

**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.)

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

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BILL: SB 122

INTRODUCER: Senator Montford

SUBJECT: Sales Tax Exemptions

DATE: January 18, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Hrdlicka	CM	<b>Pre-meeting</b>
2.			AFT	
3.			AP	
4.				
5.				
6.				

**I. Summary:**

SB 122 reenacts s. 212.031(10), F.S., exempting from sales tax separately stated charges imposed by a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility upon a lessee or licensee for food, drink, or services required or available in connection with a lease or license to use real property, including charges for laborers, stagehands, ticket takers, event staff, security personnel, cleaning staff, and other event-related personnel, advertising, and credit card processing.

Section 212.031(10), F.S. (2009), providing the above exemptions was repealed by operation of law effective July 1, 2009.

This bill reenacts s. 212.031(10), F.S.

**II. Present Situation:**

**Sales and Use Tax**

Chapter 212, F.S., contains the state's statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. A 6 percent sales and use tax is levied on tangible personal property and a limited number of services. The statutes currently provide for more than 200 different exemptions.

Sections 212.054 and 212.055, F.S., authorize Florida counties to charge a discretionary sales surtax; only those surtaxes specifically designated in s. 212.055, F.S., may be levied.<sup>1</sup> The maximum discretionary sales surtax that any county may levy depends upon the county's eligibility for the taxes listed in s. 212.055, F.S., and ranges between 1.5 percent and 3.5 percent. The maximum any county currently levies is 1.5 percent. As of January 2013, 55 counties levied at least one discretionary sales surtax and 14 counties levied at least two.<sup>2</sup>

The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold and is levied in addition to the state taxes. The surtax applies to all transactions occurring in a county that are "subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions" and on communications services, defined in ch. 202, F.S. The surtax does not apply to a sales amount above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service. The Florida Department of Revenue (DOR) is responsible for administering, collecting, and enforcing all sales taxes. Collections received by DOR are returned monthly to the county imposing the tax.<sup>3</sup>

### **Tax on Rental or License Fee for Use of Real Property**

Section 212.031, F.S., establishes a taxable privilege for engaging in the business of renting, leasing, letting, or granting a license for the use of any real property. The tax imposed by s. 212.031, F.S., is in addition to the total amount of the rental or license fee.

There are several exemptions to the imposition of this taxable privilege cited in s. 212.031, F.S. Some of these exemptions include:

- Property used as an integral part of the performance of qualified production services.
- Property leased, subleased, licensed, or rented to a person providing food and drink concessionaire services within the premises of a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or a publicly owned recreational facility.
- Property used or occupied predominantly for space flight business purposes.
- Property rented, leased, subleased, or licensed to a person providing telecommunications, data systems management, or Internet services at a publicly or privately owned convention hall, civic center, or meeting space at a public lodging establishment.

### **Chapter 2000-345, L.O.F.; Section 212.031(10), F.S. (2009)**

Chapter 2000-345, L.O.F., created subsection (10) of s. 212.031, F.S., providing a sales tax exemption for rental or license fees on separately stated charges imposed by a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility upon a lessee or licensee for food, drink, or services required

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<sup>1</sup> These include: charter county and regional transportation system surtax, local government infrastructure surtax, small county surtax, county public hospital surtax, school capital outlay surtax, indigent care and trauma center surtax, voter-approved indigent care surtax, and emergency fire rescue services and facilities surtax.

<sup>2</sup> Florida Department of Revenue, *Discretionary Sales Surtax Information for Calendar Year 2013*, available at: <http://dor.myflorida.com/dor/forms/2013/dr15dss.pdf>, (Last visited on January 11, 2013).

<sup>3</sup> Section 212.054, F.S.

in connection with a lease or license to use real property.<sup>4</sup> This exemption included charges for laborers, stagehands, ticket takers, event staff, security personnel, cleaning staff, and other event-related personnel, advertising, and credit card processing.

