

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: PCS/CS/SB 620 (741326)

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Commerce and Tourism Committee; and Senator Passidomo and others

SUBJECT: Disaster Preparedness Tax Exemption

DATE: March 1, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Gross</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	<u>Recommend: Fav/CS</u>
3.	<u>Gross</u>	<u>Hansen</u>	<u>AP</u>	<u>Pre-meeting</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

PCS/CS/SB 620 provides a documentary stamp tax exemption for any loan made by the Florida Small Business Emergency Bridge Loan Program in response to a disaster that results in a state of emergency, or any loan made by the Agricultural Economic Development Program.

The bill also establishes two 7-day periods during which items purchased for disaster preparedness and protection are exempt from state sales and use tax and county discretionary sales surtaxes. The first period begins Friday, June 1, 2018, and ends Thursday, June 7, 2018, which coincides with the start of the Atlantic hurricane season. The second period begins Friday, July 6, 2018, and ends Thursday, July 12, 2018.

Exempt items include: light sources, radios, tarps, "tie-down" kits, fuel tanks, batteries, cellular telephone chargers, portable power banks, food storage coolers, generators, carbon monoxide detectors, reusable ice, locator beacons,

The Revenue Estimating Conference (REC) estimates that this bill will reduce General Revenue Fund receipts by \$9.9 million and reduce local government revenues by \$2.6 million in Fiscal Year 2018-2019.

The bill appropriates \$70,072 in nonrecurring funds from the General Revenue Fund to the Department of Revenue to administer the sales tax holidays.

The bill is effective upon becoming law.

II. Present Situation:

Emergency Loans

The Excise Tax on Documents (documentary stamp tax) is levied on promissory notes, nonnegotiable notes, written obligations to pay money, and assignments of salaries, wages, or other compensation at the rate of 35 cents per \$100 or fraction thereof of the indebtedness or obligation evidenced thereby. The tax on these documents may not exceed \$2,450.¹

The Florida Small Business Emergency Loan Program is part of Florida's response to disasters. The program's purpose is to provide short-term, interest-free working capital loans that are intended to "bridge the gap" between the time a major catastrophe hits and when a business has secured longer term recovery resources. Loans are awarded in amounts from \$1,000 to \$50,000, with terms of 90 or 180 days, and must be paid in full by the end of the loan term.²

The program was first activated following Hurricane Andrew and has been activated 20 additional times since then. In response to Hurricane Irma in September 2017, the program has made 829 small business loans totaling \$27,719,793 and 49 citrus-related loans totaling \$5,728,000.³

The Agricultural Economic Development Program⁴ provides for disaster loans and grants for agricultural producers who have experienced losses from a natural disaster or a socio-economic condition or event. The loans and grants may be used to:

- Restore or replace essential physical property or remove debris from essential physical property;
- Pay all or part of production costs associated with the disaster year;
- Pay essential family living expenses; or
- Restructure farm debts.

Agricultural producers having parcels of land in production not exceeding 300 acres are eligible for loans under this program, and funds may be issued as direct loans or as loan guarantees for up to 90 percent of the total loan, in amounts not less than \$30,000 and not more than \$300,000. Loan applicants must provide at least ten percent equity.⁵ This program has not been funded by the Legislature, and no loans have been made.⁶

¹ Section 201.08(1)(a), F.S.

² <http://www.floridadisasterloan.org/> last visited January 12, 2018.

³ Total amounts as of January 8, 2018.

⁴ Section 570.82, F.S.

⁵ *Id.*

⁶ Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Disaster Loans*, Proposed Language, Jan 12, 2018 Revenue Impact Results, available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/page278-281.pdf.

