

STORAGE NAME: h0179s1.tu
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**HOUSE OF REPRESENTATIVES
COMMITTEE ON
TOURISM
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 179

RELATING TO: Local Option Taxes

SPONSOR(S): The Committee on Tourism and Representative Bronson

STATUTE(S) AFFECTED: Sections 125.0104, 212.054, and 212.055, Florida Statutes, 1996 Supplement

COMPANION BILL(S): SB 64 (S)

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

- (1) TOURISM YEAS 6 NAYS 1
- (2) FINANCE AND TAXATION
- (3)
- (4)
- (5)

I. SUMMARY:

The Committee Substitute for HB 179 amends s. 125.0104(3)(l), F.S., to provide certain "high tourism impact" counties the authority to use the tourist development tax (TDT) revenues collected under paragraph (l) for costs related to a convention center without having to levy the tax initially for the purpose of financing a professional sports stadium. To qualify, a county must meet a specific set of criteria currently used to designate a "high tourism impact" county. Also, the county must already be levying the initial TDT and the additional 1 percent of levy authority currently available to "high tourism impact" counties. The county governing boards of qualifying counties may levy this additional 1 percent tax by the adoption of an ordinance. The revenues collected from this additional 1 percent tax may be used for the purpose of acquiring a convention center or paying the cost of planning, designing, constructing, reconstructing or renovating a convention center and to pay the debt service on bonds issued for these purposes. The bill provides that any remaining revenues must be used to advertise the convention center or tourism in general.

There are three counties, Orange, Osceola, and Monroe, that meet the criteria required for designation as a "high tourism impact" county. Currently, only Orange and Osceola have elected to levy the additional 1 percent tax authorized under s. 125.0104(3)(m), F.S., 1996 Supplement. Osceola and Monroe specifically meet the financial set of high tourism impact criteria prescribed by this bill as a qualifier for authority to levy the second additional 1 percent tax. However, the bill precludes a county which may levy the tourist related tax under s. 125.0108, F.S. Monroe County levies such a tax. An additional 1 percent TDT in Osceola County would raise approximately \$3.59 million annually.

The bill also amends s. 212.054(2)(b), F.S., 1996 Supplement, to provide an exemption for transient rental transactions from the local option discretionary sales surtax if the transient rental establishments are subject to an aggregate rate of 5 percent or more of local option tourist development taxes and are located in a high tourism impact county. Currently, Orange County is the only county which could qualify for this exemption.

The bill amends s. 212.055(2)(d), F.S., 1996 Supplement, by authorizing charter counties to use the proceeds and interest of local government infrastructure surtax revenues to retire or service indebtedness incurred for certain bond issues. Finally, the bill ratifies the use of revenues or interest for such purposes which occurred prior to July 1, 1997. There are currently 16 charter counties in the state.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Local Option Tourist Development Tax

Currently, s. 212.03, F.S., imposes a 6 percent tax for transient rentals on persons who rent, lease, or let sleeping or housekeeping accommodations in a hotel, apartment house, rooming house, or tourist or trailer camp. The tax does not apply where there is a written lease in excess of 6 months or to a person who continuously resides for more than 6 months. Other exemptions exist for full-time students in postsecondary education and for military personnel.

Section 125.0104, F.S., 1996 Supplement, is known as the Local Option Tourist Development Act. The taxable privilege described by legislative intent in subsection (3) relates to the renting, leasing or letting for consideration of "transient rentals". Transient rentals are described in this section as living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, rooming house, mobile home park, recreational vehicle park, or condominium for a term of 6 months or less. This act authorizes certain counties to levy a tourist development tax of 1 percent or 2 percent on transient rentals, in addition to the tax imposed on such rentals by Chapter 212, F.S. After 3 years of collecting the 1 percent or 2 percent tax, the governing board of the county (by extraordinary vote) may elect to impose an additional 1 percent tax on transient rentals.

Section 125.0104(5)(a), F.S., 1996 Supplement, dictates that the revenues from these taxes may be used for four designated purposes.

- To acquire, construct, extend, enlarge, remodel, repair, improve, operate and promote one or more publicly-owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums, or museums within the county or subcounty special taxing district levying the tax and to secure or liquidate bonds for these purposes (counties may let service contracts to certain qualified lessors to provide for the operation of such facilities);
- To promote and advertise tourism in the state, nationally, and internationally;
- To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county; or
- To finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access and to secure revenue bonds for these purposes.

