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HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS DEVELOPMENT & INTERNATIONAL TRADE
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 105

RELATING TO: Sales Tax Exemption/Mining Equipment

SPONSOR(S): Representatives Putnam and Fasano

COMPANION BILL(S): SB 110(S)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) BUSINESS DEVELOPMENT & INTERNATIONAL TRADE
(2) FINANCE AND TAXATION
(3) GENERAL APPROPRIATIONS
(4)
(5)

I. SUMMARY:

This bill would expand the sales tax exemption for the purchase of industrial machinery and equipment used by new and expanding businesses to include those purchases made by phosphate or other solid mineral severance, mining, or processing operations.

Additionally, the proposed legislation ensures a net benefit to the state by specifying the tax exemption be granted only by way of a credit against taxes due under chapter 211, Florida Statutes.

The revenue estimating conference has not yet addressed this bill.

This bill provides an effective date of July 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 212, Florida Statutes, provides for the tax on sales, use and other transactions. Section 212.05, F.S., provides that every person who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under chapter 212, F.S., or who stores for use or consumption any item or article of tangible personal property and who leases or rents such property is exercising a taxable privilege. Section 212.05(1)(a)1.a, F.S., provides for a six percent tax rate on the retail price of each item or article of tangible personal property when sold at retail in this state.

Section 212.08, F.S., provides for exemptions from the sales and use tax imposed by this chapter. The exemption found in paragraph (5)(b) of this section was created by chapter 78-299, Laws of Florida, exempting machinery and equipment purchased for specific new and expanding businesses thereby promoting and encouraging job creation in Florida.

Section 212.08(5)(b)1., F.S., provides for a sales tax exemption for industrial machinery and equipment purchased for use in new businesses which manufacture, process, compound, or produce for sale, or for exclusive use in spaceport activities, items of tangible personal property at fixed locations. The taxpayer is responsible for satisfying the Department of Revenue (DOR) that the purchase was made prior to the beginning of operations. Similarly, s. 212.08(5)(b)2., provides a sales tax exemption on the purchase of industrial machinery and equipment for use in expanding manufacturing facilities from any amount of tax imposed by this chapter in excess of $50,000. The taxpayer must satisfy the DOR that the equipment was used for an increase in productive output of the expanded business by not less than 10 percent.

Section 212.08(5)(b)3.a, F.S., provides that qualifying businesses must apply to the DOR for a temporary tax exemption permit in order to receive the tax exemption based on use. Section 212.08(5)(b)5., prohibits the sales tax exemption provided in this section from being used by phosphate or other solid minerals severance, mining, or processing operations in addition to several other types of businesses.

The definition for industrial machinery and equipment means “section 38 property” as defined in s. 48(a)(1)(A) and (B)(i) of the Internal Revenue Code, provided “industrial machinery and equipment” is construed by regulations adopted by the DOR to mean tangible property used as an integral part of the manufacturing, processing, compounding, or producing of items of tangible personal property. The term may include parts and accessories as well.

Chapter 211, F.S., provides for a tax on severance and production of minerals. “Solid minerals” as defined include rare earths such as clay, gravel, phosphate rock, lime, stone, and sand. Section 211.3103, F.S., specifically provides for an excise tax on persons engaged in the business of severing phosphate rock from the soils and waters of the state. The tax is collected by the DOR at a rate provided in statute applicable to the total production during the taxable year and measured on the basis of bone-dry tons produced at the point of severance.

Section 211.3103, F.S., also provides for the distribution of the excise taxes collected; a portion goes to the county based on the number of tons of phosphate rock produced from a phosphate rock matrix located in the county.

B. EFFECT OF PROPOSED CHANGES:

This bill would amend s. 212.08(5)(b),F.S., relating to the sales tax exemption for the purchase of industrial machinery and equipment used to increase productive output in a new or expanding business. The section would be amended to no longer exclude phosphate or other solid minerals severance, mining, or processing operations from eligibility for use of the exemption.

Additionally, the bill specifies that the exemption applies only by way of a prospective tax credit against those taxes due under chapter 211, Florida Statutes.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

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

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

Only to the extent the Department of Revenue must provide for the inclusion of the phosphate mining industry with those industries currently eligible for the sales tax exemption.

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

Only to the extent the Department of Revenue must provide for the inclusion of the phosphate mining industry with those industries currently eligible for the sales tax exemption.

