

**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 Communications, Energy, and Public Utilities

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BILL: SB 1076

INTRODUCER: Senator Flores

SUBJECT: Electrical Power or Energy

DATE: February 21, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	<b>Pre-meeting</b>
2.	_____	_____	AFT	_____
3.	_____	_____	AP	_____

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**I. Summary:**

SB 1076 decreases the sales tax rate on sales of electrical power or energy from the current 7 percent to 0 percent in 3 stages (preserving the application of any county discretionary sales surtax). Concurrently the bill imposes an additional rate to the gross receipts tax for electrical power or energy delivered to a retail consumer in this state, beginning at 1.5 percent and ending at 3.5 percent over 3 years. The bill establishes a list of transactions of electrical power or energy to which the new additional rate does not apply.

The bill also creates a sales tax holiday for Energy Star and WaterSense products, with a limit of one purchase per person of each specific type of listed Energy Star or WaterSense product which has a sales price of \$500 or more. The bill authorizes the Department of Revenue to adopt emergency rules to administer the sales tax holiday and deems all requisite conditions to be met.

**II. Present Situation:**

The sales tax rate on sales of electric power or energy is 7 percent.<sup>1</sup> Sales tax revenues are deposited into the General Revenue fund.<sup>2</sup>

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<sup>1</sup> Section 212.05(1)(e)1.c., F.S.

<sup>2</sup> Section 212.20(1), F.S.

The gross receipts tax rate on utility services<sup>3</sup> is 2.5 percent.<sup>4</sup> Gross receipts tax revenues are deposited into the Public Education Capital Outlay and Debt Service Trust Fund,<sup>5</sup> where they are used for education capital outlay projects.

Counties are authorized to impose various types of discretionary sales surtaxes, including:

- each charter county that has adopted a charter, each county the government of which is consolidated with that of one or more municipalities, and each county that is within or under an interlocal agreement with a regional transportation or transit authority may levy a discretionary sales surtax of up to 1 percent for transportation system infrastructure;
- each county may levy a discretionary sales surtax of 0.5 percent or 1 percent for infrastructure;
- each county that has a population of 50,000 or less on April 1, 1992, may levy a discretionary sales surtax of 0.5 percent or 1 percent for operating purposes or servicing bond indebtedness;
- each county the government of which is not consolidated with that of one or more municipalities, which has a population of at least 800,000 residents, and is not authorized to levy a surtax for a county public hospital may levy a discretionary sales surtax at a rate that may not exceed 0.5 percent for indigent care and a trauma center;
- any county operating under a home rule charter may levy a discretionary sales surtax of 0.5 percent for a county public general hospital;
- the school board in each county may levy a discretionary sales surtax not to exceed 0.5 percent for school capital outlay projects;
- each county that has a population of fewer than 800,000 residents may levy a discretionary surtax at a rate not to exceed 0.5 percent, except that if a publicly supported medical school is located in the county, the rate shall not exceed 1 percent, for indigent care; and
- a county, other than a county that has imposed two separate discretionary surtaxes without expiration, may levy a discretionary sales surtax of up to 1 percent for emergency fire rescue services and facilities.<sup>6</sup>

Each discretionary sales tax surtax applies to all transactions occurring in the county which are subject to the state sales and use tax.<sup>7</sup> The surtax is computed by multiplying the applicable rate or rates times the amount of taxable sales and taxable purchases representing such transactions; however, in the case of utility services billed on or after the effective date of any such surtax, the entire amount of the charge for utility services is subject to the surtax. For these purposes, a transaction is deemed to have occurred in a county imposing the surtax when the consumer of utility services is located in the county.

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<sup>3</sup> The term “utility services” is defined to mean electricity for light, heat, or power; and natural or manufactured gas for light, heat, or power, including transportation, delivery, transmission, and distribution of the electricity or natural or manufactured gas. The definition expressly does not broaden the definition of utility service to include separately stated charges for tangible personal property or services which are not charges for the electricity or natural or manufactured gas or the transportation, delivery, transmission, or distribution of electricity or natural or manufactured gas. Section 203.012(3), F.S.

<sup>4</sup> Section 203.01(1)(b)1., F.S.

<sup>5</sup> Section 1013.65(2)(a)1., F.S.

<sup>6</sup> Section 212.055, F.S.

<sup>7</sup> Section 212.054, F.S.

The department administers, collects, and enforces these discretionary sales surtaxes pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax.

