STORAGE NAME: h0155a.tr
DATE: February 8, 2000

HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE
AS FURTHER REVISED BY THE COMMITTEE ON
TRANSPORTATION

BILL #: HB 155

RELATING TO: Freight Forwarders

SPONSOR(S): Representative Prieguez and others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) BUSINESS REGULATION & CONSUMER AFFAIRS (CAC) YEAS 8 NAYS 0
(2) COMMUNITY AFFAIRS (PRC) YEAS 9 NAYS 0
(3) CRIME AND PUNISHMENT (CJC) YEAS 7 NAYS 0
(4) TRANSPORTATION (EDC) YEAS 11 NAYS 0
(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.

According to the State Courts Administrator's Office, the anticipated fiscal impact of HB 155 on the State Court System is virtually none. The bill has no fiscal impact on executive agencies. If prosecutions result from violations of the provisions of the bill, it may have a minimal fiscal impact on the county prison system. Keeping records for a period of five years could impose some additional costs and burdens on freight forwarders.

The Committee on Business Regulation and Consumer Affairs adopted one amendment which is traveling with the bill. The amendment reduces the penalty for violations of the provisions of the bill from a first degree misdemeanor to a second degree misdemeanor.

The Committee on Community Affairs adopted one amendment which is traveling with the bill. The amendment changes from 5 to 3 the number of years a freight forwarder must maintain a copy of each warehouse receipt, airway bill, and bill of landing in its records.

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 an exporter who engages the freight forwarder to arrange transportation of the 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 exporters who contract with the freight forwarder to arrange for shipment of tangible personal property out-of-state by means of air or water transportation.

Florida's Uniform Commercial Code (UCC) consists of chapters 670 - 680, F.S., 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 in 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. Sales tax is imposed on the sales price of each item or article of tangible personal property, unless otherwise exempt, when the property is delivered to the purchaser or his representative in this state. 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. Pursuant to s. 212.06(5)(a)1. , F.S., the tax does not apply to tangible personal property irrevocably committed to the exportation process at the time of sale, when such process has been continuous or unbroken.

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.

Exporters customarily contract with a freight forwarder who arranges for transportation of tangible personal property. Generally, the exporter receives a receipt from the freight forwarder which indicates the forwarder has taken possession of the property. The freight forwarder is under contract to ship the property to a foreign port. Frequently, a freight forwarder takes possession of the property and holds the property while awaiting the arrival of a vessel or consolidation of the property with other orders bound for the same destination. Usually, a freight forwarder does not receive a bill of lading or an airway bill until the items that the freight forwarder has agreed to ship are accepted by a common carrier. It is customary for the freight forwarder to provide the exporter with a copy of the bill of lading or airway bill upon shipment by a common carrier. However, in some instances, the freight forwarder does not deliver a bill of lading or airway bill to the exporter. Neither the DOR rule nor statutes require the common carrier or freight forwarder to provide the documentation to the dealer.

For the purposes of determining whether certain items of tangible personable property are subject to Florida sales tax, the DOR audits persons who conduct certain tax exempt activities such as exporting. Exporters who cannot produce a bill of lading or airway bill demonstrating that the property they bought tax free was shipped out of Florida may face the imposition of state taxes and fines.

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."

Subsection (2) of s. 212.13, F.S., in part requires dealers to "secure, maintain, and keep as long as required by s. 213.35 a complete record of tangible personal property or services received, used, sold at retail, distributed or stored, leased or rented by said dealer, together with invoices, bills of landing, gross receipts from such sales, and other pertinent records and papers as may be required by the department for the reasonable administration of this chapter." Section 213.35, F.S., requires such records to be preserved until expiration of the time within which the department may make an assessment with respect to that tax pursuant to s. 95.091(3), F.S. With limited exceptions, section 95.091(3), F.S., as amended by chapter 99-239, L.O.F., provides a five-year statute of limitations on the assessment of taxes due before July 1, 1999, and a three-year statute of limitations on the assessment of taxes due on or after July 1, 1999.

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 engages the freight forwarder to arrange the transportation. The provisions of the bill are 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 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 exporter for whom the freight forwarder arranged transportation of the goods. This information must be mailed to the exporter 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 copies of each warehouse receipt, airway bill, and bill of lading in its own records for a period of 5 years.

The bill further provides that any freight forwarder who: 1) fails to provide the documentation required by this paragraph to an exporter who arranges air or water transportation of tangible personal property through the freight forwarder or; 2) fails to maintain copies of each warehouse receipt, airway bill and bill of lading in its own records, commits a first degree misdemeanor, punishable by up to one year in jail and a $1,000 fine.

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:

   According to the State Courts Administrator's Office, the anticipated fiscal impact of HB 155 on the State Court System is virtually none. The bill has no fiscal impact on executive agencies.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   Prosecutions resulting from violations of the provisions of the bill may have a minimal fiscal impact on the county prison system.

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:

As noted in the Fiscal Analysis section of the analysis, any prosecutions resulting from violations of the provisions of the bill may have a minimal fiscal impact on the county prison system. However, the bill is exempt from the mandates provision since the potential expenditures result from the creation of a new criminal infraction. Also, the anticipated fiscal impact is insignificant.

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:

This bill does not necessitate additional agency rule-making authority.

C. OTHER COMMENTS:

The Department of Revenue notes that the 1999 Legislature changed the statute of limitations for assessment and refunds from five to three years. The department suggests that if the intent is to use the statutory limitations period, a conforming amendment is appropriate. However, if the intent is to assure the freight forwarder has the documents for the entire period during which its customer might need to provide them to the department, a longer period needs to be provided since the running of the statute is tolled while audits are conducted.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS

The Committee on Business Regulation and Consumer Affairs adopted one amendment which is traveling with the bill. The amendment reduces the penalty for violations of the provisions of the bill from a first degree misdemeanor to a second degree misdemeanor.

COMMITTEE ON COMMUNITY AFFAIRS

The Committee on Community Affairs adopted one amendment which is traveling with the bill. The amendment changes from 5 to 3 the number of years a freight forwarder must maintain a copy of each warehouse receipt, airway bill, and bill of landing in its records.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

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

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:	Staff Director:
Thomas L. Hamby	Joan Highsmith-Smith

AS FURTHER REVISED BY THE COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:	Staff Director:
Trina Kramer	David De La Paz

AS FURTHER REVISED BY THE COMMITTEE ON TRANSPORTATION:

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