

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

FINANCE AND TAX
Senator Hukill, Chair
Senator Abruzzo, Vice Chair

MEETING DATE: Tuesday, April 7, 2015
TIME: 10:00 a.m.—12:00 noon
PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Hukill, Chair; Senator Abruzzo, Vice Chair; Senators Altman, Diaz de la Portilla, Flores, Margolis, Simpson, and Soto

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 572 Montford (Compare H 7141)	School Support Organizations; Defining the term "school support organization"; authorizing such organizations to pay tax on specified items purchased for resale in lieu of collecting the tax upon resale, etc. ED 03/31/2015 Favorable FT 04/07/2015 Favorable FP	Favorable Yeas 6 Nays 0
2	SB 752 Hukill	Redevelopment Trust Fund; Adding certain hospital districts to the list of public bodies or taxing authorities that are exempt from appropriating certain revenues to the redevelopment trust fund, etc. CA 03/31/2015 Favorable FT 04/07/2015 Favorable FP	Favorable Yeas 6 Nays 0
3	SB 780 Smith (Similar CS/H 919)	Special Assessment for Law Enforcement Services; Authorizing a municipality to levy a special assessment to fund the costs of providing law enforcement services; requiring the property appraiser to list the special assessment on the notice of property taxes; specifying exceptions to the reduction of the ad valorem millage by more than a certain percentage; providing for construction, etc. CA 03/10/2015 Favorable FT 04/07/2015 Favorable FP	Favorable Yeas 5 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Finance and Tax

Tuesday, April 7, 2015, 10:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 924 Community Affairs / Hays (Similar CS/H 839)	Property Prepared for a Tax-exempt Use; Consolidating and revising provisions relating to obtaining an ad valorem exemption for property owned by an exempt organization, including the requirement that the owner of an exempt organization take affirmative steps to demonstrate an exempt use; authorizing the property appraiser to serve a notice of tax lien on exempt property that is not in actual exempt use after a certain time; providing that the provisions authorizing the tax lien do not apply to a house of public worship, etc. CA 03/10/2015 Fav/CS FT 04/07/2015 Fav/CS AP	Fav/CS Yeas 6 Nays 0
Consideration of proposed bill:			
5	SPB 7074	Tobacco Products other than Cigarettes or Cigars; Defining the term "affiliate"; clarifying the definitions of the terms "tobacco products" and "wholesale sales price"; providing that the act is intended to clarify existing law, etc.	Submitted as Committee Bill Yeas 6 Nays 0
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: SB 572

INTRODUCER: Senator Montford

SUBJECT: School Support Organizations

DATE: April 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bailey	Klebacha	ED	Favorable
2.	Babin	Diez-Arguelles	FT	Favorable
3.			FP	

I. Summary:

SB 572 grants a partial exemption from the sales tax for sales of food and drink by a school support organization. The bill defines the term “school support organization” as an entity organized to raise funds to support extracurricular activities at public, parochial, or nonprofit schools teaching grades K-12.

The Revenue Estimating Conference has determined that this bill will reduce General Revenue receipts by \$1.5 million in Fiscal Year 2015-16, with a recurring negative impact of \$1.5 million. The bill will reduce local government revenues by \$200,000 in Fiscal Year 2015-2016, with a recurring negative impact of \$200,000.

The bill takes effect on July 1, 2015.

II. Present Situation:

Florida sales tax applies to retail sales of taxable items sold by schools and school-related organizations.¹ Without an exception, current statutes would require schools and school-related organizations to register as sales tax dealers, thereby requiring them to file returns, remit taxes and maintain necessary records.

Current law, however, exempts schools having grades K-12, parent-teacher organizations (PTOs), and parent-teacher associations (PTAs) from typical dealer requirements by authorizing them to sell certain taxable items without collecting tax; however, they must pay sales tax to their suppliers on taxable purchases.² This treatment is authorized for school materials and supplies purchased, rented, or leased for resale or rental to students, items sold for fundraising

¹ See generally ch. 212, F.S.

² Section 212.08(7)(II)2., F.S.

purposes, and for items sold through vending machines, including food or beverages sold through vending machines located in student lunchrooms or school dining rooms.

III. Effect of Proposed Changes:

Section 1 authorizes school support organizations to sell food and drinks, and supplies necessary to serve such food and drink, without collecting tax; however, they are required to pay tax on the cost price of these items when purchased from the supplier.

The bill defines a “school support organization” as an entity organized to raise funds to support extracurricular activities at public, parochial, or nonprofit schools that teach grades K-12.

Section 2 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandates provisions of Art. VII, Section 18, of the Florida Constitution are implicated because his bill reduces the authority of municipalities and counties to raise revenue; however, the amount of the reduction is estimated to be insignificant. Therefore, the bill is exempt from the mandates provisions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has determined that the bill will reduce General Revenue receipts by \$1.5 million in Fiscal Year 2015-2016, with a recurring negative impact of \$1.5 million. The bill will reduce local government revenues by \$200,000 in Fiscal Year 2015-2016, with a recurring negative impact of \$200,000.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.08 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Montford

3-00208-15

2015572__

1 A bill to be entitled
2 An act relating to school support organizations;
3 amending s. 212.08, F.S.; defining the term "school
4 support organization"; authorizing such organizations
5 to pay tax on specified items purchased for resale in
6 lieu of collecting the tax upon resale; providing an
7 effective date.

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

10 Section 1. Paragraph (11) of subsection (7) of section
12 212.08, Florida Statutes, is amended to read:

13 212.08 Sales, rental, use, consumption, distribution, and
14 storage tax; specified exemptions.—The sale at retail, the
15 rental, the use, the consumption, the distribution, and the
16 storage to be used or consumed in this state of the following
17 are hereby specifically exempt from the tax imposed by this
18 chapter.

19 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
20 entity by this chapter do not inure to any transaction that is
21 otherwise taxable under this chapter when payment is made by a
22 representative or employee of the entity by any means,
23 including, but not limited to, cash, check, or credit card, even
24 when that representative or employee is subsequently reimbursed
25 by the entity. In addition, exemptions provided to any entity by
26 this subsection do not inure to any transaction that is
27 otherwise taxable under this chapter unless the entity has
28 obtained a sales tax exemption certificate from the department
29 or the entity obtains or provides other documentation as

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30 required by the department. Eligible purchases or leases made
31 with such a certificate must be in strict compliance with this
32 subsection and departmental rules, and any person who makes an
33 exempt purchase with a certificate that is not in strict
34 compliance with this subsection and the rules is liable for and
35 shall pay the tax. The department may adopt rules to administer
36 this subsection.

37 (11) *Parent-teacher organizations* ~~and, parent-teacher~~
38 *associations, school support organizations, and schools having*
39 *grades K through 12.*—

40 1. Sales or leases to parent-teacher organizations and
41 associations the purpose of which is to raise funds for schools
42 that teach grades K through 12 and that are associated with
43 schools having grades K through 12 are exempt from the tax
44 imposed by this chapter.

45 2. Parent-teacher organizations and associations described
46 in subparagraph 1. ~~7~~ and schools that teach ~~having~~ grades K
47 through 12, ~~7~~ may pay tax to their suppliers on the cost price of
48 school materials and supplies purchased, rented, or leased for
49 resale or rental to students in grades K through 12, of items
50 sold for fundraising purposes, and of items sold through vending
51 machines located on the school premises, in lieu of collecting
52 the tax imposed by this chapter from the purchaser. This
53 ~~subparagraph~~ ~~paragraph~~ also applies to food or beverages sold
54 through vending machines located in the student lunchroom or
55 dining room of a school that teaches grades K ~~having~~
56 ~~kindergarten~~ through ~~grade~~ 12.

57 3. School support organizations may pay tax, as applicable
58 under this chapter, to their suppliers on the cost price of

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59 food, drink, and supplies necessary to serve such food and
60 drink, if the items are purchased for resale, in lieu of
61 collecting the tax from the purchaser. For purposes of this
62 subparagraph, the term "school support organization" means an
63 entity organized solely to raise funds to support
64 extracurricular activities at public, parochial, or nonprofit
65 schools that teach grades K through 12.

66 Section 2. This act shall take effect July 1, 2015.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: SB 752

INTRODUCER: Senator Hukill

SUBJECT: Redevelopment Trust Fund

DATE: April 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Fournier</u>	<u>Diez-Arguelles</u>	<u>FT</u>	Favorable
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 752 adds hospital districts to the list¹ of taxing authorities that are exempt from making annual appropriations to a redevelopment trust fund in any community redevelopment area created after July 1, 2015.

II. Present Situation:

Community Redevelopment Act

The Community Redevelopment Act of 1969² authorizes a county or municipality to create a community redevelopment area (CRA) as a means of redeveloping slums and blighted areas. To carry out the purposes and provisions of the Act counties and municipalities are authorized to undertake the following activities within a CRA:

- Enter into contracts;
- Disseminate information;
- Acquire property within a slum or blighted area by voluntary methods;
- Demolish and remove buildings and improvements;
- Construct improvements; and
- Dispose of property at fair value.³

Counties and municipalities are prohibited from exercising the community redevelopment authority provided by the Community Redevelopment Act until they adopt an ordinance that declares an area to be a slum or a blighted area.⁴

¹ Section 163.387, F.S.

² Chapter 163, part III, F.S.

³ Section 163.370, F.S.

⁴ Sections 163.355(1) and 163.360(1), F.S.

