

**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 Appropriations Subcommittee on Finance and Tax

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BILL: CS/SB 68

INTRODUCER: Commerce and Tourism Committee; and Senators Grimsley and Latvala

SUBJECT: Tourist Development Tax

DATE: March 19, 2017

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Askey</u>	<u>McKay</u>	<u>CM</u>	<b>Fav/CS</b>
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
3.	<u>Gross</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	<b>Recommend: Favorable</b>
4.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 68 expands the authority of counties to use revenue derived from local option tourist development taxes to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote a publicly owned auditorium operated by an organization exempt from federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code. Under current law, the tourist development tax revenues may be used for an auditorium only if the auditorium is publicly owned and operated.

The bill takes effect July 1, 2017

**II. Present Situation:**

**Tourist Development Taxes**

Florida law permits counties to impose local option taxes on rentals or leases of accommodations for a term of six months or less.<sup>1</sup> The taxes are generally referred to as “tourist development taxes,” but consist of several separate levied taxes.

- 1 or 2 Percent Tax:<sup>2</sup> This tax may be levied by the county’s governing board at a rate of 1 or 2 percent on the total amount charged for transient rental transactions.

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<sup>1</sup> Section 125.0104, F.S.

<sup>2</sup> Section 125.0104(3)(c), F.S.

- Additional 1 Percent Tax:<sup>3</sup> This tax may be levied by an extraordinary vote of a county’s governing board, in addition to the 1 or 2 percent tax on the total amount charged for transient rental transactions. To be eligible to levy the tax, a county must have levied the 1 or 2 percent tax for at least 3 years.
- High Tourism Impact Tax:<sup>4</sup> A county with high tourism impact may levy an additional 1 percent tax on the total amount charged for transient rental transactions.<sup>5</sup>
- Professional Sports Franchise Facility Tax:<sup>6</sup> In addition to any other tourist development taxes, a 1 percent tax on the total amount charged for transient rental transactions may be levied to pay debt service on bonds issued to finance professional sports franchise facilities, retaining spring training franchise facilities, and convention centers. These funds may also be used to promote tourism in the state.
- Additional Professional Sports Franchise Facility Tax:<sup>7</sup> Counties that levy the professional sports franchise facility tax may levy an additional tax no greater than 1 percent to be used for the same purposes.

Depending on a county’s eligibility, the maximum tax rate varies from 3 to 6 percent. The table below displays the five local option tourist development taxes available to counties, the number of counties eligible to levy a specific tourist development tax, and the number of counties currently levying such tax.<sup>8</sup>

	Original Tax (1% or 2%)	Additional Tax (1%)	Professional Sports Franchise Facility Tax (up to 1%)	High Tourism Impact Tax (1%)	Additional Professional Sports Franchise Facility Tax (up to 1%)
Eligible to Levy:	67	59	67	8	65
Levying:	63	48	41	5	26

These local option taxes may be administered by the Department of Revenue or by one or more units of local government. These taxes may be levied within a subcounty special district. If the tax is levied in a subcounty special district, the additional taxes must be levied only in that district.<sup>9</sup>

As a requirement for adopting tourist development taxes, a county’s tourist development council<sup>10</sup> must prepare a plan for tourist development and present it before the governing board of the county. The plan must include the anticipated revenue derived from the tax for the first 24 months, the tax district where it will be imposed, and a list prioritizing the use of the revenue.

<sup>3</sup> Section 125.0104(3)(d), F.S.

<sup>4</sup> Section 125.0104(3)(m), F.S.

<sup>5</sup> A county may be designated as having a “high tourism impact” by the Department of Revenue as provided by s. 125.0104(3)(m)2, F.S.

<sup>6</sup> Section 125.0104(3)(l), F.S.

<sup>7</sup> Section 125.0104(3)(n), F.S.

<sup>8</sup> Office of Economic Demographic Research, The Florida Legislature, *County Tax Rates: CY 2007-2017, Local Option Tourist Taxes*, (website last revised, Mar 14, 2017), available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm> (last visited Mar 14, 2017).

<sup>9</sup> See ss. 125.0104(b), (d), and (l), F.S.

<sup>10</sup> Also referred to as a “tourism” development council.

Any changes to the plan after the levy has been enacted must be approved by the county's governing board.<sup>11</sup>

Local option tourist development tax revenues may be used for capital construction of tourist-related facilities, tourism promotion, and beach or shoreline maintenance. More specifically, the revenues derived from tourist development taxes are authorized to be used:

- To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more:
  - Publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums; or
  - Aquariums and museums that are publicly owned and operated, or owned and operated by a non-profit organization that is open to the public;
- To promote zoological parks that are publicly owned and operated or owned and operated by a non-profit organization that is open to the public;
- To promote and advertise tourism in the state;
- To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies; or
- To finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control.<sup>12</sup>

### **Tax-exempt Organizations**

26 U.S.C. s. 501(a), Internal Revenue Code, exempts from federal income taxes those organizations described in section 501(c), (d), or 401(a), Internal Revenue Code.

Organizations exempt under 26 U.S.C. s. 501(c)(3), Internal Revenue Code, are “[c]orporations, and any community chest, fund, or foundation . . .” These organizations must be, “organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition, . . . or for the prevention of cruelty to children or animals . . .”<sup>13</sup>

Under 26 U.S.C. s. 501(c)(3), Internal Revenue Code, tax-exempt organizations “may not attempt to influence legislation as a substantial part of its activities and may not participate in any campaign activity for or against political candidates.” Further, these organizations “must not be organized or operated for the benefit of private interest . . .”<sup>14</sup>

### **III. Effect of Proposed Changes:**

The bill expands the authorized uses of revenue derived from local option tourist development taxes to include the acquisition, construction, extension, enlargement, remodel, repair,

<sup>11</sup> See ss. 125.0104(4), F.S. The provisions found in ss. 125.0104(4)(a)-(d), F.S., do not apply to the high tourism impact tax, the professional sports franchise facility tax, or the additional professional sports franchise facility tax.

<sup>12</sup> Section 125.0104(5)(a), F.S.

<sup>13</sup> 26 U.S.C. s. 501(c)(3)

<sup>14</sup> U.S. Department of Treasury, Internal Revenue Service, *Exemption Requirements – 501(c)(3) Organizations*. (Jan 26, 2017) available at: <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501-c-3-organizations> (last visited Mar 16, 2017).

improvement, maintenance, operation, or promotion of auditoriums that are publicly owned and open to the public, but operated by an organization that is tax-exempt under 26 U.S.C. s. 501(c)(3) and within the boundaries in which the tax is levied.<sup>15</sup>

**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 changes the authorized use of tourist development tax revenues, not the amount of such revenue.

B. Private Sector Impact:

Unknown, but positive. A tax-exempt organization operating a publicly owned auditorium could receive funds derived from tourist development tax revenues for statutorily defined purposes related to that auditorium.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 125.0104 of the Florida Statutes.

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<sup>15</sup> Examples of publicly owned auditoriums that are operated by 501(c)(3) organizations include the Florida Theatre in Jacksonville, the Tampa Theatre, and the Ruth Eckerd Hall in Clearwater.

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Commerce and Tourism on January 23, 2017:**

The CS makes technical changes for purposes of statutory organization and clarification.

- 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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