

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 Committee on Appropriations

BILL: HB 5601

INTRODUCER: House Appropriations Subcommittee on Finance and Tax and Rep. Workman

SUBJECT: Economic Development

DATE: April 25, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Diez-Arguelles</u>	<u>Kynoch</u>	<u>AP</u>	Fav/1 Amendment

I. Summary:

The Senate Appropriations Committee considered HB 5601 on April 10 and 22, 2014. The Committee adopted a “delete-all” amendment and a number of amendments to the delete-all amendment. The amendments have been engrossed into one amendment. The amendment:

- Reduces the state Communications Services Tax rate by 0.52 percentage point.
- Creates a 3-day “back to school” sales tax holiday.
- Allows a motorsports complex to apply for a sales tax distribution of up to \$2 million.
- Changes the tax treatment of mobile phone prepaid calling plans.
- Allows a local government to repeal or reduce local business taxes without having to establish an equity study commission.
- Allows sales tax dealers to receive credits or refunds of 25% of sales taxes paid on purchases made with uncollectable private-label credit card accounts.
- Revises the calculation of the premium tax imposed on bail bond premiums so that the tax rate is applied only to the amount of the premium received by the insurance company, excluding amounts retained by the bail bondsman.
- Creates a revolving loan fund program for television productions filmed in the state. The amendment does not appropriate any moneys to the fund.
- Creates a 12-day sales tax holiday for hurricane supplies.
- Reduces the Sales Tax rate on electricity purchases by 2.65 percentage points, from 7% to 4.35% and creates an additional Gross Receipts Tax rate on electricity purchases of 2.6%, thereby increasing the combined Gross Receipts tax rate on these purchases from 2.5% to 5.1%. The effect of these changes is to provide a small tax reduction to purchasers of electricity and deposit additional revenues in the Public Education Capital Outlay Trust Fund to be used for construction and maintenance of educational facilities.

The amendment has a significant, negative fiscal impact on state and local government revenues. See the table in Section IX. B. for the fiscal impact of the amendment.

The mandates constitutional provision may apply to the amendment, requiring a two-thirds vote of the membership of each house for passage.

Additional information regarding the amendment is set forth in Section IX. B. of this analysis.

The rest of this analysis is of HB 5601, as passed by the House of Representatives.

HB 5601 makes the following changes:

- Creates four temporary “tax holiday” periods where sales of certain goods will be exempt from the sales tax – a “back to school” holiday, a hurricane supplies holiday, a physical fitness admissions holiday and an energy efficient products holiday.
- Creates a temporary sales tax exemption for cement mixing drums.
- Creates a permanent sales tax exemption for child restraint systems and booster seats for use in motor vehicles.
- Creates a permanent sales tax exemption for bicycle helmets marketed for use by youth.
- Increases the corporate income tax exemption from the first \$50,000 of income to the first \$75,000 of income.
- Expands the amount of credits available under the New Markets Tax Credit program from \$178.8 million to \$227.55 million.
- Delays the repeal of the Community Contributions Tax Credit program.
- Creates a \$20 million revolving loan program to encourage the production of television programs in Florida.
- Amends the statutory definition of “prepaid calling arrangement” to provide that certain prepaid mobile communications services are subject to state and local sales taxes instead of state and local communications services taxes.
- Reduces the sales tax rate for electricity purchases.
- Decreases the sales tax rate on sales of electricity from seven to four percent and increases the gross receipts tax rate on electrical power or energy delivered to a non-exempt retail consumer from two and one-half to five and one-half percent.
- Transfers \$100 million in recurring state sales tax revenue, currently deposited in the General Revenue Fund, to the State Transportation Trust Fund.

The bill has a significant, negative fiscal impact on state and local government revenues. See the table in Section V.A. for the fiscal impact of the bill.

The mandates constitutional provision may apply to this bill, requiring a two-thirds vote of the membership of each house for passage. See Section IV.A. of the analysis.

II. Present Situation:

The present situation for each issue in the bill is discussed below in Section III, Effect of Proposed Changes.

III. Effect of Proposed Changes:

Prepaid Calling Arrangements – Sections 1, 2, 4, and 5

Present situation: The communication services tax (CST) is applied to the sales price of each communications service which originates and terminates in this state, or originates or terminates in this state and is charged to a service address in this state.¹ However, the definition of the term “sales price” expressly excludes the “sale or recharge of a prepaid calling arrangement,” so CST is not collected on the sale of a prepaid calling arrangement.²

The term “prepaid calling arrangement” is defined to mean “the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars of which the number declines with use in a known amount.”³

Chapter 212, F.S., provides for the application of the sales tax to the sale of tangible personal property and some services. The sales tax rate of 6 percent is applicable to charges for prepaid calling arrangements.⁴ The term “prepaid calling arrangement” as defined in ch. 212, F.S., means “the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount.”⁵ The definition of “prepaid calling arrangement” in ch. 202, F.S. is virtually identical to the definition in ch. 212, F.S.

When the definition of prepaid calling arrangement was placed in the statute⁶, prepaid calling arrangements typically consisted of prepaid calling cards purchased in advance and limited to telephone calls. However, since then the telecommunications industry has developed to offer more prepaid plans compatible with the texting, data, video, and other capabilities of today’s modern smartphones. This has led to increased utilization of prepaid mobile services. As markets and technology have evolved, the statutory definition has become increasingly incompatible and inconsistent with industry practice and the ability to collect communication services taxes.

