

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 Community Affairs

BILL: SB 334

INTRODUCER: Senator Stewart

SUBJECT: Tourist Development Tax

DATE: January 23, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	Favorable
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

I. Summary:

SB 334 authorizes counties imposing a tourist development tax to use the tax revenues to promote or incentivize film or television production in the state. The bill requires all productions using tourist development tax revenues to include either a “Created in Florida” or “Filmed in Florida” statement within the production credits. For the bill, “production” has the same meaning as provided in s. 288.1254(1), F.S.

II. Present Situation:

Tourist Development Taxes

Florida law permits counties to impose local option taxes on short-term¹ rentals or leases of accommodations.² The taxes are generally referred to as “tourist³ development taxes,” but consist of several separate tax levies. The taxes include:

- 1 or 2 Percent Tax:⁴ The county’s governing board may levy this tax at a rate of 1 or 2 percent on the total amount charged for transient rental transactions.
- Additional 1 Percent Tax:⁵ This tax may be levied by an extraordinary vote⁶ of a county’s governing board or by referendum approval, 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.

¹ Section 125.0104(3)(a), F.S. provides that the tax applies to rentals or leases of 6 months or less.

² Section 125.0104, F.S.

³ “Tourist” means a person who participates in trade or recreation activities outside the county of his or her permanent residence or who rents or leases transient accommodations as described in paragraph (3)(a). Section 125.103(b)2., F.S.

⁴ Section 125.0104(3)(c), F.S.

⁵ Section 125.0104(3)(d), F.S.

⁶ “Extraordinary vote” is not defined by law, but by its plain definition would appear to mean something greater than an ordinary vote by simple majority. *See* Op. Att’y Gen. Fla. 2010-05.

- **High Tourism Impact Tax:**⁷ By an extraordinary vote of the governing board of the county, a county with high tourism impact may levy an additional 1 percent tax on the total amount charged for transient rental transactions.⁸
- **Professional Sports Franchise Facility Tax:**⁹ In addition to any other tourist development taxes, a 1 percent tax on the total amount charged for transient rental transactions may be levied, by a majority vote of the governing board, to pay debt service on bonds issued to finance professional sports franchise facilities, retained 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:**¹⁰ A county that levies the professional sports franchise facility tax may levy an additional 1 percent tax to be used for the same purposes. This tax must be approved by a majority plus one vote of the membership of the board of county commissioners.

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.¹¹

2020 TDT Rates & Number of Counties	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	9	65
Levying:	63	54	45	7	30

These local option taxes may be administered by the Department of Revenue (DOR) 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.¹²

Tourist Development Council

The governing board of each county that levies tourist development taxes must form a tourist development council. Section 125.0104(4)(e), F.S., provides the authority and requirements for county tourist development councils and their memberships. Requirements include:

- The council must be called “ (name of county) Tourist Development Council;”
- The council shall be composed of nine members appointed by the governing board of the county;

⁷ Section 125.0104(3)(m), F.S.

⁸ 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. The tax is currently levied by Broward, Monroe, Orange, Osceola, Palm Beach, and Pinellas counties. Additionally, Hillsborough, Lee, and Walton counties are eligible to levy it.

⁹ Section 125.0104(3)(l), F.S.

¹⁰ Section 125.0104(3)(n), F.S.

¹¹ Office of Economic and Demographic Research, *2020 Local Option Tourist/Food and Beverage/Tax Rates in Florida’s Counties*, available at: <http://edr.state.fl.us/Content/local-government/data/county-municipal/2020LOTTRates.pdf>, (published Dec. 19, 2019) (last visited Jan. 17, 2020).

¹² See s. 125.0104(3)(b) and (d), F.S.

- A member of the county governing board shall serve as a member of the council;
- Two members of the council must be elected municipal officials;
- Six members of the council must be involved in the tourism industry, of whom no less than three and no more than four shall be owners or operators of motels, hotels, recreational vehicles parks, or other tourist accommodations in the county;
- All members of the council shall be electors of the county;
- The governing board of the county may elect a chair for the council or allow the council to elect its chair;
- The chair shall be appointed or elected annually and may be reappointed or elected;
- Members of the council shall serve staggered 4 year terms;
- The council shall meet at least once each quarter;
- The council shall recommend to the governing board of the county, special projects and uses for tourist development tax revenue;
- The council shall continuously review expenditures of revenues from the tourist development taxes; and
- The council shall report unauthorized/questionable expenditures from the tourist development tax revenues to the county governing board and the DOR for review.

