.⁴²

An allocation formula serves as the basis for the distribution of these revenues to each municipality that meets strict eligibility requirements. Municipalities must use the funds derived from the one-cent municipal fuel tax for transportation-related expenditures. Additionally, there are statutory limitations on the use of the funds as a pledge for bonded indebtedness.

Effect of Proposed Changes:

Municipal Revitalization Act (Act)

The bill creates the Municipal Revitalization Act in chapter 290, F.S., relating to urban redevelopment.

Legislative Intent

The bill provides that the Legislature intends to foster the revitalization of counties and municipalities and support job-creating retail development projects within enterprise zones by authorizing the governing bodies of counties and municipalities to designate sales tax TIF areas within enterprise zones, subject to the review and approval by the DEO.

The Legislature also finds that by authorizing the receipt of an annual increase in sales tax collections within a sales tax TIF area resulting from a retail development project, the Legislature intends to provide financing for public improvements that will foster job growth for the residents of economically distressed areas and enhance the base of retailers operating within an enterprise zone and serving local residents and international visitors.

Definitions

The bill creates the following definitions:

- “Base year” means the amount of sales taxes that would have been produced by the tax levied upon all eligible sales and use transactions pursuant to chapter 212, F.S., before the construction of a retail development project.
- “Bond” means any bonds, notes, or other instruments issued by the governing body and secured by tax increment revenues or other securities authorized in ch. 290, F.S.
- “Compliance period” means the 3-year period after the establishment of the base for a sales tax TIF area during which the minimum job requirement for a retail development project must be satisfied.

³⁹ The information relating to the Municipal Revenue Sharing Program was obtained from the 2011 Local Government Financial Information Handbook. See Florida Legislature, Office of Economic and Demographic Research, 2011 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, at 79-90 (Oct. 2011) available at <http://edr.state.fl.us/Content/local-government/reports/lgfih11.pdf> (last visited January 11, 2012).

⁴⁰ *Id.* citing s. 212.20(6)(d)5., F.S.

⁴¹ *Id.* citing s. 206.605(1), F.S.

⁴² *Id.* citing s. 206.879(1), F.S.

- “Retail development project” means the establishment of a retail facility, under common ownership or control, consisting of more than 300,000 square feet of new or rehabilitated retail space within an enterprise zone engaged in direct onsite retail sales to consumers. A retail development project must create at least 500 jobs within the compliance period and generate more than \$1 million annually in additional taxes and fees collected pursuant to the Revenue Sharing Trust Fund for Municipalities. A retail project may include restaurants, grocery and specialty food stores, art galleries, and businesses engaged in sales of home furnishings, apparel, and general merchandise goods serving both local customers and tourists.

A retail development project must exclude liquor stores; adult entertainment nightclubs; and adult book stores. Additionally, the relocation of a retail business to the retail development project from another location within an enterprise zone, unless the relocation involves a significant expansion of the size of the business or results in a total increase in taxable sales of not less than 50 percent within the county in which the business relocates.

- “Retail development project developer” means any person or entity sponsoring a retail development project within an enterprise zone.
- “Sales tax increment area” means a geographic area within an enterprise zone that includes a retail development project, designated by a governing body to receive tax increment revenues or bond proceeds to underwrite the public improvements authorized by the Act.
- “Tax increment revenues” means the portion of available sales tax revenue calculated under the Act.

Enterprise Zone Development Agency (EZDA)

The bill provides that the EZDA is required to review, process, and certify applications for state enterprise zone tax incentives authorized under the Municipal Revitalization Act.

Should the local governing body designate a sales tax TIF area, the governing body or the EZDA are granted the following additional powers for the purpose of financing public improvements that will foster job growth and enhance the base of retailers within an enterprise zone, unless prohibited by an ordinance:

- Enter into cooperative contracts and agreements with a county, municipality, or governmental agency for services and assistance within the sales tax TIF area.
- Expend tax increment revenues to acquire, own, convey, construct, maintain, improve, and manage property and facilities and grant and acquire licenses, easements, and options with respect to such property within the sales tax TIF area.
- Expend tax increment revenues to complete public improvements within the sales tax TIF area, including, but not limited to, the:
 - Construction of streetscape improvements;
 - Installation of landscaping enhancements within the public right-of-way.
 - Construction of street lighting system
 - Installation of water and sewer mains.
 - Construction of on-street and off-street public parking facilities.
- Enter into a retail development agreement with a retail project developer to underwrite public improvements or services listed above.

The designation of a sales tax TIF area is included as a state incentive available under the Enterprise Zone Program.

Designation of a Sales Tax TIF Area

The bill authorizes, by resolution and after a public hearing, a sales tax TIF area to support the development of a retail development project within municipalities with populations of 300,000 residents and a designated enterprise zone, or all of the governing bodies in the case of a county and one or

more municipalities having designated an enterprise zone if the county has a population of 1,200,000 residents. As of April 2011, three municipalities had a population over 300,000 and have designated one or more enterprise zones.⁴³

- Jacksonville: 822,038
- Tampa: 337,368
- Miami: 406,385

As of April 2011, four counties have a population over 1,200,000 residents and have designated one or more enterprise zones.⁴⁴

- Broward County: 1,753,162
- Hillsborough County: 1,238,951
- Miami-Dade County: 2,516,515
- Palm Beach County: 1,325,758

The resolution creating the sales tax TIF area, at a minimum, must:

- Include findings that the designation of the sales tax TIF area:
 - Is essential to furthering a retail development project.
 - Will provide needed retail amenities within the enterprise zone.
 - Will result in the development of a retail development project that will create no fewer than 500 new jobs within the compliance period and not less than \$1 million in sales tax increment revenue annually.
 - Will enhance the health and general welfare of the residents of an enterprise zone within the sponsoring municipality or county.
- Establish the geographic boundaries of the sales tax TIF area within which the governing body may expend tax increment revenues.
- Establish the term of life of the sales tax TIF area, which term may not extend more than 40 years after the date the sales tax TIF area is approved by the DEO.
- Establish the base year for determination of the sales tax receipts collected pursuant to the Revenue Sharing Trust Fund for Municipalities, less the amount calculated as the tax increment revenue contribution under the Act to the governing body.

The bill provides that no more than two sales tax TIF areas may be designated in any one eligible municipality and no more than four sales tax TIF areas may be designated in any eligible county. If an eligible municipality is located in an eligible county, any sales tax TIF area designated by a municipality counts against the maximum number of sales tax TIF areas permitted within an eligible county. A sales tax TIF area may not be located within a one-quarter mile of any other designated sales tax TIF area and may not exceed 5 square miles in total land mass.

The following areas are prohibited from designation as a sales tax TIF area:

- Areas designated or to be designated as an urban infill and redevelopment area.⁴⁵
- Areas designated or to be designated as a community redevelopment area.⁴⁶

⁴³ Florida Legislature, Office of Economic and Demographic Research, Population and Demographic Data, *Florida Population Estimates – Municipalities: 1979-2011*, available at http://edr.state.fl.us/Content/population-demographics/data/FLmupops_2011.xls (last visited January 13, 2012). NOTE: Two municipalities have populations close to 250,000: Orlando – 241,978 and St. Petersburg – 246,293. *Id.*

⁴⁴ Florida Legislature, Office of Economic and Demographic Research, Population and Demographic Data, *Florida Population Estimates for Counties and Municipalities: April 1, 2011*, available at http://edr.state.fl.us/Content/population-demographics/data/2011_Pop_Estimates.pdf (last visited January 29, 2012).

⁴⁵ See part II, ch. 163, F.S.

- Any facility financed or partially financed with bonds whose debt is serviced with bonds under the "Local Option Tourist Development Act."⁴⁷
- Any facility conducting gaming activities authorized pursuant to the state law regulating the Gaming Compact between the Seminole Tribe of Florida and the State of Florida, the Florida Pari-mutuel Wagering Act, Slot Machine Gaming, or Gambling.⁴⁸

The prohibition also extends to any facilities authorized to conduct gaming activities after the effective date of the Act.

For counties that have adopted a home rule charter, the powers conferred by the Municipal Revitalization Act (Act) may not be exercised within the boundaries of a municipality within those counties unless the governing body of the municipality expresses its consent by resolution. A resolution consenting to the powers conferred upon counties by the Act must specifically enumerate the powers to be exercised by the county within the boundaries of the municipality. Any power not specifically enumerated in the resolution of consent must be exercised exclusively by the municipality within its boundaries.

For counties that have adopted a home rule charter,⁴⁹ the powers conferred by the (Act) must be exercised exclusively by the governing body of the county. However, the governing body of the county may, in its discretion, by resolution delegate the powers to the governing body of a municipality located in the county. The resolution must specifically enumerate the powers delegated to the municipality. Any power not specified in the resolution remains a power of the county's governing board. This provision applies to the Miami-Dade County as its home rule charter was approved by its voters and adopted in 1957. Thus, Miami-Dade County would have the authority to delegate the powers conferred by the Act to a municipality located in the county. It appears that while the City of Miami may be authorized to designate a sales tax TIF area, the municipality would still need to seek authorization from Miami-Dade County as it is a municipality in a county with an adopted home rule charter.

