

## CHAMBER ACTION

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1 The Finance & Tax Committee recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to exemptions from the tax on sales, use,  
7 and other transactions; providing a short title; providing  
8 legislative findings and purpose; amending s. 212.08,  
9 F.S.; deleting an annual limitation on an exemption from  
10 the sales tax for certain machinery and equipment used to  
11 increase productive output; deleting an exemption for  
12 machinery and equipment used to expand certain printing  
13 manufacturing facilities or plant units; deleting a  
14 limitation on application of the exemption for machinery  
15 and equipment purchased for use in phosphate or other  
16 solid minerals severance, mining, or processing operations  
17 by way of a prospective credit; deleting an annual  
18 limitation on an exemption from the sales tax for certain  
19 machinery and equipment purchased under a federal  
20 procurement contract; repealing s. 212.0805, F.S.,  
21 relating to qualifications for the exemption and credit  
22 for machinery and equipment purchased by an expanding  
23 business for use in phosphate or other solid minerals

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24 severance, mining, or processing operations; providing an  
25 appropriation; providing an effective date.

26  
27 Be It Enacted by the Legislature of the State of Florida:

28  
29 Section 1. Short title.--This act may be cited as the  
30 "Florida Manufacturing Global Competitiveness Act."

31 Section 2. Legislative findings and purpose.--The  
32 Legislature finds that a competitive manufacturing business  
33 climate is important given that the manufacturing sector  
34 contributes significantly to the economy of this state, helping  
35 the state to weather natural and manmade disasters; that the  
36 development of free trade agreements with the Americas will  
37 allow the state to be the gateway to increased international  
38 trade that will expand the opportunities for manufacturing  
39 exports, potentially add thousands of well-paying jobs in the  
40 state, and secure this state's place in emerging markets in the  
41 world marketplace; and that with the potential for increasing  
42 exports, an investment in manufacturing today will mean  
43 significant long-term positive economic benefits to the state  
44 tomorrow.

45 Section 3. Paragraphs (b) and (d) of subsection (5) of  
46 section 212.08, Florida Statutes, are amended to read:

47 212.08 Sales, rental, use, consumption, distribution, and  
48 storage tax; specified exemptions.--The sale at retail, the  
49 rental, the use, the consumption, the distribution, and the  
50 storage to be used or consumed in this state of the following

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51 are hereby specifically exempt from the tax imposed by this  
52 chapter.

53 (5) EXEMPTIONS; ACCOUNT OF USE.--

54 (b) Machinery and equipment used to increase productive  
55 output.--

56 1. Industrial machinery and equipment purchased for  
57 exclusive use by a new business in spaceport activities as  
58 defined by s. 212.02 or for use in new businesses which  
59 manufacture, process, compound, or produce for sale items of  
60 tangible personal property at fixed locations are exempt from  
61 the tax imposed by this chapter upon an affirmative showing by  
62 the taxpayer to the satisfaction of the department that such  
63 items are used in a new business in this state. Such purchases  
64 must be made prior to the date the business first begins its  
65 productive operations, and delivery of the purchased item must  
66 be made within 12 months of that date.

67 2.~~a~~ Industrial machinery and equipment purchased for  
68 exclusive use by an expanding facility which is engaged in  
69 spaceport activities as defined by s. 212.02 or for use in  
70 expanding manufacturing facilities or plant units which  
71 manufacture, process, compound, or produce for sale items of  
72 tangible personal property at fixed locations in this state are  
73 exempt from any amount of tax imposed by this chapter ~~in excess~~  
74 ~~of \$50,000 per calendar year~~ upon an affirmative showing by the  
75 taxpayer to the satisfaction of the department that such items  
76 are used to increase the productive output of such expanded  
77 facility or business by not less than 10 percent.

78 | ~~b. Notwithstanding any other provision of this section,~~  
 79 | ~~industrial machinery and equipment purchased for use in~~  
 80 | ~~expanding printing manufacturing facilities or plant units that~~  
 81 | ~~manufacture, process, compound, or produce for sale items of~~  
 82 | ~~tangible personal property at fixed locations in this state are~~  
 83 | ~~exempt from any amount of tax imposed by this chapter upon an~~  
 84 | ~~affirmative showing by the taxpayer to the satisfaction of the~~  
 85 | ~~department that such items are used to increase the productive~~  
 86 | ~~output of such an expanded business by not less than 10 percent.~~

87 | 3.a. To receive an exemption provided by subparagraph 1.  
 88 | or subparagraph 2., a qualifying business entity shall apply to  
 89 | the department for a temporary tax exemption permit. The  
 90 | application shall state that a new business exemption or  
 91 | expanded business exemption is being sought. Upon a tentative  
 92 | affirmative determination by the department pursuant to  
 93 | subparagraph 1. or subparagraph 2., the department shall issue  
 94 | such permit.

