STORAGE NAME: h0767.tr
DATE: March 25, 1999

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
TRANSPORTATION
ANALYSIS

BILL #: HB 767

RELATING TO: Freight Forwarders

SPONSOR(S): Representative Prieguez

COMPANION BILL(S): SB 1030 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 8 NAYS 0
(2) TRANSPORTATION
(3)
(4)
(5)

I. SUMMARY:

The bill requires a freight forwarder, which is in the business of receiving goods and making transportation arrangements for shipment of the goods, to provide receipts of the transaction. This bill is intended to provide exporters who ship tangible personal property overseas or out-of-state with sufficient documentation to prove tax exempt status of the exported goods from Florida sales tax. However, the bill does not provide a penalty for non-compliance, and does not specify what remedies are available to an exporter who is not provided the required documents.

The bill does not appear to have a fiscal impact on the state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, there are no specific statutory requirements for a freight forwarder to provide business receipts to persons who deliver tangible personal property for shipment out-of-state by means of air or water transportation.

Florida's Uniform Commercial Code (UCC) consists of chapters 670 - 680, Florida Statutes, and, generally, addresses the rights of parties in commercial transactions. Chapter 677, F.S., relates to "Documents Of Title" which is Article 7 of the UCC. The chapter addresses numerous terms which are used in commercial transactions and include "delivery order", "receipt of goods", "warehouseman", and "overseas." Though not defined, the chapter describes "warehouse receipts" and "bills of lading" for purposes of content and rights of the parties to the transaction. The term "freight forwarder" is also referred to, s. 677.503(3), F.S., but is not defined.

Under chapter 212, F.S., sales and use taxes are imposed on the retail sale, storage, or use of tangible personal property. Section 212.08, F.S., provides a wide variety of exemptions from the sales and use tax. Exemptions may apply for numerous reasons, such as, for the type of product or equipment, whether other taxes apply, or whether the item is being moved through Florida for sale or delivery in out-of-state locations.

The term "dealer" is defined in s. 212.06, F.S., for purposes of liability for collecting and submitting taxes which may be due to the Florida Department of Revenue (DOR) or for purposes of documenting an exempt status.

Section 212.13, F.S., requires records to be kept for purposes of inspection by DOR. Subsection (1) provides in part, "...the department is hereby specifically authorized and empowered to examine at all reasonable hours the books, records, and other documents of all transportation companies, agencies, or firms that conduct their business by truck, rail, water, aircraft, or otherwise, in order to determine [which persons]...are shipping in articles [of] tangible personal property which are liable for said tax."

DOR rules further address tax liability and exemptions. Rule 12A-1.064, FAC, addresses sales in interstate and foreign commerce. The rule specifies that sales tax is imposed on tangible personal property, unless otherwise exempt, when the property is delivered to the purchaser in this state. The rule further specifies that the tax does not apply to property which is committed to the exportation process at the time of sale. The exportation of the goods must also be continuous and not interrupted or broken.

The rule describes several requirements to qualify for determination that the goods are "committed to the exportation process." One of the qualifications is that the dealer be required by the terms of the sales contract to deliver the goods to a common carrier for final transportation to the out-of-state destination. The rule further provides that sales by a Florida dealer are exempt when the dealer delivers the merchandise to the transportation terminal for shipment out-of-state and secures a dock or warehouse receipt and a copy of the bill of lading. Neither the rule nor statutes require the common carrier or freight forwarder to provide the documentation to the dealer.

B. EFFECT OF PROPOSED CHANGES:

The bill would require a freight forwarder, which is in the business of receiving goods and making arrangements for air and water transportation of the goods, to provide a warehouse receipt to the person who delivers the goods. The receipt would be required to be provided at the time of delivery of the goods. The receipt must contain the following:

1. the name, address, and telephone number of the freight forwarder;
2. a preprinted warehouse receipt number;
3. the date the goods were delivered to the freight forwarder; and
4. a brief description of the goods.

The bill further requires the freight forwarder to provide a copy of the transportation company's shipping receipt to the person who delivered the goods. This information must be mailed to that person within two weeks of receipt by the freight forwarder from the transportation company. The bill specifies that the documentation be provided in order to comply with DOR rules relating to sales in interstate and foreign commerce. The bill also requires the freight forwarder to maintain records of the transactions for a period of five years.

