

**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 Committee on Appropriations

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BILL: CS/CS/SB 1412

INTRODUCER: Appropriations Committee; Commerce and Tourism Committee; and Senator Gruters

SUBJECT: Taxation

DATE: April 22, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Anderson</u>	<u>McKay</u>	<u>CM</u>	<b>Fav/CS</b>
2.	<u>Colton</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<b>Favorable</b>
3.	<u>Gross</u>	<u>Kynoch</u>	<u>AP</u>	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1412:

- Authorizes the Department of Revenue to use the best information available to determine levels of assessment when conducting in-depth reviews of property assessment rolls in counties affected by natural disasters.
- Creates a 3-day “back-to-school” sales tax holiday, from Friday, August 2 to Sunday, August 4, 2019, for certain clothing, school supplies, and personal computers.
- Creates a 7-day “disaster preparedness” sales tax holiday, from Friday, May 31 to Thursday, June 6, 2019, during which certain items purchased for disaster preparedness and protection are exempt from the sales and use.
- Delays from January 2020 to June 2020 a reimbursement from the state to fiscally constrained counties and Monroe County for ad valorem tax abatements paid to homestead property owners for certain losses caused by Hurricanes Matthew, Hermine, and Irma.

The bill allows the Department of Revenue to adopt emergency rules in order to implement the sales tax holidays.

The bill appropriates \$237,000 in nonrecurring funds from the General Revenue Fund to the Department of Revenue in Fiscal Year 2018-2019 to administer the “back-to-school” sales tax holiday.

The fiscal impact of the bill will reduce General Revenue Fund receipts by \$36.3 million and local government revenue by \$11.0 million in Fiscal Year 2019-2020. See Section V., Fiscal Impact Statement.

Except for the sales tax holidays and the grant of rulemaking authority to the Department of Revenue to implement the holidays, which take effect upon becoming law, the bill takes effect July 1, 2019.

## **II. Present Situation:**

The present situation for each issue is described in the Effect of Proposed Changes section below.

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

### **Section 1 – Department of Revenue Review of Assessment Rolls**

*Present situation:* The property tax assessment rolls of each county are subject to review by the Department of Revenue (DOR).<sup>1</sup> The DOR is required to conduct an in-depth review of the assessment rolls of each county at least once every two years and report the results of its review to specified legislative staff and county officials.<sup>2</sup> In conducting the assessment ratio studies, the DOR must use all practicable steps to maximize the representativeness or statistical reliability of the samples of properties reviewed.<sup>3</sup> However, for counties affected by natural disasters, statistically valid and reliable ratio studies may not be available.

For counties not subject to an in-depth review, the DOR is authorized to project the level of assessment based on the best information available using a professionally accepted methodology.<sup>4</sup>

*Proposed change:* The bill amends s. 195.096(2), F.S., to allow the DOR to estimate a county's level of assessment based on the best information available for one or more assessment years following a natural disaster in counties in which a state of emergency has been declared. The DOR is required to take all practicable steps to maximize the representativeness and reliability of its statistical and analytical reviews.

### **Section 2 and 3 – Florida Sales Tax**

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions,<sup>5</sup> transient rentals,<sup>6</sup> rental of commercial real estate,<sup>7</sup> and a limited number of services. Chapter 212, F.S., contains 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

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<sup>1</sup> Section 195.096(1), F.S.

<sup>2</sup> Section 195.096(2) and (3)(c), F.S.

<sup>3</sup> Section 195.096(2)(c), F.S.

<sup>4</sup> Section 195.096(3)(b), F.S.

<sup>5</sup> Section 212.04, F.S.

<sup>6</sup> Section 212.03, F.S.