Authorized Uses of Tax Revenue

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:¹³

- 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;
- Promote zoological parks that are publicly owned and operated or owned and operated by a non-profit organization that is open to the public;
- Promote and advertise tourism in the state;
- Fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies;
- Finance beach park facilities or beach improvement, maintenance, nourishment, restoration, and erosion control; or
- Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities within the boundaries of the county or subcounty special taxing district, if the public facilities are needed to increase tourist-related business activities in the county or subcounty special district and are recommended by the county tourist development council, and only if the following five conditions are satisfied:
 - \$10 million in tourist development tax revenue was received the year before expenditure;
 - The county governing board approves the use for the proposed public facilities by a vote of at least two-thirds of its membership;

¹³ Section 125.0104(5)(a), F.S.

- No more than 70 percent of the cost of the proposed public facilities will be paid for with tourist development tax revenues;
- At least 40 percent of all tourist development tax revenues collected in the county are spent to promote and advertise tourism; and
- An independent professional analysis, performed at the expense of the county tourist development council, demonstrates the positive impact of the infrastructure project on tourist-related businesses in the county.

Tourist Development Plan

As a requirement for levying tourist development taxes, a county's tourist development council¹⁴ must prepare a plan for tourism 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 of implementation and the tax district where the tax will be imposed.¹⁵

The tourist development plan must also include a list, in order of priority, of the proposed uses of the tax revenue. The list may only detail specific projects or special uses that are authorized in s. 125.104(5), F.S. After the tourist development plan has been enacted by ordinance, the plan may not be substantially amended except by ordinance enacted by an affirmative vote of a majority plus one additional member of the governing board.¹⁶

An example of a tourist development plan can be seen in the ordinances of Pinellas County.¹⁷ Pinellas County's plan provides five categories of proposed uses:¹⁸

- Category A: Promoting and advertising tourism in the state, nationally and internationally, and funding other marketing events and promotional operations.
- Category B: Funding the St. Petersburg/Clearwater Convention and Visitors Bureau; funding budget reserves as authorized by law; and funding other bureaus.
- Category C: Funding beach improvement, maintenance, renourishment, restoration, and erosion control.
- Category D: Funding annually as matching funds (applicants must have at least \$1.00 for every \$1.00 of Category D tourist tax funding) to publicly owned and operated or owned and operated by not-for-profit organizations, facilities open to the public.
- Category E: Funding for debt service payments for bonds issued to finance the construction, reconstruction, or renovation of professional sports franchise facilities, retained spring training facilities, and convention centers located in Pinellas County.

Pinellas County's plan allocates 60 percent of yearly tax revenues to category A, B, and C uses, and 40 percent to category D and E uses.¹⁹ Notwithstanding the above allocations, the plan also states that tax revenues shall be allocated to debt service on bonds for the City of Dunedin

¹⁴ Also referred to as a "tourism" development council.

¹⁵ Section 125.104(4)(c), F.S.

¹⁶ See s. 125.0104(4), F.S. The provisions found in s. 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.

¹⁷ Pinellas County Code of Ordinances, ch. 118, Art. III, Sec. 118-32 Use of revenues; tourist development plan, *available at*: https://library.municode.com/fl/pinellas_county/codes/code_of_ordinances?nodeId=PTIIPICOCO_CH118TA_ARTIIITODETA_S118-34TODECO (last visited Jan. 19, 2020).

¹⁸ *Id.*

¹⁹ *Id.*

retained spring training facility, the Dali Museum, and the City of Clearwater spring training facility.²⁰

Tourist Development Tax Revenues Fiscal Year 2018

According to the DOR, total tourist development tax receipts amongst all counties for the fiscal year 2018 (most recent year data available) amounted to just under a billion dollars (\$954,937,590).²¹ This amount signified a 12.1 percent increase from the total tax revenues generated in 2017 (\$851,732,560).²² Tax revenues corresponded to tourism and transient rental activities in a county. For reference, the top five tourist development tax grossing counties for 2018 are displayed in the table below.²³

1. Orange	2. Broward	3. Pinellas	4. Osceola	5. Palm Beach
\$272,306,000	\$79,597,603	\$58,485,782	\$57,233,940	\$53,487,001

Florida’s Entertainment Industry Financial Incentive Program (2010 – 2016)

In 2010, Florida began the Entertainment Industry Financial Incentive Program to encourage film productions to use Florida “as a site for filming, for the digital production of films, and to develop and sustain the workforce and infrastructure for film, digital media, and entertainment production.”²⁴ The program was administered by the Florida Office of Film and Entertainment and lasted from July 1, 2010 to June 30, 2016. During this period, Florida awarded \$296 million in tax credits and exemptions to productions and companies that met the certification criteria.²⁵

