

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 Budget Committee

BILL: PCB 7150

INTRODUCER: For consideration by the Budget Committee

SUBJECT: Cigarette, Tobacco, and Alcoholic Beverage Taxes

DATE: March 28, 2011

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Frederick/Blizzard	Meyer, C.		Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill transfers the tax collection and audit functions for cigarettes, other tobacco products, and alcoholic beverages from the Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) to the General Tax Administration Program (program) within the Department of Revenue (DOR).

The bill transfers the DBPR’s rules that are in effect immediately before the effective date of this bill, relating to the collection and audit of taxes on cigarettes, to the DOR. The bill authorizes the DOR to adopt rules to administer the tax collection and audit provisions that are transferred to it. It also authorizes the division and program to adopt emergency rules to administer the provisions of this bill.

The bill includes the following provisions relating to cigarettes and other tobacco products:

- Requires cigarettes wholesale dealers and tobacco products dealers who have paid \$20,000 or more in taxes during the previous year to remit payments by electronic funds transfer.
- Deletes provisions for affixing and paying taxes through metering machines, which the DBPR indicates are no longer used by the industry.
- Requires that wholesale dealers of cigarettes and other tobacco products report the specified information regarding sales to retail dealers.

The bill provides for the regulation of manufacturers and importers of other tobacco under Part II of ch. 210, F.S., by providing record keeping requirements and inspection requirements.

The bill provides for the regulation of cigarettes distribution and sale by the two agencies and requires that the agencies exercise regulatory authority in concert, including the following circumstances.

- The division will appoint dealers in cigarettes as agents to buy and affix tax stamps, while the program will approve such appointments.
- If a dealer fails to file a tax return, the dealer may apply to the program for a hearing with the division after the program has made a final determination of the amount of tax due.
- Both agencies are authorized to inspect records and issue subpoenas.

The bill includes the following provisions relating to the regulation of alcoholic beverages.

- Requires dealers who have paid \$20,000 or more in taxes during the previous year to remit payments by electronic funds transfer.
- Requires manufacturers, distributors, brokers, sales agents, importers, and exporters to provide the program with specified information regarding sales to the retail dealers.
- Permits manufacturers, distributors, and vendors to make deliveries in vehicles which are not owned or leased by the licensee.
- Permits manufacturers, distributors, and vendors to receive orders by electronic mail.

Regarding alcoholic beverage regulation, the bill also provides several instances in which the two agencies will be granted dual authority to exercise regulatory authority, including the following.

- The division may accept a surety bond that is less or greater than the required bond for each manufacturer and distributor. The program may accept from brewers a surety bond of less than or greater than the required bond.
- Both agencies are authorized to search persons, places, and conveyances and to enter any buildings or places where beverages subject to taxation are manufactured or brought into the state.
- Both agencies are authorized to conduct annual audits of malt beverage manufacturers for compliance with the container tracking provisions in s. 563.06(5)(a), F.S.
- Both agencies may ascertain whether all applicable taxes have been paid when a court orders the sale of alcoholic beverages after a conviction for a violation of the Beverage Law during which the beverages were confiscated.
- Both agencies may inspect licensed premises without a search warrant.

The bill provides an effective date of July 1, 2011.

This bill substantially amends the following sections of the Florida Statutes: 20.165, 210.01, 210.11, 210.02, 210.021, 210.04, 210.05, 210.06, 210.07, 210.08, 210.09, 210.095, 210.11, 210.12, 210.13, 210.14, 210.15, 210.16, 210.1605, 210.161, 210.18, 210.1801, 210.185, 210.20, 210.19, 210.25, 210.31, 210.35, 210.40, 210.45, 210.50, 210.51, 210.55, 210.60, 210.65, 210.70, 559.79, 561.01, 561.051, 561.08, 561.11, 561.111, 561.15, 561.221, 561.25, 561.27, 561.29, 561.37, 561.41, 561.49, 561.50, 561.55, 561.57, 562.16, 562.20, 562.25, 562.41, 563.01, 564.01,

565.01, 563.06, 563.07, 564.06, 565.02, 565.12, 565.13, 568.10, 569.004, 569.002, 569.009, and 213.05.

This bill creates section 561.024, Florida Statutes. This bill creates unnumbered sections of the Florida Statutes.