Section 163.340(8), F.S., defines “blighted area” as follows:

An area in which there are a substantial number of deteriorated, or deteriorating structures, in which conditions, as indicated by government-maintained statistics or other studies, are leading to economic distress or endanger life or property, and in which two or more of the following factors are present:

- (a) Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities;
- (b) Aggregate assessed values of real property in the area for ad valorem tax purposes have failed to show any appreciable increase over the five years prior to the finding of such conditions;
- (c) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- (d) Unsanitary or unsafe conditions;
- (e) Deterioration of site or other improvements;
- (f) Inadequate and outdated building density patterns;
- (g) Falling lease rates per square foot of office, commercial, or industrial space compared to the remainder of the county or municipality;
- (h) Tax or special assessment delinquency exceeding the fair value of the land;
- (i) Residential and commercial vacancy rates higher in the area than in the remainder of the county or municipality;
- (j) Incidence of crime in the area higher than in the remainder of the county or municipality;
- (k) Fire and emergency medical service calls to the area proportionately higher than in the remainder of the county or municipality;
- (l) A greater number of violations of the Florida Building Code in the area than the number of violations recorded in the remainder of the county or municipality;
- (m) Diversity of ownership or defective or unusual conditions of title which prevent the free alienability of land within the deteriorated or hazardous area; or
- (n) Governmentally owned property with adverse environmental conditions caused by a public or private entity.

However, the term “blighted area” also means any area in which at least one of the factors identified in paragraphs (a) through (n) are present and all taxing authorities subject to s. 163.387(2)(a), F.S., agree, either by inter-local agreement or agreements with the agency or by resolution, that the area is blighted.

The TIF Mechanism for Funding CRAs

CRAs are not permitted to levy or collect taxes; however, the local governing body is permitted to establish a community redevelopment trust fund that is funded through tax increment financing (TIF). The TIF mechanism, as described in s. 163.387, F.S., requires taxing authorities annually to appropriate an amount to the redevelopment trust fund by January 1, each year. This revenue may be used to back bonds issued to finance redevelopment projects in accordance with a redevelopment plan.⁵ The increment revenue amount is calculated annually as 95 percent of the difference between:

- The amount of ad valorem taxes levied in a given year by each taxing authority, exclusive of debt service millage, on taxable real property within the CRA; and

⁵ Section 163.387(1)(a), F.S.

- The amount of ad valorem taxes which would have been produced at the current-year millage rate, exclusive of debt-service millage, on the total assessed value of taxable property in the CRA immediately prior to establishment of the CRA trust fund.

Thus, as property values in the CRA grow the tax increment increases and is available to finance or refinance community redevelopment activities undertaken by the community redevelopment agency created under s. 167.356, F.S.

TIF Limitations and Exemptions

CRAs created before July 1, 2002, typically appropriate to the trust fund for a period not exceeding 30 years, unless the community redevelopment plan is amended.⁶ For CRAs created after July 1, 2002, taxing authorities make the annual appropriation for a period not to exceed 40 years after the fiscal year in which the plan is approved or adopted. The following taxing authorities are exempt from paying the increment revenues:⁷

- A special district that levies ad valorem taxes on taxable real property in more than one county.
- A special district for which the sole available source of revenue the district has the authority to levy is ad valorem taxes at the time the ordinance is adopted.
- A library district, except a library district in a jurisdiction where the community redevelopment agency had validated bonds, as of April 30, 1984.
- A neighborhood improvement district created under the Safe Neighborhoods Act.
- A metropolitan transportation authority.
- A water management district created under s. 373.069, F.S., and
- A special district specifically made exempt by the local governing body that created the CRA, if the exemption is made in accordance with the requirements of s. 163.387(2)(d), F.S., which include a public hearing, public notice, and an interlocal agreement.⁸

Hospital Districts

First created in the 1920s to provide indigent care for county residents, hospital districts now differ greatly in roles, powers, and governance.⁹ There are currently six hospital districts created as dependent districts, and 24 created as independent special districts.¹⁰ Independent districts are generally created by special acts of the Legislature, whereas dependent districts are created by local governments with their governing bodies under the control of a county or municipal board. The North Sumter County Hospital District, created in 2004 by special act of the Legislature, is the most recently created hospital district.

⁶ Section 163.387(2)(a), F.S.

⁷ Section 163.387(2)(c), F.S.

⁸ School districts are not taxing authorities for purposes of tax increment financing, because they are explicitly excluded from the definition of “public body” in s. 163.340(2), F.S., and “taxing authority” is defined as “a public body that levies or is authorized to levy an ad valorem tax on real property located in a community redevelopment area.” (Section 163.340(24), F.S.)

⁹ Florida TaxWatch, *Florida’s Fragmented Hospital Taxing District System in Need of Reexamination*, Briefings (Feb. 2009).

¹⁰ Florida Department of Economic Opportunity, Official List of Special Districts Online, *available at* <https://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/selectfunctions.cfm> (last visited Mar. 26, 2015).

III. Effect of Proposed Changes:

Section 1 amends s. 163.387, F.S., to add hospital districts to the list of taxing authorities exempt from providing funding for redevelopment trust funds. The exemption is limited to CRAs created after July 1, 2015.

Section 2 reenacts s. 259.042, F.S., to incorporate provisions related to tax increment financing for conservation lands to the changes made by Section 1 of the bill.

Section 3 of the bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

Any community redevelopment areas created after July 1, 2015, will not receive appropriations from hospital districts.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Revenue and Department of Economic Opportunity have analyzed the bill and determined that it has no impact on their operations.¹¹

The bill will have a positive fiscal impact on hospital districts that otherwise would have had to appropriate funds to a community development trust fund associated with a newly created CRA. Newly-created CRAs will experience a corresponding negative fiscal impact, because hospital districts will be exempt from having to make annual appropriations to a community redevelopment trust fund.

¹¹ Florida Department of Revenue, *Senate Bill 752 Fiscal Analysis* (Feb. 10, 2015); Florida Department of Economic Opportunity, *Senate Bill 752 Fiscal Analysis* (Feb. 12, 2015). (on file with the Senate Committee on Community Affairs).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.387 of the Florida Statutes.

This bill reenacts section 259.042 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Hukill

8-00720-15

2015752__

1 A bill to be entitled
 2 An act relating to the redevelopment trust fund;
 3 amending s. 163.387, F.S.; adding certain hospital
 4 districts to the list of public bodies or taxing
 5 authorities that are exempt from appropriating certain
 6 revenues to the redevelopment trust fund; reenacting
 7 s. 259.042(9), F.S., to incorporate the amendment made
 8 to s. 163.387, F.S., in a reference thereto; providing
 9 an effective date.

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

11 Section 1. Paragraph (a) of subsection (2) of section
 12 163.387, Florida Statutes, is republished, and paragraph (c) of
 13 that subsection is amended, to read:

14 163.387 Redevelopment trust fund.—

15 (2) (a) Except for the purpose of funding the trust fund
 16 pursuant to subsection (3), upon the adoption of an ordinance
 17 providing for funding of the redevelopment trust fund as
 18 provided in this section, each taxing authority shall, by
 19 January 1 of each year, appropriate to the trust fund for so
 20 long as any indebtedness pledging increment revenues to the
 21 payment thereof is outstanding (but not to exceed 30 years) a
 22 sum that is no less than the increment as defined and determined
 23 in subsection (1) or paragraph (3)(b) accruing to such taxing
 24 authority. If the community redevelopment plan is amended or
 25 modified pursuant to s. 163.361(1), each such taxing authority
 26 shall make the annual appropriation for a period not to exceed
 27 30 years after the date the governing body amends the plan but
 28
 29

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30 no later than 60 years after the fiscal year in which the plan
 31 was initially approved or adopted. However, for any agency
 32 created on or after July 1, 2002, each taxing authority shall
 33 make the annual appropriation for a period not to exceed 40
 34 years after the fiscal year in which the initial community
 35 redevelopment plan is approved or adopted.

36 (c) The following public bodies or taxing authorities are
 37 exempt from paragraph (a):

- 38 1. A special district that levies ad valorem taxes on
- 39 taxable real property in more than one county.
- 40 2. A special district for which the sole available source
- 41 of revenue the district has the authority to levy is ad valorem
- 42 taxes at the time an ordinance is adopted under this section.
- 43 However, revenues or aid that may be dispensed or appropriated
- 44 to a district as defined in s. 388.011 at the discretion of an
- 45 entity other than such district shall not be deemed available.
- 46 3. A library district, except a library district in a
- 47 jurisdiction where the community redevelopment agency had
- 48 validated bonds as of April 30, 1984.
- 49 4. A neighborhood improvement district created under the
- 50 Safe Neighborhoods Act.
- 51 5. A metropolitan transportation authority.
- 52 6. A water management district created under s. 373.069.
- 53 7. For a community redevelopment area created after July 1,
- 54 2015, a hospital district that is a special district as defined
- 55 in s. 189.012.

56 Section 2. Subsection (9) of s. 259.042, Florida Statutes,
 57 is reenacted for the purpose of incorporating the amendment made
 58 by this act to s. 163.387, Florida Statutes, in a reference

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59 thereto.

