

STORAGE NAME: h1539.ccc

DATE: April 9, 2001

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE
COUNCIL ON COMPETITIVE COMMERCE
ANALYSIS**

BILL #: HB 1539

RELATING TO: Economic Development

SPONSOR(S): Committee on Economic Development & International Trade

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE YEAS 9 NAYS 0
 - (2) CRIME PREVENTION, CORRECTIONS, ANDA SAFETY YEAS 7 NAYS 0
 - (3) COUNCIL FOR COMPETITIVE COMMERCE
 - (4)
 - (5)
-

I. SUMMARY:

The bill would require 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 three years. Failure to comply with the provisions of the bill would be a second-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 on the exported goods.

The bill would make a number of changes to provisions relating to Enterprise Florida, Inc.'s (EFI) operations. The bill would change the due date for submission of the statewide strategic plan from January 1 to January 31; raise the cap for refunds under the Qualified Target Industry (QTI) and Qualified Defense Contractor Tax Refund Programs to from \$30 million to \$35 million for FY 2002-2003 and each subsequent year; require entities with the authority to audit EFI to coordinate with the Auditor General resulting in a single audit of the organization's activities during a fiscal year; change the due date from October 1 to December 1 for foreign offices under contract with EFI to submit their annual reports; and allow EFI to contract with an economic analysis firm for the return-on-investment report and a survey for the customer satisfaction report.

Except for the provisions relating to freight forwarders, which would take effect January 1, 2001, the bill would take effect upon becoming a law.

Raising the cap from \$30m to \$35m for QTI refunds will have a \$5 million dollar negative fiscal impact on General Revenue in the future. For FY 2001-2002, \$24.7 million is appropriated, showing that the program has not yet reached the current \$30m cap.

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II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Less Government - 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 three 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 that 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, F.A.C., 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 that 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 that 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 personal 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 lading, 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.

Enterprise Florida, Inc., is required pursuant to the provisions of s. 288.90151(8), F.S., to contract with a private accounting firm to conduct annual return-on-investment and customer satisfaction reports. According to EFI, this requirement unnecessarily elevates the cost of the reports.

Section 288.905, F.S., requires Enterprise Florida, Inc., to develop a statewide strategic plan for economic development and provide annual updates of the statewide strategic plan to the Governor and Legislature by January 1 of each year.

Qualified Defense Contractor Tax Refunds

Finding that high technology jobs in the state were threatened by downsizing in the national defense budget, the Legislature during a special session in 1993 created a tax refund program designed to facilitate the employment of Florida citizens by defense contractors. The Qualified Defense Contractor (QDC) Tax Refund Program authorized tax refunds to a certified contractor that: 1) secured a new Department of Defense (DOD) contract; 2) consolidated an existing DOD contract in Florida; 3) converted defense production jobs to non-defense production jobs; or 4) contracted for the reuse of a defense-related facility (s. 288.104, F.S. (1994 Supp.)). The program was repealed effective December 1, 1994.

In 1996, the QDC program was re-created and codified in s. 288.1045, F.S. (s. 1, ch. 96-348, L.O.F.) In order to participate in the program and be eligible to receive tax refunds, a business must apply to the Office of Tourism, Trade, and Economic Development (OTTED) for certification. The statute prescribes information that must be submitted by a defense contractor in order to be certified (s. 288.1045(3), F.S.). The required information varies depending upon whether the business is consolidating a DOD contract or has secured a new DOD contract; is converting defense production jobs to non-defense production jobs; or has a contract to reuse a defense-related facility. Examples of the types of information that are generally required to be submitted during the application process include: 1) the applicant's federal employer identification number and state sales tax registration number; 2) the number of full-time jobs in Florida that will be dedicated to the project and the average wage of such jobs; 3) the percentage of the applicant's gross receipts derived from DOD contracts during the five taxable years preceding the application date; 4) the amount of various state taxes paid during the five fiscal years preceding the application date; and 5) the estimated amount of tax refunds to be claimed in each fiscal year under the QDC program.

The QDC program features a local financial support component, under which an eligible business must secure a resolution, adopted by county government, which recommends the project and indicates that the necessary commitments of local financial support for the business exist. Local financial support means funding from local sources, public or private, which is equal to 20 percent of the annual tax refund for a qualified business (s. 288.1045(1)(o) and (3), F.S.). Approved applicants enter into an agreement with OTTED and may receive refunds based on the payment of sales and use taxes, corporate income

taxes, intangible personal property taxes, emergency excise taxes, excise taxes on documents, and ad valorem taxes paid. Tax refunds generally are paid to a participating business over a period of several years. A qualified applicant may not receive more than \$5,000 times the number of jobs provided for in the tax refund agreement.

Qualified Target Industry Tax Refunds

The Qualified Target Industry (QTI) Tax Refund Program, s. 288.106, F.S., is one of Florida's main economic development incentives. The QTI program allows new or expanding businesses in certain industrial sectors or corporate headquarters to be approved for tax refunds of \$3,000 per job created (\$6,000 in an enterprise zone or rural county). To be eligible, a business's project must create at least 10 full-time jobs, and an expansion of an existing business must result in a ten percent increase in employment at the business. Approved applicants enter into an agreement with OTTED and may receive refunds based on the payment of sales and use taxes, corporate income taxes, intangible personal property taxes, emergency excise taxes, excise taxes on documents, ad valorem taxes paid, and insurance premium taxes. Tax refunds generally are paid to a participating business over a period of several years.