As technology evolved, most communications service providers and other prepaid phone retailers continued to apply the sales tax to all prepaid mobile phone plans, even though the plans did not meet the strict definition of a “prepaid calling arrangement.” This practice continues today for all prepaid plans.

Proposed change: The bill amends subsection 202.11(9), F.S., to revise the definition of the term “prepaid calling arrangement.” For other than mobile communications services, the term

¹ Section 202.12, F.S.

² Section 202.11(13)(b)4., F.S.

³ Section 202.11(9), F.S.

⁴ Section 212.05(1)(e)1., F.S.

⁵ *Id.*

⁶ Chapter 2000-260, Laws of Florida.

includes a right to use communications services “for which a separately stated price must be paid in advance, which is sold at retail in predetermined units that decline in number with use on a predetermined basis, and which consists exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered.”

For mobile communications services, the term includes “a right to use mobile communications services that must be paid for in advance and is sold at retail in predetermined units that expire or decline in number on a predetermined basis if:

1. The purchaser’s right to use mobile communications services terminates upon all purchased units expiring or being exhausted unless the purchaser pays for additional units;
2. The purchaser is not required to purchase additional units; and
3. Any right of the purchaser to use units to obtain communications services other than mobile communications services is limited to services that are provided to or through the same handset or other electronic device that is used by the purchaser to access mobile communications services.”

Predetermined units may be quantified as amounts of usage, time, money, or a combination of these or other means of measurement.

The bill expands the definition of “prepaid calling arrangement” to include prepaid communication services other than those that consist exclusively of telephone calls. The changes recognize that under current industry practices prepaid services may include services other than telephone calls, such as text messaging, web access, and email.

In addition, the bill provides that the purchaser of prepaid units may use the units to purchase other communication services other than mobile communication services if the other services are provided to or through the same handset or other electronic device the purchaser uses to access mobile communication services. This provision may result in communication services currently subject to CST tax rates being subject to only sales tax in the future if they are sold as part of a prepaid calling arrangement.

These changes are remedial in nature and apply retroactively, but do not create the right to a refund or credit of any tax paid.

Electrical Energy or Power Provided to a Retail Customer – Sections 3, 6, and 7

Present situation: The sale of electric power or energy by an electric utility is subject to the state sales tax at the rate of 7 percent,⁷ subject to numerous exemptions. The exemptions include sales for use in residential households, sales for certain agricultural purposes, sales for use in operating manufacturing machinery and equipment in a fixed location, and sales in enterprise zones. The distribution for sales and use tax receipts is governed by s. 212.20, F.S., with roughly 89% of the proceeds being deposited in the General Revenue Fund, and most of the remainder shared with counties and municipalities.

⁷ Section 212.05(1)(e)1.c., F.S.

Chapter 203 imposes, at the rate of two and one-half percent, a tax on gross receipts from the sale, delivery, or transportation of natural gas, manufactured gas, or electricity to a retail consumer in Florida. All revenue received pursuant to this tax is deposited in the Public Education Capital Outlay and Debt Service (“PECO”) Trust Fund. The use of such funds is limited to paying the principal and interest on bonds to finance capital projects for institutions of higher learning, community colleges, vocational technical schools, or public schools; the cost of any public educational facility capital project; and the cost of maintenance and repairs.

Proposed change: The bill decreases the sales tax rate on sales of electricity from seven to four percent and increases the gross receipts tax rate on electrical power or energy delivered to a non-exempt retail consumer from two and one-half to five and one-half percent. The new gross receipts tax additional rate will incorporate the existing exemptions from the sales tax in order to make this change revenue neutral to both the state and to taxpayers. These changes will result in an increase in the amount of revenue deposited in the PECO Trust Fund.

Cement Mixers – Section 6

Present situation: Chapter 212, F.S., levies a six percent state sales and use tax on most items of tangible personal property. Also, local governments are authorized to levy several types of local discretionary sales surtaxes pursuant to s. 212.055, F.S. Rates currently range from one-half percent to one and one-half percent. The surtax does not apply to any sales amount about \$5,000 on any item of tangible personal property.⁸ Section 212.08, F.S., provides a variety of exemptions from these taxes.

In 2013, the legislature passed an exemption for machinery and equipment used at a fixed location within Florida to manufacture, process, compound, or produce tangible goods for sale. This sales tax exemption is available for three years, from April 30, 2014 until April 30, 2017.⁹

Proposed change: The bill adds cement mixer drums that are affixed to mixer trucks, as well as the parts and labor necessary to affix the drums to mixer trucks, to the sales tax exemption for manufacturing machinery and equipment that will sunset on April 20, 2017.

Motor Vehicle Child Restraints – Section 6

Proposed change: The bill adds a permanent exemption from the sales tax for child restraint systems and booster seats used in motor vehicles.

Youth Bicycle Helmets – Section 6

Proposed change: The bill adds a permanent exemption from the sales tax for bicycle helmets marketed for use by youth.

⁸ Section 212.054(2)(b)1., F.S.

⁹ Chapter 2013-39, L.O.F.