Paragraph (b) of subsection (5) provides that counties with less than 600,000 in population which are imposing a tourist development tax may use the revenues of that tax to acquire, construct, generally improve, or promote zoos, fishing piers or nature

centers. Those entities must be owned and operated publicly or by a not-for-profit corporation and open to the public.

Currently, there are 41 counties in Florida which have elected to levy local option tourist development taxes. Most of the revenues from this tax are spent by the counties on advertising and promotion and on convention centers. Several opportunities (tied to certain conditions) exist within s. 125.0104, F.S., 1996 Supplement, for counties to levy additional taxes on transient rentals. Paragraph (m) of this section authorizes high tourism impact counties to levy an additional 1 percent tax for the uses enumerated above.

To qualify for the high tourism impact county designation, a county must have had the Department of Revenue certify to it that it meets either one standard of qualifying criteria or the other. The first standard requires that a county's sales subject to the tourist development tax must have exceeded \$600 million during the previous calendar year. The alternative standard requires that at least 18 percent of the county's total taxable sales are attributable to transient rentals and the minimum amount collected for such sales is \$200 million. Additionally, counties levying convention development taxes are prohibited from levying this additional percentage of local option tourist development tax.

When s. 125.0104(3), F.S., 1996 Supplement, was amended to add paragraph (m) (Chapter 89-356, L.O.F.), the paragraph only included the standard of qualifying criteria requiring transient rental sales taxes to annually exceed \$600 million. When Chapter 89-356, L.O.F., became law, Orange County was the only county to qualify. Subsequently, Chapter 90-107, L.O.F., added the alternative standard of qualifying criteria now found in paragraph (m) of s. 125.0104(3), F.S., 1996 Supplement. Osceola County then qualified to levy the tax. Since that time, Monroe County has also met the "at least 18 percent" threshold. Currently, only Orange and Osceola have elected to levy the additional 1 percent tax authorized under s. 125.0104(3)(m), F.S., 1996 Supplement.

Discretionary Sales Surtaxes

Under the provisions of s. 212.054(2)(a), F.S., 1996 Supplement, the local discretionary sales surtaxes authorized in s. 212.055, F.S., 1996 Supplement, apply to all transactions subject to the state tax imposed on sales, use, services, rentals and admissions. The surtax is computed by multiplying the rate imposed by the county where the sale occurs by the amount of the taxable sale. The sales amount is not subject to the surtax if the property or service is delivered within a county that does not impose a surtax. In addition, the tax may not be applied to any sales amount above \$5,000 on any item of tangible personal property or to long distance telephone service charges. The \$5,000 cap does not apply to the sale of any other service.

Section 212.054(4), F.S., 1996 Supplement, requires the Department of Revenue (DOR) with administering, collecting, and enforcing the local discretionary sales surtaxes in the same manner that state sales taxes are handled. The only exception is the Dade County Food and Beverage Surtax, which is self-administered. Pursuant to s. 212.054(6), F.S., 1996 Supplement, the governing body of any county enacting an ordinance providing for the imposition of a surtax must notify DOR within ten days after

adoption of the ordinance. Notification to DOR and final adoption of the enabling ordinance must occur at least 45 days prior to the initial imposition of the surtax.

Local Government Infrastructure Surtax

Chapter 87-239, Laws of Florida, known as the "Local Government Infrastructure Commitment Act," authorized county governments to levy a sales tax of up to 1% on all taxable transactions under Chapter 212, Florida Statutes. In order for local governments to levy this sales tax, voter approval must be expressed in a referendum. Municipalities representing a majority of the county's population may place the required referendum on the ballot through the adoption of uniform resolutions requesting the imposition of the tax. There is an exemption provided for taxable items in excess of \$5,000.

Section 212.055(2), F.S., authorizes the levy of the tax at a rate of 0.5% or 1%. If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance. If the ordinance did not limit the time period of the levy, the surtax may not be levied for more than 15 years.