Before the governing body adopts any resolution designating sales tax TIF area or authorizes the issuance of bonds the governing bond must provide public notice⁵⁰ of such action.

Department of Economic Opportunity

A copy of the resolution adopted by the governing body designating the sales tax TIF area must be transmitted to the DEO for review. The DEO must determine whether the designation of the sales tax TIF area complies with requirements of ch. 290, F.S., and determine whether the designation:

- Captures taxable spending, either in whole or in significant part, that would not otherwise occur in the community rather than redistributing current spending.
- Supports and enhances the tourism industry.
- Supports a retail development project that will create at least 500 jobs within the compliance period and generate more than \$1 million annually in additional taxes and fees collected.

If the DEO determines that the designation by the governing body complies with the requirements of the Act, the DEO must notify the local governing body in writing. Upon receipt of the notification, the local governing body must remit a copy of the resolution establishing the sales tax TIF area, along with the DEO's notice of determination, to the Department of Revenue.

⁴⁶ See part III, ch. 163, F.S.

⁴⁷ See s. 125.0104, F.S.

⁴⁸ Part II, ch. 285, F.S.; ch. 550, F.S.; ch. 551, F.S.; and ch. 849, F.S.

⁴⁹ Section 6(e) of Art. VIII of the State Constitution provides that ss. 9, 10, 11 and 24 of Art. VIII of the Constitution of 1885, as amended, remain in full force and effect as to each county affected, until a county expressly adopts a charter or home rule plan pursuant to that article. Sections 9, 10, 11 and 24 refer to Duval, Monroe, Dade and Hillsborough counties, respectively.

⁵⁰ See s. 125.66(2), F.S., and s. 166.041(3)(a), F.S.

Retail Development Project Agreement

A retail development project developer proposing to use tax increment revenues to expend sales tax increment revenues on behalf of the governing body or EZDA may enter into a retail development project agreement with the governing body of the sales tax TIF area. The agreement must establish:

- The goals and objectives of the retail development project.
- Requirements for leasing retail space within the retail development project, which will advance the governing body's or EZDA's goals and objectives.
- The terms and conditions pursuant to which tax increment revenues or bond proceeds will be advanced to pay for costs incurred in the sales tax TIF area.
- Goals for hiring enterprise zone residents for the new jobs created by the retail development project.
- Matters required in connection with the issuance of bonds to support the retail development project and matters the governing body designating the sales tax TIF area may determine to be necessary and appropriate.

The retail project development agreement must be approved by resolution of the governing body following a public hearing advertised in a newspaper of general circulation not less than 10 days before the date of the required public hearing. The retail development agreement must be transmitted to DEO for review and determination that the agreement complies with ch. 290, F.S.

Issuance of Bonds

If authorized or approved by resolution of the governing body that designated the sales tax TIF area, after a public hearing, tax increment revenues may be used to support the issuance of sales tax increment revenue bonds to finance the authorized public improvements, including, but not limited to, the payment of principal and interest upon any advances for surveys and plans or preliminary loans.

Sales tax increment revenues may not be committed for any projects identified following the 10th year after the base year. Any sales tax increment revenue bonds or other obligations issued to finance the undertaking of any eligible activity under the Municipalities Revitalization Act must mature by the end of the 40th fiscal year after the fiscal year in which sales tax increment revenues are first deposited into the sales tax TIF area trust fund or at the expiration of any agreement between the governing body and the retail project developer for which bonds are issued to underwrite eligible public improvements, whichever is later.

Sales tax increment revenue bonds do not constitute a debt, liability, or obligation of the public body or the state or any political subdivision, but are payable solely from the revenues generated. The bonds are to be issued for an essential public and governmental purpose, and the interest and income from the bonds are exempt from all taxes, except the corporate income tax in ch. 220, F.S.

These bonds may be sold either at a public or private sale and for such price as the designated governing body may determine will effectuate the purposes of the Act. In any suit, action, or proceeding involving the validity or enforceability of these bonds, any bond that recites in substance that it has been issued by the governing body in connection with the sales tax increment district for an authorized purpose is conclusively presumed to have been issued for that purpose. Further, any project financed by the bond is also conclusively presumed to have been planned and carried out in accordance with the intended purposes.

Municipal Revenue Sharing Program

The bill amends the provisions relating to the distribution formula under the Municipal Revenue Sharing Program, to require distributions to municipalities that have a sales tax TIF area prior to the final adjustment. The distributions must be made to the appropriate governing body eligible for distribution.

When the amount of the sales tax revenues shared with the local governments is increased, or when additional local government discretionary sales tax is authorized, the state becomes further restricted in the use of these funds for state priorities. This is especially true when these funds are bonded.

Distribution Percentage

The governing body of a sales tax TIF area is eligible for a percentage distribution from the Revenue Sharing Trust Fund for Municipalities in the amount of the increased state sales tax collections realized during any month by the municipality over the same monthly period of the base year as follows:

- 85% of the increased monthly collections of \$85,000 or less.
- 75% of the increased monthly collections greater than \$85,000, but \$425,000 or less.
- 50% of the increased monthly collections of \$425,000, but \$675,000 or less.
- 25% of the increased monthly collections of \$675,000, but \$1 million or less.
- 0% of the increased monthly collections of more than \$1 million.

Percentage distributions to each governing body are contingent upon the following:

- A contribution by the local governing body equal to not less than 30 percent of the percent of the distributions of sales tax revenues provided to the governing body. The matching contribution may be provided in one of the following forms:
 - A cash deposit by the governing body to the revenue account established for the purpose of the Act;
 - A commitment within the governing body's capital plan to underwrite any project within the sales tax TIF area; or
 - Approval of an economic development ad valorem tax exemption⁵¹ by the governing body.
- Total private investment in a retail development project equal to an amount not less than three times the state contribution.
- Annual transmittal of an employment certificate by the retail development project developer to the DEO and the Department of Revenue attesting to the total number of full-time and part-time jobs created by the retail development project.

The retail development project developer must continue to provide an employment certificate until the end of the compliance period or transmittal of an employee certificate indicating that the retail development project has created the required minimum number of jobs, whichever occurs first. For the purposes of determining whether the job requirement has been met, two part-time jobs are counted as the equivalent of one full-time job.

If the retail development project fails to create the required minimum number of jobs by the end of the compliance period, future percentage distributions to the governing body must be reduced by the number of actual jobs created as a percentage of the minimum required jobs.

Each governing body receiving a percentage distribution is required to establish a separate redevelopment trust fund for each designated sales tax TIF area. Funds allocated to and deposited in the fund may only be used to underwrite any eligible public improvements approved by the enterprise zone governing body.

Department of Revenue

The bill requires the Department of Revenue to determine monthly, the specific amount payable to each eligible governing body and the aggregate amount of sales tax revenue that is required for distribution, and transfer that amount from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities. All amounts transferred must be distributed as created in this bill.

⁵¹ See ss. 196.1995 and 196.1996, F.S.

B. SECTION DIRECTORY:

Section 1 amends s. 212.20., F.S., relating to the amount of funds required to be distributed monthly to the Revenue Sharing Trust Fund for Municipalities.

Section 2 amends s. 218.23, F.S., relating to the formula required for revenue sharing with units of local government.

Section 3 amends s. 290.004, F.S., providing definitions

Section 4 amends s. 290.0056, F.S., providing authority to expend sales tax increment revenues

Section 5 amends 290.007, F.S., adding the sales tax TIF area program to a list of incentives

Section 6 creates 290.01351, F.S., identifying the Municipal Revitalization Act

Section 7 creates s. 290.0136, F.S., authorizing governing bodies to create sales tax TIF areas

Section 8 creates s. 290.0137, F.S., providing procedures to designate sales tax TIF areas

Section 9 creates s. 290.0138, F.S., providing a calculation for distributions of sales tax increment revenue

Section 10 creates s. 290.0139, F.S., requiring a retail development project agreement within sales tax TIF areas

Section 11 creates s. 290.01391, F.S., authorizing a governing body to issue sales tax increment financing bonds

Section 12 provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has estimated that this bill will have no impact on General Revenue or state trust funds in FY 2012-13, but the General Revenue impact will grow to a recurring annual -\$61.1 million as TIF areas come on line. The state trust fund impact will eventually be a recurring -\$1.0 million.

2. Expenditures:

Unknown. The Department of Revenue may have to create a new administrative process for determining past and future revenue collections in the TIF areas. See DRAFTING ISSUES OR OTHER COMMENTS below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Local government revenues will increase under the bill, but as with the state impacts will be zero in FY 2012-13. As TIF areas come on line the local government revenue gains are estimated to reach \$56.9 million annually.

2. Expenditures:

The revenue gains to local governments are to be spent on various improvements in the TIF areas, as provided in the act.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that public improvements financed by the incremental increases in sales tax collections occur in a designated sales tax TIF area, businesses located in such areas will benefit.