These provisions are intended to provide exporters who ship tangible personal property overseas with sufficient documentation to prove tax exempt status of the exported goods from Florida sales tax. However, the bill does not provide a penalty for non-compliance, and does not specify what remedies are available to an exporter who is not provided the required documents.

The bill does not address a specific statutory chapter, but is drafted in a generic fashion for placement in the Florida Statutes by the Division of Statutory Revision of the Office of Legislative Services, if enacted.

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?

No.

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

Yes, the bill sets out specific requirements for certain documentation exchanged between private parties (exporters and freight forwarders). However, assuming that the business transactions addressed in the bill are currently documented by appropriate receipts, such as a bill of lading, it would not be anticipated that the requirements of the bill would impose significant additional costs or burdens to private organizations or individuals as parties to the transaction.

Keeping records for a period of five years could impose some additional cost and burdens on freight forwarders.

(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?

      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.

   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. Personal Responsibility:

   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?

      No.

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

      Yes, the bill sets out specific requirements for certain documentation exchanged between private parties, currently there are no such requirements and these matters are handled as part of the contractual relationship between the exporter and the freight forwarder.

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:

The bill does not cite a specific statutory chapter or section.

E. SECTION-BY-SECTION ANALYSIS:

<u>Section 1.</u> Requires freight forwarders to provide warehouse receipts and copies of airway bills or bills of lading to persons who deliver goods to be transported out-of-state.

<u>Section 2.</u> Provides that the act shall take effect 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>:

None.

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

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:

   None.

3. Long Run Effects Other Than Normal Growth:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   Most commercial transactions are documented for any number of reasons, including for personal liability, taxation, forecasting and revenue projections, and other purposes. Much of this paperwork is addressed in the Uniform Commercial Code or are considered good business practices. Assuming that the business transactions addressed in the bill are currently recorded by documents, such as a bill of lading, it would not be anticipated that the requirements of the bill would impose significant additional costs or burdens to the parties of those business transactions. Keeping the records for a period of five years may be good business practice, but could impose additional costs and burdens on freight forwarders.

2. Direct Private Sector Benefits:

   The bill is designed to benefit certain parties in business transactions relating to the out-of-state transportation of goods. Requiring that receipts be provided would facilitate documenting the transaction for purposes of claiming sales tax exemptions.

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

   Private enterprise may be effected as noted in 1 and 2 above.

D. FISCAL COMMENTS:

   None.

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 spend funds or take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenue in the aggregate.

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

This bill does not reduce the state tax shared with counties or municipalities.

V. COMMENTS:

The bill does not address a specific statute nor does it create a specific location for placement within the statutes. The bill also does not address penalties for noncompliance. Thus, two scenarios appear to exist in relation to violations of the provisions of the bill. First, the provisions are a mandate as to how certain business transactions are to be conducted, but there is no penalty if the mandates are not carried out. It could be anticipated that a violation of these statutory mandates would give standing to the aggrieved party in a lawsuit resulting from the transaction and the failure to provide the required documents.

Second, when the provisions of the bill are codified into statute by the Division of Statutory Revision, their location could create an appropriate remedy. Should the provisions be placed in the tax code, or other regulatory statute, a violation of the provisions of the tax code, or other code, could create an appropriate remedy as a violation of that code. If the provisions were to be placed in the Uniform Commercial Code, certain legal rights would be created and carried out through appropriate legal proceedings.

In addition, the bill text incorporates a reference to a DOR rule in the Florida Administrative Code. This adoption by reference does not have the effect of adopting future changes to this rule. If the rule is modified by DOR, the statute would need to be amended in order to incorporate the latest rule modifications.

DOR has reviewed the bill and made a number of recommendations for technical or clarifying changes. According to DOR, a statutory reference should be included in the bill to place its provisions in the appropriate sales and use tax statutes. Further, DOR requested that the effective date be changed to January 1, 2000, to give the agency time to implement the law and provided notice to affected parties. Finally, DOR suggested that because freight forwarders sometimes pick up goods at the exporter's place of business, the bill should be changed to require that the freight forwarder's receipt should be provided at the time the goods are delivered to the freight forwarder.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:	Staff Director:
Alan W. Livingston	Rebecca R. Everhart

AS REVISED BY THE COMMITTEE ON TRANSPORTATION:

Prepared by:	Staff Director:
Phillip B. Miller	John R. Johnston