To participate in the program, an eligible business must apply to OTTED before the business has made a decision to locate a new business in this state or before the business had made the decision to expand an existing business in this state. As part of the application process, the business must submit, among other items: 1) its federal employer identification number and its state sales tax registration number; 2) the number of full-time jobs in this state that will be dedicated to the project and the average wage of such jobs; 3) an estimate of the proportion of the sales resulting from the project that will be made outside the state; and 4) any other additional information requested by OTTED (s. 288.106(3)(a), F.S.).

The QTI program features a local financial support component, under which an eligible business must submit a resolution adopted by county government, which recommends that certain types of businesses be approved as qualified and states that the commitments of local financial support necessary for the target industry business exist. Local financial support means funding from local sources, public or private, which is equal to 20 percent of the annual tax refund for a qualified business (s. 288.106(1)(j) and (3)(a)9, F.S.).

Refunds under the Qualified Target Industry and Qualified Defense Contractor Tax Refund Programs are limited to \$24m during FY 2001-2002 and \$30m for each fiscal year thereafter.

Enterprise Florida is required to be audited annually under s. 288.906, F.S., and to submit a complete and detailed report of its activities to the Governor and Legislature by December 1 of each year. EFI reports that, in addition to its mandated annual audit, as many as four state agencies have the authority to audit its operations. This results in the potential for multiple audits during a single fiscal year that affect the organization's productivity.

Section 288.012, F.S., requires each foreign office to submit to OTTED, by October 1 of each year, a complete and detailed report on its activities and accomplishments during the

preceding fiscal year. The information provided in the report shall include, but not be limited to, the number of Florida companies assisted; the number of inquiries received about investment opportunities in Florida; the number of trade leads generated; the number of investment projects announced; and the estimated U.S. dollar value of sales confirmations.

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 3 years.

The bill also 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 second degree misdemeanor.

The bill would make a number of changes to provisions relating to Enterprise Florida's operations. The proposed legislation would allow EFI to contract with an economic analysis firm for the return-on-investment report and a survey form for the customer satisfaction report. This change would allow EFI the option of reducing costs by using firms, other than private accounting firms, to prepare these reports. The bill would change the due date for submission of the statewide strategic plan from January 1 to January 31 of each year to allow the EFI board to review and approve the strategic plan updates at its annual January board meeting prior to submission of the changes to the Governor and Legislature. The proposed change would raise the cap for refunds under the QTI and QDC tax refund programs from \$30m to \$35m for FY 2002-2003 and each subsequent year.

It would require entities with the authority to audit EFI to coordinate with the Auditor General resulting in a single audit of the organization's activities during a fiscal year. The Joint Legislative Auditing Committee may authorize additional audits.

The bill would change the due date for foreign offices under contract with EFI from October 1 to December 1 to make the reporting date consistent with the EFI annual report due date. Enterprise Florida would include information relating to foreign office operations in its annual report.

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. Provides an effective date of January 1, 2002.

Section 2. Amends s. 288.90151(8), F.S., to allow EFI to hire an economic analysis firm for its return-on-investment report and a survey firm for its customer-satisfaction survey.

Section 3. Amends s. 288.905, F.S., to revise the due date of annual modifications to EFI's statewide strategic plan from January 1 to January 31.

Section 4. Amends s. 288.095, F.S., to increase the cap on refunds from the QTI and QDC tax refund programs for FY 2002-2003 and subsequent years from \$30m to \$35m.

Section 5. Amends s. 288.906, F.S., to require agencies with the authority to audit EFI to coordinate with the Auditor General so that a single state audit is conducted. Specifies that the Joint Legislative Auditing Committee must authorize additional audits.

Section 6. Amends s. 288.012, F.S., to revise the reporting date for Florida foreign offices under contract with EFI. Information from the foreign offices to Enterprise Florida, Inc., is changed from October 1 to December 1 of each year and is to be included in the EFI annual report.

Section 7. Effective date – Except for provisions relating to freight forwarders, which are effective January 1, 2002, the bill takes effect upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments below

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

See Fiscal Comments, below.

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 three 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:

There is no immediate fiscal impact related to raising the QTI cap from \$30m to \$35m, but there is a future negative impact to General Revenue of \$5 million. The legislature must appropriate QTI funds; therefore, the fiscal committees adjust the appropriations annually according to the amount under contract by OTTED. The funds appropriated in a fiscal year are not expended during that fiscal year; rather, they reflect the amount of funds promised to businesses participating in the program. The cap limits the amount OTTED may promise during any one fiscal year. If there are enough businesses participating in the program to reach the cap, no more contracts may be written for that fiscal year. For FY 2001-2002, \$24.7 million is appropriated, showing that the program has not yet reached the current \$30m cap.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 29, 2001, the Committee on Crime Prevention, Corrections, and Safety adopted one amendment. It eliminates provisions that would have required agencies to coordinate audits of EFI. The amendment is traveling with the bill.

VII. SIGNATURES:

COMMITTEE ON ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE:

Prepared by:

Staff Director:

J. Paul Whitfield, Jr.

J. Paul Whitfield, Jr.

AS REVISED BY THE COMMITTEE ON CRIME PREVENTION, CORRECTIONS, AND SAFETY:

Prepared by:

Staff Director:

Allen Mortham, Jr.

David DeLaPaz

AS REVISED BY THE COUNCIL ON COMPETITIVE COMMERCE:

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Hubert "Bo" Bohannon