II. Present Situation:

Regulation and Taxation of Cigarettes and Other Tobacco Products

The Division of Alcoholic Beverages and Tobacco oversees the collection of excise taxes from the sale of cigarettes and other tobacco products. Part I, ch. 210, F.S., consisting of ss. 210.01-210.22, F.S., provides for the taxation of cigarettes. Part II, ch.210, F.S., consisting of ss. 210.25-210.75, F.S., provides for the taxation of tobacco products other than cigarettes and cigars. The retail sale and delivery of tobacco is governed by the division under the provisions of ch. 569, F.S.

Cigarette Regulation and Taxation

Section 210.15(1)(a), F.S., requires a permit issued by the division before any person, firm, or corporation may engage in business as a manufacturer, importer, exporter, distributing agent, or wholesale dealer of cigarettes. A separate application and permit is required for each place of business located within the state or, in the absence of such place of business in this state, for wherever its principal place of business is located.

Section 210.01(1), defines the term “cigarette” to mean:

Any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

The current excise tax in Florida ranges from 16.95 cents per package to 67.8 cents per package, depending on the number of cigarettes per package.¹ The current excise tax is 33.9 cents per standard 20-cigarette pack cigarettes.²

A “distributing agent” is defined as any person, firm, or corporation who receives cigarettes and distributes them to wholesalers or other distributing agents inside or outside the state.³ An “agent” is defines as any person authorized by the division to purchase and affix adhesive or meter stamps under Part I of ch. 210, F.S.⁴ A “wholesale dealer” sells cigarettes to retail dealers

¹ Section 210.02(3) and (4), F.S.

² Section 210.02(3)(b), F.S.

³ Section 210.01(14), F.S.

⁴ Section 210.01(9), F.S.

for resale only or operates cigarette vending machines in more than one place of business.⁵ An “exporter” is a person who transports tax-exempt cigarettes into Florida under bond for delivery beyond state borders.⁶

Section 210.06, F.S., requires that every dealer affix a tax stamp as evidence that the excise tax has been paid before the cigarettes can be offered for sale in this state. Sections 210.02 and 210.04, F.S., provide that excise taxes must be paid by the wholesale dealer upon the first sale or transaction within this state, whether or not such sale or transfer is to the ultimate purchaser or consumer. Because wholesalers may purchase cigarettes from other wholesalers, only the first sale is taxed. Distributing agents, acting as agents to the manufacturers, are not required to pay taxes for the distribution of cigarettes to wholesalers. Collected excise taxes are paid to the division. Stamps representing various denominations of tax are purchased in bulk by wholesale dealers and are affixed to packages as proof of payment.⁷ Cigarettes that are not properly stamped may not be sold in Florida.⁸ The amount of the tax then becomes a part of the price of the cigarettes to be paid by the purchaser or consumer.

Cigarette manufacturers report information pertaining to the tobacco settlement agreement⁹ to the Attorney General’s Office rather than to the division. Section 210.09(2), F.S., requires a monthly report by “any distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting or possessing cigarettes for sale or distribution within the state.” All manufacturers must report to the division the amount of cigarettes, by invoice total, shipped to Florida cigarette stamping wholesalers, i.e., distributors.

Cigarette distributing agents file a monthly report with the division detailing the number of cigarettes shipped through their warehouse for the preceding month, including all cigarettes received from manufacturers and delivered to each stamping agent. Stamping agents file a monthly report listing all stamp purchases and usage for the preceding month, including ending and beginning inventories. Wholesale distributors that are not stamping agents file a similar report of all purchases and sales inside and outside the state for the preceding month, including ending and beginning inventories. Sales of cigarettes out-of-state are reported on a wholesale dealer’s monthly report as exempt from the excise tax because the tax applies only to sales in Florida. The monthly report details the number of cigarette packages, but does not include any information about the quantity of each brand. There are no reporting requirements for retailers.

Revenues from the taxes as well as the license fees are then distributed by the Bureau of Auditing within the division to the statutorily designated recipients on a monthly or quarterly basis.

⁵ Section 210.01(6), F.S.

⁶ Section 210.01(17), F.S.

⁷ Sections 210.05 and 210.06, F.S.

⁸ Section 210.06, F.S.