Florida Sales and Use Tax

Florida levies a six percent sales and use tax on the sale or rental of most tangible personal property, admissions,⁷ transient rentals,⁸ rental of commercial real estate,⁹ and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. There are currently more than 250 exemptions, exclusions, deductions, and credits from the sales and use tax.¹⁰ Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.¹¹

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose nine local discretionary sales surtaxes. A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by [ch. 212, F.S.], and on communications services as defined in ch. 202, F.S."¹² The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold, or are delivered into. Discretionary sales surtax rates currently levied vary by county in a range from 0.5 percent to 1.5.¹³

Disaster Preparedness

Previous legislatures have approved sales tax exemptions for specified items in preparation for the Atlantic hurricane season, which typically begins on June 1st of each year.¹⁴

The Florida Division of Emergency Management recommends having a plan and preparing property to prevent damage. Additionally, the Division of Emergency Management recommends having a disaster supply kit with items such as a battery-operated radio, flashlight, batteries, and first-aid kit.¹⁵

The Federal Emergency Management Agency (FEMA) educates Americans on how to prepare for emergencies through Ready, a public service advertising campaign.¹⁶ In addition to the items listed in the paragraph above, FEMA recommends cell phone chargers, inverters, or solar chargers as items to include in an emergency preparedness supply kit.¹⁷

⁷ Section 212.04, F.S.

⁸ Section 212.03, F.S.

⁹ Section 212.031, F.S.

¹⁰ See Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, 164-170 (2017).

¹¹ Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities*, available at http://dor.myflorida.com/dor/taxes/sales_tax.html (last visited Nov. 15, 2017).

¹² Section 212.054, F.S.

¹³ Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook*, 2017 Local Discretionary Sales Surtax Rates in Florida's Counties, 224-225 (2017), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2017.pdf> (last visited Nov. 15, 2017).

¹⁴ National Oceanic and Atmospheric Administration, *Frequently Asked Questions*, available at, <http://www.aoml.noaa.gov/hrd/tcfaq/G1.html> (last visited Nov. 15, 2017).

¹⁵ Florida Division of Emergency Management, *Emergency Kit, Make a Plan, Be Informed*, available at, <http://www.floridadisaster.org/documents/EmergencyKit-FDEM.pdf> (last visited Nov. 15, 2017).

¹⁶ Federal Emergency Management Agency, *Ready.gov*, available at, <http://www.ready.gov> (last visited Nov. 15, 2017).

¹⁷ Federal Emergency Management Agency, *Build A Kit*, available at, <https://www.ready.gov/build-a-kit> (last visited Nov. 15, 2017).

III. Effect of Proposed Changes:

Section 1 provides an exemption from documentary stamp tax for any loan made by the Florida Small Business Emergency Loan Program in response to a disaster for which the governor declares a state of emergency pursuant to s. 252.36, F.S., or any loan made by the Agricultural Economic Development Program.

Section 2 establishes two 7-day periods during which items purchased for disaster preparedness and protection are exempt from the sales and use tax and local discretionary sales surtaxes. The first exemption period begins at 12:01 a.m. on Friday, June 1, 2018, and ends at 11:59 p.m. on Thursday, June 7, 2018. The second exemption period begins at 12:01 a.m. on Friday, July 6, 2018 and ends at 11:59 on Thursday, July 12, 2018. The following items are exempt:

- 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 \$75 or less.
- A tarpaulin or other flexible waterproof sheeting selling for \$50 or less.
- An item typically sold or advertised as 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 AAA-cell, AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less.
- A portable power bank intended to be used to charge cellular telephones and other small electronic devices and selling for \$75 or less.
- A cellular telephone charger selling for \$40 or less.
- A non-electric food storage cooler selling for \$30 or less.
- A carbon monoxide detector selling for \$75 or less.
- Reusable ice selling for \$10 or less.
- A single product consisting of two or more of the previously listed items selling for \$75 or less.
- A portable generator selling for \$1,000 or less used to provide light, support communications, or preserve food during a power outage.
- A standby generator selling for \$5,000 or less which is intended to be permanently affixed to real property.
- A personal locator beacon selling for \$600 or less.
- An emergency position-indicating radio beacon selling for \$1,500 or less.