<sup>7</sup> Section 212.031, F.S.

uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.<sup>8</sup> Sales tax receipts are estimated to account for 77 percent of the state's General Revenue in Fiscal Year 2018-2019.<sup>9</sup>

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose 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, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202."<sup>10</sup> 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. Discretionary sales surtax rates currently levied vary by county in a range from 0.5 to 2.5 percent.<sup>11</sup>

### ***Disaster Preparedness Sales Tax Holiday***

*Present situation:* Florida has enacted a "disaster preparedness" sales tax holiday five times since 2006, exempting specified items in preparation for the Atlantic hurricane season that officially begins June 1 of each year. The length of the exemption periods has varied from 3 to 12 days.

The Florida Division of Emergency Management recommends having a disaster supply kit with items such as a battery operated radio, flashlight, batteries, and first-aid kit.<sup>12</sup>

*Proposed change:* The bill establishes a 7-day period, from Friday, May 31 to Thursday, June 6, 2019, during which items purchased for disaster preparedness and protection are exempt from the sales and use tax and local discretionary sales surtaxes. 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 \$50 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 non-electric food storage cooler selling for \$30 or less.
- A portable generator used to provide light or communications or preserve food in the event of a power outage selling for \$750 or less.
- Reusable ice selling for \$10 or less.

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<sup>8</sup> See Section 212.07, F.S.

<sup>9</sup> Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook*, Sources of General Revenue, 16 (2019), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited March 25, 2019).

<sup>10</sup> Section 212.054, F.S.

<sup>11</sup> Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook*, 2019 Local Discretionary Sales Surtax Rates in Florida's Counties, 225-226 (2019), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited March 25, 2019).

<sup>12</sup> Florida Division of Emergency Management, *Plan & Prepare, Disaster Supply Kit*, available at <https://www.floridadisaster.org/planprepare/disaster-supply-kit/> (last visited March 20, 2019).

### ***“Back-to-School” Sales Tax Holiday***

*Present situation:* Florida has enacted a “back-to-school” sales tax holiday 17 times since 1998. The “Florida Residents’ Tax Relief Act of 1998” established Florida’s first tax holiday, during which clothing purchases of \$50 or less were exempt from tax. Backpacks were added to the tax holiday in 1999 and school supplies were added in 2001. In 2013, the Legislature expanded the exemption to include personal computers and related accessories selling for \$750 or less, purchased for noncommercial home or personal use. The duration of “back-to-school” sales tax holidays has varied from 3 to 10 days. The type and value of exempt items have also varied.

Nineteen of the 73 school districts in Florida began the 2018-19 school year as early as August 10, 2018. There are 45 districts that began the school year on August 13, 2018, with two districts that started the school year on August 20, 2018.<sup>13</sup>

*Proposed change:* The bill establishes a 3-day “back-to-school” sales tax holiday from Friday, August 2, 2019, to Sunday, August 4, 2019.

During the holiday, the following items that cost \$60 or less are exempt from the state sales tax and local option discretionary sales surtaxes:

- Clothing, defined as an “article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs; and all footwear, excluding skis, swim fins, roller blades, and skates.”
- Wallets, or bags including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases and other garment bags.
- Various “school supplies” that cost \$15 or less per item during the holiday.
- The first \$1,000 of the sales price of personal computers and related accessories purchased for noncommercial home or personal use are exempt. Included in this exemption are tablets, laptops, monitors, input devices, non-recreational software. Not included in this exemption are cell phones, furniture, devices or software intended primarily for recreational use, and monitors that include a television tuner.

The bill allows a business to not participate in the “back-to-school” holiday if less than 5 percent of its gross sales of tangible personal property in the prior calendar year consist of items that would be exempt under the bill. A business that meets this threshold must notify the DOR by August 1, 2019, of its election to collect sales tax during the holiday. The business must post a copy of that notice in a conspicuous location at its place of business.

The “back-to-school” and “disaster preparedness” sales tax holidays do not apply to the following sales:

- Sales within a theme park or entertainment complex, as defined in s. 509.013(9), F.S.;
- Sales within a public lodging establishment, as defined in s. 509.013(4), F.S.; and
- Sales within an airport, as defined in s. 330.27(2), F.S.