60 Section 3. This act shall take effect July 1, 2015.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/7/15

Meeting Date

752

Bill Number (if applicable)

Topic Redevelopment Trust Fund

Amendment Barcode (if applicable)

Name Darrick D. McGhee

Job Title _____

Address _____

Street

Phone (850) 321-6489

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Halifax Health

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: SB 780

INTRODUCER: Senator Smith

SUBJECT: Special Assessment for Law Enforcement Services

DATE: April 6, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	Favorable
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 780 authorizes municipalities to levy special assessments for law enforcement services. The bill requires a municipality that levies the special assessment to apportion the cost of law enforcement services among parcels in proportion to the benefits received by each parcel and reduce the municipal ad valorem taxes.

The Revenue Estimating Conference has not determined the fiscal impact of the bill.

The bill is effective July 1, 2015.

II. Present Situation:

Ad Valorem Taxes

Article VII, s. 9 of the Florida Constitution provides that counties, cities, and special districts may levy ad valorem taxes as provided by law and subject to the following millage limitations:

- Ten mills for county purposes;
- Ten mills for municipal purposes;
- Ten mills for school purposes;
- A millage rate fixed by law for a county furnishing municipal services;
- A millage authorized by law and approved by the voters for special districts; and
- A millage of not more than 1 mill for water management purposes in all areas of the state except the northwest portion of the state which is limited to 1/20th of 1 mill (.05).¹

¹ FLA. CONST. art. VII, s. 9.

Municipal Millages

Municipal millages are composed of four millage rates:²

- General millage is the non-voted millage rate set by the municipality's governing body;
- Debt service millage is the rate necessary to raise taxes for debt service as authorized by a vote of the electors pursuant to Art. VII, s. 12 of the Florida Constitution;
- Voted millage is the rate set by the municipality's governing body as authorized by a vote of the electors pursuant to Art. VII, s. 9(b) of the Florida Constitution; and
- Dependent special district millage is set by the municipality's governing body pursuant to s. 200.001(5), F.S., added to the municipal millage to which the district is dependent, and included as municipal millage for the purpose of the ten-mill cap.

Method of Fixing Millage

After the property appraiser completes the assessment of all property, the property appraiser certifies to each taxing authority the taxable value within each taxing authority's jurisdiction.³ Each taxing authority prepares a tentative budget and proposes a millage rate necessary to fund the tentative budget. The millage rate proposed by each taxing authority must be based on not less than 95 percent of the taxable value according to the certified tax rolls.⁴ The Department of Revenue is responsible for ensuring that millage rates are in compliance with the maximum millage rate requirements set forth by law as well as the constitutional millage caps. A public hearing on the proposed millage rate and tentative budget must be held within 65 to 80 days of the certification of the rolls, and a final budget and millage rate must be announced prior to the end of said hearing.⁵

Special Assessments⁶

Special assessments are a revenue source that may be used by local governments to fund certain services and maintain capital facilities. Unlike taxes, these assessments are directly linked to a particular service or benefit. Examples of special assessments include fees for garbage disposal, sewer improvements, fire protection, and rescue services.⁷ Counties and municipalities have the authority to levy special assessments based on their home rule powers. Special districts derive their authority to levy these assessments through general law or special act.

As established in Florida case law, an assessment must meet two requirements in order to be classified as a valid special assessment:

- The assessed property must derive a special benefit from the service provided; and

² The following information was obtained from The Florida Legislature's Office of Economic and Demographic Research, 2014 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, 4 (Dec. 2014), *referencing* s. 200.001(1), F.S.

³ Section 200.065(1), F.S.

⁴ Section 200.065(2)(a)1., F.S.

⁵ Section 200.065, F.S.

⁶ The following information was obtained from The Florida Legislature's Office of Economic and Demographic Research, 2014 LOCAL GOVERNMENT FINANCIAL INFORMATION HANDBOOK, 15 (Dec. 2014).

⁷ See *Harris v. Wilson*, 693 So. 2d 945 (Fla. 1997); *City of Hallandale v. Meekins*, 237 So. 2d 578 (Fla. 2d DCA 1977); *South Trail Fire Control Dist., Sarasota County v. State*, 273 So. 2d 380 (Fla. 1973); and *Sarasota County v. Sarasota Church of Christ*, 641 So. 2d 900 (Fla. 2d DCA 1994).

- The assessment must be apportioned fairly and reasonably among the properties that receive the special benefit.⁸

Local governments may collect these special assessments, or “non-ad valorem assessments,” on the annual ad valorem tax bills. Section 197.3632, F.S., provides procedures for including non-ad valorem assessments on annual ad valorem tax bills.

Supplemental Method of Making Local Improvements

Independent of a municipality’s authority to impose special assessments under its home rule powers, ch. 170, F. S., provides a supplemental and alternative method for making municipal improvements. Specifically, s. 170.201(1), F.S., provides that:

The governing body of a municipality may levy and collect special assessments to fund capital improvements and municipal services including, but not limited to, fire protection, emergency medical services, garbage disposal, sewer improvement, street improvement and parking facilities. The governing body of a municipality may apportion costs of such special assessment on:

- The front or square footage of each parcel of land; or
- An alternative methodology, so long as the amount of the assessment for each parcel of land is not in excess of the proportional benefits as compared to other assessments on other parcels of land.

Although subsection (1) of s. 170.201, F.S., does not explicitly list law enforcement services, the language “including, but not limited to” provides that this is not an exclusive list.

Municipal Service Taxing or Benefit Units

Counties may establish municipal service taxing or benefit units (MSTUs) for any part or all of the county’s unincorporated area in order to provide a number of county or municipal services. Such services can be funded, in whole or in part, from special assessments.⁹ To the extent not inconsistent with general or special law, counties may also create special districts to include both incorporated and unincorporated areas, upon the approval of the affected municipality’s governing body, which may be provided municipal services and facilities from funds derived from service charges, special assessments, or taxes within the district only.¹⁰

Special Assessments for Law Enforcement Services

In 1998, the Attorney General’s Office issued Opinion 98-57, stating that “the imposition of special assessments to fund general law enforcement would not appear to be permissible in light of the” Florida Supreme Court decision, *Lake County v. Water Oak Management*.¹¹

⁸ *City of Boca Raton v. State*, 595 So. 2d 25, 29 (Fla. 1992).

⁹ Section 125.01(1)(q)-(r), F.S.

¹⁰ Section 125.01(5), F.S.

¹¹ Op. Atty. Gen. Fla. 98-57 (Sept. 18, 1998) *citing* 695 So. 2d 667 (Fla. 1997).

In *Lake County*, the Fifth District Court of Appeal struck down a special assessment for fire protection services provided by the county on the grounds that there was no special benefit to the properties on which the fire protection special assessment was imposed.

On appeal, the Florida Supreme Court stated that the “test is not whether the services confer a ‘unique’ benefit or are different in type or degree . . . rather the test is whether there is a logical relationship between services provided and the benefit to real property.”¹² In support of a previous 1969 Supreme Court decision, the court held that “fire protection services do, at a minimum, specifically benefit real property by providing for lower insurance premiums and enhancing the value of the property.”¹³ The Court further stated that the assessment still must meet the second prong of the test and be properly apportioned to the benefit received. Absent the proper apportionment, the assessment becomes an unauthorized tax.

In conclusion the court held that:

Clearly, services such as general law enforcement activities, the provision of courts, and indigent health care are, like fire protection services, functions required for an organized society. However, unlike fire protection services, those services provide no direct, special benefit to real property.¹⁴

In 2005, the First District Court of Appeal held that special assessments for law enforcement services in an MSTU that benefited leaseholds were a valid special assessment.¹⁵ In that case, the leaseholds subject to the special assessment were located on an island with “unique tourist and crowd control needs requiring specialized law enforcement services to protect the value of the leasehold property.” For these reasons, the court held that the “unique nature and needs of the subject leaseholds” made the special assessments valid.

Based on these court decisions and the 1998 Attorney General Opinion, it would appear that, absent a unique condition of the properties benefited, a municipality currently does not have the authority to levy assessments for general law enforcement services even if the assessment provides a special benefit to the property.

III. Effect of Proposed Changes:

Section 1 creates s. 166.212, F.S., to allow a municipality to levy a special assessment to fund the costs of providing law enforcement services. The municipality must develop an apportionment methodology and reduce its ad valorem millage.

The municipality’s apportionment methodology must apportion the cost of law enforcement services among the parcels of real property in the municipality in reasonable proportion to the benefit each parcel receives. The apportionment may be based on the following factors:

- The square footage of structures on the parcel;
- The location and use of the parcel;

¹² *Lake County* 695 So. 2d at 669.

¹³ *Id.* citing *Fire Dist. No. 1 v. Jenkins*, 221 So. 2d 740, 741 (Fla. 1969).

¹⁴ *Id.* at 670.

¹⁵ *Quietwater Entertainment, Inc. v. Escambia County*, 890 So. 2d 525 (Fla. 1st DCA 2005).

- The projected amount of time that the municipal law enforcement agency will spend protecting the property, grouped by neighborhood, zone, or category of use;
- The value of the property (this factor may not be a sole or major factor); and
- Any other factor that reasonably may be used to determine the benefit of law enforcement services to a parcel of property.

The municipality must reduce its ad valorem millage as follows:

- In the first year the municipality levies the special assessment, it must reduce the ad valorem millage by the millage that would be required to collect revenue equal to the revenue that is forecast to be collected from the special assessment.
- When preparing the notice of proposed property taxes¹⁶ in the first year of the assessment, the governing body of the municipality must calculate the rolled-back millage rate¹⁷ and determine the preliminary proposed millage rate as if there were no law enforcement services assessment. The preliminary proposed millage rate must then be reduced by the amount of the law enforcement services assessment.
- After the first year of the assessment, the municipality's governing body will calculate the millage rate and rolled-back rate for the notice of proposed property taxes, based on the adopted millage rate from the previous year.
- A municipality is not required to reduce its millage, excluding millage approved by a vote of the electors and millage pledged to repay bonds:
 - By more than 75 percent; or
 - By more than 50 percent, if the resolution imposing the special assessment is approved by a two-thirds vote of the governing body of the municipality.