Sales within public lodging establishments,¹⁸ theme parks or entertainment complexes,¹⁹ or airports²⁰ are not exempt from taxes under this bill.

The bill authorizes the Department of Revenue (DOR) to adopt emergency rules in order to implement the sales tax exemption.

Section 3 appropriates \$70,072 in nonrecurring funds from the General Revenue Fund to the DOR in Fiscal Year 2017-18 to administer the holidays.

¹⁸ Section 509.013(4), F.S.

¹⁹ Section 509.013(9), F.S.

²⁰ Section 330.27(2), F.S.

Section 4 provides that the bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenues.

Subsection (b) of s. 18, Art. VII, 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. However, the mandates requirements do not apply to laws having an insignificant impact,²¹ which for Fiscal Year 2017-2018, is \$2.1 million or less.²²

The Revenue Estimating Conference estimates this bill will reduce the authority that counties have to raise revenue from the local options sales tax by \$1.3 million. Therefore, this bill has an insignificant fiscal impact on local governments and may not be a mandate requiring a two-thirds vote of the membership.

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 that the documentary stamp tax exemption provided by this bill will reduce General Revenue Fund receipts and state trust fund receipts by an indeterminate amount in Fiscal Year 2018-2019 and each year thereafter.²³

²¹ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Nov. 9, 2017).

²² Based on the Demographic Estimating Conference's population adopted on December 5, 2017. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Dec. 22, 2017).

²³ *Supra* note 6.

The Revenue Estimating Conference estimates that the disaster preparedness sales tax holidays in this bill will reduce General Revenue Fund receipts by \$9.9 million and reduce local government revenues by \$2.6 million in Fiscal Year 2018-2019.²⁴

B. Private Sector Impact:

Indeterminate, but positive. Consumers may see a reduction in the cost of the specified products related to disaster preparation and protection.

C. Government Sector Impact:

The DOR estimates the cost associated with notifying businesses of the sales tax exemption, by printing and mailing a tax information publication, will be approximately \$70,072.²⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates section 201.25 of the Florida Statutes.
The bill creates an undesignated section of Florida law.

IX. Additional Information:

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

Recommended CS by Appropriations Subcommittee on Finance and Tax on January 16, 2018:

The committee substitute (CS) exempts from the tax on documents:

- Loans made by the Florida Small Business Emergency Bridge Loan Program that are in response to a disaster, which disaster must be declared by executive order or proclamation by the Governor.
- Loans made by the Agricultural Economic Development Program.

The CS creates two 7-day periods when items purchased for disaster preparedness are exempt from sales tax. The first period, beginning at 12:01 a.m. on Friday, June 1, 2018, and ending Thursday, June 7, 2018, coincides with the start of the Atlantic hurricane

²⁴ Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Disaster Preparedness Holiday, SB620-Proposed Amendment*, Jan 12, 2018 Revenue Impact Results, available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/page295-301.pdf.

²⁵ Florida Department of Revenue, *2018 Agency Legislative Bill Analysis: SB 620* (Nov. 3, 2017) (on file with the Senate Commerce and Tourism Committee).

season. The second period begins at 12:01 a.m. on Friday, July 6, 2018, and ends Thursday, July 12, 2018.

The CS removes from the list of exempt items in CS/SB 620:

- Cellphone batteries;
- Storm shutter devices;
- External portable computer drives; and
- Inverters or uninterruptible power supply systems.

The CS adds to the list of exempt items in CS/SB 620:

- Portable power banks intended to be used to charge cellular telephones and other small electronic devices.
- Standby generators intended to be permanently affixed to real property selling for \$5,000 or less.

CS by Commerce and Tourism Committee on November 13, 2017:

The bill is amended to specify the amount of the appropriation to the DOR to administer the sales tax exemption. For the 2017-2018 fiscal year, the bill appropriates \$70,072 in nonrecurring funds from the General Revenue Fund to the DOR.

B. Amendments:

None.