

**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 960

INTRODUCER: Senator Bean

SUBJECT: Tax on Sales, Use, & Other Transactions

DATE: March 15, 2013

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

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

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**I. Summary:**

SB 960 provides a sales tax exemption for dyed diesel fuel used by commercial fishing vessels designed, constructed, and used exclusively for the taking of shrimp from salt and freshwater. The purchaser of the fuel must provide the seller with a written and signed statement verifying the fuel will be used by the vessel exclusively for the taking of shrimp from salt and freshwaters for sale.

This bill amends ss. 212.05 and 212.08, F.S.

**II. Present Situation:**

Currently, under chs. 206 and 212, F.S., there are a number of taxes levied on diesel fuel in Florida.<sup>1</sup> Dyed diesel fuel, however, is exempt from the taxes in ch. 206, F.S.<sup>2</sup> Dyed diesel can only be purchased and used for specific purposes that do not involve commercial use on public highways, such as, on a farm for farm processing, in school buses, and in commercial fishing vessels.<sup>3</sup> Because it is exempt from the taxes in ch. 206, F.S., dyed diesel is less expensive than non-dyed diesel fuel. Consequently, dyed diesel allows the Department of Revenue (DOR) to ensure vehicles and equipment are using the dyed diesel fuel only for exempt purposes.

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<sup>1</sup> See ss. 206.87, 212.05(1)(k), 212.0501, F.S. One purpose of these taxes is to provide revenue to defray the cost of constructing and maintaining public highways in Florida. See s. 206.85, F.S.

<sup>2</sup> Section 206.874(1) and (3), F.S.

<sup>3</sup> Section 206.874(3), F.S. Similarly, motor fuel used for aquacultural and commercial fishing purposes are exempt from the local option tax, state comprehensive enhanced transportation system tax, municipal fuel tax, and fuel sales taxes paid under s. 206.41, F.S. Section 206.41(4)(c), F.S.

Although dyed diesel fuel is exempt from the taxes in ch. 206, F.S., it is generally not exempt from the sales tax in ch. 212, F.S.<sup>4</sup> Under s. 212.05, F.S., a 6 percent sales tax is levied on the sale price of each gallon of diesel fuel not taxed under ch. 206, F.S., used in a vessel.<sup>5</sup> Because dyed diesel fuel used in commercial fishing vessels is exempt from taxes under ch. 206, F.S., it is subject to the 6 percent sales tax in s. 212.05, F.S.

Section 212.08, F.S., provides a partial exemption from the 6 percent sales tax for dyed diesel fuel used by vessels to transport persons or property in interstate or foreign commerce, including commercial fishing vessels.<sup>6</sup> This partial exemption is calculated based on the ratio of intrastate mileage to interstate or foreign mileage traveled by vessels that were used in interstate or foreign commerce and that had at least some Florida mileage during the previous fiscal year.<sup>7</sup> This ratio, known as the mileage apportionment factor, is generally determined at the close of the carrier's fiscal year.<sup>8</sup>

Dyed diesel fuel used exclusively in intrastate commerce does not qualify for the prorated exemption.<sup>9</sup> Consequently, dyed diesel fuel used for inshore commercial fishing or fishing that occurs within the territorial waters of Florida is not exempt from the 6 percent sales tax.<sup>10</sup>

### III. Effect of Proposed Changes:

**Sections 1 and 2** amend ss. 212.05 and 212.08, F.S., to provide a sales tax exemption for dyed diesel fuel that is placed in the storage tanks of vessels designed, constructed, and used exclusively for the taking of shrimp from salt and fresh waters for sale. The exemption only applies when the purchaser of the fuel provides the seller with a written statement, signed by the purchaser, verifying that the fuel is to be used by the vessel exclusively for the taking of shrimp from salt and fresh waters for sale. Any fuel not used exclusively for this purpose is subject to the 6 percent sales tax levied under s. 212.05(1)(k), F.S., due and payable by the purchaser.

**Section 3** provides that the bill takes effect July 1, 2013.

### IV. Constitutional Issues:

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

None.

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<sup>4</sup> Section 212.0501(3), F.S., exempts diesel fuel used "on account of residential purposes; or in any tractor, vehicle, or other equipment used exclusively on a farm or for processing farm products on the farm, no part of which diesel fuel is used in any licensed motor vehicle on the public highways of this state; or the purchase or storage of diesel fuel held for resale."

<sup>5</sup> Section 212.05(1)(k), F.S.

<sup>6</sup> See Rule 12A-1.0641, F.A.C. "Commercial fishing vessels" are defined by DOR as "vessels designed, constructed, and used exclusively for the taking of fish, crayfish, oysters, shrimp, and sponges from the salt and fresh waters for sale. Vessels used for sports or pleasure fishing, such as pleasure fishing boats, charter boats, or party boats, are not commercial fishing vessels."

<sup>7</sup> Section 212.08(4)(a)2., F.S.; Rule 12A-1.0641, F.A.C.

<sup>8</sup> *Supra* note 7. The calculation for the first year's ratio is based on an estimated ratio of anticipated miles in the state to the anticipated total miles for that year, and either an additional tax will be paid or a refund may be applied for based on the actual ratio of miles in the state to total miles for the year. Section 212.08(4)(a)2., F.S.

<sup>9</sup> *Supra* note 7.

<sup>10</sup> See Rule 12A-1.0641, F.A.C.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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

The Revenue Estimating Conference estimates the bill will result in a recurring negative fiscal impact of \$700,000 to the State Transportation Trust Fund.<sup>11</sup>

**B. Private Sector Impact:**

Commercial shrimpers who operate in state waters may benefit from the reduced tax assessment on dyed diesel fuel used to operate their commercial shrimping vessels.

**C. Government Sector Impact:**

According to DOR, the bill will have an insignificant operational impact on the agency.<sup>12</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>11</sup> Office of Economic and Demographic Research, The Florida Legislature, Revenue Estimating Conference, *Analysis of HB 423: Sales and Use Tax (Off-Highway Fuel)* (Jan. 30, 2013) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2013/pdf/page1-2.pdf> (last visited March 13, 2013).

<sup>12</sup> Department of Revenue, *Agency Bill Analysis: SB 960* (February 20, 2013) (on file with the Senate Commerce and Tourism Committee).