The bill requires the property appraiser to list the special assessment on the notice of property taxes. The bill provides authorization for the Department of Revenue to adopt rules and forms necessary to administer this section.

The authorization provided in the bill is to be construed to be general law authorizing a municipality to levy taxes under Art. VII, ss. 1 and 9 of the Florida Constitution.

Section 2 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁶ Pursuant to s. 200.069, F.S.

¹⁷ Pursuant to s. 200.065(5), F.S.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not determined the fiscal impact of this bill.

B. Private Sector Impact:

Individuals that reside in municipalities that levy special assessments for law enforcement services as provided in this bill may be required to pay such special assessments for the law enforcement services they receive.

C. Government Sector Impact:

Municipalities will be permitted to levy special assessments for law enforcement services so long as they meet the provisions of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Revenue notes that complications may arise because the bill provides no deadline for a municipality to pass its resolution to levy the law enforcement service assessment.¹⁸ If a municipality passed a resolution during the later stages of the TRIM process, the collection of the assessment and adjustment to the millage rate could be problematic. Instead, a specific deadline could be established¹⁹ for a taxing authority to pass a non-ad valorem resolution to levy this assessment. Because the DOR would need to promulgate new forms and make programming changes before municipalities could implement the assessment and change their millage rate, the DOR advises that implementing any law enforcement assessments in 2015 would be difficult.

Additionally, the DOR notes that no consequences are provided for a taxing authority not calculating the rolled-back rate by reducing the amount of law enforcement services.

VIII. Statutes Affected:

This bill creates section 166.212 of the Florida Statutes.

¹⁸ Department of Revenue, *Senate Bill 780 Fiscal Analysis at 6* (Mar. 3, 2015).

¹⁹ Department of Revenue suggests April 1 for the deadline. *Id.*

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Smith

31-01021-15

2015780__

1 A bill to be entitled
 2 An act relating to a special assessment for law
 3 enforcement services; creating s. 166.212, F.S.;
 4 authorizing a municipality to levy a special
 5 assessment to fund the costs of providing law
 6 enforcement services; requiring a municipality to
 7 adopt an ordinance and reduce its ad valorem millage
 8 to levy the special assessment; providing a
 9 methodology for the apportionment of the special
 10 assessment and the reduction of the ad valorem
 11 millage; requiring the property appraiser to list the
 12 special assessment on the notice of property taxes;
 13 specifying exceptions to the reduction of the ad
 14 valorem millage by more than a certain percentage;
 15 authorizing the Department of Revenue to adopt rules
 16 and forms; providing for construction; providing an
 17 effective date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Section 166.212, Florida Statutes, is created to
 22 read:

23 166.212 Law enforcement services special assessment.—
 24 (1) GENERAL.—The governing body of a municipality may levy
 25 a law enforcement services special assessment to fund all or a
 26 portion of its costs of providing law enforcement services, if
 27 the governing body:
 28 (a) Adopts an ordinance levying the law enforcement
 29 services special assessment, which apportions the cost of law

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

31-01021-15

2015780__

30 enforcement services among the parcels of real property in the
 31 municipality in reasonable proportion to the benefit received by
 32 each parcel; and
 33 (b) Reduces its ad valorem millage pursuant to subsection
 34 (3).
 35 (2) APPORTIONMENT METHODOLOGY.—The methodology used to
 36 determine the benefit that a parcel of real property derives
 37 from law enforcement services may be based on the following:
 38 (a) The square footage of structures on the parcel.
 39 (b) The location of the parcel.
 40 (c) The use of the parcel.
 41 (d) The projected amount of time that the municipal law
 42 enforcement agency will spend serving and protecting the parcel,
 43 grouped by neighborhood, zone, or category of use, which may
 44 include the projected amount of time that will be spent
 45 responding to calls for law enforcement services and the
 46 projected amount of time that law enforcement officers will
 47 spend patrolling or regulating traffic on the streets that
 48 provide access to the parcel.
 49 (e) The value of the real property that is served or
 50 protected, including the value of each structure on the parcel
 51 and the structure's contents. However, this factor may not be
 52 used as the sole factor or as a major factor in determining the
 53 benefit of law enforcement services to a parcel of real
 54 property.
 55 (f) Any other factor that may reasonably be used to
 56 determine the benefit of law enforcement services to a parcel of
 57 real property.
 58 (3) REDUCTION IN AD VALOREM MILLAGE.—

Page 2 of 4

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31-01021-15

2015780__

59 (a) In the first year that the special assessment is
 60 levied, the governing body of the municipality must reduce its
 61 ad valorem millage, calculated as if there were no law
 62 enforcement services assessment, by the millage that would be
 63 required to collect revenue equal to the revenue that is
 64 forecast to be collected from the special assessment.

65 (b) When preparing the notice of proposed property taxes
 66 pursuant to s. 200.069 in the first year of the assessment, the
 67 governing body of the municipality shall calculate the rolled-
 68 back millage rate pursuant to s. 200.065(5) and shall determine
 69 the preliminary proposed millage rate as if there were no law
 70 enforcement services assessment. The governing body shall then
 71 adopt the proposed law enforcement services assessment and
 72 determine the equivalent millage rate pursuant to paragraph (a).
 73 The preliminary proposed millage rate shall then be reduced by
 74 the amount of the law enforcement services assessment equivalent
 75 millage rate and the resulting millage rate shall then be
 76 reported to the property appraiser, together with the amount of
 77 the law enforcement services assessment, pursuant to the notice
 78 requirements of ss. 200.065 and 200.069. The property appraiser
 79 shall list the law enforcement services assessment on the notice
 80 of proposed property taxes below the line in the columns
 81 reserved for non-ad valorem assessments. After the first year of
 82 the assessment, the millage rate and rolled-back rate for the
 83 notice of proposed property taxes shall be calculated pursuant
 84 to s. 200.065(5) and shall be based on the adopted millage rate
 85 from the previous year.

86 (c) Notwithstanding paragraph (a), the governing body of a
 87 municipality is not required to reduce its millage, excluding

Page 3 of 4

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31-01021-15

2015780__

88 millage approved by a vote of the electors and millage pledged
 89 to repay bonds, by more than 75 percent, or by more than 50
 90 percent if the ordinance levying the law enforcement services
 91 assessment is approved by a two-thirds vote of the governing
 92 body of the municipality.

93 (4) RULES AND FORMS.—The Department of Revenue may adopt
 94 rules and forms necessary to administer this section.

95 (5) CONSTRUCTION.—The levy of a law enforcement services
 96 special assessment pursuant to this section shall be construed
 97 as being authorized by general law in accordance with ss. 1 and
 98 9, Art. VII of the State Constitution.

99 Section 2. This act shall take effect July 1, 2015.

Page 4 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



The Florida Senate

Committee Agenda Request

To: Senator Dorothy L. Hukill, Chair
Committee on Finance and Tax

Subject: Committee Agenda Request

Date: March 11, 2015

I respectfully request that **Senate Bill #780**, relating to Special Assessment for Law Enforcement Services, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Christopher L. Smith", written over a horizontal line.

Senator Christopher L. Smith
Florida Senate, District 31

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4.7.15

Meeting Date

750

Bill Number (if applicable)

Topic Special Assessment

Amendment Barcode (if applicable)

Name Ken Koczynski "cop-CHEN-ski"

Job Title Lobbyist

Address 300 East Brevard St

Phone 222-3329

Street

Talla FL 32301

Email Ken@flpba.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Fla PBA Inc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

~~04/07/15~~ 04/07/15
Meeting Date

780
Bill Number (if applicable)

Topic Law Enforcement Assessment

Amendment Barcode (if applicable)

Name Dave Ericks

Job Title Lobbyist

Address 205 S Adams St

Phone 850-591-7550

Tallahassee FL 32303
City State Zip

Email Dave@ericksconsultants.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing CITY OF NORTH LAUDERDALE

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4-7-15

Meeting Date

780

Bill Number (if applicable)

Topic Special Assessments for Law Enforcement

Amendment Barcode (if applicable)

Name Amber Hughes

Job Title Legislative Advocate

Address PO Box 1757

Phone 701-3621

Street

Tall

City

State

Zip

Email ahughes@flcities.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

APPEARANCE RECORD

4-7-15

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

SB 780

Meeting Date

Bill Number (if applicable)

Topic LAW ENF Services Assessment

Amendment Barcode (if applicable)

Name DAVID SIGERSON

Job Title _____

Address 1121 S Military Tr

Phone 954 336-3544

Street

Deerfield Bch FL 33442

Email SIGERSONATLAW@aol.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing City of Margate

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: CS/CS/SB 924

INTRODUCER: Finance and Tax Committee; Community Affairs Committee and Senator Hays

SUBJECT: Property Prepared for a Tax-exempt Use

DATE: April 7, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 924 expands the ad valorem tax exemption for an exempt organization that is taking “affirmative steps” to prepare property to be used for an exempt purpose. Current law grants this treatment to educational institutions, religious organizations, and 501(c)(3) organizations that provide affordable housing. The bill expands the exemption to all property being prepared for an educational, literary, scientific, religious or charitable purpose.

