

STORAGE NAME: h0103a.tu
DATE: March 12, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
TOURISM
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 103

RELATING TO: Tax on Sales, Use, and Other Transactions

SPONSOR(S): Representative Jones

STATUTE(S) AFFECTED: Section 212.0607, Florida Statutes

COMPANION BILL(S): SB 234 (I)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) TOURISM YEAS 9 NAYS 0
- (2) FINANCE & TAXATION
- (3) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

This bill provides whereas clauses identifying the importance of repairing and restoring Florida's eroding beaches and the need to substantially fund such activities. The bill then provides for a two tiered surcharge on both the embarkation and debarkation of cruise ship passengers which originate at a Florida deepwater port. The Department of Revenue would collect \$5 each way from passengers taking cruises of 24 hours or more in duration and \$1 each way from passengers taking cruises of less than 24 hours in duration.

One hundred percent of the proceeds from this surcharge including interest and penalties on delinquent surcharges, which are estimated to annually raise \$25 million, would be deposited in a separate account in the Ecosystem Management and Restoration Trust Fund. The bill provides that such funds would be used for studies and projects to implement a statewide beach management plan under Chapter 161, F.S., 1996 Supplement. In addition to the provisions covered under the statewide beach management plan, the bill provides a listing of other ports-related coastal enhancement activities which would be eligible for funding in deepwater port environments.

The bill makes certain provisions regarding the administration of the surcharge including authorizing the Department of Revenue to adopt administrative rules to implement and enforce the surcharge. The Department estimates that such administration will cost the Administrative Trust Fund \$38,338 in FY 1997-98, and \$32,019 in 1998-99.

The Committee on Tourism adopted an amendment which deleted all references to a surcharge on cruise ship tickets and admissions and amended s. 161.091, F.S., 1996 Supplement, to require the Department of Environmental Protection to identify an additional dedicated funding source to fund the beach management program.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Beach Restoration

Chapter 161, F.S., 1996 Supplement, provides for the development and maintenance of a long-term management plan for the restoration of the state's critically eroding beaches by the Department of Environmental Protection (DEP). The following is a partial description of the program provided in a brochure distributed by DEP:

The Florida Beach Erosion Control Assistance Program is a grant-in-aid program established for the purpose of working in concert with local, state and federal governmental entities to achieve the protection, preservation and restoration of the coastal sandy beach resources of the state. The program is authorized by Section 161.101, Florida Statutes, and is administered under the provisions of Chapter 62B-36, Florida Administrative Code, by the Department of Environmental Protection. Eligible governmental agencies include federal, state, county and municipal governments, or special taxing districts having legal authority and responsibility for preserving and protecting sandy beach resources. Proposed projects that are approved by the Department are recommended to the Florida Legislature for funding. Projects are funded by line item legislative appropriation. The Department is authorized to pay up to 75 percent of the non-federal cost of approved projects. Funding for beach restoration and dune protection projects, and related studies, is based upon the amount of public access and parking established by Department standards. All other projects are eligible for a 75 percent state funding match.

In 1995, the Committee on Tourism and Cultural Affairs provided a report on the *Promotion and Protection of Florida's Natural Tourism Resources*. This report includes more extensive information on the history of Florida's beach erosion problems and the status of the State's beach management plan, including some local government comment on the implementation of that plan. Excerpts from the report are attached to this analysis.

Currently, s. 161.091, F.S., 1996 Supplement, provides that subject to legislative appropriation, funds from the Permit Fee Trust Fund may be used by DEP to implement the beach management plan; however, this fund is projected to have deficit income for FY 1997/98.

In FY 1996/97, the department requested approximately \$30 million for implementation of the plan through its grant-in-aid program and the State appropriated \$15.1 million from General Revenue. An additional \$31.8 million was appropriated from General Revenue for beach and dune recovery in the Panhandle due to Hurricane Opal. For FY 1997/98, the department has requested \$25.1 million to fund 27 approved projects under the beach management plan. As noted in the explanation of the plan, these funds are used to match Federal Government dollars provided through Army Corps of Engineers approved projects, and locally raised funding. The total of funds from all of these sources to be used in 1997/98 for the 27 projects is estimated to be \$89 million.

Cruise Ship Passenger Fees

Vessels passing through Florida's deepwater ports (s. 403.021(9)(b), F.S., 1996 Supplement) pay a variety of fees for the use of these ports. Such fees paid by cruise ships may be passed on to passengers as part of their ticket cost. A portion of the fee revenues goes to the individual ports and a portion goes to the Federal Government. One of the depositories of the Federal revenues is the Harbor Maintenance Trust Fund. Recent Federal legislation, the 1996 Water Resources Development Act, allows revenues in this fund to be used for the direct renourishment of eroded beaches adjacent to ports and inlets.

Florida currently collects sales taxes on the cost of tickets for cruises as an admissions tax under s. 212.04, F.S., 1996 Supplement, if the ticket charge does not entitle the passenger to be transported from a point of origin in Florida to a point of destination in another state or nation. Cruises which originate in Florida and provide the opportunity for passengers to disembark in another state or country are considered to be engaged in transportation in interstate or foreign commerce and not subject to the sales tax on admissions. This consideration was expressed in the Department of Revenue Technical Assistance Advisement 89(A)-034R, dated May 2, 1990.