D. FISCAL COMMENTS:

Incremental increases in sales tax collections in a sales tax TIF area that are shared with the state shall be transferred from the General Revenue Fund to the Revenue Sharing Trust Fund for Municipalities for distribution to eligible local governing bodies as provided in the bill. Should this bill become law, as the amount of the sales tax revenues shared with the local governments is increased the state becomes further restricted in the use of these funds for state priorities.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue (DOR) Comments:⁵²

“Florida businesses may currently file and pay sales and use tax using a single tax return for each location or by filing one tax return for each county in which the business is located. Businesses with locations in multiple counties may use a consolidated tax return, reporting tax collections for each county in which the business operates. The Department does not collect tax information at the boundary level lower than a county (such as a city or within enterprise zone boundaries). Based on the current sales tax reporting system, the Department does not collect the tax information necessary to calculate the “increased sales tax collections” within a municipality as proposed in the bill and is unable to make a proposed distribution to the sales tax increment redevelopment zone agency.” DOR further states that these issues cannot be resolved through rulemaking.

The bill requires the annual transmittal of an “employment certificate” by the retail development project developer to the DEO and the Department of Revenue attesting to the total number of full-time and

⁵² Florida Department of Revenue, *2012 Bill Analysis, HB 595, Revitalizing Municipalities*, at 4, (Dec. 6, 2011) on file with the House Community & Military Affairs Subcommittee.

part-time jobs created by the retail development project. However, the bill does not define "employment certificate."

Lines 627-628 refer to "sales tax increment district." The correct term is "sales tax TIF area."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2012, the House Community & Military Affairs Subcommittee adopted a strike everything after the enacting clause amendment. The amendment significantly modifies the bill as originally filed and includes the following:

- Creates the "Municipal Revitalization Act."
- Defines terms applicable to the "Municipal Revitalization Act."
- Authorizes by resolution and after a public hearing, a sales tax TIF area to support the development of a retail development project within municipalities with populations of 300,000 residents and that are located within a designated enterprise zone, or at least 1,200,000 in the case of a county and one or more municipalities having been designated an enterprise zone.
- Limits the use of tax increment revenues to finance public improvements within the sales tax TIF area in support of a retail development project.
- Requires the Enterprise Zone Development Agency to review, process, and certify applications for state enterprise zone tax incentives authorized under the Municipal Revitalization Act.
- Grants additional powers to the EZDA to carry out the provisions of the Municipal Revitalization Act.
- Requires the resolution creating the sales tax TIF area to establish specific findings.
- Requires a retail development project to create at least 500 jobs within the compliance period and generate more than \$1 million annually in additional taxes and fees collected.
- Prohibits certain areas from designation as a sales tax TIF area.
- Modifies the percentage distribution that the governing body of a sales tax TIF area is eligible to receive from the Revenue Sharing Trust Fund for Municipalities.
- Provides that a retail development project developer proposing to use tax increment revenues to expend sales tax increment revenues on behalf of the governing body or EZDA may enter into a retail development project agreement with the governing body of the sales tax TIF area.
- Establishes the elements of the retail development project agreement.
- Requires a contribution by the local governing body equal to not less than 30 percent of the percent of the distributions of sales tax revenues provided to the governing body. The matching contribution may be provided in one of three forms as provided in the bill.

The analysis has been updated to reflect the amendment adopted by the subcommittee.

1 A bill to be entitled
 2 An act relating to revitalizing municipalities;
 3 amending s. 212.20, F.S.; providing for the transfer
 4 of certain sales tax revenues from the General Revenue
 5 Fund to the Revenue Sharing Trust Fund for
 6 Municipalities; amending s. 218.23, F.S.; providing
 7 for a distribution from the Revenue Sharing Trust Fund
 8 for Municipalities relating to an increase in sales
 9 tax collections over the preceding year to the
 10 governing body of an area that receives tax increment
 11 revenues pursuant to a designation as a sales tax TIF
 12 area; amending s. 290.004, F.S.; providing
 13 definitions; amending s. 290.0056, F.S.; revising
 14 provisions relating to the enterprise zone development
 15 agency; providing powers of the governing body upon
 16 the designation of a sales tax TIF area; amending s.
 17 290.007, F.S.; providing designation of sales tax TIF
 18 areas as an economic incentive in enterprise zones;
 19 creating ss. 290.01351, 290.0136, 290.0137, 290.0138,
 20 290.0139, and 290.01391, F.S.; creating the "Municipal
 21 Revitalization Act"; providing legislative intent and
 22 purposes; authorizing specified governing bodies to
 23 create sales tax TIF areas within a county or
 24 municipality having a specified population; providing
 25 requirements, processes, and limitations relating to
 26 such sales tax TIF areas; providing that the governing
 27 body for an enterprise zone where a sales tax TIF area
 28 is located is eligible for specified percentage

29 distributions of increased state sales tax collections
 30 under certain circumstances; requiring the Department
 31 of Revenue to determine the amount of increased sales
 32 tax collections to be distributed to each eligible
 33 designated enterprise zone redevelopment agency and to
 34 transfer the aggregate amount due to all such agencies
 35 to the Revenue Sharing Trust Fund for Municipalities
 36 for distribution; providing requirements and
 37 conditions relating to such distributions of increased
 38 sales tax collections to governing bodies; authorizing
 39 certain retail development project developers to enter
 40 into retail development project agreements with
 41 governing bodies designating sales tax TIF areas;
 42 providing requirements, limitations, and conditions
 43 relating to such retail development project
 44 agreements; granting specified powers to a governing
 45 body for a sales tax TIF area for the purpose of
 46 providing financing and fostering certain
 47 improvements, including issuing sales tax increment
 48 revenue bonds; providing for the issuance of tax
 49 increment revenue bonds and the use of such bonds;
 50 providing an effective date.

51
 52 Be It Enacted by the Legislature of the State of Florida:

53
 54 Section 1. Paragraph (d) of subsection (6) of section
 55 212.20, Florida Statutes, is amended to read:
 56 212.20 Funds collected, disposition; additional powers of

57 | department; operational expense; refund of taxes adjudicated
 58 | unconstitutionally collected.—

59 | (6) Distribution of all proceeds under this chapter and s.
 60 | 202.18(1)(b) and (2)(b) shall be as follows:

61 | (d) The proceeds of all other taxes and fees imposed
 62 | pursuant to this chapter or remitted pursuant to s. 202.18(1)(b)
 63 | and (2)(b) shall be distributed as follows:

64 | 1. In any fiscal year, the greater of \$500 million, minus
 65 | an amount equal to 4.6 percent of the proceeds of the taxes
 66 | collected pursuant to chapter 201, or 5.2 percent of all other
 67 | taxes and fees imposed pursuant to this chapter or remitted
 68 | pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in
 69 | monthly installments into the General Revenue Fund.

70 | 2. After the distribution under subparagraph 1., 8.814
 71 | percent of the amount remitted by a sales tax dealer located
 72 | within a participating county pursuant to s. 218.61 shall be
 73 | transferred into the Local Government Half-cent Sales Tax
 74 | Clearing Trust Fund. Beginning July 1, 2003, the amount to be
 75 | transferred shall be reduced by 0.1 percent, and the department
 76 | shall distribute this amount to the Public Employees Relations
 77 | Commission Trust Fund less \$5,000 each month, which shall be
 78 | added to the amount calculated in subparagraph 3. and
 79 | distributed accordingly.

80 | 3. After the distribution under subparagraphs 1. and 2.,
 81 | 0.095 percent shall be transferred to the Local Government Half-
 82 | cent Sales Tax Clearing Trust Fund and distributed pursuant to
 83 | s. 218.65.

84 | 4. After the distributions under subparagraphs 1., 2., and

85 | 3., 2.0440 percent of the available proceeds shall be
 86 | transferred monthly to the Revenue Sharing Trust Fund for
 87 | Counties pursuant to s. 218.215.

88 | 5. After the distributions under subparagraphs 1., 2., and
 89 | 3., 1.3409 percent of the available proceeds, plus the amount
 90 | required under s. 290.0138(2), shall be transferred monthly to
 91 | the Revenue Sharing Trust Fund for Municipalities pursuant to s.
 92 | 218.215. If the total revenue to be distributed pursuant to this
 93 | subparagraph is at least as great as the amount due from the
 94 | Revenue Sharing Trust Fund for Municipalities and the former
 95 | Municipal Financial Assistance Trust Fund in state fiscal year
 96 | 1999-2000, no municipality shall receive less than the amount
 97 | due from the Revenue Sharing Trust Fund for Municipalities and
 98 | the former Municipal Financial Assistance Trust Fund in state
 99 | fiscal year 1999-2000. If the total proceeds to be distributed
 100 | are less than the amount received in combination from the
 101 | Revenue Sharing Trust Fund for Municipalities and the former
 102 | Municipal Financial Assistance Trust Fund in state fiscal year
 103 | 1999-2000, each municipality shall receive an amount
 104 | proportionate to the amount it was due in state fiscal year
 105 | 1999-2000.