### III. Effect of Proposed Changes:

The bill decreases the current sales tax rate of 7 percent on electrical power or energy in stages:

- effective January 1, 2015, the tax rate is 4 percent;
- effective January 1, 2016, the tax rate is 2 percent; and
- effective January 1, 2017, the tax rate is 0 percent.<sup>8</sup>

However, a discretionary sales surtax continues to apply to charges for electrical power or energy regardless of the general state sales and use tax rate.<sup>9</sup> The surtax is levied on all charges for electrical power or energy unless specifically exempted.<sup>10</sup>

Concurrently the bill imposes an additional rate to the gross receipts tax for electrical power or energy delivered to a retail consumer in this state:

- effective January 1, 2015, the additional rate is 1.5 percent;
- effective January 1, 2016, the additional rate is 2.5 percent; and
- effective January 1, 2017, the additional rate is 3.5 percent.

These additional rates apply to charges for electrical power or energy on any bill dated on or after the date the increase takes effect.<sup>11</sup>

If a utility provider elects to separately state the additional tax on any bill, invoice, or other tangible evidence of the provision of such taxable service, the additional tax may not be included as part of the taxable base on which the gross receipts tax is calculated.<sup>12</sup>

The additional rate does not apply to:

- the sale of electrical power or energy to a person eligible for an exemption under s. 212.08(7)(ff), F.S.,<sup>13</sup> for use in operating machinery and equipment at a fixed location in this state;

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<sup>8</sup> Section 2 of the bill, amending section 212.05(1)(e), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> Section 3 of the bill, amending section 212.054, F.S.

<sup>11</sup> Section 1 of the bill, amending section 203.01, F.S.

<sup>12</sup> *Id.*

<sup>13</sup> This exemption applies to charges for electricity or steam used to operate machinery and equipment at a fixed location in this state when such machinery and equipment is used to manufacture, process, compound, produce, or prepare for shipment items of tangible personal property for sale, or to operate pollution control equipment, recycling equipment, maintenance equipment, or monitoring or control equipment used in such operations are exempt to the extent provided in this paragraph. If 75 percent or more of the electricity or steam used at the fixed location is used to operate qualifying machinery or equipment, 100 percent of the charges for electricity or steam used at the fixed location are exempt. If less than 75 percent but 50 percent or more of the electricity or steam used at the fixed location is used to operate qualifying machinery or equipment, 50 percent of the charges for electricity or steam used at the fixed location are exempt. If less than 50 percent of the electricity or steam used at the fixed location is used to operate qualifying machinery or equipment, none of the charges for electricity or steam used at the fixed location are exempt.

- the sale or transportation of electrical power or energy to, or the use of electrical power or energy by, a person eligible for an exemption under s. 212.08(5)(e), F.S.,<sup>14</sup> for certain agricultural purposes;
- the sale or transportation of electrical power or energy to, or the use of electrical power or energy by, a person eligible for an exemption under s. 212.08(7)(j), F.S.,<sup>15</sup> for use as a household fuel;
- the sale or transportation of electrical power or energy to, or the use of electrical power or energy by, a person eligible for an exemption under s. 212.08(15)(a), F.S.,<sup>16</sup> for use in an enterprise zone;
- the sale or transportation of electrical power or energy to, or the use of electrical power or energy by, a person who holds a valid Consumer's Certificate of Exemption issued by the Department of Revenue;
- the sale or transportation of electrical power or energy to, or the use of electrical power or energy by, a foreign diplomat and consular personnel who hold a tax exemption card issued by the United States Department of State; or
- the sale or transportation of electrical power or energy to, or the use of electrical power or energy by, the Federal Government or any federal department, commission, agency, or other instrumentality thereof.<sup>17</sup>

These exemptions appear to ensure that those who currently do not pay sales tax on purchases of electricity or energy would not pay the additional gross receipts tax rate.

The bill also creates a sales tax holiday for Energy Star and WaterSense products<sup>18</sup> from 12:01 a.m. on September 19, 2014, through 11:59 p.m. on September 21, 2014, on the first \$1,500 of

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<sup>14</sup> This exemption applies to electricity used directly or indirectly for production, packing, or processing of agricultural products on the farm, or used directly or indirectly in a packinghouse. As used in this subsection, the term "packinghouse" means any building or structure where fruits, vegetables, or meat from cattle or hogs is packed or otherwise prepared for market or shipment in fresh form for wholesale distribution. The exemption does not apply to electricity used in buildings or structures where agricultural products are sold at retail. This exemption applies only if the electricity used for the exempt purposes is separately metered. If the electricity is not separately metered, it is conclusively presumed that some portion of the electricity is used for a nonexempt purpose, and all of the electricity used for such purposes is taxable.

