
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 21, 1998 Revised: _____

Subject: Sales Tax (RAB)

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Keating</u>	<u>Smith</u>	<u>WM</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

CS/SB 1694 provides specific statutory authority for Department of Revenue rules or parts thereof that have been identified by the department as subject to repeal under s. 120.536, F.S. These rules all relate to the sales and use tax.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 212.08 and 213.22, F.S.

II. Present Situation:

During the 1996 legislative session a comprehensive rewrite of the Florida Administrative Procedures Act was adopted as CS/SBs 2290 and 2288. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provision for periodic review of rules by agencies with rulemaking authority.

In the past, a number of court decisions held that a rule did not exceed the legislative grant of rulemaking authority if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

Section 120.536, F.S., effectively overturned this line of cases and imposed a much stricter standard for rulemaking authority. Under the new APA, existing rules and proposed rules must **implement, interpret, or make specific** the particular powers and duties granted by the enabling statute. It is important to note that the revised APA is not intended to eliminate administrative rules or even to discourage rulemaking, but to ensure that administrative rules are no broader than

the enabling statute. A grant of rulemaking authority by the Legislature is necessary but not enough by itself to allow an agency to adopt a rule. Likewise, agencies need more than a statement of general legislative intent for implementing a rule. Rules must be based on specific grants of powers and not address subjects on which the Legislature was silent.

In order to temporarily shield a rule or portion of a rule from challenge under the new provisions, agencies were to report rules which they believed did not meet the new criteria by October 1, 1997.

Section 120.536(2) also lays out the second step in the process, that of legislative review. The subsection provides:

The Legislature shall, at the 1998 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted. By January 1, 1999, each agency shall initiate proceedings pursuant to s. 120.54 to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist.

Thus, during the 1998 Legislative Session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions thereof which the agency deems necessary but which currently exceed the agencies' rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

According to the Joint Administrative Procedures Committee (JAPC), there are 3500-3600 grants of rulemaking authority contained in the Florida Statutes falling roughly into two categories: specific grants and general grants. Most of them are specific grants of authority, that is, the grant of authority is found coupled in a sentence with a specific power or duty of the agency. General grants of rulemaking authority authorize rulemaking in the context of the agency's mission or as it pertains to the stated purpose of the enabling legislation. Most agencies have a general grant of rulemaking authority and numerous specific grants of rulemaking authority. In most cases, it appears that existing rules exceed statutory authority because a "specific law to be implemented" is missing from the statute, not a legislative grant of rulemaking authority.

In response to the requirements of s. 120.536, F.S., the Department of Revenue identified 78 rules or portions of rules which they found exceeded their rulemaking authority and for which they recommended that the Legislature grant such authority. This bill addresses a number of these issues. The current situation and the effect of the changes proposed by this bill are detailed in the following section.

Rule 12A-1.011: Food and Beverages for Human Consumption

Present Situation:

The rule provides that food products for human consumption are exempt from the sales tax, with certain exceptions. The rule specifies that bakery products sold by bakeries or pastry shops that do not have eating facilities and items that are not considered candy based on normal use are taxable. Food products prepared off the premises and sold for immediate consumption when prepared and sold in the original sealed container are exempt. The Department of Revenue has identified this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, bakery products sold by bakeries or pastry shops that do not have eating facilities and items that are not considered candy based on normal use will become exempt and food products prepared off the premises and sold for immediate consumption when prepared and sold in the original sealed container will become taxable.

Effect of Proposed Changes:

The bill amends subsections (1) and (14) of s. 212.08, F.S., making numerous changes to the exemption for groceries. The amendments reflect the product of three years work by the Department of Revenue and the grocery industry to make necessary administrative changes in the law. These provisions were passed by the 1997 Legislature in CS/SB 1660, which was vetoed by the Governor. The bill also amends s. 213.22, F.S., providing that a technical assistance advisement may be issued at any time to a taxpayer who requests an advisement relating to grocery or medical exemptions pursuant to s. 212.08(1) and (2), F.S. In addition to the rule provisions, the bill amends subsection (7), adding paragraphs (tt) and (uu), exempting from sales tax, complimentary items which are defined as any food or drink that is provided without charge as a sample or for the convenience of the customers and donated foods or beverages which are defined as food or drinks donated to a food bank by a dealer who sells food products at retail.

Rules 12A-1.002(3), 1.020, and 1.022: Veterinary Medicine, Prescription Drugs and Special Items for the Handicapped

Present Situation:

Rule 12A-1.002(3), F.A.C., exempts purchases by veterinarians for the treatment and care of animals of drugs used in connection with medical treatment, certain medicines, bandages, lotions, vitamins, worm remedies and antiseptics. The Department of Revenue has identified part of this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, purchases by veterinarians of drugs, certain medicines, bandages, lotions, vitamins, worm remedies and antiseptics would become taxable.