106 | 6. Of the remaining proceeds:
 107 | a. In each fiscal year, the sum of \$29,915,500 shall be
 108 | divided into as many equal parts as there are counties in the
 109 | state, and one part shall be distributed to each county. The
 110 | distribution among the several counties must begin each fiscal
 111 | year on or before January 5th and continue monthly for a total
 112 | of 4 months. If a local or special law required that any moneys

113 accruing to a county in fiscal year 1999-2000 under the then-
 114 existing provisions of s. 550.135 be paid directly to the
 115 district school board, special district, or a municipal
 116 government, such payment must continue until the local or
 117 special law is amended or repealed. The state covenants with
 118 holders of bonds or other instruments of indebtedness issued by
 119 local governments, special districts, or district school boards
 120 before July 1, 2000, that it is not the intent of this
 121 subparagraph to adversely affect the rights of those holders or
 122 relieve local governments, special districts, or district school
 123 boards of the duty to meet their obligations as a result of
 124 previous pledges or assignments or trusts entered into which
 125 obligated funds received from the distribution to county
 126 governments under then-existing s. 550.135. This distribution
 127 specifically is in lieu of funds distributed under s. 550.135
 128 before July 1, 2000.

129 b. The department shall distribute \$166,667 monthly
 130 pursuant to s. 288.1162 to each applicant certified as a
 131 facility for a new or retained professional sports franchise
 132 pursuant to s. 288.1162. Up to \$41,667 shall be distributed
 133 monthly by the department to each certified applicant as defined
 134 in s. 288.11621 for a facility for a spring training franchise.
 135 However, not more than \$416,670 may be distributed monthly in
 136 the aggregate to all certified applicants for facilities for
 137 spring training franchises. Distributions begin 60 days after
 138 such certification and continue for not more than 30 years,
 139 except as otherwise provided in s. 288.11621. A certified
 140 applicant identified in this sub-subparagraph may not receive

141 more in distributions than expended by the applicant for the
 142 public purposes provided for in s. 288.1162(5) or s.
 143 288.11621(3).

144 c. Beginning 30 days after notice by the Department of
 145 Economic Opportunity to the Department of Revenue that an
 146 applicant has been certified as the professional golf hall of
 147 fame pursuant to s. 288.1168 and is open to the public, \$166,667
 148 shall be distributed monthly, for up to 300 months, to the
 149 applicant.

150 d. Beginning 30 days after notice by the Department of
 151 Economic Opportunity to the Department of Revenue that the
 152 applicant has been certified as the International Game Fish
 153 Association World Center facility pursuant to s. 288.1169, and
 154 the facility is open to the public, \$83,333 shall be distributed
 155 monthly, for up to 168 months, to the applicant. This
 156 distribution is subject to reduction pursuant to s. 288.1169. A
 157 lump sum payment of \$999,996 shall be made, after certification
 158 and before July 1, 2000.

159 7. All other proceeds must remain in the General Revenue
 160 Fund.

161 Section 2. Subsection (3) of section 218.23, Florida
 162 Statutes, is amended to read:

163 218.23 Revenue sharing with units of local government.-

164 (3) The distribution to a unit of local government under
 165 this part is determined by the following formula:

166 (a) First, the entitlement of an eligible unit of local
 167 government shall be computed on the basis of the apportionment
 168 factor provided in s. 218.245, which shall be applied for all

169 eligible units of local government to all receipts available for
 170 distribution in the respective revenue sharing trust fund.

171 (b) Second, revenue shared with eligible units of local
 172 government for any fiscal year shall be adjusted so that no
 173 eligible unit of local government receives less funds than its
 174 guaranteed entitlement.

175 (c) Third, revenues shared with counties for any fiscal
 176 year shall be adjusted so that no county receives less funds
 177 than its guaranteed entitlement plus the second guaranteed
 178 entitlement for counties.

179 (d) Fourth, revenue shared with units of local government
 180 for any fiscal year shall be adjusted so that no unit of local
 181 government receives less funds than its minimum entitlement.

182 (e) Fifth, after the adjustments provided in paragraphs
 183 (b), (c), and (d), the funds remaining in the respective trust
 184 fund for municipalities shall be distributed to the appropriate
 185 governing body eligible for a distribution under ss. 290.0137
 186 and 290.0138.

187 (f)(e) Sixth Fifth, after the adjustments provided in
 188 paragraphs (b), (c), ~~and~~ (d), and (e), and after deducting the
 189 amount committed to all the units of local government, the funds
 190 remaining in the respective trust funds shall be distributed to
 191 those eligible units of local government which qualify to
 192 receive additional moneys beyond the guaranteed entitlement, on
 193 the basis of the additional money of each qualified unit of
 194 local government in proportion to the total additional money of
 195 all qualified units of local government.

196 Section 3. Section 290.004, Florida Statutes, is amended

197 to read:

198 290.004 Definitions relating to Florida Enterprise Zone
 199 Act.—As used in ss. 290.001-290.016, the term:

200 (1) "Base year" means the amount of sales taxes that would
 201 have been produced by the tax levied upon all eligible sales and
 202 use transactions pursuant to chapter 212 before the construction
 203 of the retail development project.

204 (2) "Bond" means any bonds, notes, or other instruments
 205 issued by the governing body and secured by tax increment
 206 revenues or other security authorized in this chapter.

207 (3)-(1) "Community investment corporation" means a black
 208 business investment corporation, a certified development
 209 corporation, a small business investment corporation, or other
 210 similar entity incorporated under Florida law that has limited
 211 its investment policy to making investments solely in minority
 212 business enterprises.

213 (4) "Compliance period" means the 3-year period after the
 214 establishment of the base year for a sales tax TIF area during
 215 which the minimum job requirement for a retail development
 216 project must be satisfied.

217 (5)-(2) "Department" means the Department of Economic
 218 Opportunity.

219 (6)-(3) "Governing body" means the council or other
 220 legislative body charged with governing the county or
 221 municipality.

222 (7)-(4) "Minority business enterprise" has the same meaning
 223 as provided in s. 288.703.

224 (8) "Retail development project" means the establishment

225 | of a retail facility, under common ownership or control,
 226 | consisting of more than 300,000 square feet of new or
 227 | rehabilitated retail space within an enterprise zone engaged in
 228 | direct onsite retail sales to consumers. A retail development
 229 | project shall create at least 500 jobs within the compliance
 230 | period and generate more than \$1 million annually in additional
 231 | taxes and fees collected pursuant to s. 212.20(6)(d)5. A retail
 232 | development project may include restaurants, grocery and
 233 | specialty food stores, art galleries, and businesses engaged in
 234 | sales of home furnishings, apparel, and general merchandise
 235 | goods serving both local customers and tourists. A retail
 236 | development project shall exclude:

- 237 | (a) Liquor stores;
- 238 | (b) Adult entertainment nightclubs;
- 239 | (c) Adult book stores; and
- 240 | (d) The relocation of a retail business to the retail
 241 | development project from another location within the enterprise
 242 | zone, unless the relocation involves a significant expansion of
 243 | the size of the business or results in a total increase in
 244 | taxable sales of not less than 50 percent within the county in
 245 | which the business relocates.

246 | (9) "Retail development project developer" means any
 247 | person or entity sponsoring a retail development project within
 248 | an enterprise zone.

249 | (10)-(5) "Rural enterprise zone" means an enterprise zone
 250 | that is nominated by a county having a population of 75,000 or
 251 | fewer, or a county having a population of 100,000 or fewer which
 252 | is contiguous to a county having a population of 75,000 or

253 fewer, or by a municipality in such a county, or by such a
 254 county and one or more municipalities. An enterprise zone
 255 designated in accordance with s. 290.0065(5)(b) is considered to
 256 be a rural enterprise zone.

257 (11) "Sales tax TIF area" means a geographic area within
 258 an enterprise zone that includes a retail development project,
 259 designated by a governing body to receive tax increment revenues
 260 or bond proceeds to underwrite improvements authorized under s.
 261 290.0056.

262 (12)~~(6)~~ "Small business" has the same meaning as provided
 263 in s. 288.703.

264 (13) "Tax increment revenues" means the portion of
 265 available sales tax revenue calculated pursuant to s.
 266 290.0138(1).

267 (14) "TIF" means tax increment financing.

268 Section 4. Paragraph (a) of subsection (9) of section
 269 290.0056, Florida Statutes, is amended, subsections (11) and
 270 (12) are renumbered as subsections (12) and (13), respectively,
 271 and a new subsection (11) is added to that section, to read:

272 290.0056 Enterprise zone development agency.—

273 (9) The following powers and responsibilities shall be
 274 performed by the governing body creating the enterprise zone
 275 development agency acting as the managing agent of the
 276 enterprise zone development agency, or, contingent upon approval
 277 by such governing body, such powers and responsibilities shall
 278 be performed by the enterprise zone development agency:

279 (a) To review, process, and certify applications for state
 280 enterprise zone tax incentives pursuant to ss. 212.08(5)(g),

281 (h), and (15); 212.096; 220.181; ~~and~~ 220.182; and 290.0137.

