# 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: CS/SB 2028

SPONSOR: Fiscal Resource Committee and Senator Webster

SUBJECT: Sales, Use & Other Transactions

DATE: April 14, 1999 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Keating | Wood | FR | Favorable/CS |
| 2. | | | CM | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |

## I. Summary:

This bill provides that a sale for resale under chapter 212, F. S., includes the sale of certain tangible personal property used or consumed by a government contractor in performance of a contract with the United States Department of Defense or the National Aeronautics and Space Administration under certain conditions. The bill provides a sales tax exemption for sales to or use by a government contractor of overhead materials which are used or consumed in performance of such a contract under certain conditions. The bill provides a schedule for implementing the exemption over a 5-year period beginning July 1, 1999.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 212.02 and 212.08

## II. Present Situation:

Section 212.02, (14)(a), F.S., defines “retail sale” or a “sale at retail” as a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property or services taxable under 212.02, F.S., and includes all such transactions that may be made in lieu of retail sales or sales at retail. Subsection (20) provides a definition for “use” and provides that it does not include the loan of an automobile by a motor vehicle dealer to a high school for use in its driver education and safety program.

Section 212.08, F.S., provides for specific exemptions from the sales tax imposed by this chapter. The statutes currently provide more than 150 exemptions from the sales tax. Exemptions generally take the form of identifying specifically exempt items, exempting items when used for particular purposes, and exempting certain types of organizations, such as the government, churches, and charitable organizations. Section 212.08(7), F.S., provides for over 50 miscellaneous exemptions.

## III. Effect of Proposed Changes:

The bill amends s. 212.02(14), F. S., amending the definition of “retail sale” or “sale at retail” to include a sale of qualifying property. The bill amends paragraph (20) of s. 212.02, F.S., providing that the term “use” does not include a contractor’s use of “qualifying property” as defined in paragraph (14)(a). Defines “qualifying property” as tangible property, other than electricity, which is used or consumed by a government contractor in performance of a qualifying contract as defined in s. 212.08(17)(c), F.S., to the extent that the cost of the property is allocated or charged as a direct item of cost to such contract, title to which property vests in or passes to the government under contract. The term “government contractor” includes prime contractors and subcontractors. The term “direct item of cost” is defined.

The amendments to ss. 212.02(14)(a) and (20), F.S., made by this act are intended to clarify and confirm existing law with respect to the tax imposed by chapter 212.

The bill adds subsection (17) to section 212.08, F.S., providing that the tax imposed by chapter 212, F.S., does not apply to overhead materials used by a government contractor. “Overhead materials” is defined as any tangible personal property, other than qualifying property as defined in s. 212.02(14)(a) and electricity, used or consumed in the performance of a qualifying contract, title to which property vests in or passes to the government under contract. “Qualifying contract” is defined as a contract with the United States Department of Defense or the National Aeronautics and Space Administration, or a subcontract thereunder, but does not include a contract or subcontract for the repair, alteration, improvement, or construction of real property, except to the extent that purchases under such a contract would otherwise be exempt from the tax imposed by this chapter.

The tax exemption is phased in as follows: Beginning July 1, 1999, the tax imposed shall be applicable to 80 percent of the sales price or cost price of such overhead materials. Beginning July 1, 2000, the tax shall be applicable to 60 percent of such overhead materials. Beginning July 1, 2001, the tax imposed shall be applicable to 40 percent of such overhead materials. Beginning July 1, 2002, the tax imposed shall be applicable to 20 percent of such overhead materials. Beginning July 1, 2003, the entire sales price or cost price of such overhead materials is exempt from the tax.

Possession by a seller of a resale certificate or direct-pay permit relieves the seller from the responsibility of collecting the tax, and the department shall look solely to the contractor for recovery of such tax if it determined that the contractor was not entitled to the exemption.

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 exemption provided by this bill would be phased-in over a five year period with 20 percent exempt from taxation each year until all specified materials were totally tax exempt.

The estimated fiscal impact on the General Revenue Fund for FY 1999-00 of ($2.2) million and on local governments of ($0.3) million reflects the reduction in tax collections for the first year of the five year phase in period. The tax reduction for the second year of the phase-in is estimated to impact the General Revenue Fund by ($5.1) million for FY 2000-01 and local governments by ($0.8) million. Subsequent years' tax collections would be reduced by 20 percent until all the specified costs were exempt.

The Revenue Estimating Conference estimates the annualized cost to the General Revenue Fund is ($12.8) million with an annualized local government impact of ($2.0) million .

| | General Revenue | | Trust | | Local | | Total | |
|---|---|---|---|---|---|---|---|---|
| Issue/Fund | 1st Year $ | Recurring $ | 1st Year $ | Recurring $ | 1st Year $ | Recurring $ | 1st Year $ | Recurring $ |
| Sales Tax Exemption for Overhead Materials DOD/NASA Contracts | (2.2) | (12.1) | (*) | (*) | (0.3) | (2.0) | (2.5) | (14.1) |

* Insignificant
** Indeterminate

B. Private Sector Impact:

The bill would create a more favorable business climate for businesses who compete for NASA or the Department of Defense aviation or aerospace contracts. Some other states have similar exemptions which allow them to offer lower bids for such contracts. This bill would allow Florida contractors to offer lower priced proposals.

C. Government Sector Impact:

The Department of Revenue will have to identify affected taxpayers, create new forms, change internal processes, draft and promulgate rule amendments, prepare a Taxpayer Information Publication (TIP) to be sent to affected parties, and notify the public on how to comply with the new tax law.

## VI. Technical Deficiencies:

The bill has an effective date of July 1, 1999. The Department of Revenue has requested an effective date of January 1, 2000, which will allow the Department to devote more time and effort to execute a more thorough and better planned implementation.

## 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.