Rule 12A-1.020, F.A.C., broadens the exemption for prescription drugs dispensed in a retail establishment by a pharmacist as provided for in statute to include such things as orally transmitted prescriptions and medicines dispensed or administered directly by a doctor. The rule also includes drugs prescribed by veterinarians. The Department of Revenue has identified part of this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceeding pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, the exemption would be limited to only prescriptions dispensed in a retail establishment by a pharmacist. Prescriptions by veterinarians would become taxable.

Rule 12A-1.021, F.A.C., expands the exemption for prosthetic and orthopedic appliances to include special attachments to allow handicapped persons to operate tangible personal property, if such items are separately stated and prescribed pursuant to a prescription. Human organs and lithotripters are also exempt under this rule. The Department of Revenue has identified part of this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceeding pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, special attachments to allow handicapped persons to operate tangible personal property as well as human organs and lithotripters will become taxable.

Effect of Proposed Changes:

The bill amends s. 212.08 (2), F.S., exempting the purchases by veterinarians for the treatment and care of animals of drugs used in connection with medical treatment, certain medicines, bandages, lotions, vitamins, worm remedies and antiseptics. The bill also broadens the exemption for prescription drugs dispensed in a retail establishment to include such things as orally transmitted prescriptions and medicines dispensed or administered directly by a doctor. The bill also includes drugs prescribed by veterinarians. In addition, the bill expands the exemption for prosthetic and orthopedic appliances to include special attachments to allow handicapped persons to operate tangible personal property, if such items are separately stated and prescribed pursuant to a prescription. The bill also extends the sales tax exemption to human organs and lithotripters.

Rule 12A-1.008: Sale of School Yearbooks

Present Situation:

The rule specifically exempts from sales tax, school yearbooks and similar publications when sold by schools to students. The Department of Revenue has identified part of this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, school yearbooks and similar publications sold by schools to students would be taxable.

Effect of Proposed Changes:

The bill amends s. 212.08(7)(q), F.S., exempting from sales tax, school yearbooks and similar publications when sold by schools to students.

Rule 12A-1.001(14)(a),(d)and(e): Parent-Teacher Organizations

Present Situation:

The rule allows K-12 schools and PTO's to sell school materials and supplies tax free to students if tax is paid by the school or PTO to the suppliers. Also, the rule provides for the tax exempt sale of food and beverages through vending machines located in the student cafeteria of schools. The Department of Revenue has identified part of this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, schools and PTO's will have to purchase tax-free, school materials and supplies for resale and will have to collect and remit sales tax on the sale of such materials and supplies. Also, the sale of food and beverages through vending machines located in the student cafeteria of schools will become subject to taxation.

Effect of Proposed Changes:

The bill amends s. 212.08 (7), F.S., adding paragraph (qq), authorizing K-12 schools and PTO's to sell school materials and supplies tax free to students if tax is paid by the school or PTO to the suppliers. Also, the rule provides for the tax exempt sale of food and beverages through vending machines located in the student cafeteria of schools.

Rule 12A-1.007(11)(c): Mobile Home Lot Improvements

Present Situation:

The rule provides that if a developer sells a mobile home to a purchaser, places the mobile home on the lot and makes improvements to the lot for a single lump sum price, such developer can purchase items used for real property improvements tax exempt as a sale for resale, provided that the developer collects and remits sales tax on the entire lump sum. The Department of Revenue has identified part of this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, a developer who sells a mobile home to a purchaser, places the mobile home on the lot and makes real property improvements to the lot for a single lump sum, could no longer purchase items used for the improvements tax exempt as a sale for resale. Items used for real property improvements could still be purchased tax exempt if charges for the improvements were separately stated on the purchasers bill.

Effect of Proposed Changes:

The bill amends s. 212.08 (7), F.S., adding paragraph (rr), which provides that if a developer sells a mobile home to a purchaser, places the mobile home on the lot and makes real property improvements to the lot for a single lump sum price, such developer can purchase items used for improvements tax exempt as a sale for resale, provided that the developer collects and remits sales tax on the entire lump sum.

Rule 12A-1.007(4): Veterans Administration

Present Situation:

The rule exempts from the sales tax, the portion of the purchase price paid directly by the Veterans' Administration when a veteran is assisted under certain programs in the purchase of a boat, aircraft or motor vehicle. The Department of Revenue has identified part of this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, the total sales price of a boat, aircraft or motor vehicle purchased by a veteran would be taxable, even the portion paid directly by the Veterans' Administration. (This could be prohibited by Federal law).