⁹ As provided in s. 215.56005(1)(f), F.S., the “tobacco settlement agreement” means the settlement, as amended, in the case of *State v. American Tobacco Co. et al.*, No. 95-1466AH (Fla. 15th Cir. Ct. 1996). The settling manufacturers are Phillip Morris, Inc. R.J. Reynolds Tobacco Company, Brown and Williamson Tobacco Corp., and Lorillard Tobacco Company. The purpose of the information provided is to verify the settlement payments made pursuant to the settlement agreement. The provided information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a) of Art. I of the State Constitution under s. 569.215, F.S.

Regulation and Taxation of Other Tobacco Products

Section 210.25(11), F.S., defines the term “tobacco products” to mean:

Loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but “tobacco products” does not include cigarettes, as defined by s. 210.01(1), or cigars.

There is no definition for cigars in ch. 210, F.S.¹⁰

The term “other tobacco products” or OTP refers to all tobacco products except cigarettes and cigars. Part I of ch. 210, F.S., provides for the taxation of cigarettes. Part II of ch. 210, F.S., provides for the taxation of other tobacco products. Cigarettes are taxed in a different manner from other tobacco products. Cigars are not subject to an excise tax. Tobacco products, including cigars and cigarettes, are subject to the sales tax.

All OTP are taxed at the same rate. “Other tobacco products” are taxed on an *ad valorem* basis at the rate of 25 percent of the wholesale sales price of the tobacco product.¹¹ The tax is imposed at the time the distributor:

- (a) Brings or causes to be brought into this state from without the state tobacco products for sale;
- (b) Makes, manufactures, or fabricates tobacco products in this state for sale in this state; or
- (c) Ships or transports tobacco products to retailers in this state, to be sold by those retailers.¹²

Section 210.35, F.S., requires a license for distributors of OTP under Part II of ch. 210, F.S. Manufacturers and importers of OTP are not required to be licensed. According to the DBPR, manufacturers, currently report to the division on a monthly basis what they sell into Florida or to Florida-licensed distributors, as required under the Prevent All Cigarette Trafficking Act (PACT Act), which took effect on June 29, 2010.¹³

¹⁰ Section 381.84, F.S., includes cigars in the definition of “tobacco.” Section 386.203, F.S., includes cigars in the definition of “smoking.”

¹¹ Section 210.30, F.S.

¹² *Id.*

¹³ *Prevent All Cigarette Trafficking Act*, P.L. 111-154 (2010), requires sellers of tobacco products to comply with certain requirements regarding reporting, shipping, recordkeeping, and collecting taxes. The act applies businesses that sell or deliver tobacco products purchased online, by catalog, or by phone. It prohibits importers and interstate sellers of tobacco from selling cigarettes produced by companies that are not in full compliance with the terms of the tobacco settlement agreement between states and tobacco.

Regulation and Taxation of Alcoholic Beverages

Alcoholic beverages are regulated by ch. 561, 562, 563, 564, 565, 567, and 568, F.S., known as the Beverage Law.¹⁴ These provisions regulate the manufacture, distribution, and sale of wine, beer, and liquor via manufacturers, distributors, and vendors.¹⁵ The division is authorized to administer and enforce the Beverage Law.

Section 561.50(1), F.S., provides that there shall be only one state tax paid as to each gallon or fraction thereof of beverage sold under the Beverage Law. No other excise tax shall be levied directly or indirectly. Generally, the applicable excise taxes, which vary depending on the volume and percentage of alcohol, are:

- The malt beverages excise tax ranges from 48 cents per gallon for bulk, kegs, or barrels to 6 cents for beverages in containers of less than 1 gallon;¹⁶
- The wine excise tax ranges from \$2.25 per gallon for wines containing between 0.5 percent and 17.259 percent alcohol by volume to \$3.50 for natural sparkling wines.¹⁷
- The liquors excise tax ranges from \$6.50 per gallon for beverages with between 17.259 percent and 55.780 percent of alcohol by volume to \$9.53 per gallon for beverages with more than 55.780 percent of alcohol by volume.¹⁸

These taxes are paid by the distributor and collected by the division, paid into the State Treasury, and disbursed in the following manner:

- Two percent is deposited into the Alcoholic Beverage and Tobacco Trust Fund to meet the division's appropriation for the state fiscal year.
- The remainder is credited to the General Revenue Fund.¹⁹

Deliveries of Alcoholic Beverages by Licensees

Section 561.57(1), F.S., provides that manufacturers, distributors, and vendors may make deliveries only in vehicles which are owned or leased by the licensee. As a condition of the alcoholic beverage license, such vehicles are subject to inspection and search without a search warrant. Vendors are required to attach a vehicle permit to any vehicles used to transport alcoholic beverage from a distributor's place of business. However, s. 561.57(6), F.S., provides that common carriers are not required to have vehicle permits to transport alcoholic beverages. According to the DBPR, it is a common practice in the state for manufacturers, distributors, and vendors to make deliveries by common carrier, including retail sales by wineries in this state that are made directly to consumers.

