

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: SB 76

INTRODUCER: Senator Garcia

SUBJECT: Small Business Saturday Sales Tax Holiday

DATE: November 3, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	_____	_____	<u>AFT</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 76 establishes a one-day sales tax holiday on Small Business Saturday, November 24, 2018. During the holiday, a small business may opt not to collect state sales tax and county discretionary sales surtaxes on retail sales of tangible personal property having a sales price of \$1,000 or less per item.

The bill defines a “small business” as one that:

- Has registered with the Department of Revenue (DOR);
- Began operation in Florida on or before January 8, 2018; and
- Owed and remitted less than \$200,000 in tax under ch. 212, F.S., to the DOR during either:
 - A one-year period ending on September 30, 2018, or
 - The period beginning on the date the business began operating in Florida and ending on September 30, 2018, if the business has not been in operation for a full year as of September 30, 2018.

The Revenue Estimating Conference estimates that the bill will reduce General Revenue receipts by \$32.8 million and local government revenues by \$8.4 million in Fiscal Year 2018-2019.¹

The bill provides DOR with a nonrecurring General Revenue appropriation of \$200,000 in Fiscal Year 2018-2019 to administer the provisions of the Act.

¹ Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Small Business Saturday Tax Holiday, SB 76*, Oct. 6, 2018 Revenue Impact Results, available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/pdf/page44-48.pdf> (last visited Oct. 31, 2017).

II. Present Situation:

Florida levies a six percent sales and use tax on the sale or rental of most tangible personal property, admissions,² transient rentals,³ rental of commercial real estate,⁴ 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.⁵ Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.⁶

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose eight 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."⁷ 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.

The Florida Legislature has not previously authorized a sales and use tax exemption for items of tangible personal property purchased from a small business.

In 2010, American Express instituted a Small Business Saturday incentive for their cardholders who shopped at small, independent businesses on the Saturday after Black Friday.⁸ The U.S. Senate passed a resolution recognizing Small Business Saturday and encouraging consumers to shop locally in 2015, but this measure was not voted on by the U.S. House of Representatives.⁹ Although American Express has removed the cash back incentive for their cardholders, sales on Small Business Saturday have grown.¹⁰ One survey estimates that 112 million consumers spent \$15.4 billion at small, independent businesses on Small Business Saturday in 2016,¹¹ compared

² Section 212.04, F.S.

³ Section 212.03, F.S.

⁴ Section 212.031, F.S.

⁵ See Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, 164-170 (2017).

⁶ 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 Oct. 31, 2017).

⁷ Section 212.054, F.S.

⁸ Jeremy Quittner, *Small Business Saturday Is No Longer Just an AmEx Holiday* (Oct 21, 2016), <http://fortune.com/2016/11/21/small-business-saturday-amex-holiday/> (last visited Oct. 31, 2017). American Express, *Small Business Saturday*, <https://www.americanexpress.com/us/content/small-business/shop-small/about/?linknav=us-open-shops-small-homepage-about> (last visited Oct. 31, 2017).

⁹ A Resolution Recognizing Small Business Saturday, S. Res. 304, 114th Cong. (2015). See also, H. Res. 886, 114th Cong. (2015).

¹⁰ Ethan Wolff-Mann, "Small Business Saturday No Longer Comes with Free Money from AmEx" (Nov. 13, 2015), <http://time.com/money/4110506/amex-credit-small-business-saturday-2015/> (last visited Oct. 31, 2017).

¹¹ Business Wire, *Small Business Saturday Results: 112 Million Consumers Shop and Dine Small on Small Business Saturday – More Than Ever Before* (Nov. 28, 2016), <http://www.businesswire.com/news/home/20161128005542/en/Small-Business-Saturday%20AE-Results-112-Million-Consumers> (last visited Oct. 31, 2017). National Federation of Independent Business, *Small Business Saturday 2016 Sees Record Participation* (Nov. 29, 2016), <http://www.nfib.com/content/news/economy/small-business-saturday-2016-sees-record-participation-76103/> (last visited Oct. 31, 2017).

to the estimated \$14.3 billion that 88 million consumers spent on Small Business Saturday in 2014.¹²

III. Effect of Proposed Changes:

The bill establishes a one-day sales tax holiday, on Saturday, November 24, 2018, to coincide with Small Business Saturday. During the tax holiday, and at the option of the small business, the total sales price of taxable tangible personal property, not to exceed \$1,000 per purchaser, per small business, is exempt from the state sales tax and county discretionary sales surtaxes.

The bill defines “small business” as one that:

- Has registered with the DOR;
- Began operation in Florida on or before January 8, 2018; and
- Owed and remitted less than \$200,000 in tax under ch. 212, F.S., to the DOR during either:
 - A one-year period ending on September 30, 2018, or
 - The period beginning on the date the business began operating in Florida and ending on September 30, 2018, if the business has not been in operation for the one-year period ending September 30, 2018.

Additionally, any business with multiple locations only qualifies as a small business for purposes of this bill if it is eligible to file a consolidated return, and has owed and remitted less than \$200,000 for all of its locations.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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, which for Fiscal Year 2018-2019, is \$2.08 million or less.^{13,14}

The Revenue Estimating Conference estimated that the bill would reduce the authority that counties have to raise revenues through local option sales surtax by \$4.2 million in

¹² Nicole Leinbach-Reyhle, *Small Business Saturday 2014 Stood Strong Among Communities and Small Businesses* (Dec. 2, 2014), <https://www.forbes.com/sites/nicoleleinbachreyhle/2014/12/02/small-business-saturday-2014-stood-strong-among-communities-and-small-businesses/#7612b39242b7> (last visited Oct. 31, 2017).

¹³ 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 Oct. 31, 2017).

¹⁴ Based on the Demographic Estimating Conference’s population adopted on July 10, 2017. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Oct. 31, 2017).

Fiscal Year 2018-2019.¹⁵ Therefore, the bill may 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 SB 76 will reduce General Revenue receipts by \$32.8 million and local government revenues by \$8.4 million in Fiscal Year 2018-2019.¹⁶

B. Private Sector Impact:

The sales tax holiday may promote retail sales at businesses that qualify under SB 76.

C. Government Sector Impact:

SB 76 provides DOR with a nonrecurring General Revenue appropriation of \$200,000 in Fiscal Year 2018-2019, to administer the provisions of the act. The DOR estimates that it can administer the holiday using existing resources, and that the appropriation is therefore unnecessary.¹⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the DOR, small business dealers will have to maintain documentation regarding whether and how they participated in the holiday.¹⁸

¹⁵ Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Small Business Saturday Tax Holiday, SB 76*, Oct. 6, 2018 Revenue Impact Results, available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/pdf/page44-48.pdf> (last visited Oct. 31, 2017).

¹⁶ Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Small Business Saturday Tax Holiday, SB 76*, Oct. 6, 2018 Revenue Impact Results, available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/pdf/page44-48.pdf> (last visited Oct. 31, 2017).

¹⁷ Department of Revenue, *Senate Bill 76 Bill Analysis*, (Sep. 29, 2017) (on file with the Senate Committee on Commerce and Tourism).

¹⁸ *Id.*

Additionally, the DOR reports that it will not be able to disclose a list of businesses that qualify to participate in the Small Business Saturday sales tax holiday because of confidentiality requirements in s. 213.053, F.S.¹⁹

VIII. Statutes Affected:

This bill creates an undesignated section 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:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁹ *Id.*