Effect of Proposed Changes:

The bill amends s. 212.08 (7), F.S., adding paragraph (ss), which exempts from the sales tax, the portion of the purchase price paid directly by the Veterans' Administration when a veteran is assisted under certain programs in the purchase of a boat, aircraft or motor vehicle.

Rule 12A-1.001(6)(b): Commercial Fishing Vessels

Present Situation:

The rule provides that the sales of fuels, commercial fishing vessels and related equipment to commercial fisheries and commercial fishermen are treated as vessels engaged in foreign commerce and taxable on a prorated basis pursuant to s. 212.08(4) and (8), F.S. The Department of Revenue has identified part of this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, sales of fuels, commercial fishing vessels and related equipment to commercial fisheries and commercial fishermen will no longer be subject to proration pursuant to s. 212.08(4) and (8), F.S.

Effect of Proposed Changes:

The bill amends s. 212.09(8)(a), F.S., providing that the sales of fuels, commercial fishing vessels and related equipment to commercial fisheries and commercial fishermen are treated as vessels

engaged in foreign commerce and taxable on a prorated basis pursuant to s. 212.08(4) and (8), F.S.

The bill will take effect July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution requires a two-thirds vote of the membership of each house of the Legislature to enact general laws if the anticipated effect is to reduce revenue raising authority of counties or municipalities, as such authority existed on February 1, 1989. Since the revenue raising authority addressed in this bill results from rules to be repealed in 1999, the bill does not affect local revenue raising authority as it existed in 1989 and therefore does not qualify as a mandate under section 18.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill provides statutory authority for a number of the rules identified by the Department of Revenue as exceeding their rulemaking authority permitted by s. 120.536, F.S. If these rules are allowed to be repealed, as current law requires, there would be a significant increase in sales tax revenue beginning in the 1999-00 fiscal year. This bill provides statutory authority for these rules and would have the effect of eliminating any revenue increases caused by the rule repeal process. The following table shows estimates of the fiscal impact of providing statutory authorization for these rules. While these estimates show a revenue decrease, passage of the bill will not affect the budget process. The revenue estimates being used for the appropriations bill have not recognized any revenue impact from these issues.

Issue/Fund	General Revenue		Trust		Local		Total	
	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
Sales Tax Exemptions	\$	\$	\$	\$	\$	\$	\$	\$
1. Commercial fishing boats: proration of tax	0.0	(3.6)	0.0	(*)	0.0	(0.5)	0.0	(4.1)
2. Sales by K-12 schools & P.T.O.'s	0.0	(1.4)	0.0	(*)	0.0	(0.2)	0.0	(1.6)
3. Veterinarian medicines	0.0	(4.3)	0.0	(*)	0.0	(0.7)	0.0	(5.0)
4. Purchase by veteran of boat, aircraft or MV	0.0	(*)	0.0	(*)	0.0	(*)	0.0	(*)
5. Mobile home sales and lot improvement	0.0	(**)	0.0	(**)	0.0	(**)	0.0	(**)
6. Sales of yearbooks by schools	0.0	(3.3)	0.0	(*)	0.0	(0.5)	0.0	(3.8)
7. Food and drink for human consumption	0.0	(**)	0.0	(**)	0.0	(**)	0.0	(**)
8. Prescription drugs	0.0	(292.8)	0.0	(0.6)	0.0	(46.2)	0.0	(339.6)
9. Lithotripters and human organs	0.0	(0.3)	0.0	(*)	0.0	(*)	0.0	(0.3)
10. Vessels in foreign commerce	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>
TOTAL	0.0	(305.7)	0.0	(0.6)	0.0	(48.1)	0.0	(354.4)

* Insignificant
** Indeterminate

B. Private Sector Impact:

This bill would counteract the effect of the rule repeal process for those issues addressed, resulting in lower taxes and reduced administrative burdens than would have occurred in many businesses or organizations had the rules been repealed. Businesses or organizations with revenue impacts include commercial fishing boat owners or operators, public schools and PTO's, veterinarians, pharmacists and doctors, and sellers of lithotripters. The grocery industry, schools and PTO's, and a developer who sells a mobile home to a purchaser, places the mobile home on a lot and makes improvements to the lot for a lump sum and purchases items used for the improvements tax exempt for sale for resale should experience reduced administration burdens.

C. Government Sector Impact:

The Department of Revenue should experience reduced sales tax administrative burdens in a number of areas including the grocery industry, schools and PTO's, and mobile home developers who sell mobile homes to purchasers, place the mobile home on a lot and makes

improvements to the lot for a lump sum and purchases items used for the improvements tax exempt for sale for resale

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
