

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 Commerce and Tourism

BILL: CS/SB 68

INTRODUCER: The Committee on Commerce and Tourism, Senators Grimsley and Latvala

SUBJECT: Tourist Development Tax

DATE: January 23, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Askey	McKay	CM	Fav/CS
2.			CA	
3.			AFT	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 68 allows 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 that is operated by a tax-exempt, non-profit organization.

II. Present Situation:

Tourist Development Taxes

Florida law permits counties to impose local option transient rental taxes on rentals or leases of accommodations for a term of six months or less.¹ The taxes are generally referred to as "tourist development taxes," but consist of several separate levied taxes. The taxes are:

- **1 or 2 Percent Tax:**² levied by the county's governing board at a rate of 1 or 2 percent on the total amount charged for transient rental transactions.
- **Additional 1 Percent Tax:**³ levied by the county's governing board, in addition to the 1 or 2 percent tax on the total amount charged for transient rental transactions.

¹ Section 125.0104, F.S.

² Section 125.0104(3)(c), F.S.

³ Section 125.0104(3)(d), F.S.

Eligibility to levy the tax requires that a county must have levied the 1 or 2 percent tax for at least 3 years.

- **High Tourism Impact Tax:**⁴ a county with high tourism impact may levy an additional 1 percent tax on the total amount charged for transient rental transactions.⁵
- **Professional Sports Franchise Facility Tax:**⁶ 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 can also be used to promote tourism in the state.
- **Additional Professional Sports Franchise Facility Tax:**⁷ 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. These local option taxes can be administered by the Department of Revenue or by one or more unit of local government. These taxes may be levied within a subcounty special district. If the tax is levied in a subcounty special district, the subsequent additional taxes must be levied only in that district.⁸

As a requirement for adopting tourist development taxes, a county's tourist development council⁹ 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. Any changes to the plan after the levy has been enacted must be voted upon by the county's governing board.¹⁰

The 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:¹¹

- 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;

⁴ Section 125.0104(3)(m), F.S.

⁵ 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.

⁶ Section 125.0104(3)(l), F.S.

⁷ Section 125.0104(3)(n), F.S.

⁸ See ss. 125.0104(b), (d), and (l), F.S.

⁹ Also referred to as a "tourism" development council.

¹⁰ 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.

¹¹ Section 125.0104(5)(a), F.S.

- 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.

Non-Profit Organizations and Tax-exemption

A non-profit organization is generally defined as one whose purpose is something other than making a profit, usually related to a public purpose. Since “non-profit” refers to incorporation status under state law, the legal definition varies by state.¹² The legal format for establishing non-profit status also varies depending on state. Non-profit status formats can include non-profit corporations, unincorporated associations, and charitable trusts.

Tax-exempt status exempts a non-profit organization from paying corporate income tax on income generated from activities that are substantially related to the purposes for which the group was organized. A non-profit organization is not automatically tax-exempt; to be tax-exempt, an organization must qualify for federal income tax exemption under the Internal Revenue Code.¹³ There are 29 types of nonprofit organizations that are exempt from some federal income taxes; most of these are charitable organizations and are known as 501(c)(3) organizations.¹⁴ A non-profit organization must apply to be recognized as being tax-exempt. Non-profit organizations that are granted tax-exempt status by the Internal Revenue Service can apply and receive a Florida Consumer’s Certificate of Exemption, further exempting them from certain sales tax.

III. Effect of Proposed Changes:

CS/SB 68 amends the authorized uses of revenue derived from local option tourist development taxes to include the acquisition, construction, extension, enlargement, remodel, repair, improvement, maintenance, operation, or promotion of one or more auditoriums that are publicly owned but operated by a non-profit organization that is tax-exempt under 26 U.S.C. s.501(c)(3) and within the boundaries in which the tax is levied.¹⁵

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹² Florida law regarding non-profit corporations is found in Ch. 617, F.S.

¹³ See 26 U.S.C. s.501

¹⁴ 26 U.S.C. s.501(c)(3) is the section of federal law regulating tax exemptions for charitable organizations.

¹⁵ Examples of publicly owned auditoriums that are operated by 501(c)(3) non-profits include Florida Theatre in Jacksonville, Tampa Theatre, and Ruth Eckerd Hall in Clearwater.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None. The bill changes the authorized use of tourist development tax revenue, not the amount of such revenue.

B. Private Sector Impact:

Unknown, but positive. A tax-exempt, non-profit organization that is 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.

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.