State Transportation Trust Fund Distribution – Sections 8 and 16

Present situation: The State Transportation Trust Fund (STTF) is currently funded by a variety of tax sources, including portions of the revenue received from the tax on motor and aviation fuels imposed by ch. 206, F.S., motor vehicle fees imposed by ch. 320, F.S., the rental car surcharge imposed by s. 212.0606, F.S., and the documentary stamp tax imposed by ch. 201, F.S. The funds deposited in the trust fund are used for transportation purposes, as provided by law.¹⁰

Proposed change: The bill will transfer \$100 million annually from sales and use tax revenue that would otherwise be deposited into the General Revenue Fund to the STTF. Newly created s. 339.0803, F.S., directs that, of those funds, \$85 million will be used annually for transportation projects that connect major markets within this state or between this state and other states, and which increase Florida's viability in national and global markets. The remaining \$15 million will be used annually for regionally-significant transportation projects that provide connectivity to and through rural areas. To be eligible for the regional funding, projects must be production ready in the five-year work program. State funds can be used to provide up to 75 percent of project costs. Preference will be given to projects identified as regionally significant, according to current law, and that have an increased level of non-state match.

Corporate Income Tax Exemption – Sections 9, 10, 12, and 13

Present situation: Florida levies an income tax of five and one-half percent on corporations,¹¹ banks, and savings associations.¹²

Florida's corporate income tax is imposed on a taxpayer's "net income." Net income is calculated by starting with the taxpayer's federal taxable income, making certain statutory adjustments, apportioning income attributable to Florida, and applying the statutory exemption.¹³ Currently, the statutory exemption is \$50,000.¹⁴

Proposed change: The bill increases the statutory exemption from \$50,000 to \$75,000.

Community Contribution Tax Credits – Sections 11 and 17

Present situation: The Community Contribution Tax Credit Program provides a 50 percent tax credit or refund for eligible donations made by Florida businesses to community development projects and housing projects for low-income persons sponsored by organizations that have been approved by the Department of Economic Opportunity to participate in the program.

The total amount of tax credits which may be granted for the Community Contribution Tax Credit Program is \$10.5 million annually for projects that provide homeownership opportunities

¹⁰ Section 206.46(1), F.S.

¹¹ "Corporation" is defined in s. 220.03(1)(e), F.S. Tax is imposed by s. 220.11, F.S. Only some Florida businesses are considered corporations subject to the Florida corporate income tax. Sole proprietorships, limited liability companies, and S corporations are not subject to the tax, except under limited circumstances. *See* s. 220.03(1)(e), F.S.

¹² "Bank" and "savings association" are defined in s. 220.62, F.S., and tax is imposed by s. 220.63, F.S.

¹³ Section 220.12, F.S.

¹⁴ Section 220.14, F.S.

for low-income and very-low-income households and \$3.5 million for all other projects.¹⁵ During Fiscal Year 2012-2013, 345 tax credit applications in 36 local governments were approved by the DEO.¹⁶

A business that makes a donation to an eligible sponsor must apply for a tax credit during the first 10 business days of the fiscal year after the donation is made. Each business is eligible to receive credits of up to a maximum of \$200,000 per tax year.

Businesses may take the credit against corporate income tax pursuant to s. 220.183, F.S., insurance premium tax pursuant to s. 624.5105, F.S., or as a refund on sales tax collected pursuant to s. 212.08(5)(p), F.S. If requests for tax credits within the first 10 business days of a fiscal year exceed the tax credit allocation, tax credit applications will be approved on a pro rata basis. If they do not exceed that allocation, they will be approved on a first-come, first-served basis.

The Community Contribution Tax Credit Program expires on June 30, 2015.

Proposed change: The bill delays the expiration date of the program by one year from June 30, 2015 to June 30, 2016.

Qualified Television Loan Fund – Sections 14 and 22

Present situation: Florida does not provide a loan program for television program production.

Proposed change:

The Fund. The bill creates the Qualified Television Loan Fund (QTV fund) – a \$20 million revolving loan fund – within the Department of Economic Opportunity (DEO). The QTV fund will make loans to companies that produce television shows in Florida. As the loans are repaid, the principal and interest will be returned to the fund and loaned to additional production companies.

The Fund Administrator. The DEO will contract with a private organization (fund administrator) to administer the QTV fund. The fund administrator will be selected based on the following qualifications:

- A track record of managing private sector equity or debt funds in the entertainment industry;
- Having a partnership with a qualified lending partner capable of providing at least two and one-half times the capital amount in the QTV fund; and
- Experience managing economic development or job creation-related funds.

The DEO will give preference to applicants headquartered in Florida.

Additional Capital. The fund administrator must partner with a qualified lending partner, who will invest its own capital along with funds from the QTV fund in qualifying projects. The fund

¹⁵ Sections 212.08(5)(p)1.e., F.S.; 220.183(1)(c), F.S.; and 624.5105(1)(c), F.S.

¹⁶ Department of Economic Opportunity, *supra* note 8.

administrator may also partner with other companies who provide equity financing, mezzanine financing, or other types of financing. Capital provided by private entities, including the qualified lending partner, must be kept in separate accounts, and such entities are responsible for paying their own management fees.

The Loans. The QTV fund and the qualified lending partner will make joint loans to production companies in order to fund production or improve the credit profile of the production's structured financial transactions. Loans from the QTV fund may not exceed 30 percent of the total production funding cost for the project and may not have a term exceeding 36 months, unless the fund administrator approves a longer period. The loan issued by the qualified lending partner will have a senior position to the loan issued by the QTV fund. Loans from private capital may not be made at more favorable terms and conditions than loans from the QTV fund.