The Revenue Estimating Conference has determined that the bill reduces local government revenues by \$1 million in Fiscal Year 2015-2016, with a recurring negative impact of \$1 million.

The bill is effective July 1, 2015.

II. Present Situation:

Property Tax Assessments

All property must be assessed at just value for ad valorem tax purposes.¹ Just value has been interpreted by the courts to mean fair market value, or what a willing buyer would pay a willing seller for the property in an arm’s length transaction.²

¹ FLA. CONST. art. VII, s. 4.

² See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

The Florida Constitution authorizes the Legislature to provide an exemption for property predominantly used for educational, literary, scientific, religious or charitable purposes by general law.³

Property Entitled to Educational, Literary, Scientific, Religious, or Charitable Exemptions

Property used predominantly for educational, literary, scientific, religious, or charitable purposes is exempt.⁴ In determining whether the property is predominantly used for an exempt purpose, the property appraiser must consider the nature and extent of the qualifying activity compared to other activities performed by the organization owning the property, and the availability of the property for use by other charitable or other qualifying entities.⁵ Only the portions of the property used predominantly for an exempt purpose may be exempt from ad valorem taxation.

Affirmative Steps

Property is also exempt when the owner has taken affirmative steps to prepare for exempt use. This treatment is authorized for property owned by an educational institution that is being prepared for educational use,⁶ property owned by an exempt organization that is being prepared as a house of public worship,⁷ and property owned by a 501(c)(3) organization that is being prepared to provide affordable housing to extremely-low, very-low, low, and moderate income persons or families.⁸ These properties are exempt from tax while they are being prepared for exempt use if the owner has taken “affirmative steps” to prepare the property for exempt use. As such, this treatment is commonly referred to as “affirmative steps” treatment.

The term "affirmative steps" is defined to mean:

- Environmental or land use permitting activities,
- Creation of architectural or schematic drawings,
- Land clearing or site preparation,
- Construction or renovation activities, or
- Other similar activities that demonstrate a commitment to an exempt use.⁹

The affirmative steps treatment for affordable housing requires that the property appraiser assess the property owner if the property is transferred for a purpose other than affordable housing or otherwise is not in actual use to provide affordable housing within five years after first being granted affirmative steps treatment.¹⁰ The property appraiser may grant an extension if the property owner can demonstrate that the owner is still taking affirmative steps.¹¹ Otherwise, the property appraiser is required to assess the unpaid taxes, plus 15 percent interest and a penalty

³ FLA. CONST. art. VII, s. 3(a).

⁴ Sections 196.196(2) and 196.198, F.S. *See also* s. 196.1978, F.S. (providing that certain property used to provide affordable housing is property used for a charitable purpose).

⁵ Section 196.196(1)(a)-(b), F.S.

⁶ Section 196.198, F.S.

⁷ Section 196.196(3), F.S. “Public worship” is defined to mean religious worship services and incidental activities such as educational activities, parking, recreation, partaking of meals, and fellowship.

⁸ Section 196.196(5)(a), F.S.

⁹ Sections 196.196(3),(5)(a), and 196.198, F.S.

¹⁰ Section 196.196(5)(b), F.S.

¹¹ Section 196.196(5)(b)4, F.S.

equal to 50 percent of the taxes owed. The taxpayer has 30 days to pay the taxes, penalties and interest, after which the property appraiser must file a lien against any property owned by the organization.¹²

III. Effect of Proposed Changes:

Section 1 creates s. 196.1955, F.S., to consolidate the current affirmative steps provisions into a single statute and extends the affirmative steps treatment to all property owned by an exempt organization and being prepared for an exempt educational, literary, scientific, religious, or charitable use. The bill retains the current definition of “affirmative steps” and all organizations that qualify for affirmative steps treatment under current law (educational institutions, religious organizations, and 501(c)(3) organizations that provide affordable housing) continue to qualify for such treatment under the bill.

The bill provides that if property granted affirmative steps treatment is transferred for a nonexempt purpose or is not in actual use for an exempt purpose within five years, the property appraiser shall assess back taxes plus 15 percent interest. A tax lien will be placed on property to collect these taxes if the property owner does not pay the assessment within 30 days. The tax lien provision does not apply to property that an exempt organization is preparing for use as a house of public worship.

Sections 2 and 3 delete the current affirmative steps provisions in ss. 196.196 and 196.198, F.S.

Section 4 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(b) of the Florida Constitution states that “[e]xcept upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that the municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.”

Article VII, section 18(d) of the Florida Constitution provides an exemption from the mandates provision for laws having an insignificant fiscal impact. Therefore, the bill may be exempt.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹² Section 196.196(5)(b), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has determined that will reduce local property taxes by \$1 million annually, beginning in Fiscal Year 2015-2016.

B. Private Sector Impact:

Exempt organizations that own real property and take affirmative steps to prepare that property for an exempt purpose will receive an exemption from ad valorem taxation.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 196.196 and 196.198.

This bill creates section 196.1955 of the Florida Statutes.

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Finance and Tax on April 7, 2015:

The CS/CS requires the property appraiser to file a tax lien when property is not used for

an exempt purpose or is transferred within five years of being granted affirmative steps treatment, rather than leaving the lien up to the property appraiser's discretion.

CS by Community Affairs on March 10, 2015:

Changes a word to make it permissive for a property appraiser to serve a tax lien against a property that is not in an exempt use within five years, instead of mandatory.

B. Amendments:

None.



475658

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2015	.	
	.	
	.	
	.	

The Committee on Finance and Tax (Hukill) recommended the following:

Senate Amendment

Delete line 46
and insert:
property appraiser making such determination shall serve
upon the

By the Committee on Community Affairs; and Senator Hays

578-02122-15

2015924c1

1 A bill to be entitled
 2 An act relating to property prepared for a tax-exempt
 3 use; creating s. 196.1955, F.S.; consolidating and
 4 revising provisions relating to obtaining an ad
 5 valorem exemption for property owned by an exempt
 6 organization, including the requirement that the owner
 7 of an exempt organization take affirmative steps to
 8 demonstrate an exempt use; authorizing the property
 9 appraiser to serve a notice of tax lien on exempt
 10 property that is not in actual exempt use after a
 11 certain time; providing that the lien attaches to any
 12 property owned by the organization identified in the
 13 notice of lien; providing that the provisions
 14 authorizing the tax lien do not apply to a house of
 15 public worship; defining the term "public worship";
 16 amending s. 196.196, F.S.; deleting provisions
 17 relating to the exemption as it applies to public
 18 worship and affordable housing and provisions that
 19 have been moved to s. 196.1955, F.S.; amending s.
 20 196.198, F.S.; deleting provisions relating to
 21 property owned by an educational institution and used
 22 for an educational purpose that is included in s.
 23 196.1955, F.S.; providing an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Section 196.1955, Florida Statutes, is created
 28 to read:
 29 196.1955 Preparing property for educational, literary,

Page 1 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

578-02122-15

2015924c1

30 scientific, religious, or charitable use.-
 31 (1) Property owned by an exempt organization is used for an
 32 exempt purpose if the owner has taken affirmative steps to
 33 prepare the property for an exempt educational, literary,
 34 scientific, religious, or charitable use and no portion of the
 35 property is being used for a nonexempt purpose. The term
 36 "affirmative steps" means environmental or land use permitting
 37 activities, creation of architectural plans or schematic
 38 drawings, land clearing or site preparation, construction or
 39 renovation activities, or other similar activities that
 40 demonstrate a commitment to prepare the property for an exempt
 41 use.
 42 (2) (a) If property owned by an organization granted an
 43 exemption under this section is transferred for a purpose other
 44 than an exempt use or is not in actual exempt use within 5 years
 45 after the date the organization is granted an exemption, the
 46 property appraiser making such determination may serve upon the
 47 organization that received the exemption a notice of intent to
 48 record in the public records of the county a notice of tax lien
 49 against any property owned by that organization in the county,
 50 and such property must be identified in the notice of tax lien.
 51 The organization owning such property is subject to the taxes
 52 otherwise due and owing as a result of the failure to use the
 53 property in an exempt manner plus 15 percent interest per annum.
 54 1. The lien, when filed, attaches to any property
 55 identified in the notice of tax lien owned by the organization
 56 that received the exemption. If the organization no longer owns
 57 property in the county but owns property in any other county in
 58 the state, the property appraiser shall record in each such

Page 2 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

578-02122-15

2015924c1

59 county a notice of tax lien identifying the property owned by
 60 the organization in each respective county, which shall become a
 61 lien against the identified property.

62 2. Before such lien may be filed, the organization so
 63 notified must be given 30 days to pay the taxes and interest.

64 3. If an exemption is improperly granted as a result of a
 65 clerical mistake or an omission by the property appraiser, the
 66 organization improperly receiving the exemption may not be
 67 assessed interest.

68 4. The 5-year limitation specified in this subsection may
 69 be extended by the property appraiser if the holder of the
 70 exemption continues to take affirmative steps to develop the
 71 property for the purposes specified in this subsection.

72 (b) This subsection does not apply to property being
 73 prepared for use as a house of public worship. The term "public
 74 worship" means religious worship services and those activities
 75 that are incidental to religious worship services, such as
 76 educational activities, parking, recreation, partaking of meals
 77 and fellowship.

