

## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 1575 City of Destin, Okaloosa County  
**SPONSOR(S):** Sansom  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government Council</u>	<u></u>	<u>Camechis</u>	<u>Hamby</u>
2) <u>Finance &amp; Tax Committee</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

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### SUMMARY ANALYSIS

This proposed special act authorizes the governing authority of the City of Destin to impose, levy, and collect a tax within the corporate limits of the municipality, to be known as a municipal resort tax. The tax must be levied at a rate that may not exceed 2 percent upon the amount charged by any person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, rooming house, mobile home park, recreational vehicle park, or condominium for a term of 6 months or less, unless such person rents, leases, or lets for consideration living quarters or accommodations that are exempt from taxation according to ch. 212, F.S.

Proceeds of the municipal resort tax must be used for the following purposes:

- Creating and maintaining convention and publicity bureaus and cultural and art centers;
- Enhancing tourism; publicity and advertising;
- Transportation improvements, including, but not limited to, sidewalks, pathways, and bike lanes;
- Beach restoration;
- Artificial reef construction;
- Stormwater management;
- Land acquisition; and
- Purchasing, building, designing, engineering, planning, repairing, reconditioning, altering, expanding, maintaining, servicing, and otherwise operating auditoriums, community houses, convention halls, convention buildings or structures, and other related purposes, including relief from ad valorem taxes heretofore levied for such purposes.

The attached Economic Impact Statement indicates that the municipal resort tax will increase revenues by \$2.36 million in FY 04-05 and \$2.4 million in FY 05-06.

As discussed in the Comments Section of this analysis, the bill raises constitutional concerns regarding the authorization of a tax by special (or local) law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provides for lower taxes: This bill authorizes the City of Destin to impose municipal resort tax at a rate not to exceed 2 percent of the amount charged for any nonexempt accommodations let for a term of less than 6 months.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Chapter 67-930, L.O.F., authorizes municipalities to levy a municipal resort tax if: (1) the county within which the municipality is located fell within specified population limits based on the 1960 census; and (2) the municipal charter specifically provided for the levy of the tax prior to January 1, 1968. The City of Destin was originally incorporated as a municipality in 1985, therefore, a municipal resort tax may not be levied by the City pursuant to ch. 67-930, L.O.F.

The following statutes authorize counties, but not municipalities, to levy various tourist development taxes:

- Section 125.0104(3)(c), F.S., authorizes counties to levy a tax at a rate of 1 or 2 percent on the total consideration charged for transient rental transactions. The tax is levied pursuant to an ordinance approved in a county-wide referendum election or by a majority of voters in the subcounty special tax district affected by the law. All counties are eligible, but any use of tax proceeds not expressly authorized is prohibited. Authorized uses include promoting tourism, paying expenses related to certain public facilities, funding visitor centers, and financing certain beach and shoreline projects. Proceeds may be pledged to secure and liquidate revenue bonds issued by the county for certain purposes.
- Section 125.0104(3)(d), F.S., authorizes counties, under certain circumstances, to levy an additional 1% on the total consideration charged for transient rental transactions. To be eligible, a county must have levied the 1 or 2 percent tax above for a minimum of 3 years prior to the effective date of the levy and imposition of the additional 1%. In addition, the tax must be levied pursuant to an ordinance adopted by an extraordinary vote of the county governing body.
- Section 125.0104(3)(l), F.S., authorizes counties to levy up to an additional 1% tax on the total consideration charged for transient rental transactions pursuant to an ordinance adopted by a majority vote of the county's governing body. Proceeds pay bonds issues to finance professional sports franchise facilities, convention centers, and spring training facilities. All counties are eligible.
- Section 125.0104(3)(n), F.S., authorizes counties, in addition to any other tourist development tax, that have levied the sports franchise tax to levy an additional tax that is no greater than 1% on the total consideration charged for transient rental transactions. The tax must be levied pursuant to an ordinance adopted by a majority plus one vote of the county's governing body. With the exception of Miami-Dade and Volusia, any county that has levied the sports franchise tax is eligible.
- Section 125.0104(3)(m), F.S., authorizes a high tourism impact county to levy an additional 1% tax on the total consideration charged for transient rental transactions pursuant to an ordinance adopted by an extraordinary vote of the county's governing body. A county is eligible if the Department of Revenue has certified to the county that: (1) Its sales subject to the tax exceeded \$600 million the previous year OR (2) Sales were at least 18% of the county's total taxable sales under ch. 212, F.S., where the sales subject to the tax were a minimum of \$200 million. Counties authorized to levy a convention development tax are not considered a high tourism impact county.

- Section 125.0108, F.S., authorizes any county creating a land authority to levy a 1% tax on transient rental within the county area designated as an area of critical state concern.
- Section 212.0305, F.S., authorizes Duval, Miami-Dade, and Volusia counties to levy convention development taxes on transient rental transactions.
- Section 212.0305(4), F.S., authorizes each county operating under a government consolidated with one or more municipalities in the county, i.e., Duval County, to impose a 2% tax on the total consideration charged for transient rental transactions.
- Section 212.0305(4)(b), F.S., authorizes Miami-Dade County to impose a 3 percent tax on the total consideration charged for transient rental transactions.
- Section 212.0305, F.S., authorizes Volusia County to impose a tax of up to 3 percent on the total consideration charged for transient rental transactions.

**Effect of Proposed Changes**

This proposed special act authorizes the governing authority of the City of Destin to impose, levy, and collect a tax within the corporate limits of the municipality, to be known as a municipal resort tax. The tax must be levied at a rate that may not exceed 2 percent upon the amount charged by any person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, rooming house, mobile home park, recreational vehicle park, or condominium for a term of 6 months or less, unless such person rents, leases, or lets for consideration living quarters or accommodations that are exempt from taxation according to ch. 212, F.S.