¹⁴ Section 561.01(6), F.S., defines the term "The Beverage Law" to mean chs. 561, 562, 563, 564, 565, 567, and 568, F.S.

¹⁵ See s. 561.14, F.S.

¹⁶ Section 563.05, F.S.

¹⁷ Section 564.06, F.S.

¹⁸ Section 565.12, F.S.

¹⁹ Section, 561.121, F.S.

Division of Alcoholic Beverage and Tobacco

The division enforces the provisions of the alcoholic beverage, cigarette, and tobacco laws, rules, and regulations. The division has three distinct functions, which include: licensing of the industry; collecting and auditing taxes and fees paid by the licensees; and enforcing the laws and regulations of the alcoholic beverage and tobacco industries. The division's Bureau of Licensing is responsible for the issuance or denial of all alcoholic beverage licenses and cigarette or other tobacco product permits. The division is also responsible for the maintenance of all records pertaining to these licenses throughout the state. The division's Bureau of Auditing is responsible for the collection of excise tax revenues levied upon alcoholic beverages, cigarettes, and tobacco products sold in Florida, the collection of surcharge on cigarettes and tobacco products sold in Florida, and the determination of the adherence to regulatory requirements by manufacturers, importers, distributors, distributing agents, exporters, and retail dealers licensed or permitted by the division. The division's Bureau of Law Enforcement is responsible for the management of the division's law enforcement and investigation programs. It conducts license discipline investigations; provides guidance, direction, and leadership to licensees; conducts criminal investigations pursuant to beverage and cigarette laws; provides assistance in the collection of authorized taxes and fees; and determines the need for using extraordinary emergency suspension powers when a business licensed by the division has become an immediate danger to the health, safety, and welfare of Florida citizens.

Department of Revenue

The Department of Revenue is created in s. 20.21, F.S. The General Tax Administration Program within the DOR administers and collects 32 taxes and fees, including sales and use tax, unemployment tax, communications services tax, corporate income tax, and fuel tax. The Governor and Cabinet oversee the DOR.

Type Two Transfers

Section 20.104(2), F.S., provides for a type-two transfer as follows.

A type two transfer is the merging into another agency or department of an existing agency or department or a program, activity, or function thereof or, if certain identifiable units or subunits, programs, activities, or functions are removed from the existing agency or department, or are abolished, it is the merging into an agency or department of the existing agency or department with the certain identifiable units or subunits, programs, activities, or functions removed therefrom or abolished.

(a) Any agency or department or a program, activity, or function thereof transferred by a type two transfer has all its statutory powers, duties, and functions, and its records, personnel, property, and unexpended balances of appropriations, allocations, or other funds, except those transferred elsewhere or abolished, transferred to the agency or department to which it is transferred, unless otherwise provided by law. The transfer of

segregated funds must be made in such a manner that the relation between program and revenue source as provided by law is retained.

(b) Unless otherwise provided by law, the head of the agency or department to which an existing agency or department or a program, activity, or function thereof is transferred is authorized to establish units or subunits to which the agency or department is assigned, and to assign administrative authority for identifiable programs, activities, or functions, to the extent authorized in this chapter.

(c) Unless otherwise provided by law, the administrative rules of any agency or department involved in the transfer which are in effect immediately before the transfer remain in effect until specifically changed in the manner provided by law.

III. Effect of Proposed Changes:

The bill transfers the tax collection and audit functions for cigarettes, other tobacco products, and alcoholic beverages from the division to the General Tax Administration Program within the DOR.

Section 3 of the bill provides for a Type II transfer of the tax collection and audit functions for cigarette and other tobacco products taxes under ch. 210, F.S., from the division to the DOR. Section 41 of the bill provides for a Type II transfer of the tax collection and audit functions for alcoholic beverage taxes under ch. 210, F.S., from the division to the DOR, effective July 1, 2011.