78 Section 2. Subsections (3), (4), and (5) of section
 79 196.196, Florida Statutes, are amended to read:

80 196.196 Determining whether property is entitled to
 81 charitable, religious, scientific, or literary exemption.-

82 ~~(3) Property owned by an exempt organization is used for a~~
 83 ~~religious purpose if the institution has taken affirmative steps~~
 84 ~~to prepare the property for use as a house of public worship.~~

85 ~~The term "affirmative steps" means environmental or land use~~
 86 ~~permitting activities, creation of architectural plans or~~
 87 ~~schematic drawings, land clearing or site preparation,~~

578-02122-15

2015924c1

88 ~~construction or renovation activities, or other similar~~
 89 ~~activities that demonstrate a commitment of the property to a~~
 90 ~~religious use as a house of public worship. For purposes of this~~
 91 ~~subsection, the term "public worship" means religious worship~~
 92 ~~services and those other activities that are incidental to~~
 93 ~~religious worship services, such as educational activities,~~
 94 ~~parking, recreation, partaking of meals, and fellowship.~~

95 (3)(4) Except as otherwise provided in this section herein,
 96 property claimed as exempt for literary, scientific, religious,
 97 or charitable purposes which is used for profitmaking purposes
 98 is shall be subject to ad valorem taxation. Use of property for
 99 functions not requiring a business or occupational license
 100 conducted by the organization at its primary residence, the
 101 revenue of which is used wholly for exempt purposes, is shall
 102 not be considered profitmaking profit making. In this connection
 103 the playing of bingo on such property is shall not be considered
 104 as using such property in such a manner as would impair its
 105 exempt status.

106 ~~(5)(a) Property owned by an exempt organization qualified~~
 107 ~~as charitable under s. 501(c)(3) of the Internal Revenue Code is~~
 108 ~~used for a charitable purpose if the organization has taken~~
 109 ~~affirmative steps to prepare the property to provide affordable~~
 110 ~~housing to persons or families that meet the extremely-low-~~
 111 ~~income, very-low-income, low-income, or moderate-income limits,~~
 112 ~~as specified in s. 420.0004. The term "affirmative steps" means~~
 113 ~~environmental or land use permitting activities, creation of~~
 114 ~~architectural plans or schematic drawings, land clearing or site~~
 115 ~~preparation, construction or renovation activities, or other~~
 116 ~~similar activities that demonstrate a commitment of the property~~

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117 to providing affordable housing.

118 ~~(b)1. If property owned by an organization granted an~~
 119 ~~exemption under this subsection is transferred for a purpose~~
 120 ~~other than directly providing affordable homeownership or rental~~
 121 ~~housing to persons or families who meet the extremely low-~~
 122 ~~income, very-low-income, low-income, or moderate-income limits,~~
 123 ~~as specified in s. 420.0004, or is not in actual use to provide~~
 124 ~~such affordable housing within 5 years after the date the~~
 125 ~~organization is granted the exemption, the property appraiser~~
 126 ~~making such determination shall serve upon the organization that~~
 127 ~~illegally or improperly received the exemption a notice of~~
 128 ~~intent to record in the public records of the county a notice of~~
 129 ~~tax lien against any property owned by that organization in the~~
 130 ~~county, and such property shall be identified in the notice of~~
 131 ~~tax lien. The organization owning such property is subject to~~
 132 ~~the taxes otherwise due and owing as a result of the failure to~~
 133 ~~use the property to provide affordable housing plus 15 percent~~
 134 ~~interest per annum and a penalty of 50 percent of the taxes~~
 135 ~~owed.~~

136 ~~2. Such lien, when filed, attaches to any property~~
 137 ~~identified in the notice of tax lien owned by the organization~~
 138 ~~that illegally or improperly received the exemption. If such~~
 139 ~~organization no longer owns property in the county but owns~~
 140 ~~property in any other county in the state, the property~~
 141 ~~appraiser shall record in each such other county a notice of tax~~
 142 ~~lien identifying the property owned by such organization in such~~
 143 ~~county which shall become a lien against the identified~~
 144 ~~property. Before any such lien may be filed, the organization so~~
 145 ~~notified must be given 30 days to pay the taxes, penalties, and~~

Page 5 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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146 ~~interest.~~

147 ~~3. If an exemption is improperly granted as a result of a~~
 148 ~~clerical mistake or an omission by the property appraiser, the~~
 149 ~~organization improperly receiving the exemption shall not be~~
 150 ~~assessed a penalty or interest.~~

151 ~~4. The 5-year limitation specified in this subsection may~~
 152 ~~be extended if the holder of the exemption continues to take~~
 153 ~~affirmative steps to develop the property for the purposes~~
 154 ~~specified in this subsection.~~

155 Section 3. Section 196.198, Florida Statutes, is amended to
 156 read:

157 196.198 Educational property exemption.-

158 (1) Educational institutions within this state and their
 159 property used by them or by any other exempt entity or
 160 educational institution exclusively for educational purposes are
 161 exempt from taxation.

162 (a) Sheltered workshops providing rehabilitation and
 163 retraining of individuals who have disabilities and exempted by
 164 a certificate under s. (d) of the federal Fair Labor Standards
 165 Act of 1938, as amended, are declared wholly educational in
 166 purpose and are exempt from certification, accreditation, and
 167 membership requirements set forth in s. 196.012.

168 (b) Those portions of property of college fraternities and
 169 sororities certified by the president of the college or
 170 university to the appropriate property appraiser as being
 171 essential to the educational process are exempt from ad valorem
 172 taxation.

173 (c) The use of property by public fairs and expositions
 174 chartered by chapter 616 is presumed to be an educational use of

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2015924c1

175 such property and is exempt from ad valorem taxation to the
176 extent of such use.

177 (2) Property used exclusively for educational purposes
178 shall be deemed owned by an educational institution if the
179 entity owning 100 percent of the educational institution is
180 owned by the identical persons who own the property, or if the
181 entity owning 100 percent of the educational institution and the
182 entity owning the property are owned by the identical natural
183 persons.

184 (a) Land, buildings, and other improvements to real
185 property used exclusively for educational purposes shall be
186 deemed owned by an educational institution if the entity owning
187 100 percent of the land is a nonprofit entity and the land is
188 used, under a ground lease or other contractual arrangement, by
189 an educational institution that owns the buildings and other
190 improvements to the real property, is a nonprofit entity under
191 s. 501(c)(3) of the Internal Revenue Code, and provides
192 education limited to students in prekindergarten through grade
193 8.

194 (b) If legal title to property is held by a governmental
195 agency that leases the property to a lessee, the property shall
196 be deemed to be owned by the governmental agency and used
197 exclusively for educational purposes if the governmental agency
198 continues to use such property exclusively for educational
199 purposes pursuant to a sublease or other contractual agreement
200 with that lessee.

201 (c) If the title to land is held by the trustee of an
202 irrevocable inter vivos trust and if the trust grantor owns 100
203 percent of the entity that owns an educational institution that

Page 7 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

578-02122-15

2015924c1

204 is using the land exclusively for educational purposes, the land
205 is deemed to be property owned by the educational institution
206 for purposes of this exemption. ~~Property owned by an educational~~
207 ~~institution shall be deemed to be used for an educational~~
208 ~~purpose if the institution has taken affirmative steps to~~
209 ~~prepare the property for educational use. The term "affirmative~~
210 ~~steps" means environmental or land use permitting activities,~~
211 ~~creation of architectural plans or schematic drawings, land~~
212 ~~clearing or site preparation, construction or renovation~~
213 ~~activities, or other similar activities that demonstrate~~
214 ~~commitment of the property to an educational use.~~

215 Section 4. This act shall take effect July 1, 2015.

Page 8 of 8

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining, *Alternating Chair*

SENATOR ALAN HAYS
11th District

MEMORANDUM

To: Senator Dorothy Hukill Chair
Finance & Tax Committee
CC: Jose Diez-Arguelles, Staff Director
Lynn Wells, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 924 – Property Prepared for a Tax-exempt Use

Date: March 11, 2015

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays" with a stylized flourish at the end.

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/7/15

Meeting Date

924

Bill Number (if applicable)



475658

Amendment Barcode (if applicable)

Topic _____

Name Loren Levy

Job Title General Counsel, Property Appraisers' Ass'n of Fla.

Address 1828 Riggins Rd

Phone 850-219-0220

Street

Tallahassee FL 32308

Email levylawfirm@comcast.net

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Amendment only

Representing in favor of bill

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/7/15
Meeting Date

CS/SB 924
Bill Number (if applicable)

Topic Property Prepared for Tax-exempt use Amendment Barcode (if applicable)

Name Carey Baker

Job Title Lake County Property Appraiser

Address 320 W. Main St., Ste A Phone 352/253-2150

Street

City

Tavares FL 32780-3831

State

Zip

Email cbaker@lcpaf.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FLORIDA ASSOC. of Property Appraisers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: SPB 7074

INTRODUCER: Finance and Tax Committee

SUBJECT: Tobacco Products other than Cigarettes or Cigars

DATE: April 7, 2015

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Fournier	Diez-Arguelles		FT Submitted as Committee Bill

I. Summary:

SPB 7074 makes changes to definitions in s. 210, 25, F.S., concerning the tax on tobacco products other than cigarettes and cigars. It provides that the tax applies to the full price paid by a distributor to acquire tobacco products (including the federal excise tax paid by a domestic manufacturer) and to the federal excise tax on an imported product, if it is paid by the distributor. It amends the definition of “tobacco products” to provide that products made in whole or in part from tobacco leaves for use in chewing, smoking, or sniffing are tobacco products. It defines “affiliate” to mean “a manufacturer or other person that directly or indirectly, through one or more intermediaries, controls or is controlled by a distributor or that is under common control with a distributor.”