B. EFFECT OF PROPOSED CHANGES:

This bill creates s. 212.0607, F.S., providing for the two tiered levy of a surcharge on the sale of cruise ship admission tickets. The amount of the surcharge depends on the duration of the cruise and is assessed on both the embarkation and debarkation of passengers on cruise ships in certain Florida deepwater ports. Those ports are identified under s. 403.021(9)(b), F.S., 1996 Supplement, and include Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina, and Key West. The Department of Revenue would collect \$5 each way from passengers taking cruises of 24 hours or more in duration and \$1 each way from passengers taking cruises of less than 24 hours in duration.

The bill specifically exempts admission fees paid or tickets purchased for the purpose of sports, commercial or recreational fishing, diving, or sightseeing. (The Department of Revenue notes that use of the term "sightseeing" in the part of the bill exempting activities is problematic because it could arguably apply to any cruise.) However, application of this surcharge on cruise ships originating only in the specified deepwater ports, has the effect of exempting any other vessels originating at other ports. The February 3, 1997 *Miami Herald* reports statistics from the *Casino Boat News* and cruise lines which show that 7 casino and day cruise industry cruise lines have vessels originating in 14 other Florida ports. A reason for the discrimination between ports appears to be given in the WHEREAS clauses of this bill which indicate that a major cause of beach erosion is the presence of [deep] channels and protective navigation structures at ports and harbors.

One hundred percent of the proceeds from this surcharge including interest and penalties on delinquent surcharges, which are estimated to annually raise \$25 million, would be deposited in a separate account in the Ecosystem Management and Restoration Trust Fund. The bill then provides that such funds would be used for

studies and projects to implement a statewide beach management plan under Chapter 161, F.S., 1996 Supplement. The Department of Environmental Protection indicates that an annual input of \$30 million in state funds to the beach management grant-in-aid program would sustain the health of Florida's beaches and likens the need for such maintenance to that of the State's road system. In addition to the provisions covered under the statewide beach management plan, the bill provides a listing of other ports-related coastal enhancement activities which would be eligible for funding in deepwater port environments.

Finally, the bill makes certain provisions regarding the administration of the surcharge including authorizing the Department of Revenue to adopt administrative rules to implement and enforce the surcharge.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The bill increases the authority of the Department of Revenue to make rules related to the collection of the cruise ship ticket surcharge.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The bill gives the new responsibility of cruise ship ticket surcharge collection to the Department of Revenue.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

Yes. The bill levies a tax on certain cruise ship admission tickets.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

The beneficiaries do not contribute towards the implementation of the surcharge, but local governments do contribute to the overall application of the beach management plan.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Not required.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

<u>Revenue</u>	<u>1997-98</u>	<u>1998-99</u>
Ecosystem Management Trust Fund*	\$25 M	\$25 M
<u>Expenditures</u>		
Administrative Trust Fund	(\$38,338)	(\$32,019)

* This is an amount estimated by the Florida Shore and Beach Preservation Association. The Revenue Estimating Conference has been asked to put this issue on their agenda for the week of March 10, 1997.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

<u>Revenue</u>	<u>1997-98</u>	<u>1998-99</u>
Ecosystem Management Trust Fund*	\$25 M	\$25 M
<u>Expenditures</u>		
Administrative Trust Fund	(\$38,338)	(\$32,019)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Individuals buying certain cruise ship admission tickets in Florida will pay an additional surcharge of between \$1 and \$10. Cruise ship lines upon whose admissions the surcharge is levied may incur additional administrative costs to account for the surcharge to be collected for each passenger.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

The surcharge would cause certain cruise ship tickets sold in Florida to be higher than those sold in other states or countries. Consequently, agents selling tickets in Florida could experience a competitive disadvantage. Those selling such tickets may move the sales outside of the state which would cause a loss of private enterprise and employment in Florida.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority of counties or municipalities to raise revenue.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties and municipalities.

V. COMMENTS:

The Constitution of the United States authorizes the Federal Government to regulate interstate and international commerce in Article I, Section 8. The length to which this regulation may go to limit an individual state's taxing authority of certain activities has been the subject of an ample amount of case law. A review of the *Current Status of State Taxes Under the Commerce Clause* presented by Joan K. Irion at the 44th Annual Southeastern Association of Tax Administrators Conference in July of 1994, and of the recent U.S. Supreme Court case, *Oklahoma Tax Commission v. Jefferson Lines, Inc.*, 115 S.Ct. 1331 (1995), reveals that this has been a long standing and continuing "question" with as many different answers as there are cases.

In a February 6, 1997, memorandum to the Legislature, the Florida Caribbean Cruise Association reports on a multitude of direct and indirect economic benefits Florida receives from the presence of the cruise industry in the State. Included with this memorandum is a summary of cruise impacts as reported by various individual Florida ports.

The memorandum and the summary indicate that the cruise industry is currently making a substantial financial contribution to Florida through the purchase of taxable goods and services in the State for use by the industry; by bringing passengers and ship crew members into the State who purchase taxable goods, services, food and lodging; and by employing persons in cruise line corporate headquarters located in the State.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Tourism adopted an amendment which deleted all references to a surcharge on cruise ship tickets and admissions and amended s. 161.091, F.S., 1996 Supplement, to require the Department of Environmental Protection to identify an additional dedicated funding source to fund the beach management program.

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VII. SIGNATURES:

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