The bill authorizes the executive director of the DOR to establish, abolish, or consolidate bureaus, sections, or subsections within the DOR. The executive director is also authorized to reallocate duties and functions within the program to promote effective and efficient operation of the program. Any such organizational changes after July 1, 2012, would require action by the Legislature.

Subsection (6) of section 3 and subsection (6) of section 42 also apply the DOR's general provisions in ch. 213, F.S., for administering the state's revenue laws to ch. 210 and 561, F.S. However, the bill does not apply the provisions in ch. 213, F.S., to the relevant tax provisions in ch. 567 and 568, F.S.

Rulemaking

Subsections (4) of section 3 and subsection (4) of section 41 transfer the DBPR's rules, which were in effect before the effective date of this act, relating to the collection and audit of taxes on cigarettes to the DOR. Such rules would remain in effect until amended or repealed by the DOR. It also amends ss. 210.75(2) and 569.009, F.S., F.S., to authorize the program to adopt rules to collect and audit taxes under part II of ch. 210, F.S. It amends s. 569.009, F.S., to authorize the program to adopt any rules necessary for the collection and audit of taxes and surcharges on tobacco products.

The bill amends s. 561.08, F.S., to authorize the program to prescribe forms, reports, and records to be kept for the collection and audit of the Beverage Law and cigarettes tax law. It also amends s. 565.12, F.S., to authorize the program to adopt rules to administer the excise tax on liquors and beverages.

Section 75 of the bill authorizes the division and program to adopt emergency rules to administer the provisions of this bill for the collection of taxes.

Regulation and Taxation of Cigarettes and Other Tobacco Products

The bill amends several provisions throughout parts I and II of ch. 210, F.S., to effectuate the transfer by replacing references to the division with references with the program. In general, it provides for the program to perform the functions currently being performed by the division that relate to the process of tax auditing and tax collections, including reporting requirements for the licensees.

Subsection 5 of section 3 and subsection 5 of section 41 authorize the division to enforce any rules adopted by the state agency providing collection and auditing services for taxes relating to cigarette, tobacco products, and alcoholic beverages, and for the program to adopt rules.

The bill does not affect division's authority to issue permits and licenses under s. 210.015, F.S., for manufacturers, importers, exporters, distributing agents, and wholesale dealers of cigarette and under ch. 569, F.S., for the retail sale of tobacco products.

The bill also makes several changes to ch. 210, F.S., which substantively revise provisions that do not directly relate to transferring the division's tax audit and collection functions. These include:

- Sections 210.021(1) and 210.31, F.S., are amended to require cigarettes dealers and tobacco products dealers, respectively, who have paid \$20,000 or more in taxes during the previous year, to remit payments by electronic funds transfer. It deletes the current provision that authorizes the Secretary of the DBPR to require payment by certified check or electronic funds transfer if the taxpayer's payments in the prior year amounted to \$50,000 or more.
- Section 210.021(2), F.S., is amended to remove the requirement that dealers and agents remit tax payments by certified check or electronic funds transfer during a period not to exceed 12 months.
- Section 210.07(1), F.S., is amended to delete the provision for the affixing and payment of taxes through metering machines. According to the DBPR, metering machines are no longer used by the industry.
- Section 210.09(6), F.S., is created to require wholesale dealers of cigarettes to provide the program with information regarding sales to the retail dealers, including the names, addresses, retail tobacco products dealer permit number, resale certificate number, invoice number, the dates the products were sold, the quantity of each type of product sold, and the sales price of each type of product sold on their monthly returns.
- Sections 210.15(1)(i) and 210.35(3), F.S., are created to prohibit the division from issuing a permit or license to an applicant who is not a registered dealer with the program or who has an outstanding tax warrant for more than three months.

- Sections 210.16(6) and 210.50, F.S., are created to authorize the division to suspend or revoke a permit or license if the DOR tax warrant against the permit or license holder has been outstanding for more than three months.
- Sections 210.1605(2), F.S., are created, relating to the renewal of cigarette permits and licenses, respectively, to authorize the division to deny an application to renew a permit or license if the DOR tax warrant against the permit or license holder has been outstanding for more than three months.
- Section 210.51(2), F.S., is created, relating to the renewal of tobacco products permits and licenses, to require that the permit or license holder must be in good standing with the program for sales tax purposes for sales tax purposes.
- Section 210.55(8), F.S., is created to require wholesale dealers of tobacco products to provide the program with information regarding sales to the retail dealers, including the names, addresses, retail tobacco products dealer permit number, resale certificate number, invoice number, the dates the products were sold, the quantity of each type of product sold, and the sales price of each type of product sold on their monthly returns.