II. Present Situation:

Tobacco products other than cigarettes and cigars are taxed under Part II of ch. 210, F.S., enacted in 1985.¹ Tobacco products include:

- Loose tobacco suitable for smoking;
- Snuff;
- Snuff flour;
- Cavendish;
- Plug and twist tobacco;
- Fine cuts and other chewing tobaccos;
- Shorts;
- Refuse scraps; and
- Clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing.

“Tobacco products” does not include cigarettes, as defined by s. 210.01(1), F.S., or cigars.²

¹ Chapter 85-141, Laws of Fla.

² Section 210.25(11), F.S.

These products are subject to a surcharge levied at the rate of 60 percent,³ and a tax levied at the rate of 25 percent,⁴ of the wholesale sales price. The surcharge and tax are levied upon any person engaged in business as a distributor⁵ of tobacco products at the time the distributor:

- Brings or causes to be brought into this state from without the state tobacco products for sale;
- Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or
- Ships or transports tobacco products to retailers in this state, to be sold by those retailers.⁶

The surcharge and tax are administered by the Division of Alcoholic Beverages and Tobacco (division) of the Department of Business and Professional Regulation (DBPR), which licenses distributors⁷ and collects monthly tax returns.⁸ The division must notify a taxpayer of any tax deficiency, stating its intention to assess the amount due. The taxpayer may protest the proposed assessment and the division must hold a hearing on the protest and issue a final assessment for the amount found due.⁹

Revenue produced from the surcharge on tobacco products is deposited into the Health Care Trust Fund within the Agency for Health Care Administration.¹⁰ Revenue produced from the tax on tobacco products is deposited in the General Revenue Fund.¹¹ The estimate for total collections for Fiscal Year 2015-2016 is \$100.5 million. The Health Care Trust Fund share is \$65.2 million and the General Revenue Fund share is \$35.2 million.

The surcharge and tax on tobacco products are based on the “wholesale sales price” which means “the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any diminution by volume or other discounts.”¹²

Legal Challenges to DBPR Administration of Tobacco Products Tax and Surcharge

The statutory scheme for determining the correct amount of tax and the products subject to tax has remained largely unchanged since the tax was enacted in 1985. The statutes worked well when the distribution chain of the product included a manufacturer, a distributor, a retailer, and the products for sale were all covered by the statutory definition. Since 1985, however, the industry has become more diverse. Additional products have come on the market and the supply chain often includes multiple transactions. These products and supply arrangements are not clearly addressed by existing statutory language, and DBPR has been challenged over tax assessments in these situations.

³ Section 210.276(1), F.S.

⁴ Section 210.30(1), F.S.

⁵ “Distributor” means: (a) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from outside the state any tobacco products for sale; (b) any person who makes, manufactures, or fabricates tobacco products in this state for sale in this state; or (c) any person engaged in the business of selling tobacco outside this state who ships or transports tobacco products to retailers in this state to be sold by those retailers. (s. 210.25(4), F.S.)

⁶ Sections 210.276(1)(a),(b), and (c) and 210.30(1)(a),(b), and (c), F.S.

⁷ Section 210.45, F.S.

⁸ Section 210.55(1), F.S.

⁹ Section 210.55(2) and (3), F.S.

¹⁰ Section 210.276(7), F.S. This trust fund is subject to the General Revenue Service Charge s. 215.20(1), F.S.

¹¹ Section 210.70, F.S.

¹² Section 210.25(13), F.S.

Definition of Wholesale Sales Price

In 2012, Micjo, Inc., a Florida-licensed distributor of tobacco products, challenged DBPR's interpretation of "wholesale sales price." Micjo purchased hookah tobacco from non-Florida importers who purchased the product from overseas manufacturers. These importers paid the federal excise taxes on the products as well as delivery costs, and provided invoices to Micjo that itemized these costs. Micjo paid Florida taxes on the price the importers paid the manufacturers for tobacco but not on the total invoice amount, because federal excise taxes and delivery costs were paid by the importer, not by the manufacturer. The Second DCA¹³ agreed with Micjo's position that the federal excise tax and delivery charges paid by the importer were not part of the wholesale sales price.

It is the division's position that the Micjo decision applies only to distributors of imported tobacco products, but other tobacco products distributors have challenged the division over tax assessments or refund requests related to what is included in the "wholesale sales price" of tobacco products, based on the Micjo decision. The division has also seen a change in the way tobacco product manufacturers prepare invoices, itemizing elements such as federal excise taxes and transportation costs that previously were included in the price of the product. These challenges, which seek to expand the Micjo ruling to domestic-source products, include requests for refunds of taxes paid on these separately-stated charges and could exceed \$200 million, in addition to recurring \$50 million annual reductions in excise tax revenue.

The Micjo ruling itself, although relatively small in its revenue impact, creates an unequal playing field between tobacco products manufactured outside the United States and those produced domestically. Domestic manufacturers must pay federal excise tax (included in the wholesale sales price) while these taxes must be paid by the importers of foreign-made products (and excluded from the wholesale sales price).

Definition of Tobacco Products

On February 24, 2015, an Administrative Law Judge issued a recommended order¹⁴ finding that "blunt wraps" are not taxable as tobacco products and set aside the division's assessment against a taxpayer for the excise taxes and surcharges that the Department alleged were due. "Blunt wraps" are used to wrap tobacco or other products for smoking, and are made from tobacco sweepings, cellulose, and glue or are punched out of whole tobacco leaves. They were not a commercial product in 1985 when the statutory definition of "tobacco products" was created, and the judge found that:

"DBPR's interpretation of section 210.25(11), F.S., as including blunt wraps within the specialized definition of "tobacco products" is erroneous and unreasonably enlarges the taxing authority in contravention of the plain language of the statute."¹⁵

¹³ *Micjo, Inc. v. Department of Business and Professional Regulation*, 78 So. 3d. 124 (Fla. 2d. DCA 2012).

¹⁴ *Brandy's Products, Inc. v. Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco*, Case No. 14-3496 (Fla. DOAH 2015).

¹⁵ *Id.* p. 20.

The potential revenue impact of a final decision favoring the plaintiffs is a loss of \$3 million recurring and \$9 million in refunds. It also suggests that as new tobacco products are introduced into the market they may not be subject to the tax and surcharge unless they are specifically listed in the statute.

III. Effect of Proposed Changes:

Section 1 amends the definitions of “tobacco products” and “wholesale sales price” and creates a definition of “affiliate” in s. 210.25, F.S. It codifies the division’s current administration of these laws with respect to domestically-manufactured products, and provides that the wholesale sales price for imported products must include the federal excise tax regardless of who pays that tax. It amends the definition of tobacco products to include products that have been introduced to the market since the statute was originally enacted.

The bill defines “wholesale sales price” as the total amount paid by the distributor to obtain tobacco products. It is the sum of:

- (a) The full price paid by the distributor to acquire the tobacco products, including charges by the seller for the cost of materials, cost of labor and service, charge for transportation and delivery, the federal excise tax, and any other charge, even if the charge is listed as a separate item on the invoice paid by the distributor, exclusive of any diminution by volume or other discounts, including a discount extended to a distributor by an affiliate, and
- (b) The federal excise tax paid by the distributor on the tobacco products, if the tax is not included in the full price under paragraph (a).

The bill defines “affiliate” to mean “a manufacturer or other person that directly or indirectly, through one or more intermediaries, controls or is controlled by a distributor or that is under common control with a distributor.” This definition is needed to ensure that the price on which the tax is based is not diminished by a discount resulting from an affiliation between the distributor and another entity.

The bill amends the definition of tobacco products to include “all other kinds and forms of products, including wraps, made in whole or in part from tobacco leaves for use in chewing, smoking, or sniffing.”

Section 2 amends s. 951.22, F.S., to correct a cross-reference.

The effective date of the bill is July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has determined that changes made by the bill to the tobacco products tax statute are consistent with the division's current administration of the tax on domestically-manufactured tobacco products and have no tax impact with respect to those products. For distributors that buy products directly from overseas manufacturers or from out-of-state importers (as in *Micjo, Inc. v. Department of Business and Professional Regulation*) the Revenue Estimating Conference has determined that the bill will have a positive indeterminate impact on state revenue, as it will include federal excise tax and other charges paid by the out-of-state importer.

B. Private Sector Impact:

This bill provides that distributors of tobacco products are taxed on the full price paid to acquire the tobacco product. This interpretation of the term "wholesale sales price" is the division's position as to the meaning of the term for domestically-manufactured tobacco products. For distributors operating under the same circumstances as Micjo, Inc., namely, buying products from an out-of-state importer, or for distributors importing products from overseas manufacturers, the bill will increase the tax due by including the federal excise tax in the wholesale sales price, creating parity with distributors buying domestic products.

C. Government Sector Impact:

By amending the definitions of "tobacco products" and "wholesale sales price" this bill may reduce future litigation costs for the division. In the current fiscal year the division has spent \$61,080 for representation by the Attorney General's office in litigation related to issues this bill will clarify. Litigation of four ongoing cases is expected to cost approximately \$24,000 for each. Additional challenges have been filed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 210.25 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



849476

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/07/2015	.	
	.	
	.	
	.	