282 (11) Contingent upon the governing body's designation of a
 283 sales tax TIF area, the governing body or the enterprise zone
 284 development agency may exercise the following additional powers
 285 for the purpose of financing public improvements that will
 286 foster job growth and enhance the base of retailers within an
 287 enterprise zone, unless otherwise prohibited by ordinance:

288 (a) Enter into cooperative contracts and agreements with a
 289 county, municipality, or governmental agency for services and
 290 assistance within the sales tax TIF area;

291 (b) Expend tax increment revenues to acquire, own, convey,
 292 construct, maintain, improve, and manage property and facilities
 293 and grant and acquire licenses, easements, and options with
 294 respect to such property within the sales tax TIF area;

295 (c) Expend tax increment revenues to complete public
 296 improvements within the sales tax TIF area, including, but not
 297 limited to, the:

- 298 1. Construction of streetscape improvements;
- 299 2. Installation of landscaping enhancements within the
 300 public right-of-way;
- 301 3. Construction of street lighting systems;
- 302 4. Installation of water and sewer service mains; and
- 303 5. Construction of on-street and off-street public parking
 304 facilities.

305 (d) Enter into a retail development agreement with a
 306 retail project developer to underwrite public improvements or
 307 services identified in paragraphs (a)-(c).

308 Section 5. Subsection (9) is added to section 290.007,

309 Florida Statutes, to read:

310 290.007 State incentives available in enterprise zones.—

311 The following incentives are provided by the state to encourage
312 the revitalization of enterprise zones:

313 (9) The designation of a sales tax TIF area provided in s.
314 290.0137.

315 Section 6. Section 290.01351, Florida Statutes, is created
316 to read:

317 290.01351 Municipal Revitalization Act.—Sections 290.0136–
318 290.01391 may be cited as the "Municipal Revitalization Act."

319 Section 7. Section 290.0136, Florida Statutes, is created
320 to read:

321 290.0136 Sales tax TIF area; intent and purpose.—

322 (1) The Legislature intends to foster the revitalization
323 of counties and municipalities and support job-creating retail
324 development projects within enterprise zones by authorizing the
325 governing bodies of counties and municipalities to designate
326 sales tax TIF areas within enterprise zones, subject to the
327 review and approval by the department.

328 (2) The Legislature finds that by authorizing local
329 government governing bodies to designate a sales tax TIF area,
330 the counties or municipalities may receive from the state a
331 portion of an annual increase in sales tax collections generated
332 by the development of a retail development project and will
333 further the revitalization of such counties and municipalities.
334 By authorizing the receipt of an annual increase in sales tax
335 collections within a sales tax TIF area resulting from the
336 retail development project, the Legislature intends to provide

337 financing for public improvements that will foster job growth
 338 for the residents of economically distressed areas and enhance
 339 the base of retailers operating within the enterprise zone and
 340 serving local residents and international visitors.

341 Section 8. Section 290.0137, Florida Statutes, is created
 342 to read:

343 290.0137 Designation of sales tax TIF area; review and
 344 approval by the department.-

345 (1) Any municipality having a population of at least
 346 300,000 residents that has designated an enterprise zone, or all
 347 of the governing bodies in the case of a county and one or more
 348 municipalities having designated an enterprise zone if the
 349 county has a population of at least 1,200,000 residents, may
 350 adopt a resolution after a public hearing designating a sales
 351 tax TIF area.

352 (2) The resolution creating a sales tax TIF area, at a
 353 minimum, must:

354 (a) Include findings that the designation of the sales tax
 355 TIF area:

356 1. Is essential to furthering a retail development
 357 project;

358 2. Will provide needed retail amenities within the
 359 enterprise zone;

360 3. Will result in the development of a retail development
 361 project that will create no fewer than 500 new jobs within the
 362 compliance period and not less than \$1 million in sales tax
 363 increment revenue annually; and

364 4. Will enhance the health and general welfare of the

365 residents of enterprise zone within the sponsoring municipality
 366 or county;

367 (b) Fix the geographic boundaries of the sales tax TIF
 368 area within which the governing body may expend tax increment
 369 revenues;

370 (c) Establish the term of the life of the sales tax TIF
 371 area, which term may not extend more than 40 years after the
 372 date the sales tax TIF area is approved by the department;

373 (d) Establish the base year for determination of sales tax
 374 receipts collected pursuant to s. 212.20(6)(d)5., less the
 375 amount required under s. 290.0138(1); and

376 (3) No more than two sales tax TIF areas may be designated
 377 in any one eligible municipality. No more than four sales tax
 378 TIF areas may be designated in any eligible county. If an
 379 eligible municipality is located in an eligible county, any
 380 sales tax TIF area designated by a municipality shall count
 381 against the maximum number of sales tax TIF areas permitted
 382 within an eligible county. A sales tax TIF area may not be
 383 located within a one-quarter mile of any other designated sales
 384 tax TIF area and may not exceed 5 square miles in total land
 385 mass.

386 (4) A designated sales tax TIF area may not include:

387 (a) Areas designated or to be designated as an "urban
 388 infill and redevelopment area" pursuant to part II of chapter
 389 163;

390 (b) Areas designated or to be designated as a "community
 391 redevelopment area" pursuant to part III of chapter 163;

392 (c) Any facility financed or partially financed with bonds

393 whose debt is serviced with proceeds collected under the
 394 authority provided under s. 125.0104; or

395 (d) Any facility conducting gaming activities authorized
 396 pursuant to part II of chapter 285, chapter 550, chapter 551, or
 397 chapter 849. This prohibition shall extend to any facilities
 398 authorized to conduct gaming activities after the effective date
 399 of this act.

400 (5) The powers conferred by ss. 290.0136-290.01391 upon
 401 counties not having adopted a home rule charter may not be
 402 exercised within the boundaries of a municipality within such
 403 county unless the governing body of the municipality expresses
 404 its consent by resolution. A resolution consenting to the
 405 exercise of the powers conferred upon counties by ss. 290.0136-
 406 290.01391 must specifically enumerate the powers to be exercised
 407 by the county within the boundaries of the municipality. Any
 408 power not specifically enumerated in the resolution of consent
 409 shall be exercised exclusively by the municipality within its
 410 boundaries.

411 (6) In any county that has adopted a home rule charter,
 412 the powers conferred by ss. 290.0136-290.01391 shall be
 413 exercised exclusively by the governing body of the county.
 414 However, the governing body of such county may, in its
 415 discretion, by resolution delegate the exercise of the powers
 416 conferred upon the county by ss. 290.0136-290.01391 within the
 417 boundaries of a municipality to the governing body of the
 418 municipality. Such delegation to a municipality confers upon a
 419 municipality only the powers that are specifically enumerated in
 420 the delegating resolution. Any power not specifically delegated

421 is reserved exclusively to the governing body of the county.

422 (7) Before the governing body adopts any resolution
 423 designating a sales tax TIF area pursuant to the requirements of
 424 this section or authorizes the issuance of redevelopment revenue
 425 bonds under s. 290.01391, the governing body must provide public
 426 notice of such proposed action pursuant to s. 125.66(2) or s.
 427 166.041(3)(a).

428 (8) A copy of the resolution adopted by the governing body
 429 designating the sales tax TIF area must be transmitted to the
 430 department for review. The department shall determine whether
 431 the designation of the sales tax TIF area complies with the
 432 requirements of this chapter. When determining whether the
 433 designation complies with the requirements of this chapter, the
 434 department must consider whether the designation:

435 (a) Captures taxable spending, either in whole or in
 436 significant part, that would not otherwise occur in the
 437 community rather than redistributing current spending; and

438 (b) Supports and enhances the tourism industry.

439 (c) Supports a retail development project that will meet
 440 the jobs and taxes and fees required to be generated under s.
 441 290.004.

442 (9) If the department determines that the designation by
 443 the governing body complies with the requirements of this
 444 chapter, the department must provide written notification to the
 445 local governing body of such determination. Upon receipt of the
 446 notification, the local governing body must remit a copy of the
 447 resolution establishing the sales tax TIF area, along with the
 448 department's notice of determination, to the Department of

449 Revenue.

450 Section 9. Section 290.0138, Florida Statutes, is created
 451 to read:

452 290.0138 Calculation of tax increment revenue contribution
 453 to governing body.—

454 (1) The governing body of a designated sales tax TIF area
 455 is eligible for a percentage distribution from the Revenue
 456 Sharing Trust Fund for Municipalities of the increased
 457 collections of the state tax on sales, use, and other
 458 transactions realized during any month by the municipality over
 459 the same monthly period of the base year, as follows:

460 (a) Eighty-five percent of the increased monthly
 461 collections of \$85,000 or less.

462 (b) Seventy-five percent of the increased monthly
 463 collections greater than \$85,000 but \$425,000 or less.

464 (c) Fifty percent of the increased monthly collections
 465 greater than \$425,000 but \$675,000 or less.

466 (d) Twenty-five percent of the increased monthly
 467 collections greater than \$675,000 but \$1 million or less.

468 (e) Zero percent of the increased monthly collections of
 469 more than \$1 million.