All loans made by the QTV fund must be secured. The security may consist of domestic and international broadcaster license agreements, tax credits, or other revenues. Additionally, if the production cost per episode exceeds \$1 million, the project must be bonded and secured by an industry-approved completion guarantor. With the exception of appropriated funds, the credit of the state may not be pledged. The state is not liable or obligated in any way for claims against the QTV fund or against the qualified lending partner.

The fund administrator is required to evaluate loan applications based on:

- Eligible collateral;
- The project's creditworthiness;
- The producer's track record;
- The possibility that the project will encourage economic benefits; and
- The extent to which the loan will attract private debt or equity investment.

Qualifying Productions. The production company is required to have an agreement with a major network for broadcasting on a major network, cable or streaming channel. If the production content is a series, at least 13 episodes must be ordered, unless a lesser number is approved by the fund administrator. The production must spend at least 80 percent of the production budget in Florida, unless the fund administrator approves a lesser percentage.

Reporting. Each year by February 28, the fund administrator is required to submit audited financial statements to the DEO, along with a fund annual report. The annual report must detail, for each loan:

- The name of the television program;
- The counties in which production occurred;
- The number of jobs created or retained because of the production;
- The loan amounts (including private loans made in association with the QTV loan);
- The loan repayment status;
- Details on any past due loans;
- Details on any loans in default;
- A description of assets securing the loans; and
- Any other information required by the department.

Management Fee. The fund administrator will be paid a fee equal to five percent of the assets under management for the first five years, and three percent of the assets under management every year thereafter until the end of the contract. After the first year, the fee may not exceed the investment proceeds earned from the fund's completed loans. Additionally, the fund administrator may receive 20 percent of the fund's net income on an annual basis. This amount may not be paid from the fund's principal.

Expiration. The program is repealed on December 31, 2024, and all funds remaining in the QTV fund at that point revert to the General Revenue Fund.

Appropriation. The bill appropriates \$20 million in nonrecurring general revenue to the DEO to fund the Qualified Television Loan Fund program.

New Markets Tax Credit Program – Section 15

Present situation: Florida created the New Markets Development Program in 2009¹⁷ to encourage capital investment in rural and low-income communities.¹⁸ Under the program, the state grants tax credits in return for investments in low-income community businesses.¹⁹ The Florida program is based on a similar federal program, created in 2000.²⁰

The program involves two “investments”: a taxpayer interested in tax credits makes a “qualified investment”²¹ (a cash payment) to a qualified community development entity (CDE) in return for the tax credits. The CDE then makes a “qualified low-income community investment”²² (either a cash loan or an equity investment) to a qualifying low-income community business.²³

Prior to either investment taking place, the CDE applies to the DEO for a determination of whether its qualified low-income community investment qualifies under the program.²⁴ Upon approval, the DEO awards a tax credit equal to 39 percent of the CDE's qualifying low-income community investment.

The tax credits may not be claimed for two years. After the second year, the taxpayer may claim the credits over the next five years.²⁵

¹⁷ Chapter 2009-50, L.O.F. See ss. 288.991, F.S. – 288.9922, F.S.

¹⁸ Section 288.9912, F.S.

¹⁹ *Id.*

²⁰ The Federal New Markets Tax Credit Program was enacted as P.L. 106-554, Community Tax Relief Act of 2000 and signed into law on December 21, 2000. For an overview of the federal program, see Overview, http://cdfifund.gov/what_we_do/programs_id.asp?programID=5 (last visited April 5, 2013).

²¹ Section 288.9913(7), F.S.

²² Section 288.9913(8), F.S.

²³ Section 288.9913(5), F.S.

²⁴ Section 288.9914(2), F.S.

²⁵ Section 288.9916(1), F.S.

When the program was created in 2009, the total tax credits that could be issued were limited to \$97.5 million.²⁶ The limit was increased to \$163.8 million (a \$66.3 million increase) in 2012²⁷ and to \$178.8 million (a \$15 million increase) in 2013²⁸.

Proposed change: The bill increases the total amount of tax credits available from \$178.8 million to \$227.55 million (a \$50 million increase).

Energy Star and WaterSense Sales Tax Holiday – Sections 18 and 22

Present situation: In 2006, the Legislature approved a sales tax holiday for energy-efficient products priced under \$1,500 and that met or exceeded the requirements of the federal ENERGY STAR program²⁹. The holiday ran from October 5 through October 11, 2006. The following items were exempted:

- Refrigerators.
- Dishwashers.
- Clothes washers.
- Air conditioners.
- Ceiling fans.
- Light bulbs.
- Dehumidifiers.
- Thermostats.

Proposed change: The bill provides that no sales tax will be collected on the first \$1,500 of the sales price for a new ENERGY STAR product or WaterSense product³⁰ during the period beginning on September 19, 2014, and ending on September 21, 2014.

ENERGY STAR products eligible for this holiday are:

- Room air conditioners.
- Air purifiers.
- Ceiling fans.
- Clothes washers.
- Clothes dryers.
- Dehumidifiers.
- Dishwashers.
- Freezers.
- Refrigerators.
- Water heaters.
- Swimming pool pumps.
- Light bulbs.

²⁶ Section 7, 2009-50, L.O.F.

²⁷ Section 16, 2012-32, L.O.F.

²⁸ Section 36, 2013-42, L.O.F.

²⁹ ENERGY STAR products must meet energy efficiency standards established by the U.S. Environmental Protection Agency.