Proceeds of the tax are distributed by the Department of Revenue to the county and municipalities within the county according to an interlocal agreement between the county and municipalities, which may include a school district, or by the formula established in s. 218.62, F.S., for distribution of the Half-Cent Sales Tax. Expenditure of the tax proceeds is limited to the following purposes:

- To finance, plan, and construct infrastructure;
- To acquire land for public recreation or conservation or protection of natural resources; and
- To finance the closure of local government owned solid waste land fills that are already closed or are required to be closed by order of the Department of Environmental Protection.

Counties and municipalities are prohibited from using the surtax proceeds to supplement user fees or to reduce existing ad valorem taxes.

Chapter 92-309, Laws of Florida, also amended s. 212.055, F.S., to limit the combined rate, in varying combinations, of the Small County Surtax, the Local Government Infrastructure Surtax, the Indigent Care Surtax, the County Public Hospital Surtax, and the Small County Indigent Care Surtax to 1%. In addition, it removed the restriction on use of the Local Government Infrastructure Surtax proceeds and interest in certain cases. Specifically, counties with a total population of 50,000 or less (and municipalities located therein) on April 1, 1992, were given the authority to use the proceeds for "any public purpose" so long as the following conditions were met:

- The county imposed the surtax before July 1, 1992;
- The county met its annual debt obligations; and

- The county's comprehensive plan had been found in compliance with part II of Chapter 163, F.S.

Chapter 96-240, Laws of Florida, authorized Monroe County to use up to 10% of the tax proceeds for any public purpose under certain circumstances. In addition, this act also authorized any county in which 40% or more of the just value of real property is exempt or immune from ad valorem taxation to use the proceeds for the operation and maintenance of parks and recreation programs and facilities.

All counties are eligible to levy the Local Government Infrastructure Surtax, but only 30 counties imposed this surtax during fiscal year 1996-97.

Use of the Surtax to Retire Bonded Indebtedness

Paragraph (2)(d) of s. 212.055, F.S., 1996 Supplement, specifically authorizes counties, as defined in s. 125.011(1), F.S., to additionally use the surtax proceeds to retire or service bond indebtedness incurred for bonds issued prior to July 1, 1987, (the effective date of the act) for infrastructure purposes. This provision specifically limits that use of the surtax proceeds to Dade County. Other local governments which have sought to use the surtax proceeds to retire bonded indebtedness incurred prior to the effective date of the act, or the local referendum approving the levy, have been denied that use. See 1988 *Fla. Atty. Gen. Op.* 59 (Sumter County is prohibited from using these proceeds to refund or pay off a bond indebtedness incurred prior to enactment of the statute); and 1990 *Fla. Atty. Gen. Op.* 96 (the City of Dunedin may not use surtax proceeds to service debt incurred prior to referendum approval of the surtax, although debt was incurred *after* the effective date of the act).

In 1994, the Legislature enacted a special law exception to the general law provisions restricting the use of the Local Government Infrastructure Surtax proceeds. Chapter 94-459, Laws of Florida, authorizes Clay County to use the surtax proceeds to retire or service bond indebtedness incurred prior to July 1, 1987, and subsequently refunded, for the purpose of financing infrastructure. In that same year, the Legislature also enacted Chapter 94-487, Laws of Florida, authorizing Alachua County, and municipalities located therein, to use the surtax proceeds for the operation and maintenance of parks and recreation programs as well as facilities originally established with surtax proceeds. In addition, the law allowed the use of the proceeds for the establishment of one or more trust funds to provide a permanent endowment for the additional uses.

Last year, the First District Court of Appeal upheld a declaratory judgment striking chapter 94-487, Laws of Florida, (the Alachua County special act) as an unconstitutional special act in violation of section 11 of Article III of the State Constitution. *Alachua County v. Adams*, 677 So.2d 396 (Fla. 1st DCA 1996). Section 11(a), Article III of the State Constitution provides, in pertinent part, "There shall be no special law or general law of local applications pertaining to . . . (2) assessment or collection of taxes for state or county purposes . . ." The court rejected the county's argument that the act was valid as it only affected the power to spend tax revenues, not the power to tax. *Id.*, at 398. This decision is on appeal to the Florida Supreme Court as Case No. 88-844. Oral argument was heard on February 3, 1997, and a decision is not likely before the end of the 1997 Legislative Session.

In light of the case striking down the Alachua County special act, Clay County seeks an amendment to general law authorizing its expenditures and specifically ratifying expenditures made pursuant to Chapter 94-487, Laws of Florida.