The bill also provides for the regulation of manufacturers and importers of OTP under Part II of ch. 210, F.S. Although the bill does not provide a license requirement, it amends s. 210.50, F.S., to include manufacturers and importers under the division authority to suspend or revoke licenses.

The bill amends s. 210.55, F.S., to include importers and manufacturers in the monthly reporting requirement provided in this section. The bill also amends s. 210.60, F.S., to include importers and manufacturers in the record keeping requirements and inspection requirements in this section.

The bill provides several instances in which the two agencies are granted dual authority to administer ch. 210, F.S., or to exercise regulatory authority in concert, including the following.

- Section 210.05(2), F.S., is amended to give the program the authority to prescribe, prepare and furnish tax stamps, it maintains the division's authority to appoint dealers in cigarettes as agents to buy and affix tax stamps. However, it requires that the program approve such appointments. It also gives the division, upon the program's discretion, the authority to revoke the agent's authority.
- Section 210.13, F.S., relating to a wholesale dealer's failure to file a tax return, is amended to provide that the dealer may apply to the program for a hearing with the division after the program has made a final determination of the amount of tax due.
- Section 210.161, F.S., is amended to grant the division and the program the authority to inspect records and issue subpoenas.
- Section 559.79, F.S., which provides the application process for issuance and renewal of licenses by the DBPR, is amended to require the DBPR and the DOR to work cooperatively to establish an automated method for periodically disclosing information relating to licensees. The bill does not specify the licensee information that would be subject to disclosure or provide a purpose for such disclosure.

Regulation and Taxation of Alcoholic Beverages

The bill replaces references to the division with references with the program throughout the Beverage Law to effectuate the transfer. In general, it provides for the program to perform the functions currently being performed by the division that relate to the process of tax auditing and tax collections, including reporting requirements for licensees and the authority to require bonds for the payment of taxes as provided in s. 561.37, F.S.

Section 561.024(5), F.S., is created to authorize the program to adopt rules providing collection and auditing services for taxes relating to cigarette, tobacco products, and alcoholic beverages. This section also authorizes the division to enforce any rules adopted by the program.

The bill does not affect division's jurisdiction relating to the authority to issue licenses under the Beverage Law.

The bill makes several changes to the Beverage Law that substantively revise provisions that do not directly relate to transferring the division's tax audit and collection functions. These include:

- Section 561.111, F.S., is amended to require dealers who have paid \$20,000 or more in taxes imposed under ch. 563, 564, and 565, F.S., during the previous year to remit payments by electronic funds transfer. However, the term "dealers" is not defined in the Beverage Law. The bill deletes the provision that authorizes the Secretary of the DBPR to require manufacturers or distributors of alcoholic beverages to pay taxes imposed under ch. 563, 564, and 565, F.S., by certified check or electronic funds transfer, if the taxpayer's payments in the prior year amounted to \$50,000 or more.
- Section 561.15(5), F.S., is created to prohibit the division from issuing a permit or license to an applicant who is not a registered dealer with the program or who has an outstanding tax warrant for more than three months.
- Section 561.27(3), F.S., relating to the renewal of alcoholic beverage licenses, is created to authorize the division to deny an application to renew a permit or license if the DOR tax warrant against the permit or license holder has been outstanding for more than three months.
- Section 561.55(5), F.S., is created to require manufacturers, distributors, brokers, sales agents, importers, and exporters to provide the program with information regarding sales to the retail dealers, including the names, addresses, retail beverage license number, and business partner number; the invoice number; the dates the products were sold; the quantity of each type of product sold; and the sales price of each type of product sold on its monthly returns.
- Section 561.57(2), F.S., is amended to delete the limitation that provides that manufacturers, distributors, and vendors may make deliveries only in vehicles which are owned or leased by the licensee. It also permits manufacturers, distributors, and vendors to receive order by electronic mail.

