

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: SB 466

INTRODUCER: Senator Braynon

SUBJECT: Tourist Development Tax

DATE: March 20, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Pugh	Cooper	CM	Pre-meeting
2.	_____	_____	CA	_____
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Florida statutes allow county governments to levy tourist development taxes on hotel rooms and other transient rental accommodations for specified purposes. The most a county can levy is a 6-percent tax, and only if all the statutory conditions are met.

One tourist development tax provision – authorized in s. 125.0104(3)(n), F.S. – allows 65 counties to levy up to an additional 1-percent tax to pay debt service on bonds for the construction, reconstruction, or renovation of professional sports facilities that have been in Florida since April 1, 1987, or use the funds to promote tourism.

SB 466 would:

- Allow a county to levy the aforementioned tax to pay debt service on bonds to construct, reconstruct, or renovate any professional sports facility, no matter when it began playing in Florida, that is either publicly owned and operated, or on public land but operated by a private entity in an adjacent county, under certain specific conditions. Only Broward County meets the criteria. The only professional sports facility that appears to benefit is Sun Life Stadium, home of the Miami Dolphins, and located in Miami-Dade County.
- Remove a prohibition against Miami-Dade and Volusia counties levying the tax.
- Allow Miami-Dade County to levy the tax countywide, because also deleted is the prohibition against tourist development taxes being collected in the three Miami-Dade County municipalities that levy the Municipal Resort Tax. Bonds backed by the tax revenues must be issued no later than December 14, 2015.
- Allow a county to use revenues from the tax to pay debt service on the expansion, reconstruction, or renovation of an existing convention center, plus construction of

contiguous and related facilities, and to pay the planning and design costs incurred prior to issuing the bonds.

- Specifies that if this tax is initially levied on or after January 1, 2012, the tax revenues used for existing convention center improvements, or for tourism promotion, may not exceed 49.9 percent of the total tax revenues received from the tax.
- Specifies that the aforementioned changes to paragraph (n) of s. 125.0104(3), F.S., supersede any contrary provision in s. 125.0104(5), F.S., related to how the funds may be used.

SB 466 substantially amends s. 125.0104, F.S.

II. Present Situation:

Tourist Development Taxes in Florida¹

Section 125.0104, F.S., authorizes five separate tourist development taxes on transient rental² transactions and specifies how they may be used.

Depending on a county's eligibility to levy, the maximum tax rate varies from a minimum of 3 percent to a maximum of 6 percent. The levies may be authorized by vote of the county's governing body or by referendum approval, depending on the specific tax. Generally, the revenues may be used for capital construction of tourist-related facilities, tourist promotion, and beach and shoreline maintenance; however, the authorized uses vary according to the particular levy.

Subsection (3) of s. 125.0104, F.S., authorizes the following tourist development taxes:

- The basic tourist development tax may be levied at the rate of 1 or 2 percent by all 67 counties.³ Currently, 60 counties levy this tax at the full 2-percent rate.⁴
- An additional tourist development tax of 1 percent may be levied.⁵ Currently, 43 of the 56 eligible counties levy the tax.⁶
- A professional sports franchise facility tax may be levied up to 1 percent on transient rental transactions.⁷ Currently, 34 counties levy this additional tax, although all 67 counties are eligible to levy it.⁸
- A high tourism impact county may levy an additional 1 percent on transient rental transactions.⁹ Only Broward, Monroe, Orange, Osceola and Walton counties have been

¹ Information regarding tourist development taxes was taken from the 2010 Local Government Financial Information Handbook published in October 2010 by the Office of Economic and Demographic Research. Report available at: <http://edr.state.fl.us/Content/local-government/reports/lgfi10.pdf>.

² Pursuant to s. 212.02(10), F.S., "transient rentals" are rentals or leases of accommodations for 6 months or less. Accommodations include stays in hotels, apartment houses, rooming houses, tourist or trailer camps, mobile home parks, recreational vehicle parks, or real property. See also Rule 12A-1.061(2)(f), F.A.C.

³ Section 125.0104(3)(c), F.S.

⁴ FN 1, supra. See pages 260-261.

⁵ Section 125.0104(3)(d), F.S.

⁶ See FN 4, supra.

⁷ Section 125.0104(3)(l), F.S.

⁸ See FN 4, supra.