<sup>15</sup> This exemption applies to sales of utilities to residential households or owners of residential models in this state by utility companies who pay the gross receipts tax, and sales of fuel to residential households or owners of residential models, including oil, kerosene, liquefied petroleum gas, coal, wood, and other fuel products used in the household or residential model for the purposes of heating, cooking, lighting, and refrigeration, regardless of whether such sales of utilities and fuels are separately metered and billed direct to the residents or are metered and billed to the landlord. If any part of the utility or fuel is used for a nonexempt purpose, the entire sale is taxable. The landlord shall provide a separate meter for nonexempt utility or fuel consumption. For the purposes of this paragraph, licensed family day care homes shall also be exempt.

<sup>16</sup> This exemption applies to charges for electrical energy used by a qualified business at a fixed location in an enterprise zone in a municipality which has enacted an ordinance which provides for exemption of municipal utility taxes on such businesses or in an enterprise zone jointly authorized by a county and a municipality which has enacted an ordinance which provides for exemption of municipal utility taxes on such businesses shall receive an exemption equal to 50 percent of the tax imposed by this chapter, or, if no less than 20 percent of the employees of the business are residents of an enterprise zone, excluding temporary and part-time employees, the exemption shall be equal to 100 percent of the tax imposed by this chapter. A qualified business may receive such exemption for a period of 5 years from the billing period beginning not more than 30 days following notification to the applicable utility company by the department that an exemption has been authorized. To receive this exemption, a business must file an application with the enterprise zone development agency having jurisdiction over the enterprise zone where the business is located and receive approval from that agency.

<sup>17</sup> *Id.*

<sup>18</sup> Section 5 of the bill.

the sale price of a new Energy Star<sup>19</sup> product or WaterSense<sup>20</sup> product.<sup>21</sup> However, a person is limited to one purchase of each specific type of listed Energy Star or WaterSense product which has a sales price of \$500 or more. A second or subsequent purchase of a specific type of Energy Star product or WaterSense product that has a sales price of \$500 or more is subject to tax.

The bill authorizes the Department of Revenue to adopt emergency rules to administer the sales tax holiday and deems all requisite conditions to be met.

The bill also makes conforming changes.<sup>22</sup>

The bill takes effect July 1, 2014.

#### **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:**

The bill decreases state sales tax revenues (while preserving any local government discretionary sales surtax) by decreasing the sales tax rate on sales of electrical power or energy from the current 7 percent to 0 percent in 3 stages. Concurrently, the bill increases gross receipts tax revenue by imposing an additional rate to the gross receipts tax for electrical power or energy delivered to a retail consumer in this state, beginning at 1.5 percent and ending at 3.5 percent. These changes will mean a decrease in General Revenue and an increase in PECO funds.

The bill also decreases sales tax revenues by creating a sales tax holiday for Energy Star and WaterSense products.

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<sup>19</sup> The bill defines the term “Energy Star product” to mean an air conditioner, air purifier, ceiling fan, clothes washer, dehumidifier, dishwasher, freezer, refrigerator, water heater, or package of light bulbs that is designated by the United States Environmental Protection Agency and the United States Department of Energy as meeting or exceeding each agency’s requirements under the Energy Star program and which is affixed with an Energy Star label.

<sup>20</sup> The bill defines the term “WaterSense product” to mean a bathroom sink faucet, faucet accessory, high-efficiency toilet, showerhead, or weather or sensor-based irrigation controller that is recognized as water efficient by the WaterSense program sponsored by the United States Environmental Protection Agency and which is affixed with a WaterSense label.

<sup>21</sup> Section 5 of the bill.

<sup>22</sup> Section 4.

The amounts of these decreases and increases is currently unknown.

**B. Private Sector Impact:**

Purchasers of electricity will pay 3.5 percent less in taxes on sales of electricity (the current 7 percent sales tax, which the bill does away with, minus the additional 3.5 gross receipts tax).

People can also avoid sales tax on purchases of Energy Star and WaterSense products by purchasing these products during the sales tax holiday.

**C. Government Sector Impact:**

The state will have less sales tax revenue, as discussed above. There will be more PECO funds available for education capital outlay projects.

DOR will have expenses of rulemaking relating to the sales tax holiday.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 203.01, 212.05, 212.054, and 212.12.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.