The bill provides several instances in which the two agencies are granted dual authority to administer the Beverage Law, or to exercise regulatory authority in concert, including the following:

- The bill maintains the current requirement in s. 561.37, F.S., that each manufacturer and distributor file a surety bond with the division in the amount of \$25,000 and that permits the division in its discretion to accept a lesser bond. However, the bill amends s. 561.37, F.S., to grant the program the discretion to accept a surety bond of less than or greater than the \$20,000 required for brewers.
- Section 562.41, F.S., is amended to provide that the division and the program have the authority to search persons, places, and conveyances, and to enter any buildings or places where beverage subject to taxation are manufactured or brought into the state.
- Section 563.06(5)(b), F.S., is amended to permit the division and the program to conduct annual audits of malt beverage manufacturers for compliance with the container tracking provisions in s. 563.06(5)(a), F.S.
- Section 568.10, F.S., is amended to require that the division or the program must ascertain whether all applicable taxes have been paid when a court orders the sale of alcoholic beverages after a conviction for a violation of the Beverage Law during which the beverages were confiscated.
- Section 569.004, F.S., is amended to authorize the division and the program to inspect licensed premises without a search warrant.

Effective Date

The bill 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.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill provides for the regulation of manufacturers and importers of other tobacco under Part II of ch. 210, F.S., by providing record keeping requirements and inspection requirements. The bill requires dealers of cigarettes, other tobacco products, and alcoholic beverage who have paid \$20,000 or more in taxes during the previous year to

remit payments by electronic funds transfer. However, the term “dealers” is not defined in the Beverage Law. Currently, wholesale dealers of other tobacco products and alcoholic beverage manufacturers and distributor may be required to pay by electronic funds transfer if tax payments in the prior year amounted to \$50,000 or more. The bill extends this provision to wholesale dealer of cigarettes.

C. Government Sector Impact:

The DOR does not anticipate a significant operational impact. The DBPR has advised that it will transfer 65 FTE and the associated budget authority of \$5,034,883 to the DOR to handle the tax collection and auditing workloads. The DBPR advises that it has submitted a reduction issue for \$20,011 related to annual training in the Bureau of Auditing. If this reduction is taken, the expense amount transferred to DOR will be reduced by \$20,011.

The DOR has years of experience with electronic filing and procedures in place to support both electronic data interchange and web based filing. The department received over two million tax returns electronically and received over \$26 billion dollars in tax collections during fiscal year 2009-10. The DOR has an automated call center and would have access to outstanding liabilities across all taxes for individual companies. This would result in a huge benefit to the state in preventing companies with outstanding delinquencies from receiving a new license for alcohol or tobacco products. In addition, the DOR has already developed a sophisticated audit case management system to route, manage and download tax information to support audit functions across the country. Utilizing the department’s data warehouse will resolve inventory discrepancies and route cases for audit exceptions, resulting in fewer audits and concentrated efforts on non-compliant cases.

The state of Texas implemented legislation in 2007, to require retailers, wholesalers, and dealers to submit monthly electronic sales reports including quantities and units on tobacco and alcoholic beverages. The legislation enabled the state of Texas to uncover more than \$230 million in unreported sales tax. The creation of an inventory tracking system will provide the same detailed information, if applied to Florida.

VI. Technical Deficiencies:

The bill amends s. 210.50, F.S., which relates to the regulation of other tobacco products under part II of ch. 210, F.S., to include manufacturers and importers under the division’s authority to suspend or revoke licenses. However, the bill does not require a license that could be revoked for manufacturers and importers for other tobacco products under part II of ch. 210, F.S. It also amends s. 210.60, F.S., to require the unlicensed importers and manufacturers to comply with the record keeping and inspection requirements in this section.

The bill amends s. 559.79, F.S., which provides the application process for issuance and renewal of licenses by the DBPR to require the DBPR and the DOR to work cooperatively to establish an automated method for periodically disclosing information relating to licensees. The bill does not

specify the type of licensee information that would be subject to disclosure or provide a purpose for such disclosure.

The bill amends s. 561.111, F.S., to require dealers who have paid \$20,000 or more in taxes imposed under chs. 563, 564, and 565, F.S., during the previous year to remit payments by electronic funds transfer. However, the term “dealers” is not defined in the Beverage Law. Currently, alcoholic beverage manufacturers and distributor may be required to pay by electronic funds transfer if tax payments in the prior year amounted to \$50,000 or more. It is not clear whether the term “dealers” is intended to mean manufactures or distributors or both license classifications.

VII. Related Issues:

None.

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.