⁹ Section 125.0104(3)(m), F.S.

designated as high tourism impact counties eligible to impose this tax. Of those five, only Monroe, Orange, and Osceola counties impose the tax.¹⁰

- An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.¹¹ This tax is commonly referred to as the “extra penny” for professional sports facilities, and may be levied by counties that already collect the first penny for professional sports facilities. Out of 65 counties eligible to levy this tax, only Broward and 19 other counties do.¹² Miami-Dade and Volusia counties are not eligible to levy this tax.¹³

Specifically, the “extra penny” levy in s. 125.0104(3)(n), F.S., must be approved by a majority-plus-1 vote of the county governing board. It can only be used for the following purposes:

- Pay the debt service on bonds issued to finance:
 - The construction, reconstruction, or renovation of a facility either publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred prior to the issuance of such bonds for a new professional sports franchise as defined in s. 288.1162, F.S.,¹⁴ or
 - The acquisition, construction, reconstruction, or renovation of a facility either publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred prior to the issuance of such bonds for a retained spring training franchise.
- Promote and advertise tourism within Florida, as well as nationally and internationally. If the revenues raised by the “extra penny” are spent for an activity, service, venue, or event, then one of the main purposes of that activity, service, venue, or event must be the “attraction of tourists.”¹⁵

A county that imposes the “extra penny” for a professional sports facility may not expend any ad valorem tax revenues for the acquisition, construction, reconstruction, or renovation of the project.

¹⁰ See FN. 4, supra.

¹¹ Section 125.0104(3)(n), F.S.

¹² See FN. 4, supra.

¹³ Miami-Dade and Volusia counties levy a 3-percent convention development tax, pursuant to s. 212.0305, F.S., and cannot by law levy more than 2 percent in tourist development taxes plus the 1-percent professional sports facility tax. If they were allowed to levy the additional penny for professional sports facilities, their total local-option levies on transient rentals would be 7 percent. Duval County, which levies a 2-percent Consolidated County Convention Center Tax on transient rentals, is specifically allowed in statute to levy the extra penny for pro sports facilities.

¹⁴ Section 288.1162(3)(a), F.S., specifies that “new professional sports franchise” means a professional sports franchise that was not based in this state before April 1, 1987. Seven of the eight professional sports franchises that call Florida home in the regular season began operations in this state after that date. The eighth, the Miami Dolphins, began playing in Florida in 1970.

¹⁵ Section 125.0104(3)(n)2., F.S.

Municipal Resort Tax¹⁶

Created in 1969 and subsequently amended four times by the Legislature, the Municipal Resort Tax may be levied at a rate of up to 4 percent on transient rental transactions, and up to 2 percent on the sale of food and beverages consumed in restaurants and bars in certain municipalities whose respective county population fell within specified limits based on the 1960 Census and whose municipal charter specifically provided for the levy of this tax prior to January 1, 1968. The levy must be adopted by an ordinance approved by the governing body. Revenues can be used for tourism promotion activities, capital construction and maintenance of convention and cultural facilities, and relief of ad valorem taxes used for those purposes.

Municipalities in counties having a population of not less than 330,000 but not more than 340,000 persons, and in counties having a population of more than 900,000, according to the 1960 decennial census, whose charter specifically provided or whose charter was amended prior to January 1, 1968, to allow the levy of this exact tax, are eligible to impose it by ordinance adopted by the governing body.

Currently, only three municipalities – Bal Harbour, Miami Beach, and Surfside, all in Miami-Dade County – are eligible to impose the tax. According to the Department of Revenue, all three municipalities are imposing the tax at the maximum rates.¹⁷

Pursuant to s. 125.0104(3)(b), F.S., no municipality levying the Municipal Resort Tax may levy tourist development taxes.

Sun Life Stadium

Sun Life Stadium (previously known as Joe Robbie Stadium, Pro Player Park, Pro Player Stadium, Dolphin Stadium, Dolphins Stadium, and, most recently, Land Shark Stadium) is a multi-purpose stadium in Miami Gardens, a suburb of Miami. Construction began in 1985, and the first professional football game was played in August 1987. It is the home stadium facility of the Miami Dolphins National Football League team, the Florida Marlins Major League Baseball team, and the University of Miami Hurricanes NCAA football team. It also hosts the annual Orange Bowl college football bowl game.

Costing \$115 million to build in the mid-1980s, Sun Life Stadium has been upgraded several times. Additional renovations for the Dolphins' stadium are planned after the Marlins leave after the 2011 season for their own stadium in Little Havana, on the site of the original Orange Bowl stadium that was demolished in 2009 to begin construction on the new facility.¹⁸ The proposed renovations for the Dolphins' stadium include the addition of a roof to shield fans from rain and other weather-related elements, and sideline improvements to narrow the field and bring seats closer to the on-field action.¹⁹

¹⁶ FN 1, supra. Information for this section of the analysis is on pages 243-244 of the report.

¹⁷ FN 1, supra. Page 243.

¹⁸ See http://mlb.mlb.com/fla/ballpark/new_ballpark.jsp.

¹⁹ See http://en.wikipedia.org/wiki/Sun_Life_Stadium.