470 (2) The specific amount payable to each eligible governing
 471 body must be determined monthly by the Department of Revenue for
 472 distribution to the appropriate eligible governing body in
 473 accordance with subsection (1). The Department of Revenue must
 474 determine monthly the aggregate amount of sales tax revenue that
 475 is required for distribution to each eligible governing body
 476 under this section and transfer that amount from the General

477 Revenue Fund to the Revenue Sharing Trust Fund for
 478 Municipalities in accordance with s. 212.20(6)(d)5. All amounts
 479 transferred to the Revenue Sharing Trust Fund for Municipalities
 480 must be distributed as provided in s. 218.23(3)(e). The total
 481 distribution provided to the eligible governing body may not
 482 exceed the total tax increment revenue contribution set forth in
 483 the retail project development agreement required pursuant to s.
 484 290.0139.

485 (3) Percentage distributions to each governing body under
 486 subsection (1) are contingent upon the following:

487 (a) A contribution by the local governing body equal to
 488 not less than 30 percent of the percent of the distributions of
 489 sales tax revenues provided to the governing body under
 490 subsection (1). Such matching contribution may be provided in
 491 one of the following forms:

492 1. A cash deposit by the governing body to the revenue
 493 account established pursuant to subsection (4);

494 2. A commitment within the governing body's capital plan
 495 to underwrite any project within the sales TIF area; or

496 3. Approval of an economic development ad valorem tax
 497 exemption by the governing body authorized under ss. 196.1995
 498 and 196.1996.

499 (b) Total private investment in a retail development
 500 project equal to an amount not less than three times the state
 501 contribution; and

502 (c) Annual transmittal of an employment certificate by the
 503 retail development project developer to the department and the
 504 Department of Revenue attesting to the total number of full-time

505 and part-time jobs created by the retail development project.

506 1. The retail development project developer must continue
 507 to provide such employment certificate until the end of the
 508 compliance period or transmittal of an employment certificate
 509 indicating that the retail development project has created the
 510 required minimum number of jobs, whichever occurs first. For
 511 purposes of determining whether the job requirement has been
 512 satisfied, two part-time jobs shall be counted as the equivalent
 513 of one full-time job.

514 2. If the retail development project fails to create the
 515 required minimum number of jobs by the end of the compliance
 516 period, future percentage distributions to the governing body
 517 under subsection (1) must be reduced by the number of actual
 518 jobs created as a percentage of the minimum required jobs.

519 (4) Each governing body receiving a percentage
 520 distribution under subsection (1) must establish a separate
 521 redevelopment trust fund for each designated sales tax TIF area.
 522 Funds allocated to and deposited in this fund may only be used
 523 to underwrite any eligible public improvements approved by the
 524 enterprise zone governing body pursuant to the authority
 525 provided in s. 290.0056 and ss. 290.0136-290.01391.

526 Section 10. Section 290.0139, Florida Statutes, is created
 527 to read:

528 290.0139 Retail development project agreement.-

529 (1) A retail development project developer proposing to
 530 use tax increment revenues to expend sales tax increment
 531 revenues for purposes authorized under s. 290.0056 on behalf of
 532 the governing body or enterprise zone development agency may

533 | enter into a retail development project agreement with the
 534 | governing body designating a sales tax TIF area. The agreement
 535 | must set forth:

536 | (a) The goals and objectives of the retail development
 537 | project;

538 | (b) Requirements for leasing retail space within the
 539 | retail development project which will advance the governing
 540 | body's or enterprise zone development agency's goals and
 541 | objectives;

542 | (c) The terms and conditions pursuant to which tax
 543 | increment revenue or bond proceeds will be advanced to pay for
 544 | costs incurred in the sales tax TIF area;

545 | (d) Goals for the hiring of enterprise zone residents for
 546 | the new jobs created by the retail development project;

547 | (e) Such matters as may be required in connection with the
 548 | issuance of bonds to support the retail development project; and

549 | (f) Such other matters as the governing body designating
 550 | the sales tax TIF area may determine to be necessary and
 551 | appropriate.

552 | (2) A retail project development agreement must be
 553 | approved by resolution of the governing body following a public
 554 | hearing advertised in a newspaper of general circulation not
 555 | less than 10 days before the date of the required public
 556 | hearing.

557 | (3) A retail development agreement must be transmitted to
 558 | the department for review and determination that the agreement
 559 | complies with the requirements of this chapter.

560 | Section 11. Section 290.01391, Florida Statutes, is

561 created to read:

562 290.01391 Issuance of sales tax increment revenue bonds;
 563 use of bond proceeds; funding agreement.-

564 (1) If authorized or approved by resolution of the
 565 governing body that designated the sales tax TIF area, after a
 566 public hearing, tax increment revenues may be used to support
 567 the issuance of sales tax increment revenue bonds to finance the
 568 authorized public improvements, including, but not limited to,
 569 the payment of principal and interest upon any advances for
 570 surveys and plans or preliminary loans and to issue refunding
 571 bonds for the payment or retirement of bonds or other
 572 obligations previously issued. Sales tax increment revenue bonds
 573 may not be committed for any projects identified following the
 574 10th year after the base year established under s. 290.004. Any
 575 sales tax increment revenue bonds or other obligations issued to
 576 finance the undertaking of any eligible activity under ss.
 577 290.0136-290.01391 must mature by the end of the 40th fiscal
 578 year after the fiscal year in which sales tax increment revenues
 579 are first deposited into the sales tax TIF area trust fund or at
 580 the expiration of any agreement between the governing body and
 581 the retail project developer for which bonds are issued to
 582 underwrite eligible public improvements, whichever is later.
 583 However, any refunding bonds issued pursuant to this subsection
 584 may not mature later than the final maturity date of any bonds
 585 or other obligations issued pursuant to this subsection being
 586 paid or retired with the proceeds of such refunding bonds.

587 (2) Sales tax increment revenue bonds issued under ss.
 588 290.0136-290.01391 may not be deemed to constitute a debt,

589 liability, or obligation of the public body or the state or any
 590 political subdivision thereof, or a pledge of the faith and
 591 credit of the public body or the state or any political
 592 subdivision thereof, but shall be payable solely from the
 593 revenues provided therefor. All such sales tax increment revenue
 594 bonds must contain on the face thereof a statement to the effect
 595 that the agency may not be obligated to pay the same or the
 596 interest thereon except from the revenues of the sales tax TIF
 597 area held for that purpose and that neither the faith and credit
 598 nor the taxing power of the governing body or of the state or of
 599 any political subdivision thereof is pledged to the payment of
 600 the principal of, or the interest on, such bonds.

601 (3) Bonds issued under this section must be authorized by
 602 resolution of the governing body and may be issued in one or
 603 more series and may bear such date or dates, be payable upon
 604 demand or mature at such time or times, bear interest at such
 605 rate or rates, be in such denomination or denominations, be in
 606 such form either with or without coupon or registered, carry
 607 such conversion or registration privileges, have such rank or
 608 priority, be executed in such manner, be payable in such medium
 609 of payment at such place or places, be subject to such terms of
 610 redemption with or without a premium, be secured in such manner,
 611 and have such other characteristics as may be provided by the
 612 resolution or ordinance authorizing their issuance. Bonds issued
 613 under this section may be sold in such manner, either at public
 614 or private sale, and for such price as the designated governing
 615 body may determine will effectuate the purposes of this section.

616 (4) If the public officials of the county or municipal

617 governing body whose signatures appear on any bonds or coupons
 618 issued under ss. 290.0136-290.01391 cease to be such officials
 619 before the delivery of such bonds, such signatures are,
 620 nevertheless, valid and sufficient for all purposes, the same as
 621 if such officials had remained in office until such delivery.

622 (5) Bonds issued under ss. 290.0136-290.01391 are declared
 623 to be issued for an essential public and governmental purpose.
 624 In any suit, action, or proceeding involving the validity or
 625 enforceability of any bond issued under this section, any bond
 626 that recites in substance that it has been issued by the
 627 governing body in connection with the sales tax increment
 628 district for a purpose authorized under this section is
 629 conclusively presumed to have been issued for that purpose, and
 630 any project financed by the bond is conclusively presumed to
 631 have been planned and carried out in accordance with the
 632 intended purposes of this section.

633 (6) If the enterprise zone program is not extended beyond
 634 the date set forth in s. 290.016 and bonds issued pursuant to
 635 this section remain outstanding, the Department of Revenue must
 636 continue to collect and remit tax increment revenues generated
 637 by the retail development project to service the outstanding
 638 bond obligations.

639 Section 12. This act shall take effect July 1, 2012.

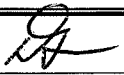
HB 4099

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4099 Tax on Sales, Use, and Other Transactions

SPONSOR(S): O'Toole

TIED BILLS: IDEN./SIM. **BILLS:** SB 1548

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee		Flieger BF	Langston 
2) Economic Affairs Committee			

SUMMARY ANALYSIS

HB 4099 repeals the current sales tax on rental of real property pursuant to s. 212.031, F.S. Section 212.031, F.S., declares that renting real property is a taxable privilege and such rent shall be taxed at 6 percent unless otherwise excluded or exempted. With some exceptions, this tax applies to the rental of most real property used by businesses.

