STORAGE NAME: h0155.brc
DATE: October 13, 1999

HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION & CONSUMER AFFAIRS
ANALYSIS

BILL #: HB 155

RELATING TO: Freight Forwarders

SPONSOR(S): Representatives Prieguez and Fasano

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) BUSINESS REGULATION & CONSUMER AFFAIRS
(2) COMMUNITY AFFAIRS
(3) CRIME & PUNISHMENT
(4) TRANSPORTATION
(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 out of state, to provide receipts of the transaction and to maintain records of the transaction for five years. Failure to comply with the provisions of the bill would be a first degree misdemeanor. 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 from Florida sales tax of the exported goods.

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

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No [X]	N/A []
2.	Lower Taxes	Yes []	No []	N/A [X]
3.	Individual Freedom	Yes []	No [X]	N/A []
4.	Personal Responsibility	Yes []	No []	N/A [X]
5.	Family Empowerment	Yes []	No []	N/A [X]

Less Government and Individual Freedom - The bill sets out specific requirements for certain documentation exchanged between private parties (exporters and freight forwarders) in order to facilitate the process of individuals claiming tax exempt status from the Florida sales tax. Currently, there are no specific statutory requirements for a freight forwarder to provide business receipts to specific personnel who deliver goods. 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.

B. 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 <u>does not apply</u> 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.

C. EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.13, F.S., to require a freight forwarder, which is in the business of receiving goods and making arrangements for air and water transportation of the goods out-of-state, to provide a warehouse receipt to the person who delivers the goods. The provisions of the bill are intended to provide exporters who ship tangible personal property overseas with sufficient documentation to prove tax exempt status from Florida sales tax of the exported goods.

The bill requires that the receipt for the goods 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 airway bill or bill of lading 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 shall be evidence that the goods were exported for purposes of determining whether the goods are exempt from taxation. The bill also requires the freight forwarder to maintain records of the transactions for a period of five years. Failure to comply with these provisions would be a first degree misdemeanor, which is punishable by up to one year imprisonment and a fine of up to $1,000.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 212.13, F.S., to require 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; to provide required contents; and to provide a penalty for failure to comply.

Section 2. Provides that the act shall take effect January 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The provisions of the bill do not address or impact state government revenues.

2. Expenditures:

The bill does not require state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The provisions of the bill do not address or impact local government revenues.

2. Expenditures:

The bill does not require local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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 is considered good business practice. 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.

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.

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:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

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