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- Artificial reef construction;
- Stormwater management;
- Land acquisition; and
- Purchasing, building, designing, engineering, planning, repairing, reconditioning, altering, expanding, maintaining, servicing, and otherwise operating auditoriums, community houses, convention halls, convention buildings or structures, and other related purposes, including relief from ad valorem taxes heretofore levied for such purposes.

**C. SECTION DIRECTORY:**

- Section 1. Authorizes the City of Destin to impose a municipal resort tax.
- Section 2. Provides an effective date.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 29, 2005

WHERE? The Destin Log, Okaloosa County, Florida.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### Constitutional Notice Requirements

Article III, section 10 of the Florida Constitution provides that “[n]o special law shall be passed unless notice of intention to seek enactment thereof has been published in the manner provided by general law. Such notice shall not be necessary when the law, except the provision for referendum, is conditioned to become effective only upon approval by vote of the electors of the area affected.” This bill does not require a referendum to authorize the levy of the municipal resort tax.

Chapter 11, F.S., provides general law requirements applicable to the notice for special laws. Section 11.02, F.S., requires the notice to “state the substance of the contemplated law.” Therefore, the notice must be broad enough to include all matters contained in the body of the proposed legislation, although the specific contents need not be listed in detail. The function of the notice is to provide reasonable notice to a person whose interests may be affected by the proposed legislation so that he or she may inquire further into the detail of the local bill.

The published Notice of Intent indicates that this bill “will create a new special district to be known as the City of Destin Tourism and Infrastructure Authority to impose, levy, and collect a municipal resort tax not to exceed 2%, to be used by the City of Destin to promote tourism, improve transportation, and infrastructure, and other projects.”

This bill does not create a special district authorized to impose a resort tax; rather, the bill authorizes the City of Destin to impose the tax.

##### Municipal Report Tax

This bill authorizes the City of Destin to impose a municipal report tax. The tax must be levied at a rate that may not exceed 2 percent upon the amount charged by any person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, rooming house, mobile home park, recreational vehicle park, or condominium for a term of 6 months or less, unless such person rents, leases, or lets for consideration living quarters or accommodations that are exempt from taxation according to ch. 212, F.S.

Section 1, Article VII of the State Constitution provides as follows:

No **tax** shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by **general law**.  
[Emphasis added.]

Section 9, Article VII of the State Constitution provides municipalities may be authorized by “**general law**” to levy taxes other than ad valorem taxes except ad valorem taxes on intangible personal property and taxes prohibited by this constitution. Therefore, a municipality may be authorized to levy taxes other than ad valorem taxes only by **general law** enacted by the Legislature.

The first issue to consider is whether the municipal resort tax is a "tax" rather than a special assessment or fee. A special law may authorize a municipality to impose special assessments or fees, but a general law must authorize the imposition of a "tax". A "tax" is an enforced burden imposed by sovereign right for the support of the government, the administration of law, and the exercise of various functions the sovereign is called on to perform. *City of Boca Raton v. State*, 595 So.2d 25 (Fla.1992).

On the other hand, a "special assessment" is a charge assessed against the property of some particular locality because that property derives some special benefit from the expenditure of the money. Special assessments are not taxes because they confer a special benefit on the land burdened by the assessment. *City of Gainesville v. State*, 863 So.2d 138 (Fla. 2003); *City of Boca Raton v. State*, 595 So.2d 25, 29 (Fla.1992). The theory of a special assessment is that "the value of certain property is enhanced by an improvement of a public character, the property thus receiving an especial and peculiar benefit; and that upon such property a part or the whole of the cost of such public improvement is assessed to an amount not exceeding the amount of such benefits". *Atlantic Coast Line R.R. v. City of Gainesville*, 83 Fla. 275, 283-84, 91 So. 118, 121 (1922).

"User fees" are charges based upon the proprietary right of the governing body permitting the use of the instrumentality involved; they share common traits that distinguish them from taxes since they are charged in exchange for a particular governmental service which benefits the party paying the fee in a manner not shared by other members of society, and they are paid by choice, in that the party paying the fee has the option of not utilizing the governmental service and thereby avoiding the charge. *City of Gainesville v. State*, 863 So.2d 138 (Fla. 2003).

The municipal resort tax authorized by this bill does not appear to meet the requirements of a special assessment or a fee.

If the municipal resort tax is, indeed, a "tax", the municipality must be authorized to impose the tax by general law, not by special law. A "general law" operates universally throughout the state, or uniformly upon subjects as they may exist throughout the state, or uniformly within permissible classifications by population of counties or otherwise, or is a law relating to a state function or instrumentality. *Schrader v. Florida Keys Aqueduct Authority*, 840 So.2d 1050 (Fla.2003). *Dep't of Business Reg. v. Classic Mile, Inc.*, 541 so2d 1155 (Fla. 1989). In contrast, a "special law" or "local law" relates to, or is designed to operate upon, particular persons or things, or purport to operate upon classified persons or things when classification is not permissible or the classification adopted is illegal. *Schrader v. Florida Keys Aqueduct Authority*, 840 So.2d 1050 (Fla.2003). Special laws can operate in a limited geographic area within the state or they can regulate the conduct of a limited class of persons within the state. *Ocala Breeders' Sales Co., Inc. v. Florida Gaming Centers, Inc.*, 731 So.2d 21 (Fla. 1st DCA 1999).

This bill authorizes the City of Destin to impose a municipal resort tax, but does not authorize any other municipality in the state to impose a similar tax. Therefore, this bill, which was filed as a local bill, may be considered a "special law" or "local law" if enacted by the Legislature.

B. RULE-MAKING AUTHORITY: Rule-making is not addressed by this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.