95 | b. The applicant shall be required to maintain all  
 96 | necessary books and records to support the exemption. Upon  
 97 | completion of purchases of qualified machinery and equipment  
 98 | pursuant to subparagraph 1. or subparagraph 2., the temporary  
 99 | tax permit shall be delivered to the department or returned to  
 100 | the department by certified or registered mail.

101 | c. If, in a subsequent audit conducted by the department,  
 102 | it is determined that the machinery and equipment purchased as  
 103 | exempt under subparagraph 1. or subparagraph 2. did not meet the  
 104 | criteria mandated by this paragraph or if commencement of  
 105 | production did not occur, the amount of taxes exempted at the

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106 | time of purchase shall immediately be due and payable to the  
107 | department by the business entity, together with the appropriate  
108 | interest and penalty, computed from the date of purchase, in the  
109 | manner prescribed by this chapter.

110 |       d. In the event a qualifying business entity fails to  
111 | apply for a temporary exemption permit or if the tentative  
112 | determination by the department required to obtain a temporary  
113 | exemption permit is negative, a qualifying business entity shall  
114 | receive the exemption provided in subparagraph 1. or  
115 | subparagraph 2. through a refund of previously paid taxes. No  
116 | refund may be made for such taxes unless the criteria mandated  
117 | by subparagraph 1. or subparagraph 2. have been met and  
118 | commencement of production has occurred.

119 |       4. The department shall adopt rules governing applications  
120 | for, issuance of, and the form of temporary tax exemption  
121 | permits; provisions for recapture of taxes; and the manner and  
122 | form of refund applications and may establish guidelines as to  
123 | the requisites for an affirmative showing of increased  
124 | productive output, commencement of production, and qualification  
125 | for exemption.

126 |       5. The exemptions provided in subparagraphs 1. and 2. do  
127 | not apply to machinery or equipment purchased or used by  
128 | electric utility companies, communications companies, oil or gas  
129 | exploration or production operations, publishing firms that do  
130 | not export at least 50 percent of their finished product out of  
131 | the state, any firm subject to regulation by the Division of  
132 | Hotels and Restaurants of the Department of Business and  
133 | Professional Regulation, or any firm which does not manufacture,

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134 process, compound, or produce for sale items of tangible  
135 personal property or which does not use such machinery and  
136 equipment in spaceport activities as required by this paragraph.  
137 The exemptions provided in subparagraphs 1. and 2. shall apply  
138 to machinery and equipment purchased for use in phosphate or  
139 other solid minerals severance, mining, or processing operations  
140 ~~only by way of a prospective credit against taxes due under~~  
141 ~~chapter 211 for taxes paid under this chapter on such machinery~~  
142 ~~and equipment.~~

143 6. For the purposes of the exemptions provided in  
144 subparagraphs 1. and 2., these terms have the following  
145 meanings:

146 a. "Industrial machinery and equipment" means tangible  
147 personal property or other property that has a depreciable life  
148 of 3 years or more and that is used as an integral part in the  
149 manufacturing, processing, compounding, or production of  
150 tangible personal property for sale or is exclusively used in  
151 spaceport activities. A building and its structural components  
152 are not industrial machinery and equipment unless the building  
153 or structural component is so closely related to the industrial  
154 machinery and equipment that it houses or supports that the  
155 building or structural component can be expected to be replaced  
156 when the machinery and equipment are replaced. Heating and air-  
157 conditioning systems are not industrial machinery and equipment  
158 unless the sole justification for their installation is to meet  
159 the requirements of the production process, even though the  
160 system may provide incidental comfort to employees or serve, to  
161 an insubstantial degree, nonproduction activities. The term

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162 includes parts and accessories only to the extent that the  
163 exemption thereof is consistent with the provisions of this  
164 paragraph.

165       b. "Productive output" means the number of units actually  
166 produced by a single plant or operation in a single continuous  
167 12-month period, irrespective of sales. Increases in productive  
168 output shall be measured by the output for 12 continuous months  
169 immediately following the completion of installation of such  
170 machinery or equipment over the output for the 12 continuous  
171 months immediately preceding such installation. However, if a  
172 different 12-month continuous period of time would more  
173 accurately reflect the increase in productive output of  
174 machinery and equipment purchased to facilitate an expansion,  
175 the increase in productive output may be measured during that  
176 12-month continuous period of time if such time period is  
177 mutually agreed upon by the Department of Revenue and the  
178 expanding business prior to the commencement of production;  
179 provided, however, in no case may such time period begin later  
180 than 2 years following the completion of installation of the new  
181 machinery and equipment. The units used to measure productive  
182 output shall be physically comparable between the two periods,  
183 irrespective of sales.