The Revenue Estimating Conference estimates that this bill will have FY 2012-13 revenue impacts of -\$1,111 million (-\$1,212 million recurring) to General Revenue, -\$0.1 million to state trust funds, and -\$261 million (-\$285 million recurring) to local government.

The effective date of this bill is July 1, 2012.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 212.031, F.S., declares that renting real property is a taxable privilege. With some exceptions, this tax applies to the rental of most real property used by businesses. There are numerous exclusions and exemptions from the tax. They include:

- agricultural property,
- property used exclusively as dwelling units,
- leases of property used primarily for space flight business purposes,
- a public or private street or right-of-way and poles, conduits, fixtures, and similar improvements located on such streets or rights-of-way, occupied or used by a utility or provider of communications services,
- public streets or roads which are used for transportation purposes,
- property used at an airport exclusively for the purpose of aircraft landing or aircraft taxiing or property used by an airline for the purpose of loading or unloading passengers or property onto or from aircraft or for fueling aircraft,
- property used at a port authority exclusively for the purpose of oceangoing vessels or tugs docking
- property used as an integral part of the performance of qualified production services directly in connection with the production of a qualified motion picture
- property rented to a person providing food and drink concessionaire services within the premises of a convention hall, exhibition hall, auditorium, stadium, theater, etc.,
- the portion of the rent that is based on a percentage of sales for property rented to a person providing telecommunications, data systems management, or Internet services at a publicly or privately owned convention hall, civic center, or meeting space at a public lodging establishment. The fixed price rent for those persons remains taxable,
- subleases of property to the operators of an industry trade show in a convention hall by the prime sponsor,
- the lease or rental of land or a hall or other facilities by a fair association subject to the provisions of chapter 616 to a show promoter or prime operator of a carnival or midway attraction is exempt from the tax imposed by this section; however, the sublease of land or a hall or other facilities by the show promoter or prime operator is not exempt from the provisions of this section, and
- the rental of a skybox, luxury box, or other box seats for use during a high school or college football game when the charge for such rental is imposed by a nonprofit sponsoring organization which is qualified as nonprofit pursuant to s. 501(c)(3) of the Internal Revenue Code.

The sales tax is due at the state rate of 6 percent, plus whatever local option sales taxes local governments may choose to levy, on the total rent paid for the right to use or occupy real property. If the tenant makes payments such as mortgage, ad valorem taxes, or insurance on behalf of the landlord, those payments are also classified as rent and are subject to tax. Payments for separately stated services that are required under the lease or license are also part of the taxable rent amount.

Some examples of commercial real property rentals that are subject to this tax are:

- Office or retail space,
- Warehouses,
- Convention and meeting rooms,
- Mini-warehouses.

Rentals, leases, and licenses to use or occupy real property between related "persons" as defined in s. 212.02(12), F.S., are also subject to sales tax. Examples include, but are not limited to, a parent

corporation to subsidiaries and individual/shareholder to a corporation. This provision has led to some litigation as it is common for parent companies to own property that is "leased" by a subsidiary.¹

Taxes collected on the rental of real property are distributed by the provisions of s. 212.20, F.S., in the same manner as the funds collected from any other sales and use taxes imposed pursuant to ch. 212, F.S. Consequently, most of the revenue is distributed to the General Revenue Fund and approximately 11% is distributed to local governments via different revenue sharing programs.

The taxation treatment of the rental of commercial real property varies nationwide. Arizona has statutory authority to levy a state level tax on commercial leases², but it is currently set at zero percent.³ Some municipalities may choose to level such a tax in a state that does not, for example, New York City charges an effective 3.9% tax on rental of commercial real property where the annual gross rent paid exceeds \$250,000.⁴ Hawaii taxes the conveyance of real property, whether through sale or lease, with a graduated tax schedule and numerous exemptions.⁵

Note that Section 212.031, F.S., does not affect the tax treatment of transient rentals. The state and local taxation of transient rentals of real property, meaning rentals or leases of accommodations for 6 months or less including stays in hotels, apartment houses, roominghouses, tourist or trailer camps, mobile home parks, or recreational vehicle parks is provided for in ss. 125.0104 and 125.0108, F.S., s. 212.03, F.S., s. 212.0305, F.S., and ch. 67-930, L.O.F., and is unaffected by this bill.

Proposed Changes

The bill repeals s. 212.031, F.S., and makes conforming changes to references elsewhere in Florida Statutes to that section. This would remove the rental of real property for periods of greater than 6 months (i.e., non-transient rentals) from the sales tax base.

B. SECTION DIRECTORY:

Section 1 repeals s. 212.031, F.S.

Section 2 amends s. 212.0598, F.S., to conform with the repeal of s. 212.031, F.S.

Section 3 amends s. 212.0602, F.S., to conform with the repeal of s. 212.031, F.S.

Section 4 amends s. 288.1258, F.S., to conform with the repeal of s. 212.031, F.S.

Section 5 amends s. 338.234, F.S., to conform with the repeal of s. 212.031, F.S.

Section 6 amends s. 341.840, F.S., to conform with the repeal of s. 212.031, F.S.

Section 7 provides an effective date.

¹ *Zero Food Storage Division of American Consumer Industries, Inc. v. Department of Revenue*, 330 So.2d 765 (Fla.App. 1 Dist. 1976)

² Ariz. Rev. Stat. s. 42-5069

³ Ariz. Rev. Stat. s. 42-5010(A)(4)

⁴ New York City Administrative Code Title 11, Chapter 7.

⁵ Haw. Rev. Stat. ch. 247

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimates that this bill will have FY 2012-13 revenue impacts of -\$1,111 million (-\$1,212 million recurring) to General Revenue, and -\$0.1 million to state trust funds.

2. Expenditures:

The Department of Revenue estimates it would incur \$99,281 in nonrecurring expenses during FY 2012-13 implementing the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimates that this bill will have FY 2012-13 revenue impacts of -\$261 million (-\$285 million recurring) to local government.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Florida residents who rent real property that does not fall within one of the exemptions contained with s. 212.031, F.S., will see a reduction in the rental price for that real property.

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 reduces local government's authority to tax the rental of real property. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There are several additional references to the rental of real property throughout ch. 212, F.S., which are not addressed by this bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the tax on sales, use, and other
 3 transactions; repealing s. 212.031, F.S., relating to
 4 imposition of a tax on the rental or license fee
 5 charged for the use of commercial real property;
 6 amending ss. 212.0598, 212.0602, 288.1258, 338.234,
 7 and 341.840, F.S.; conforming cross-references;
 8 providing an effective date.

9

10 Be It Enacted by the Legislature of the State of Florida:

11

12 Section 1. Section 212.031, Florida Statutes, is repealed.

13 Section 2. Subsection (2) of section 212.0598, Florida
 14 Statutes, is amended to read:

15 212.0598 Special provisions; air carriers.—

16 (2) The basis of the tax shall be the ratio of Florida
 17 mileage to total mileage as determined pursuant to chapter 220
 18 and this section. The ratio shall be determined at the close of
 19 the carrier's preceding fiscal year. However, during the fiscal
 20 year in which the air carrier begins initial operations in this
 21 state, the carrier may determine its mileage apportionment
 22 factor based on an estimated ratio of anticipated revenue miles
 23 in this state to anticipated total revenue miles. In such cases,
 24 the air carrier shall pay additional tax or apply for a refund
 25 based on the actual ratio for that year. The applicable ratio
 26 shall be applied each month to the carrier's total systemwide
 27 gross purchases of tangible personal property and services
 28 otherwise taxable in Florida. Additionally, the ratio shall be

29 applied each month to the carrier's total systemwide payments
 30 for the lease or rental of, or license in, real property used by
 31 the carrier substantially for aircraft maintenance if that
 32 carrier employed, on average, during the previous calendar
 33 quarter in excess of 3,000 full-time equivalent maintenance or
 34 repair employees at one maintenance base that it leases, rents,
 35 or has a license in, in this state. ~~In all other instances, the~~
 36 ~~tax on real property leased, rented, or licensed by the carrier~~
 37 ~~shall be as provided in s. 212.031.~~

38 Section 3. Section 212.0602, Florida Statutes, is amended
 39 to read:

40 212.0602 Education; limited exemption.—To facilitate
 41 investment in education and job training, there is also exempt
 42 from the taxes levied under this chapter, subject to the
 43 provisions of this section, the purchase or lease of materials,
 44 equipment, and other items or the license in or lease of real
 45 property by any entity, institution, or organization that is
 46 primarily engaged in teaching students to perform any of the
 47 activities or services described in former s. 212.031(1)(a)9.,
 48 that conducts classes at a fixed location located in this state,
 49 that is licensed under chapter 1005, and that has at least 500
 50 enrolled students. Any entity, institution, or organization
 51 meeting the requirements of this section shall be deemed to
 52 qualify for the exemptions in former s. ~~ss.~~ 212.031(1)(a)9. and
 53 s. 212.08(5)(f) and (12), and to qualify for an exemption for
 54 its purchase or lease of materials, equipment, and other items
 55 used for education or demonstration of the school's curriculum,
 56 including supporting operations. Nothing in this section shall

57 preclude an entity described in this section from qualifying for
 58 any other exemption provided for in this chapter.