The following counties are charter counties: Alachua, Brevard, Broward, Charlotte, Clay, Dade, Duval, Hillsborough, Lee, Orange, Osceola, Palm Beach, Pinellas, Sarasota, Seminole and Volusia.

B. EFFECT OF PROPOSED CHANGES:

Local Option Tourist Development Tax

The Committee Substitute for HB 179 amends s. 125.0104(3)(l), F.S., to provide certain "high tourism impact" counties the authority to use the tourist development tax (TDT) revenues collected under paragraph (l) for costs related to a convention center without having to levy the tax initially for the purpose of financing a professional sports stadium. To qualify, a county must meet a specific set of criteria currently used to designate a "high tourism impact" county. Also, the county must already be levying the initial TDT and the additional 1 percent of levy authority currently available to "high tourism impact" counties.

The county governing boards of qualifying counties may levy this additional 1 percent tax by the adoption of an ordinance. The revenues collected from this additional 1 percent tax may be used for the purpose of acquiring a convention center or paying the cost of planning, designing, constructing, reconstructing or renovating a convention center and to pay the debt service on bonds issued for these purposes. The bill provides that any remaining revenues must be used to advertise the convention center or tourism in general.

There are three counties, Orange, Osceola, and Monroe, that meet the criteria required for designation as a "high tourism impact" county. Currently, only Orange and Osceola have elected to levy the additional 1 percent tax authorized under s. 125.0104(3)(m), F.S., 1996 Supplement. Osceola and Monroe specifically meet the financial set of high tourism impact criteria prescribed by this bill as a qualifier for authority to levy the second additional 1 percent tax. However, the bill precludes a county which may levy the tourist related tax under s. 125.0108, F.S. Monroe County levies such a tax. An additional 1 percent TDT in Osceola County would raise approximately \$3.59 million annually.

Discretionary Sales Surtaxes

The bill amends s. 212.054, F.S., 1996 Supplement, by exempting from a discretionary sales surtax levied under s. 212.055, F.S., 1996 Supplement, those transactions which are subject to tourist development tax by the governing body of a county which meets the following criteria:

- ◆ Levies and imposes upon those transactions within the county a tourist development tax of five or more percent in the aggregate; and

- ◆ Levies the discretionary sales surtax effective January 1, 1998 or thereafter.

Furthermore, this section provides that if the tourist development tax is levied and imposed only in a subcounty special district, and not in the entire county, the exemption only applies in the subcounty special district. If the aggregate rate of the tourist development tax levied and imposed within the county or subcounty special district is reduced to less than five percent, the exemption no longer applies within either the county or subcounty special district.

Local Government Infrastructure Surtax

Effective July 1, 1997, the bill amends paragraph (2)(d) of s. 212.055, F.S., 1996 Supplement, to include "charter counties" along with those counties eligible to use the surtax proceeds to retire or service bonded indebtedness incurred prior to the effective date of the act. The bill also amends this paragraph by authorizing interest accrued on the surtax proceeds, in addition to the proceeds themselves, to be expended in this manner. Finally, the use of the proceeds is expanded to include refunding bonds issued subsequent to the effective date of this section of the bill, in addition to servicing bonds issued prior to that date.

Also included in the bill is a provision intended to ratify any use of the surtax proceeds or interest accrued thereon for purposes of retiring or servicing bonded indebtedness incurred before July 1, 1987, or for refunding bonds issued after July 1, 1987, by a county prior to July 1, 1997.

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?

- No.

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

- No.

- (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. This bill authorizes the levy of an additional 1 percent local option tax on transient rental clients.

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?

Yes. This bill would authorize certain counties to levy an additional 1 percent local option tourist development tax.

3. Personal Responsibility:

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

N/A

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

N/A

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:

Section 1 amends s. 125.0104(3)(l), F.S., 1996 Supplement, to provide certain "high tourism impact" counties the authority to use the tourist development tax (TDT) revenues collected under paragraph (l) for costs related to a convention center without having to levy the tax initially for the purpose of financing a professional sports stadium. To qualify, a county must meet one of the sets of criteria currently used to designate a "high tourism impact" county. Also, the county must already be levying the initial TDT and the additional 1 percent of levy authority currently available to "high tourism impact" counties.