III. Effect of Proposed Changes:

Under very specific conditions, SB 466 allows a county to spend revenues from the additional professional sports franchise facility tax in s. 125.0104(3)(n), F.S., to build, renovate, or repair a professional sports facility in an adjacent county that is 11 miles from the counties' shared border and meets other requirements. Because of how the language is drafted, only Broward County would be eligible to use revenues from its existing levy for a professional sports facility in adjacent Miami-Dade County. The eligible sports facility is the Sun Life Stadium, where the Miami Dolphins, Florida Marlins, and Miami Hurricanes play.

SB 466 also makes a number of other significant changes to s. 124.0104, F.S., related to usage of the levy's revenues and lifting the prohibition against certain municipalities from levying a tourist development tax.

Section 1: Amends s. 125.0104(3)(n), F.S., to:

- Allow a county to levy the tax to pay debt service on bonds to construct, reconstruct, or renovate any professional sports facility, no matter when it began operations in Florida, that is either publicly owned and operated, or on public land but operated by a private entity, if it meets the following criteria:
 - The county levying the tax and an adjacent county have a combined population exceeding 4 million people.
 - In the adjacent county there is, or will be, a professional sports facility located within 11 miles of the boundary of the county where the tax is or will be levied.
 - The team using the stadium has a training facility in the adjacent county.
 - The adjacent county finds that the sports facility generates economic development within its boundaries.
- Remove a statutory prohibition against Miami-Dade and Volusia counties levying the tax. This would bring the total local-option taxes on transient rentals in those counties to 7 percent, if their county governing boards voted to levy the extra penny. Approval requires a majority vote-plus-1 in the affirmative.
- Allow Miami-Dade County to levy the tax countywide, because also deleted is the prohibition against tourist development taxes being collected in the three Miami-Dade County municipalities that currently levy the Municipal Resort Tax.
 - Bonds backed by these tax revenues must be issued no later than December 14, 2015, but can be refunded or refinanced at the issuer's discretion.
 - The tax revenues generated by this extra penny tax can be used to pay debt service on bonds issued pursuant to the s. 125.0104(3), F.S., which includes more than pro sports facilities.
- Allow a county to levy the tax to pay debt service on the expansion, reconstruction, or renovation of an existing convention center, plus construction of contiguous and related facilities, and to pay the planning and design costs incurred prior to issuing the bonds.
- If this tax is initially levied on or after January 1, 2012, the tax revenues used for existing convention center improvements, or for tourism promotion, may not exceed 49.9 percent of the total tax revenues received from the tax.

These changes to paragraph (n) of s. 125.0104 (3), F.S., supersede any contrary provision in s. 125.0104(5), F.S., related to authorized uses of the tax proceeds. One of the superseded

provisions is that revenues from tourist development taxes can be spent on publicly owned and operated convention centers, sports stadiums and arenas, coliseums, and auditoriums.

These proposed changes to s. 125.0104(3)(n), F.S., in lines 30-47, appear to alter that paragraph so significantly and are so specifically tied to a particular sports facility that no other county currently eligible to levy the tax under existing law would be able to do so in the future, in order to build or upgrade a professional sports facility within its borders, unless it could meet all of the new criteria.

Additionally, the criteria are so specific in the amended s. 125.0104(3)(n)1.a.I., F.S., that SB 466 could be construed as a general bill of local application. (A discussion on this issue appears below, in **Section IV. Constitutional Issues.**)

Section 2: Provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

As drafted, SB 466 might be construed to raise the question of whether it is a local bill, and not a general law.

The eligibility requirements in the proposed modified s. 125.0104(3)(n), F.S., appear to be specifically crafted so that only Broward County would be eligible to use its existing levy under the amended paragraph, to make improvements to a specific professional sports facility that is 11 miles from its border with an adjacent county, in this case, Miami-Dade.

Research into the populations of counties that currently have pro sports facilities and of their largest adjacent county revealed no other pairing that is close to the bill's population eligibility criterion of a combined population exceeding 4 million persons. Broward (home to the NHL's Florida Panthers) and Palm Beach counties had a combined estimated 2009 population of just over 3 million persons. The counties of Hillsborough (NFL's Tampa Bay Buccaneers and NHL's Tampa Bay Lightning) and Pinellas (home of the MLB's Tampa Bay Rays), for example, had a combined estimated 2009 population of

2.12 million persons. Orange (home of the Orlando Magic) and Brevard counties combined had an estimated 2009 population of 1.6 million.²⁰

It could be considered unlikely – at least for many years, now that Florida’s growth rate has slowed – that another pairing of counties will meet not only the population threshold, but the bill’s other criteria.