Section 212.031(10), F.S., was scheduled for repeal on July 1, 2003. Chapter 2002-218, L.O.F., extended these sales tax exemptions until July 1, 2006. Chapter 2006-101, L.O.F, once again extended the tax exemptions of subsection (10), this time, until July 1, 2009. The exemptions were repealed by operation of law on July 1, 2009.

### III. Effect of Proposed Changes:

**Section 1** adds subsection (10) to s. 212.031, F.S., to provide that separately stated charges imposed by a convention hall, exhibition hall, auditorium, stadiums, theater, arena, civic center, performing arts center, or publicly owned recreational facility upon a lessee or licensee for food, drink, or services required or available in connection with a lease or license to use real property, including charges for laborers, stagehands, ticket takers, event staff, security personnel, cleaning staff, and other event-related personnel, advertising, and credit card processing, are exempt from the tax imposed on rental or license fees for the use of real property.

**Section 2** provides an effective date upon the bill becoming law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

Subsection (b) of s. 18, Art. VII, State Constitution, provides that except upon approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue.

Subsection (d) provides an additional applicable exemption. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (\$1.9 million for FY 2012-2013<sup>5</sup>), are exempt.<sup>6</sup>

This bill reduces the authority that counties have to raise revenues with local option sales taxes. A February 2, 2012, analysis of a similar bill filed during the 2012 Regular Session by the Revenue Estimating Conference estimated the total recurring local fiscal impact to

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<sup>4</sup> Sections 1 and 3, ch. 200-345, L.O.F.

<sup>5</sup> Based on the Demographic Estimating Conference’s final population estimate for April 1, 2012, which was adopted on November 7, 2012. The Executive Summary can be found at: <http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf> (Last visited on January 11, 2013).

<sup>6</sup> See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Fiscal Impact*, (September 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited on January 11, 2013).

be negative \$0.5 million.<sup>7</sup> A determination of a similar fiscal impact for this bill of less than \$1.9 million would be considered insignificant and therefore the bill would be exempt from the mandates restriction.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill has not been evaluated by the Revenue Estimating Conference (REC). However, a similar bill filed during the 2012 Regular Session (SB 1226) was evaluated by the REC. The table below summarizes the REC impact for the 2012 bill.<sup>8</sup>

	FY 2012-2013	FY 2013-2014	FY 2014-2015	FY 2015-2016
<b>General Revenue</b>	(1.5)	(1.7)	(1.8)	(1.9)
<b>State Trust</b>	(Insignificant)	(Insignificant)	(Insignificant)	(Insignificant)
<b>Total State Impact</b>	(1.5)	(1.7)	(1.8)	(1.9)

	FY 2012-2013	FY 2013-2014	FY 2014-2015	FY 2015-2016
<b>Revenue Sharing</b>	(Insignificant)	(.1)	(.1)	(.1)
<b>Local Gov't Half Cent</b>	(.1)	(.2)	(.2)	(.2)
<b>Local Option</b>	(.1)	(.2)	(.2)	(.2)
<b>Total Local Impact</b>	(.2)	(.5)	(.5)	(.5)

	FY 2012-2013	FY 2013-2014	FY 2014-2015	FY 2015-2016
<b>Total Impact</b>	(1.7)	(2.2)	(2.3)	(2.4)

B. Private Sector Impact:

Those persons eligible for the exemptions will benefit as certain charges for rentals, leases, services and fees will be exempt from sales tax.

<sup>7</sup> Office of Economic and Demographic Research, The Florida Legislature, *Analysis of HB 1497 and SB 1226: Sales and Use Tax*, available at: <http://www.edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page359-360.pdf> (last visited on January 11, 2013).

<sup>8</sup> *Id.*

C. Government Sector Impact:

According to DOR, the bill would have insignificant operational impacts on the agency.<sup>9</sup>

**VI. Technical Deficiencies:**

None.

**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.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>9</sup> Department of Revenue, *Agency Bill Analysis: SB 122* (January 4, 2013) (on file with the Senate Commerce and Tourism Committee).