The Committee on Finance and Tax (Soto) recommended the following:

Senate Amendment (with title amendment)

Delete lines 72 - 73
and insert:

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

And the title is amended as follows:

Delete lines 7 - 8
and insert:

1
2
3
4
5
6
7
8
9
10



849476

11

conforming a cross-reference; providing an

FOR CONSIDERATION By the Committee on Finance and Tax

593-02847A-15

20157074pb

A bill to be entitled

An act relating to tobacco products other than cigarettes or cigars; amending s. 210.25, F.S.; defining the term "affiliate"; clarifying the definitions of the terms "tobacco products" and "wholesale sales price"; amending s. 951.22, F.S.; conforming a cross-reference; providing that the act is intended to clarify existing law; providing an effective date.

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

Section 1. Present subsections (1) and (2) of section 210.25, Florida Statutes, are redesignated as subsections (2) and (3), respectively, a new subsection (1) is added to that section, present subsection (3) of that section is redesignated as subsection (5), present subsections (5) through (13) of that section are redesignated as subsections (6) through (14), respectively, and present subsections (11) and (13) of that section are amended, to read:

210.25 Definitions.—As used in this part:

(1) "Affiliate" means a manufacturer or other person that directly or indirectly, through one or more intermediaries, controls or is controlled by a distributor or that is under common control with a distributor.

(12)(11) "Tobacco products" means loose tobacco suitable for smoking; snuff; snuff flour; loose tobacco; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco;

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593-02847A-15

20157074pb

and all other kinds and forms of products, including wraps, made in whole or in part from tobacco leaves for use tobacco prepared in such manner as to be suitable for chewing, smoking, or sniffing. The term, but "~~tobacco products~~" does not include cigarettes, as defined by s. 210.01(1), or cigars.

(14)(13) "Wholesale sales price" means the sum of paragraphs (a) and (b):

(a) The full price paid by the distributor to acquire the tobacco products, including charges by the seller for the cost of materials, cost of labor and service, charge for transportation and delivery, the federal excise tax, and any other charge, even if the charge is listed as a separate item on the invoice paid by the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any diminution by volume or other discounts, including a discount provided to a distributor by an affiliate.

(b) The federal excise tax paid by the distributor on the tobacco products, if the tax is not included in the full price under paragraph (a).

Section 2. Subsection (1) of section 951.22, Florida Statutes, is amended to read:

951.22 County detention facilities; contraband articles.—

(1) It is unlawful, except through regular channels as duly authorized by the sheriff or officer in charge, to introduce into or possess upon the grounds of any county detention facility as defined in s. 951.23 or to give to or receive from any inmate of any such facility wherever said inmate is located at the time or to take or to attempt to take or send therefrom any of the following articles which are hereby declared to be

Page 2 of 3

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593-02847A-15

20157074pb

59 contraband for the purposes of this act, to wit: Any written or
60 recorded communication; any currency or coin; any article of
61 food or clothing; any tobacco products as defined in s.
62 210.25~~(12)(11)~~; any cigarette as defined in s. 210.01(1); any
63 cigar; any intoxicating beverage or beverage which causes or may
64 cause an intoxicating effect; any narcotic, hypnotic, or
65 excitative drug or drug of any kind or nature, including nasal
66 inhalators, sleeping pills, barbiturates, and controlled
67 substances as defined in s. 893.02(4); any firearm or any
68 instrumentality customarily used or which is intended to be used
69 as a dangerous weapon; and any instrumentality of any nature
70 that may be or is intended to be used as an aid in effecting or
71 attempting to effect an escape from a county facility.

72 Section 3. The amendment made by this act to s. 210.25,
73 Florida Statutes, is intended to clarify existing law.

74 Section 4. This act shall take effect July 1, 2015.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/7/15

Meeting Date

SB 7074

Bill Number (if applicable)

849476

Amendment Barcode (if applicable)

Topic Tax on Topic Products

Name David Shepp

Job Title Consultant

Address P.O. Box 3739

Phone 863 581-4250

Street

Lakeland

FL

33802

Email sheppesostrategy.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Association of Wholesale Distributors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/7/15

Meeting Date

7074

Bill Number (if applicable)

Sos Amendment

Amendment Barcode (if applicable)

Topic Amendment

Name Mario J. Bailey

Job Title Gov relations consultant

Address 2700 N. Miami Ave Apt 211

Phone 205-246-3932

Street

Miami

City

FL

State

33127

Zip

Email mariojbailey@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing New Image Global

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/7/15

Meeting Date

7074

Bill Number (if applicable)

Topic Other tobacco

Amendment Barcode (if applicable)

Name Mario Bailey

Job Title Government relations consultant

Address 2700 W. Miami Ave Apt 211

Phone 205-246-3932

Street

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing New Image Global

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Finance and Tax
Regulated Industries
Rules

SENATOR MIGUEL DIAZ de la PORTILLA

40th District

April 7, 2015

The Honorable Dorothy Hukill
Chair
Finance and Tax Committee

Via Email

Dear Chair Hukill:

I emailed the committee this morning that I would be late to the meeting, because I was presenting a bill in Criminal Justice. However, Finance and Tax adjourned while I was still in Criminal Justice.

Please show me as an excused absence today.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Miguel Diaz de la Portilla", written over a horizontal line.

Miguel Diaz de la Portilla
Senator, District 40

A handwritten signature in black ink, appearing to read "Dorothy Hukill", written over a horizontal line and preceded by an "X" mark.

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Rules, *Vice Chair*
Judiciary
Appropriations Subcommittee on Criminal and
Civil Justice
Finance and Tax
Environmental Preservation and Conservation
Ethics and Elections

SELECT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DARREN SOTO

Minority Caucus Rules Chair
14th District

April 7, 2015

The Honorable Dorothy Hukill
Committee on Finance and Tax
207 The Capitol
404 South Monroe Street
Tallahassee, FL 32399-1100

RE: Requested Excuse for Absence

Dear Chairman Hukill,

I respectfully request to be excused from the Committee on Finance and Tax meeting which was scheduled to meet April 7th at 10:00 am. I had to present a bill which was heard in a different committee and I was unable to make it to your committee before the adjournment. I can assure you that this will not become a regular practice for me. I fully intend to be present at all future meetings of this committee.

If you have any questions, please contact me directly at 321-332-5308.

Sincerely,

Handwritten signature of Darren M. Soto in cursive.

Darren M. Soto
State Senator, District 14

Handwritten signature of Dorothy L. Hukill in cursive, with an "X" to the left of the signature.

REPLY TO:

□ 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

CourtSmart Tag Report

Room: SB 401

Case:

Type:

Caption: Senate Finance and Tax Committee Judge:

Started: 4/7/2015 10:18:19 AM

Ends: 4/7/2015 10:38:11 AM

Length: 00:19:53

10:18:22 AM Sen. Hukill (Chair)
10:19:09 AM CS/SB 924
10:19:14 AM Sen. Hays
10:19:57 AM Sen. Hukill
10:20:05 AM Sen. Abruzzo (Chair)
10:20:14 AM Am. 475658
10:20:19 AM Sen. Hukill
10:22:17 AM Loren Levy, General Counsel, Property Appraisers' Association of Florida
10:23:52 AM Sen. Abruzzo
10:23:59 AM Sen. Hukill
10:24:25 AM Sen. Abruzzo
10:24:28 AM Sen. Hukill (Chair)
10:24:37 AM Cary Baker, Lake County Property Appraiser, Florida Association of Property Appraisers (waives in support)
10:24:43 AM Sen. Hukill
10:24:52 AM Sen. Hays
10:24:56 AM Sen. Hukill
10:25:38 AM SB 572
10:25:44 AM Sen. Montford
10:26:35 AM Sen. Hukill
10:26:45 AM Sen. Montford
10:26:47 AM Sen. Hukill
10:27:11 AM SB 780
10:27:16 AM Sen. Smith
10:27:32 AM Sen. Hukill
10:27:40 AM Sen. Margolis
10:27:48 AM Sen. Smith
10:28:12 AM Sen. Hukill
10:28:20 AM Ken Kopczynski, Florida PBA, Inc. (waives in support)
10:28:32 AM Dave Ericks, City of North Lauderdale (waives in support)
10:28:38 AM Amber Hughes, Florida League of Cities (waives in support)
10:28:43 AM David Sigerson, City of Margate (waives in support)
10:29:13 AM Sen. Smith
10:29:18 AM Sen. Hukill
10:30:03 AM Sen. Abruzzo (chair)
10:30:05 AM SB 752
10:30:09 AM Sen. Hukill
10:30:43 AM Sen. Abruzzo
10:30:51 AM Darrick McGhee, Halifax Health (waives in support)
10:31:01 AM Sen. Abruzzo
10:31:39 AM Sen. Hukill
10:31:57 AM SPB 7074
10:32:29 AM Ellen Fournier, Chief Legislative Analyst
10:34:36 AM Am. 849476
10:35:15 AM David Shepp, Florida Association of Wholesale Distributors
10:36:16 AM Mario Bailey, New Image Global (waives in support) - Am. 849476
10:36:28 AM Sen. Abruzzo
10:36:49 AM Mario Bailey, New Image Global (waives in opposition) - SPB 7074
10:36:53 AM Sen. Abruzzo
10:37:27 AM Sen. Hukill (Chair)
10:37:31 AM Sen. Altman
10:37:41 AM Sen. Hukill

10:37:49 AM Meeting adjourned