³⁰ WaterSense labeled products and meet the US Environmental Protection Agency specifications for water efficiency and performance.

WaterSense products eligible for this holiday are:

- Bathroom sink faucets.
- Faucet accessories.
- High-efficiency toilets and urinals.
- Showerheads.
- Weather or sensor-based irrigation controllers.

A person is limited to a single purchase for each specific type of item listed above with a sales price over \$500 during the holiday, and a second purchase of the same type of product will be subject to tax on the entire price.

The bill contains a nonrecurring appropriations from the General Revenue Fund to the Department of Revenue of \$43,941 to implement the Energy Efficient Appliances Sales Tax Holiday.

Physical Fitness Admissions Tax Holiday – Section 19

Present situation: Section 212.04, F.S., establishes a six percent state sales and use tax on admissions.

Proposed change: The bill provides that the sales and use tax levied on admissions will not be collected during the period beginning September 1, 2014, and ending September 8, 2014, on the sale of athletic, exercise, and physical fitness facility memberships. To participate in the holiday, a facility must be registered as a health studio with the Department of Agriculture and Consumer Services under ss. 501.012 through 501.019, F.S.

Back-to-School Sales Tax Holiday – Sections 20 and 22

Present situation: The Legislature has approved back-to-school sales tax holidays in eight of the past ten years. The length of the exemption period has varied from three to 10 days. The type and value of exempt items has also varied. The holiday is typically offered just prior to the start of a new school year.

Proposed change: The bill provides for a three-day sales tax holiday beginning August 1, 2014, and ending August 3, 2013. During the holiday, the following items that cost \$100 or less are exempt from the state sales tax and county discretionary sales surtaxes:

- Clothing (defined as an “article of wearing apparel intended to be worn on or about the human body,” but excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs);
- Footwear (excluding skis, swim fins, roller blades, and skates);
- Wallets; and
- Bags (including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags).

The bill also exempts “school supplies” that cost \$15 or less per item. Also exempt will be the first \$750 of the sales price for personal computers and related accessories purchased for noncommercial home or personal use, including tablets, laptops, monitors, input devices, and

non-recreational software. Cell phones, furniture and devices or software intended primarily for recreational use are not exempt.

The bill contains a nonrecurring appropriation from the General Revenue Fund to the Department of Revenue of \$223,048 to implement the Back to School Sales Tax Holiday (this appropriation occurs during the 2013-14 fiscal year and carries forward into 2014-15).

Hurricane Preparedness Sales Tax Holiday – Sections 21 and 22

Present situation: The Legislature has approved sales tax holidays for hurricane preparedness in the past. In 2005, 2006, and 2007 the state established 12-day periods where items below certain thresholds were exempt from tax. The type and value of exempt items has also varied. In 2005 and 2007, the hurricane preparedness holidays ran from June 1 through June 12, and in 2006 the holiday was from May 21 through June 1.

Proposed change: The bill proposes a sales tax exemption for the following items for the period beginning on June 1, 2014, and ending on June 12, 2014:

- A portable self-powered light source selling for \$20 or less.
- A portable self-powered radio, two-way radio, or weather band radio selling for \$50 or less.
- A tarpaulin or other flexible waterproof sheeting selling for \$50 or less.
- A self-contained first-aid kit selling for \$30 or less.
- A ground anchor system or tie-down kit selling for \$50 or less.
- A gas or diesel fuel tank selling for \$25 or less.
- A package of AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less.
- A nonelectric food storage cooler selling for \$30 or less.
- A portable generator selling for \$750 or less.
- Reusable ice selling for \$10 or less.

The bill contains a nonrecurring appropriation from the General Revenue Fund to the Department of Revenue of \$280,912 to implement the Hurricane Preparedness Sales Tax Holiday (this appropriation occurs during the 2013-2014 fiscal year and carries forward into the 2014-2015 fiscal year).

Effective Date – Section 23

The bill has an effective date of July 1, 2104, except as otherwise expressly provided.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by 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 in the aggregate, as such authority existed on February 1, 1989.

This mandates provision may apply because the bill provides numerous sales tax exemptions that will reduce municipalities' and counties' local option sales tax collections, thereby reducing their revenue-raising authority. In addition, the bill redefines the types of services to which local Communication Services tax rates apply, thereby potentially reducing the authority of municipalities to raise revenue.

Subsection (c) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by 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 percentage of a state tax shared with counties and municipalities as an aggregate on February 1, 1989.

This mandates provision may apply to the reduction in the sales tax rate for electricity, since counties and municipalities receive a share of sales tax revenue through distributions to the Local Government Half-Cent Sales Tax Clearing Trust Fund, the County Revenue Sharing Trust Fund, and the Municipal Revenue Sharing Trust Fund.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

HB 5601 has the following estimated fiscal impacts:

Fiscal Year 2014-2015 Estimated Fiscal Impacts (millions of \$)								
Issue	General Revenue		State Trust Funds		Local		Total	
	Cash	Recur.	Cash	Recur.	Cash	Recur.	Cash	Recur.
Sales Tax: Physical Fitness Holiday (ss. 19, 22)	(4.1)	-	(*)	-	(0.9)	-	(5.0)	0.0
Sales Tax: Back to School Holiday (ss. 20, 22)	(32.3)	-	(*)	-	(7.3)	-	(39.6)	0.0
Sales Tax: Energy Efficient Holiday (ss. 18, 22)	(1.7)	-	(*)	-	(0.3)	-	(2.0)	0.0
Sales Tax: Hurricane Prep. Holiday (ss. 21 22)	(3.0)	-	(*)	-	(0.7)	-	(3.7)	0.0
Sales Tax: Car Seats (s. 6)	(2.0)	(2.2)	(*)	(*)	(0.5)	(0.5)	(2.5)	(2.7)
Sales Tax: Youth Bicycle Helmets (s. 6)	(0.2)	(0.2)	(*)	(*)	(*)	(*)	(0.2)	(0.2)
Sales Tax: Cement Mixers (s. 6)	(3.3)	-	(*)	-	(0.4)	-	(3.7)	0.0
Sales Tax/Gross Receipts: Electricity (ss. 3, 4)	(143.0)	(171.6)	161.3	193.6	(18.3)	(22.0)	0.0	0.0
Corp Income Tax: Income Exemption (ss. 9, 12)	(8.8)	(21.6)	-	-	-	-	(8.8)	(21.6)
QTV Fund (ss. 14, 22)	(20.0)	-	--	-	-	-	(20.0)	0.0
New Markets Credits (s. 15)	-	(10.0)	-	-	-	-	0.0	(10.0)
Transportation Funding (ss. 8,16)	(100.0)	(100.0)	100.0	100.0	-	-	0.0	0.0
Prepaid Calling Definition** (ss. 1, 4)	-	(1.4)	-	(5.7)	-	(11.2)	0.0	(18.3)
Tax Holiday Appropriations***	(0.54)	-	-	-	-	-	(0.54)	0.0
FY 2014-2015 Total	(318.9)	(307.0)	261.3	287.9	(28.4)	(33.7)	(86.0)	(52.8)
Community Contribution Tax Credits (ss. 6, 11, 17) (FY 2015-2016)	(12.6)	-	(*)	-	(1.4)	-	(14.0)	0.0
Bill Total	(331.5)	(307.0)	261.3	287.9	(29.8)	(33.7)	(100.0)	(52.8)

**Estimates reflect minimums. See paragraph below for further potential impacts.

*** The appropriations for the Hurricane Preparedness and Back-to-School Holidays are for FY 2013-2014, with carry over into 2014-2015.

In addition to the fiscal impact shown on the table above for the Prepaid Calling Definition issue, a loss of up to \$600 million in audit recoveries may occur if the Department of Revenue were to successfully enforce the strict definition of “prepaid calling arrangement,” with a potential loss of up to \$200 million annually on a going-forward basis. These amounts reflect the estimate of what Communications Services Tax (CST) tax collections would have been in the past and would be in the future if CST tax, instead of sales tax, were collected on prepaid calling arrangements. However, because

current industry practice is to collect sales tax on prepaid mobile communications services, and the timing of any successful Department of Revenue action is unknown, it is uncertain if and when these losses would be realized.

B. Private Sector Impact:

The bill provides a number of tax exemptions that will benefit the purchasers of the exempt items.

Increasing the corporate income tax exemption from \$50,000 to \$75,000 will reduce corporate income taxes on all taxpayers that currently pay the tax; it is estimated to eliminate all corporate income tax liability for approximately 2,100 taxpayers.

C. Government Sector Impact:

Impacts to state government that are not tax-related are also included in the table in Section V.A.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 202.11, 203.01, 212.05, 212.08, 212.12, 212.20, 220.14, 220.183, 220.63, 288.9914, and 624.5105.

The bill creates the following sections of the Florida Statutes: 288.127 and 339.0803.

The bill creates undesignated sections of Florida law.

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:

Barcode 965938 by Appropriations on April 22, 2014:

The Senate Appropriations Committee adopted a “delete-all” all amendment to HB 5601. The amendment addresses the following issues.

Communications Services Tax (CST) Rate Reduction

Chapter 202, F.S., provides for the tax on communication services, including telecommunications, cable, direct-to-home satellite, and related services. The CST includes a state tax rate of 6.65 percent and a state gross receipts tax rate of 2.52 percent for a combined rate of 9.17 percent.³¹ In addition, local governments may impose a local tax rate of up to 7.12 percent.³²

Direct-to-home satellite service is taxed at a rate of 10.8 percent and is also subject to the 2.37 percent gross receipts tax. The local tax does not apply to these services. However, the state tax on direct-to-home satellite is higher than the state tax on other communication services, for a total tax rate of 13.17 percent. The amount of tax collected from the additional tax is distributed to local governments.

A portion of the state taxes collected – including taxes collected on direct-to-home satellite service – are deposited into the General Revenue Fund and a portion is distributed to local governments.³³ Gross Receipts Tax collections are deposited into the Public Education Capital Outlay and Debt Service Trust Fund and are used for the capital funding of public schools, community colleges, and universities.

The amendment reduces the state CST rate by 0.52 percentage point, reducing the general rate from 6.65 percent to 6.13 percent and the rate on direct-to-home satellite from 10.8 percent to 10.28 percent. The amendment makes conforming changes to other portions of the statutes, including changes to distribution formulas to ensure that local governments continue to receive the same amount of distributions that they receive under current law.

The tax rate changes first apply to taxable transactions included on bills for communications services that are dated on or after January 1, 2005.