The tax holiday sections of the bill take effect upon becoming law.

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<sup>13</sup> Florida Department of Education, *Current EIS Publications*, available at <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/index.stml> (last visited April 18, 2019).

#### Section 4 – Reimbursement for Hurricane Losses

*Present situation:* In 2018, the Legislature provided tax relief for the victims of Hurricanes Hermine, Matthew, and Irma by enacting a tax abatement for homestead parcels on which the residential improvements were damaged or destroyed by one of the hurricanes.<sup>14</sup> If the residential improvement was rendered uninhabitable for at least 30 days during the 2016 or 2017 calendar years, taxes initially levied in 2019 are to be abated.

The tax abatement is calculated by determining the loss in property value caused by the hurricane multiplied by the fraction of the year the property was uninhabitable due to hurricane damage.<sup>15</sup>

To receive the tax abatement, the property owner was required to submit an application to the property appraiser by March 1, 2019. A property owner who failed to submit the application by March 1, 2019, waived a claim for abatement of taxes from the natural disaster. The application required the property owner to identify the residential parcel on which the residential improvement was damaged or destroyed, the hurricane that caused the damage or destruction, the date the damage or destruction occurred, and the number of days the property was uninhabitable during either the 2016 or 2017 calendar years.<sup>16</sup>

Upon receipt of the application, the property appraiser was required to investigate the statements contained therein and determine if the property owner qualified for the tax abatement. If the property appraiser determined that the property owner was not entitled to the tax abatement, the property owner could file a petition with the value adjustment board. If the property owner qualified, the property appraiser was directed to issue an official written statement to the tax collector by April 1, 2019, containing:

- The number of days during the calendar year in which the natural disaster occurred that the residential improvement was uninhabitable.
- The just value of the residential parcel on January 1, 2016, or 2017.
- The post-disaster just value of the residential parcel, as determined by the property appraiser.
- The percent change in value applicable to the residential parcel.<sup>17</sup>

The tax collector is to use the property appraiser's written statement to calculate the value of the tax abatement and process a refund in the proper amount.

The tax collector must notify the DOR and the governing board of each affected local government of the total reduction in taxes of all property receiving an abatement. The law applied retroactively to January 1, 2016, and expires January 1, 2021.

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<sup>14</sup> See ch. 2018-118, s.17, Laws of Fla. (creating s. 197.318, F.S.).

<sup>15</sup> Section 197.318(1)(b), F.S., refers to the abatement as a "disaster relief credit."

<sup>16</sup> The required application elements were included on form DR-463, *Application for Abatement of Taxes for Homestead Residential Improvements*, adopted by the Department of Revenue and available at <http://floridarevenue.com/property/Documents/dr463.pdf> (last visited April 10, 2019).

<sup>17</sup> "Percent change in value" means the difference between the residential parcel's just values as of January 1 of the year in which the hurricane occurred and its post-disaster just value expressed as a percentage of the parcel's just values as of January 1 of the year in which the hurricane occurred. Section 197.318(1)(d), F.S.

Value adjustment boards may hear appeals pertaining to tax abatements under the newly created s. 197.318, F.S.<sup>18</sup>

Section 218.131, F.S., requires the Legislature to appropriate funds to offset the reduction in ad valorem tax revenue in fiscally constrained counties and Monroe County as a result of the tax abatements. The affected taxing jurisdictions must apply to the DOR by November 15, 2019, and provide supporting documentation to receive the appropriation. The appropriations are to be distributed to the affected taxing jurisdictions in January 2020, which would need to be appropriated in the 2019 legislative session, before the November 15, 2019, deadline has passed. In order to make the appropriation in the 2019 session, the Legislature would have to estimate the appropriation.

*Proposed change:* The bill extends from January 2020 to June 2020 the timing of distributions to affected taxing jurisdictions to allow sufficient time for the Legislature to determine the necessary appropriation in the 2020 legislative session based on actual data.