(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. <u>Lower Taxes:</u>

a. Does the bill increase anyone's taxes?

No.

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, because the reduction in any sales tax liability of the industry (made possible because of this bill) can only be realized by that industry <u>through a tax credit against its severance tax liability</u>.

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. <u>Personal Responsibility:</u>

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?

No.

4. Individual Freedom:

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

      N/A

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

      N/A

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. STATUTE(S) AFFECTED:

Section 212.08(5)(b)5., Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 - Amends s. 212.08(5)(b)5., F.S., removing the exclusion of phosphate or other solid minerals severance, mining, or processing operations from eligibility for the sales tax exemption on the purchase of industrial machinery and equipment used by new or expanding businesses. Additionally, the exemption is provided to the phosphate and other solid mineral mining operations by way of a prospective tax credit against taxes due under chapter 211, F.S.

Section 2 - Provides an effective date of July 1, 1999.

III. <u>FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT</u>:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. <u>Non-recurring Effects</u>:

The revenue estimating conference has not yet addressed this bill.

2. <u>Recurring Effects</u>:

The revenue estimating conference has not yet addressed this bill.

3. <u>Long Run Effects Other Than Normal Growth</u>:

None.

4. <u>Total Revenues and Expenditures</u>:

The revenue estimating conference has not yet addressed this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   The revenue estimating conference has not yet addressed this bill.

3. Long Run Effects Other Than Normal Growth:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   None.

2. Direct Private Sector Benefits:

   Phosphate or other solid mineral mining operations would be eligible for the sales tax exemption on the purchase of industrial machinery and equipment for new and expanding businesses. However, the sales tax exemption would be realized through a prospective tax credit against severance taxes due under ch. 211, F.S.

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

   None.

D. FISCAL COMMENTS:

The revenue estimating conference has not yet addressed this bill.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The revenue estimating conference has not yet addressed this bill.

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

The revenue estimating conference has not yet addressed this bill.

V. <u>COMMENTS</u>:

A study of the economic impact two proposed phosphate mining operations would have on the counties of DeSoto and Hardee was conducted by the Department of Economics, University of Florida. The study found:

> **The impact on economic activity within Florida will occur as a result of the initial construction of the mines and from their continuing operation. We estimate that the construction of the mines will increase the total production of goods and services throughout the State of Florida by $1.28 billion. Then, once in full operation, the mines will boost production in Florida by more that $360 million annually for a present value of $3.27 billion for the first fifteen years of operation.**
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> **The mines also will lead to higher employment, both in the two counties directly affected and also throughout the State. Once in full operation, the mines will be responsible for a total of about 3,100 jobs throughout the State. Directly, they will create between 600 and 650 jobs within DeSoto and Hardee Counties.**
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> **The beneficial effects of these mines on the economic life of DeSoto and Hardee counties is hard to overstate. For instance, in 1996 total employment in these two counties was 19,355 so 600 to 650 direct additional jobs is a significant increase, about 3% of the total number of jobs. In 1996 the unemployment rate within these counties averaged 10.3%. The Statewide average unemployment in that year was only 5.1%, so it is apparent that the labor force within DeSoto and Hardee Counties would surely welcome additional employment opportunities. [Blair, Roger, D., and Rush, Mark, *The Economic Impact of Farmland Hydro , L.P. and IMC Agrico's Planned Phosphate Rock Mines in DeSoto and Hardee Counties*, Department of Economics, University of Florida, February 1998.]**

Additional information contained in a report by Florida Tax Watch states:

> **While Florida currently houses the lion's share of the nations phosphate mining, international competition is becoming stronger. Florida's biggest competition comes from the country of Morocco. According to the Florida Phosphate Council, Moroccan phosphate (which is not subject to the environmental rules and regulations or the multiple taxes as Florida phosphate) can be shipped more cheaply to processing plants along the Mississippi river than Florida phosphate can be shipped from the state's mines to the Port of Tampa.**
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> **...**
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> **[I]t is estimated that the mines would provide Florida $20-$25 million in added severance taxes annually. Florida would also collect $71.7 million in other tax revenue during the construction phase and $20 million annually during the operations phase. [Wenner, Kurt, *Including Phosphate in the New and Expanding Business Incentive is Fair and Economically Sound*, Briefings, Florida Tax Watch, April 1998.]**

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT & INTERNATIONAL TRADE:

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