59 Section 4. Subsections (2) and (3) of section 288.1258,
 60 Florida Statutes, are amended to read:

61 288.1258 Entertainment industry qualified production
 62 companies; application procedure; categories; duties of the
 63 Department of Revenue; records and reports.—

64 (2) APPLICATION PROCEDURE.—

65 (a) The Department of Revenue will review all submitted
 66 applications for the required information. Within 10 working
 67 days after the receipt of a properly completed application, the
 68 Department of Revenue will forward the completed application to
 69 the Office of Film and Entertainment for approval.

70 (b)1. The Office of Film and Entertainment shall establish
 71 a process by which an entertainment industry production company
 72 may be approved by the office as a qualified production company
 73 and may receive a certificate of exemption from the Department
 74 of Revenue for the sales and use tax exemptions under ss.
 75 ~~212.031~~, 212.06~~7~~ and 212.08.

76 2. Upon determination by the Office of Film and
 77 Entertainment that a production company meets the established
 78 approval criteria and qualifies for exemption, the Office of
 79 Film and Entertainment shall return the approved application or
 80 application renewal or extension to the Department of Revenue,
 81 which shall issue a certificate of exemption.

82 3. The Office of Film and Entertainment shall deny an
 83 application or application for renewal or extension from a
 84 production company if it determines that the production company

85 | does not meet the established approval criteria.

86 | (c) The Office of Film and Entertainment shall develop,
 87 | with the cooperation of the Department of Revenue and local
 88 | government entertainment industry promotion agencies, a
 89 | standardized application form for use in approving qualified
 90 | production companies.

91 | 1. The application form shall include, but not be limited
 92 | to, production-related information on employment, proposed
 93 | budgets, planned purchases of items exempted from sales and use
 94 | taxes under ss. ~~212.031~~, 212.06~~7~~, and 212.08, a signed
 95 | affirmation from the applicant that any items purchased for
 96 | which the applicant is seeking a tax exemption are intended for
 97 | use exclusively as an integral part of entertainment industry
 98 | preproduction, production, or postproduction activities engaged
 99 | in primarily in this state, and a signed affirmation from the
 100 | Office of Film and Entertainment that the information on the
 101 | application form has been verified and is correct. In lieu of
 102 | information on projected employment, proposed budgets, or
 103 | planned purchases of exempted items, a production company
 104 | seeking a 1-year certificate of exemption may submit summary
 105 | historical data on employment, production budgets, and purchases
 106 | of exempted items related to production activities in this
 107 | state. Any information gathered from production companies for
 108 | the purposes of this section shall be considered confidential
 109 | taxpayer information and shall be disclosed only as provided in
 110 | s. 213.053.

111 | 2. The application form may be distributed to applicants
 112 | by the Office of Film and Entertainment or local film

113 commissions.

114 (d) All applications, renewals, and extensions for
 115 designation as a qualified production company shall be processed
 116 by the Office of Film and Entertainment.

117 (e) In the event that the Department of Revenue determines
 118 that a production company no longer qualifies for a certificate
 119 of exemption, or has used a certificate of exemption for
 120 purposes other than those authorized by this section and chapter
 121 212, the Department of Revenue shall revoke the certificate of
 122 exemption of that production company, and any sales or use taxes
 123 exempted on items purchased or leased by the production company
 124 during the time such company did not qualify for a certificate
 125 of exemption or improperly used a certificate of exemption shall
 126 become immediately due to the Department of Revenue, along with
 127 interest and penalty as provided by s. 212.12. In addition to
 128 the other penalties imposed by law, any person who knowingly and
 129 willfully falsifies an application, or uses a certificate of
 130 exemption for purposes other than those authorized by this
 131 section and chapter 212, commits a felony of the third degree,
 132 punishable as provided in ss. 775.082, 775.083, and 775.084.

133 (3) CATEGORIES.—

134 (a)1. A production company may be qualified for
 135 designation as a qualified production company for a period of 1
 136 year if the company has operated a business in Florida at a
 137 permanent address for a period of 12 consecutive months. Such a
 138 qualified production company shall receive a single 1-year
 139 certificate of exemption from the Department of Revenue for the
 140 sales and use tax exemptions under ss. ~~212.031~~, 212.06~~7~~ and

141 212.08, which certificate shall expire 1 year after issuance or
 142 upon the cessation of business operations in the state, at which
 143 time the certificate shall be surrendered to the Department of
 144 Revenue.

145 2. The Office of Film and Entertainment shall develop a
 146 method by which a qualified production company may annually
 147 renew a 1-year certificate of exemption for a period of up to 5
 148 years without requiring the production company to resubmit a new
 149 application during that 5-year period.

150 3. Any qualified production company may submit a new
 151 application for a 1-year certificate of exemption upon the
 152 expiration of that company's certificate of exemption.

153 (b)1. A production company may be qualified for
 154 designation as a qualified production company for a period of 90
 155 days. Such production company shall receive a single 90-day
 156 certificate of exemption from the Department of Revenue for the
 157 sales and use tax exemptions under ss. ~~212.031~~, 212.06~~7~~ and
 158 212.08, which certificate shall expire 90 days after issuance,
 159 with extensions contingent upon approval of the Office of Film
 160 and Entertainment. The certificate shall be surrendered to the
 161 Department of Revenue upon its expiration.

162 2. Any production company may submit a new application for
 163 a 90-day certificate of exemption upon the expiration of that
 164 company's certificate of exemption.

165 Section 5. Section 338.234, Florida Statutes, is amended
 166 to read:

167 338.234 Granting concessions or selling along the turnpike
 168 system, ~~immunity from taxation.~~

169 ~~(1)~~ The department may enter into contracts or licenses
 170 with any person for the sale of services or products or business
 171 opportunities on the turnpike system, or the turnpike enterprise
 172 may sell services, products, or business opportunities on the
 173 turnpike system, which benefit the traveling public or provide
 174 additional revenue to the turnpike system. Services, business
 175 opportunities, and products authorized to be sold include, but
 176 are not limited to, motor fuel, vehicle towing, and vehicle
 177 maintenance services; food with attendant nonalcoholic
 178 beverages; lodging, meeting rooms, and other business services
 179 opportunities; advertising and other promotional opportunities,
 180 which advertising and promotions must be consistent with the
 181 dignity and integrity of the state; state lottery tickets sold
 182 by authorized retailers; games and amusements that operate by
 183 the application of skill, not including games of chance as
 184 defined in s. 849.16 or other illegal gambling games; Florida
 185 citrus, goods promoting the state, or handmade goods produced
 186 within the state; and travel information, tickets, reservations,
 187 or other related services. However, the department, pursuant to
 188 the grants of authority to the turnpike enterprise under this
 189 section, shall not exercise the power of eminent domain solely
 190 for the purpose of acquiring real property in order to provide
 191 business services or opportunities, such as lodging and meeting-
 192 room space on the turnpike system.

193 ~~(2) The effectuation of the authorized purposes of the~~
 194 ~~Florida Intrastate Highway System and Florida Turnpike~~
 195 ~~Enterprise, created under this chapter, is for the benefit of~~
 196 ~~the people of the state, for the increase of their commerce and~~

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197 ~~prosperity, and for the improvement of their health and living~~
 198 ~~conditions; and, because the system and enterprise perform~~
 199 ~~essential government functions in effectuating such purposes,~~
 200 ~~neither the turnpike enterprise nor any nongovernment lessee or~~
 201 ~~licensee renting, leasing, or licensing real property from the~~
 202 ~~turnpike enterprise, pursuant to an agreement authorized by this~~
 203 ~~section, are required to pay any commercial rental tax imposed~~
 204 ~~under s. 212.031 on any capital improvements constructed,~~
 205 ~~improved, acquired, installed, or used for such purposes.~~

206 Section 6. Paragraph (a) of subsection (3) of section
 207 341.840, Florida Statutes, is amended to read:

208 341.840 Tax exemption.—

209 (3)(a) Purchases or leases of tangible personal property
 210 or real property by the authority, excluding agents of the
 211 authority, are exempt from taxes imposed by chapter 212 as
 212 provided in s. 212.08(6). Purchases or leases of tangible
 213 personal property that is incorporated into the high-speed rail
 214 system as a component part thereof, as determined by the
 215 authority, by agents of the authority or the owner of the high-
 216 speed rail system are exempt from sales or use taxes imposed by
 217 chapter 212. ~~Leases, rentals, or licenses to use real property~~
 218 ~~granted to agents of the authority or the owner of the high-~~
 219 ~~speed rail system are exempt from taxes imposed by s. 212.031 if~~
 220 ~~the real property becomes part of such system.~~ The exemptions
 221 granted in this subsection do not apply to sales, leases, or
 222 licenses by the authority, agents of the authority, or the owner
 223 of the high-speed rail system.

224 Section 7. This act shall take effect July 1, 2012.