**Section 5** authorizes the Department of Revenue to promulgate emergency rules to administer the sales tax holidays contained in sections 2 and 3 of the bill.

**Section 6** provides that except for the sales tax holidays and the grant of rulemaking authority to the DOR to implement the holidays, which take effect upon becoming law, the bill takes effect July 1, 2019.

#### 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, that limit their ability to raise revenue, or that reduce the percentage of state tax shared with counties and municipalities.

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. However, the mandates requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2019-2020, is \$2.1 million or less.<sup>19,20,21</sup>

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<sup>18</sup> Section 194.032, F.S.

<sup>19</sup> FLA. CONST. art. VII, s. 18(d).

<sup>20</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$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 March 25, 2019).

<sup>21</sup> Based on the Demographic Estimating Conference's population adopted on February 6, 2019. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited March 25, 2019).

The Revenue Estimating Conference has determined the bill will reduce the authority that counties have to raise revenue from the local options sales tax by \$6.4 million. Therefore, the mandates provision may apply.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The fiscal impact of the bill will reduce General Revenue Fund receipts by \$36.3 million and local government revenue by \$11.0 million in Fiscal Year 2019-2020. See the table below.

<b>CS/CS/SB 1412</b>								
<b>Issues</b>	<b>General Revenue</b>		<b>State Trust Funds</b>		<b>Local</b>		<b>Total</b>	
	<b>1st Yr.</b>	<b>Recur.</b>	<b>1st Yr.</b>	<b>Recur.</b>	<b>1st Yr.</b>	<b>Recur.</b>	<b>1st Yr.</b>	<b>Recur.</b>
Sales Tax: BTS Holiday 3 Days \$60/\$15/1st \$1,000 (Gov)	(31.7)	-	(*)	-	(9.9)	-	(41.6)	-
Sales Tax: Tax Holiday/Disaster Preparedness (Gov)	(4.4)	-	(*)	-	(1.1)	-	(5.5)	-
Ad Valorem: Small County Hurricane Losses/Date Change	-	-	-	-	-	-	-	-
Appropriations: Tax Holiday (Back-to-School)	(0.23)	-	-	-	-	-	(0.23)	-
<b>2019-20 Total</b>	<b>(36.3)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>(11.0)</b>	<b>-</b>	<b>(47.3)</b>	<b>-</b>

**B. Private Sector Impact:**

Persons purchasing exempted items during the sales tax holidays will realize savings. Also, the sales tax holidays may promote retail sales at businesses selling items exempted under the bill.

**C. Government Sector Impact:**

The bill appropriates \$237,000 in nonrecurring funds from the General Revenue Fund to the Department of Revenue in Fiscal Year 2018-2019 to administer the “back-to-school” sales tax holiday.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends the following sections of the Florida Statutes: 195.196 and 218.131.

The bill creates two undesignated sections of chapter law.

**IX. Additional Information:**

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

**CS/CS by Appropriations on April 18, 2019:**

The committee substitute:

- Authorizes the Department of Revenue to use the best information available in conducting level of assessment analyses for counties that have limited property assessment information available due to recent disasters.
- Delays from January 2020 to June 2020 a reimbursement from the state to fiscally constrained counties and Monroe County for ad valorem tax abatements paid to homestead property owners for certain losses caused by Hurricane's Matthew, Hermine, and Irma.
- Creates two sales tax holidays: a 7-day "disaster preparedness" holiday for items related to hurricane preparedness; and a 3-day "back-to-school" holiday for clothing, school supplies, computers, and computer-related accessories.
- Appropriates \$237,000 in nonrecurring funds from the General Revenue Fund to the Department of Revenue in Fiscal Year 2018-2019 to administer the "back-to-school" sales tax holiday.

**CS by Commerce and Tourism on March 18, 2019:**

The committee substitute appropriates \$70,072 to the Department of Revenue to administer the sales tax holiday.

- B. **Amendments:**

None.