

# 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.)

BILL: SB 1296

SPONSOR: Senator Sullivan & Other

SUBJECT: Manufactured Asphalt

DATE: March 26, 1999

REVISED: 4/19/99 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Keating</u>	<u>Wood</u>	<u>FR</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

**I. Summary:**

The bill phases-out the indexed tax that is levied on manufactured asphalt used in any state or local public works project.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 212.06

**II. Present Situation:**

Pursuant to s. 212.06(1)(c), F.S., persons who manufacture asphalt for their own use, in the performance of either public works or non-public works projects, are subject to use tax calculations upon the cost of the materials which become a component part or are an ingredient of the finished asphalt and upon the cost of the transportation of such components and ingredients. Additionally, an index tax, originally set at \$.38 per ton and adjusted on July 1 of each year according to the Consumer Price Index from the U.S. Department of Labor, is currently levied at a rate of \$.48 per ton.

**III. Effect of Proposed Changes:**

The bill amends s. 212.06(1)(c), F.S., providing that the “amount charged” for manufactured asphalt that is used for any state or local government public works project is exempt from the indexed tax. The exemption is to be phased-in over a two-year period with 33 percent of such amount exempt from July 1, 1999 to July 1, 2000, and 66 percent of such amount exempt from July 1, 2000 to July 1, 2001. Effective July 2, 2001, and thereafter, 100 percent of such amount is exempt from the tax.

The bill takes effect July 1, 1999.

**IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

This bill initially falls under subsection (b) of section 18 of Article VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989 to raise revenues in the aggregate. By adding an exemption to the state sales tax, the bill has the effect of adding an exemption to the local option county sales surtax. Since the annual local revenue loss is estimated to be less than \$1.4 million, the bill will be exempt from the requirements of subsection (b) due to the insignificant negative fiscal impact as permitted under subsection (d) of section 18 of Article VII. (See subsection (d) of s. 18, Art. VII, Florida Constitution, for various types of general laws, including those with insignificant fiscal impact.)

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

The phase-in exemption for the “amount charged” for manufactured asphalt that is used for any state or local government public works project is estimated to reduce State General Revenue in fiscal year 1999-00 by \$1.2 million and by \$3.6 million on a recurring basis. Local government sales tax revenues is estimated to be reduced by \$0.1 million in fiscal year 1999-00 and by \$0.3 million on a recurring basis.

Issue/Fund	General Revenue		Trust		Local		Total	
	1st Year \$	Recurring \$	1st Year \$	Recurring \$	1st Year \$	Recurring \$	1st Year \$	Recurring \$
Phase-out of Sales Tax on Asphalt	(1.2)	(3.6)	(*)	(*)	(0.1)	(0.3)	(1.3)	(3.9)

\* Insignificant  
 \*\* Indeterminate

**B. Private Sector Impact:**

The bill will reduce the amount of tax that manufacturer’s of asphalt would have to pay.

### C. Government Sector Impact:

The bill should reduce the cost of public works projects by state and local governments.

#### VI. Technical Deficiencies:

The Department of Revenue has identified the following technical problems with SB 1296:

- The language in subparagraph 2. refers to the “amount charged” for manufactured asphalt. The tax imposed under s. 212.06(1)(c), F.S., is a use tax upon the manufacture. There is no “sale” of asphalt, so no one is “charged” for this type of transaction.
- The phase-in language in subparagraph 2. is confusing and not consistent with effective date or phase-in language used in other sections of Chapter 212, F.S.

#### VII. Related Issues:

According to the Department of Revenue, subjecting a federal public works project to taxation while exempting state and local government public works projects appears to be contrary to the findings of the U.S. Supreme Court in Davis v. Michigan Department of Treasury, 489 U.S. 803 (U.S. Mich. 1989). There, the Court upheld the doctrine of intergovernmental tax immunity, which, generally, bars state taxes that discriminate against the federal government.

#### VIII. Amendments:

#1 by Fiscal Resource:

The amendment deletes the phase-out of the tax on manufactured asphalt used in a state or local public works project and replaces it with a 20 percent sales tax exemption, effective July 1, 1999.