Motorsports Entertainment Complex

Sections 212.20, 288.1162, 288.11621 and 288.11631, F.S., currently authorize distributions of sales tax revenues to certain professional sports facilities and for Major League Baseball spring training facilities. Also, s. 288.1171, F.S., provides the procedure by which a motorsport entertainment complex may be certified to receive up to \$2 million from a local government.

The amendment allows the Department of Economic Opportunity to certify one motorsports entertainment complex to receive annual distributions of up to \$2 million from state sales tax revenues for up to 30 years. The amendment provides the criteria that must be met prior to receiving the certification.

³¹ See ss. 202.12(1)(a) and 203.01(1)(b), F.S. The gross receipts tax is 2.37 percent, plus an additional 0.15 percent for certain services.

³² Section 202.19, F.S.

³³ Section 202.18, F.S.

Private Label Credit Cards (Bad Debt)

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 requirements for dealers to collect and remit sales tax. Florida imposes a 6 percent tax on tangible personal property sold, used, consumed, distributed, stored for use or consumption, rented, or leased in Florida. The full amount of sales tax is due at the time a transaction occurs, even if the transaction is a credit sale, installment sale, or a sale made on any kind of deferred payment plan.

A dealer who has remitted sales tax may take a credit or obtain a refund for any tax paid on the unpaid balance due on worthless accounts. The dealer must take the credit or obtain a refund within 12 months following the month in which the bad debt has been charged off by the dealer for federal income tax purposes. If any amount of the worthless account is subsequently paid, the dealer is required to remit the appropriate tax to the Department of Revenue. The dealer that paid the tax and charged off the account is the only person allowed to take the credit or claim the refund. In the case of private-label credit cards, the lender that issued the credit card may not take the credit or claim the refund for any amounts subsequently charged off by the lender, since the lender is not the "dealer."

The amendment amends s. 212.17, F.S., to create another method for a dealer to take a credit or obtain a refund for taxes remitted for a charged-off debt related to a consumer account with a private-label credit card. The amendment allows a dealer to take a credit or obtain a refund on taxes remitted on the unpaid balance of a worthless or "uncollectible" private-label credit card account. The amendment sets forth the criteria for calculating the amount of the credit or refund and limits the amount of the credit or refund to 25 percent of the amount of taxes paid on a worthless account.

Bail Bond Premiums

Under s. 624.4094(1), F.S., the direct written premium retained by a bail bond insurer may not be less than 6.5 percent of the total payment for the bail bond; licensed bail bond agents or licensed managing general agents retain up to 93.5 percent of the premium. Section 624.4094(5), F.S., provides that the reporting and payment of insurance premium taxes and related excise taxes under ss. 624.509, 624.5091, and 624.5092, F.S., is calculated using gross bail bond premiums and that insurance premium tax and related excise taxes are calculated using gross bail bond premiums.

Section 624.509, F.S., requires insurers to pay a premium tax on premiums received during the preceding calendar year. The tax is 1.75 percent of the gross amount of premium.

The amendment changes the calculation of the premium tax imposed on bail bond premiums so that the tax rate is applied only to the amount of the premium received by the insurance company, excluding amounts retained by the bail bond agent.

Local Business Taxes

Chapter 205, Florida Statutes, authorizes counties and municipalities to levy a business tax for the privilege of engaging in or managing any business, profession, or occupation within their jurisdictions. Section 205.0535 (2), F.S., requires that a municipality or county establish an equity study commission before revising its business taxes.

The amendment allows a county or municipality to repeal a local business tax or establish new rates that decrease the taxes and do not result in an increase of local business taxes for a taxpayer without having to establish an equity study commission.

Back to School Sales Tax Holiday

The amendment creates a state and local sales tax exemption for a 3-day period from August 1 through August 3, 2014, for the purchases of clothing costing \$75 or less per item, school supplies costing \$15 or less per item, and personal computers and related accessories costing \$750 or less.

The amendment appropriates \$223,048 from the General Revenue Fund to the Department of Revenue to implement the this provision and notify sales and use tax dealers prior to the beginning of the sales tax holiday.

Hurricane Preparedness Holiday

The amendment provides an exemption from state and local sales tax for specified items related to hurricane preparedness during a period of 12 consecutive days beginning on June 1, 2014. The timing of this period coincides with the start of hurricane season. The exempted items are:

- A portable, self-powered light source selling for \$20 or less.
- A portable, self-powered radio, two-way radio, or weather band radio selling for \$50 or less.
- A tarpaulin or other flexible waterproof sheeting selling for \$50 or less.
- A self-contained first-aid kit selling for \$30 or less.
- A ground anchor system or tie-down kit selling for \$50 or less.
- A gas or diesel fuel tank selling for \$25 or less.
- A package of AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less.
- A nonelectric food storage cooler selling for \$30 or less.
- A portable generator that is used to provide light or communications or preserve food in the event of a power outage selling for \$750 or less.

The amendment also authorizes the Department of Revenue to adopt rules to implement this provision.

The amendment appropriates \$280,912 from the General Revenue Fund to the Department of Revenue for purposes of administering the provisions of the amendment.