184       (d) Machinery and equipment used under federal procurement  
185 contract.--

186       1. Industrial machinery and equipment purchased by an  
187 expanding business which manufactures tangible personal property  
188 pursuant to federal procurement regulations at fixed locations  
189 in this state are ~~partially~~ exempt from the tax imposed in this

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190 chapter ~~on that portion of the tax which is in excess of~~  
191 ~~\$100,000 per calendar year~~ upon an affirmative showing by the  
192 taxpayer to the satisfaction of the department that such items  
193 are used to increase the implicit productive output of the  
194 expanded business by not less than 10 percent. The percentage of  
195 increase is measured as deflated implicit productive output for  
196 the calendar year during which the installation of the machinery  
197 or equipment is completed or during which commencement of  
198 production utilizing such items is begun divided by the implicit  
199 productive output for the preceding calendar year. In no case  
200 may the commencement of production begin later than 2 years  
201 following completion of installation of the machinery or  
202 equipment.

203 2. The amount of the exemption allowed shall equal the  
204 taxes otherwise imposed by this chapter ~~in excess of \$100,000~~  
205 ~~per calendar year~~ on qualifying industrial machinery or  
206 equipment reduced by the percentage of gross receipts from cost-  
207 reimbursement type contracts attributable to the plant or  
208 operation to total gross receipts so attributable, accrued for  
209 the year of completion or commencement.

210 3. The exemption provided by this paragraph shall inure to  
211 the taxpayer only through refund of previously paid taxes. Such  
212 refund shall be made within 30 days of formal approval by the  
213 department of the taxpayer's application, which application may  
214 be made on an annual basis following installation of the  
215 machinery or equipment.

216 4. For the purposes of this paragraph, the term:

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217 a. "Cost-reimbursement type contracts" has the same  
218 meaning as in 32 C.F.R. s. 3-405.

219 b. "Deflated implicit productive output" means the product  
220 of implicit productive output times the quotient of the national  
221 defense implicit price deflator for the preceding calendar year  
222 divided by the deflator for the year of completion or  
223 commencement.

224 c. "Eligible costs" means the total direct and indirect  
225 costs, as defined in 32 C.F.R. ss. 15-202 and 15-203, excluding  
226 general and administrative costs, selling expenses, and profit,  
227 defined by the uniform cost-accounting standards adopted by the  
228 Cost-Accounting Standards Board created pursuant to 50 U.S.C. s.  
229 2168.

230 d. "Implicit productive output" means the annual eligible  
231 costs attributable to all contracts or subcontracts subject to  
232 federal procurement regulations of the single plant or operation  
233 at which the machinery or equipment is used.

234 e. "Industrial machinery and equipment" means tangible  
235 personal property or other property that has a depreciable life  
236 of 3 years or more, that qualifies as an eligible cost under  
237 federal procurement regulations, and that is used as an integral  
238 part of the process of production of tangible personal property.  
239 A building and its structural components are not industrial  
240 machinery and equipment unless the building or structural  
241 component is so closely related to the industrial machinery and  
242 equipment that it houses or supports that the building or  
243 structural component can be expected to be replaced when the  
244 machinery and equipment are replaced. Heating and air-

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245 conditioning systems are not industrial machinery and equipment  
 246 unless the sole justification for their installation is to meet  
 247 the requirements of the production process, even though the  
 248 system may provide incidental comfort to employees or serve, to  
 249 an insubstantial degree, nonproduction activities. The term  
 250 includes parts and accessories only to the extent that the  
 251 exemption of such parts and accessories is consistent with the  
 252 provisions of this paragraph.

253 f. "National defense implicit price deflator" means the  
 254 national defense implicit price deflator for the gross national  
 255 product as determined by the Bureau of Economic Analysis of the  
 256 United States Department of Commerce.

257 5. The exclusions provided in subparagraph (b)5. apply to  
 258 this exemption. This exemption applies only to machinery or  
 259 equipment purchased pursuant to production contracts with the  
 260 United States Department of Defense and Armed Forces, the  
 261 National Aeronautics and Space Administration, and other federal  
 262 agencies for which the contracts are classified for national  
 263 security reasons. In no event shall the provisions of this  
 264 paragraph apply to any expanding business the increase in  
 265 productive output of which could be measured under the  
 266 provisions of sub-subparagraph (b)6.b. as physically comparable  
 267 between the two periods.

268 Section 4. Section 212.0805, Florida Statutes, is  
 269 repealed.

270 Section 5. For the 2006-2007 fiscal year, the sum of  
 271 \$210,069 is appropriated from the General Revenue Fund and four  
 272 positions are authorized to the Department of Revenue for the

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273 | purpose of implementing the provisions of this act. Of the funds  
274 | provided, \$191,825 are recurring and \$18,244 are nonrecurring  
275 | funds.

276 |       Section 6. This act shall take effect July 1, 2006.