Although no specific counties are explicitly named in SB 466, the specific eligibility criteria could be construed to raise the question whether the bill is, in fact, a local bill.

The Florida Constitution imposes special requirements on local laws and prohibits local laws on specified subjects. If a bill is determined to be a local bill, the notice of intention to seek enactment must be published in the manner provided by general law or the bill must be conditioned to become effective only upon approval by vote of the electors of the area affected.

The distinction between a local law and a general law is not always clear, according to the courts:

“A statute relating to subdivisions of the state or to subjects or to persons or things as a class, based upon proper distinctions and differences that inhere in or are peculiar or appropriate to the class, is a general law, while a statute relating to particular subdivisions or portions of the state, or to particular places of classified localities, is a ‘local law’”²¹

A general law operates uniformly, not because it operates on every person in the state, but because every person brought within the circumstances that the law provides for is fairly and equally affected by it.²² Even though the conditions of the subject on which a statute operates do not exist in all parts of the state, the law may be general and of uniform operation if it operates uniformly on the specified subject and conditions wherever they exist in the state.²³

Also, SB 466 may be a general bill of local application.²⁴ Before 1971, to bypass the constitutional requirements for local bills, legislation based on population thresholds, commonly called “general bills of local application,” were introduced and enacted. A general act of local application uses a classification framework, such as population or other criterion, so that its application is restricted to a particular locality.

²⁰ *Florida Estimates of Population 2009*, published by the University of Florida in 2010. Information cited is in Table I, on pages 8-21. Report on file with the Senate Commerce and Tourism Committee.

²¹ *State ex rel Buford v. Daniel*, 99 So. 804 (Fla 1924).

²² *Department of Legal Affairs v. Sanford-Orlando Kennel Club, Inc.*, 434 So. 2d 879 (Fla. 1983); *State v. Leavins*, 599 So. 2d 1326 (Fla. 1st DCA 1992).

²³ *State ex rel. Landis v. Harris*, 163 So. 237 (Fla. 1934).

²⁴ The discussion that follows is based on the “Manual for Drafting General Bills,” prepared by Legal Research and Drafting Services of the Office of the Secretary of the Senate. Fifth Edition. Published in 1999.

Bills that incorporate a classification framework can be general bills if:

- The classification framework is open so that other localities can potentially fall within the classification; and
- The classification bears a reasonable nexus to the subject matter and to the public purpose to be served; is based upon differences that inhere in or are peculiar to that class of localities; and is not arbitrary.

If the proposed general bill of local application does not satisfy both of these criteria, it is a local bill and is subject to all of the constitutional requirements and proscriptions applicable to local acts.²⁵

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

If SB 466 becomes law, Broward County, and any future eligible counties, could be allowed to use revenues from a tourist development tax levy under s. 125.0104(3)(n), F.S., to issue bonds for a pro sports facility in an adjacent county. The decision would rest with the county's governing board, implemented by a majority-plus-1 vote in the affirmative.

Also, the bill removes a statutory prohibition against Miami-Dade and Volusia counties from levying the additional pro sports facilities tourist development tax. This action would raise the total local-option taxes on transient rentals in those counties to 7 percent, if their county governing boards voted to levy the extra penny. Approval requires a majority vote-plus-1 in the affirmative.

Additionally, Miami-Dade County would be able to levy this tax countywide, because also deleted is the prohibition against tourist development taxes being collected in the three Miami-Dade County cities that currently levy the Municipal Resort Tax.

B. Private Sector Impact:

Indeterminate, depending on the industry sector and the county getting the benefits. The impacts in increased sales of goods and services will depend on a number of highly localized factors, such as proximity of hotels, restaurants, transportation facilities, retail establishments, and other businesses to the renovated pro sports and convention center facilities, and whether the attendees of the events at these facilities live in the area or are out-of-town or out-of-state visitors.

C. Government Sector Impact:

Indeterminate. The adjacent county, where the pro sports facility is located, might be in a position to reap a greater benefit than the county that levies the tax. However, the actual impacts in increased sales tax and other revenue collections will depend on a number of highly localized factors, such as proximity of hotels, restaurants, transportation facilities,

²⁵ *Lewis v. Mathis*, 345So.2d 1066 (Fla. 1977); *Vance v. Ruppel*, 215 So.2d 309 (Fla. 1968)

and retail establishments to the pro sports facility, and whether the attendees of the events at the pro sports facility live in the area or are out-of-town or out-of-state visitors.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The inclusion of a fourth usage of the “extra penny” in s. 125.0104(3)(n), F.S., to expand, reconstruct, or renovate an existing convention center, and pay planning and design costs for such a project, appears to dilute the primary purposes of the levy, which are to provide funding to build or renovate professional sports facilities and spring training facilities, or promote tourism.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.