The county governing boards of qualifying counties may levy this additional 1 percent tax by the adoption of an ordinance. The revenues collected from this additional 1 percent tax may be used for the purpose of acquiring a convention center or paying the cost of planning, designing, constructing, reconstructing or renovating a convention center and to pay the debt service on bonds issued for these purposes. Any remaining revenues must be used to advertise the convention center or tourism in general.

Section 2 amends s. 212.054, F.S., 1996 Supplement, by exempting from a discretionary sales surtax levied under s. 212.055, F.S., 1996 Supplement, those transactions which are subject to tourist development tax by the governing body of a county which meets certain specified criteria. The section also provides that if the TDT is levied and imposed only in a subcounty special district, and not the entire county, the exemption only applies in the subcounty special district. If the aggregate rate of the TDT levied and imposed is reduced to less than five percent, the exemption no longer applies.

Section 3, effective July 1, 1997, amends s. 212.055(2)(d), F.S., 1996 Supplement, to include "charter counties" along with those counties eligible to use the surtax proceeds to retire or service bonded indebtedness incurred prior to the effective date of the section. The section further amends this paragraph by authorizing interest accrued on the surtax proceeds, in addition to the proceeds themselves, to be expended in this manner. The use of the proceeds is expanded to include refunding bonds issued

subsequent to the effective date of the section in addition to servicing bonds issued prior to that date.

Section 4 is a provision intended to ratify any use of the surtax proceeds authorized by s. 212.055, F.S., or interest accrued thereon, for purposes of retiring or servicing bonded indebtedness incurred before July 1, 1987, or for refunding bonds issued after July 1, 1987, by a county prior to July 1, 1997.

Section 5 provides an effective date of becoming law unless otherwise specified.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Should Osceola County adopt an ordinance to levy an local option tourist development tax under s. 125.0104(3)(I), F.S., 1996 Supplement, for the purpose of funding a convention center, the county would raise its local option tourist tax collections by \$3.59 million annually.

3. Long Run Effects Other Than Normal Growth:

Other counties could eventually qualify to levy additional local option tourist taxes for the purpose of funding convention centers.

The bill exempts lodging establishments from a future levy of a discretionary sales surtax if they are located in counties which levy local option tourist development

taxes at an aggregate rate of 5 percent or above. Those establishments will continue to pay the tourist development tax, but not an additional discretionary sales surtax.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Transient rental establishments required to charge this sales tax who opt not to pass it on to their customers could have their costs rise.

2. Direct Private Sector Benefits:

Any benefits accruing to the private sector would depend on the county's use of tax revenues.

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

Transient rental establishments whose costs rise due to the imposition of this tax or whose client base diminishes because of it could lose varying degrees of competitiveness.

D. FISCAL COMMENTS:

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:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Tourism adopted a strike everything after the enacting clause amendment to HB 179 and reported the bill favorably as a Committee Substitute. The Committee Substitute revised the provisions related to the levy of an additional percent of local option tourist development tax and added provisions relating to the local option infrastructure surtax and the local option discretionary sales surtax. Substantively, the Committee Substitute does the following:

- * Deletes authorization for certain high tourism impact counties to levy an additional one percent of tourist development tax, and
- * Expands the use of tourist development tax revenues currently authorized for initially financing professional sports franchise facilities and subsequently for financing convention centers if all revenues are not needed for the sports facility, by authorizing certain high tourism impact counties to use these revenues to finance convention centers without having to initially levy the tax for sports franchise facilities.
- * Provides an exemption for transient rental transactions from the local option discretionary sales surtax if the transient rental establishments are subject to an aggregate rate of 5 percent or more of local option tourist development taxes and are located in a high tourism impact county.
- * Provides that if the aggregate rate of local option tourist development tax drops below 5 percent, the transient rental transactions would become subject to the discretionary sales surtax.
- * Provides that if the local option tourist development tax is imposed in a subcounty special district, that the exemption would only apply to transactions conducted in that area.
- * Expands to charter counties the authorization to use the proceeds and interest of local government infrastructure surtax revenues to retire or service indebtedness incurred for bonds issued before July 1, 1987, for infrastructure purposes and for bonds subsequently issued to refund such bonds.
- * Ratifies any use of such revenues or interest for purposes of retiring or servicing indebtedness incurred before July 1, 1997, for refunding bonds issued after July 1, 1987.

VII. SIGNATURES:

COMMITTEE ON TOURISM:
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