Prepaid Calling Arrangements

The communication services tax (CST) is applied to the sales price of each communications service which originates and terminates in this state, or originates or terminates in this state and is charged to a service address in this state.³⁴ However, the definition of the term “sales price” expressly excludes the “sale or recharge of a prepaid calling arrangement,” so CST is not collected on the sale of a prepaid calling arrangement.³⁵

The term “prepaid calling arrangement” is defined to mean “the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars of which the number declines with use in a known amount.”³⁶

Chapter 212, F.S., provides for the application of the sales tax to the sale of tangible personal property and some services. The sales tax rate of 6 percent is applicable to charges for prepaid calling arrangements.³⁷ The term “prepaid calling arrangement” as defined in ch. 212, F.S., means “the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount.”³⁸ The definition of “prepaid calling arrangement” in ch. 202, F.S. is virtually identical to the definition in ch. 212, F.S.

The amendment amends subsection 202.11(9), F.S., to revise the definition of the term “prepaid calling arrangement.” For other than mobile communications services, the term includes a right to use communications services “for which a separately stated price must be paid in advance, which is sold at retail in predetermined units that decline in number with use on a predetermined basis, and which consists exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered.”

For mobile communications services, the term includes “a right to use mobile communications services that must be paid for in advance and is sold at retail in predetermined units that expire or decline in number on a predetermined basis if:

1. The purchaser’s right to use mobile communications services terminates upon all purchased units expiring or being exhausted unless the purchaser pays for additional units;
2. The purchaser is not required to purchase additional units; and

³⁴ Section 202.12, F.S.

³⁵ Section 202.11(13)(b)4., F.S.

³⁶ Section 202.11(9), F.S.

³⁷ Section 212.05(1)(e)1., F.S.

³⁸ *Id.*

3. Any right of the purchaser to use units to obtain communications services other than mobile communications services is limited to services that are provided to or through the same handset or other electronic device that is used by the purchaser to access mobile communications services.”

The amendment expands the definition of “prepaid calling arrangement” to include prepaid communication services other than those that consist exclusively of telephone calls. The changes recognize that under current industry practices prepaid services may include services other than telephone calls, such as text messaging, web access, and email.

Commercial Electricity: Transfer of Sales Tax to Gross Receipts Tax

The sale of electric power or energy by an electric utility is subject to the state sales tax at the rate of 7 percent.³⁹

Chapter 203, F.S., imposes, at the rate of 2.5 percent, a tax on gross receipts from the sale, delivery, or transportation of natural gas, manufactured gas, or electricity to a retail consumer in Florida. All revenue received pursuant to this tax is deposited in the Public Education Capital Outlay and Debt Service (“PECO”) Trust Fund. The use of such funds is limited to paying the principal and interest on bonds to finance capital projects for institutions of higher learning, community colleges, vocational technical schools, or public schools; the cost of any public educational facility capital project; or the cost of maintenance and repairs.

The amendment decreases the sales tax rate on sales of electricity from 7.0 percent to 4.35 percent and creates an additional gross receipts tax rate on electrical power or energy delivered to a non-exempt retail consumer of 2.6 percent, thereby raising the combined gross receipts tax rate to 5.1 percent. The new gross receipts tax additional rate will incorporate the existing exemptions from the sales tax.

The effect of the amendment is to provide a small tax reduction to commercial purchasers of electricity (a tax rate reduction of 0.05 percentage point). Also, the amendment reduces revenues that are deposited in the General Revenue Fund and increases deposits to the Public Education Capital Outlay Fund (PECO). Funds deposited in the PECO trust fund are used to fund construction and maintenance of educational facilities.

Qualified Television Loan Fund

The amendment establishes a revolving loan fund to be used for loans to television productions filmed in Florida. The amendment does not appropriate any moneys to the fund.

³⁹ Section 212.05(1)(e)1.c., F.S.

Fiscal Impact of Amendment

The effect of the amendment on state and local government revenues is detailed in the following table:

Description	General Revenue		Trust Fund		Local Governments		Total	
	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring
CST Rate Reduction - 0.52%	(23.9)	(63.7)	(insig)	(insig)	(3.1)	(8.3)	(27.0)	(72.0)
Motorsports	(1.7)	(2.0)	0.0	0.0	0.0	0.0	(1.7)	(2.0)
Private-label Credit Cards (bad debt)	(2.9)	(2.6)	(insig)	(insig)	(0.6)	(0.6)	(3.5)	(3.2)
Bail Bonds	(0.7)	(0.7)	0.0	0.0	0.0	0.0	(0.7)	(0.7)
Local Business Taxes	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Sales Tax Holiday - Back to School (3 days)	(31.8)	0.0	(insig)	0.0	(7.2)	0.0	(39.0)	0.0
Prepaid Calling	0.0	(1.4)	0.0	(5.7)	0.0	(11.2)	0.0	(18.3)
Tax Holiday Appropriations	(0.5)	0.0	0.0	0.0	0.0	0.0	(0.5)	0.0
Sales Tax: Hurricane Prep. Holiday	(2.9)	0.0	(insig)	0.0	(0.7)	0.0	(3.6)	0.0
Sales Tax/Gross Receipts: Electricity	(142.6)	(171.0)	139.8	167.8	0.0	0.0	(2.8)	(3.2)
QTV Fund	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	(207.0)	(241.4)	139.8	162.1	(11.6)	(20.1)	(78.8)	(99.4)

Mandates

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by 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 in the aggregate, as such authority existed on February 1, 1989.

The mandates provision may apply because the amendment provides numerous sales tax exemptions that will reduce municipalities’ and counties’ local option sales tax collections, thereby reducing their revenue-raising authority. In addition, the amendment redefines the types of services to which local Communication Services tax rates apply, thereby potentially reducing the authority of municipalities to raise revenue.