The financial incentive program utilized transferable tax credits to afford production projects an offset against any state tax liabilities. These tax liabilities included sales and use tax and corporate income tax.²⁶ These credits and exemptions provided production companies a reduction in taxes due after verification that statutory or contractual terms of eligibility had been met. Alternatively, if a qualified production had no outstanding tax liabilities, the production had the option to monetize the tax credits by selling them to another entity that may apply them to their tax obligations.²⁷

The statutory criteria for program eligibility included only certain qualified expenditures by a production. To be considered a qualified expenditure, the purchased or leased goods or services had to be furnished by a Florida vendor that was registered with the Department of State or the DOR. Production goods and services included sets, sound stages, production editing, digital

²⁰ *Id.*

²¹ Office of Economic & Demographic Research, *Local Option Tax Receipts (Data Source: Department of Revenue)*, Tax Receipts by Tax by County: SFY 1987-2018, available at: <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm> (last visited Jan. 17, 2020).

²² *Id.*

²³ *Id.*

²⁴ Section 288.1254(2), F.S.

²⁵ Office of Economic & Demographic Research, *Return on Investment for the Entertainment Industry Incentive Programs* (Jan. 2015), available at: <http://edr.state.fl.us/Content/returnoninvestment/EntertainmentIndustryIncentivePrograms.pdf> (last visited Jan. 19, 2020).

²⁶ Section 288.1254(4), F.S.

²⁷ *Id.* at (5)

effects, entertainment rental equipment, up to \$300,000 in computer hardware and software, meals, travel, accommodations or lodging, and salary, wages, or other compensation paid to Florida residents (up to \$400,000 per resident).²⁸ However, tax credit awards were capped at \$8 million per production project.²⁹

In 2015, the Office of Economic & Demographic Research (EDR) issued a report analyzing the return on investment for the Entertainment Industry Incentive Program.³⁰ The EDR report evaluated the economic benefits the program provided to Florida in terms of jobs created, the increase or decrease in personal income, the impact on state Gross Domestic Product (GDP), the development of permanent in-state film industry, and the potentiality of film-induced tourism.

The EDR study ultimately found that the program produced no monetary return on investment. Altogether, the program generated returns on investment of less than one, meaning “the tax revenue generated by the project activity was insufficient to cover the cost of the granted exemptions [and credits]” (specifically, a return of \$0.54 for tax exemptions and \$0.43 for tax credits, for every \$1.00 spent by the state).³¹ In the EDR’s view, most productions failed to feature prominent physical sites to induce tourism, and the state program did not generate enough economic impact to support the public subsidies.³²

In a 2018 report, the EDR again evaluated the program but came to similar conclusions.³³

III. Effect of Proposed Changes:

Section 1 amends s. 125.104, F.S., authorizing counties to use tourist development tax revenues to promote or incentivize film or television production in Florida. The bill specifies that the term “production” is to have the same meaning as provided in s. 288.1254(1), F.S.³⁴ The bill requires

²⁸ *Id.* at (1)(h) and (i)

²⁹ *Id.* at (4)(b)

³⁰ Office of Economic & Demographic Research, *Return on Investment for the Entertainment Industry Incentive Programs* (Jan. 2015), available at: <http://edr.state.fl.us/Content/returnoninvestment/EntertainmentIndustryIncentivePrograms.pdf> (last visited Jan. 19, 2020).

³¹ *Id.* at p. 2 (“The STE program generated a positive ROI of 0.54.” “The first FTC program scenario generated a positive ROI of 0.43.”)

³² *Id.*

³³ Office of Economic & Demographic Research, *Return on Investment for the Entertainment Industry Incentive Programs* (Jan. 2018), available at: <http://edr.state.fl.us/Content/returnoninvestment/EntertainmentIndustryIncentivePrograms2018.pdf> (last visited Jan. 19, 2020).

³⁴ “Production means a theatrical or direct-to-video motion picture; a made-for-television motion picture; visual effects or digital animation sequences produced in conjunction with a motion picture; a commercial; a music video; an industrial or educational film; an infomercial; a documentary film; a television pilot program; a presentation for a television pilot program; a television series, including, but not limited to, a drama, a reality show, a comedy, a soap opera, a telenovela, a game show, an awards show, or a miniseries production; or a digital media project by the entertainment industry. One season of a television series is considered one production. The term does not include a weather or market program; a sporting event or a sporting event broadcast; a gala; a production that solicits funds; a home shopping program; a political program; a political documentary; political advertising; a gambling-related project or production; a concert production; a local, regional, or Internet-distributed-only news show or current-events show; a sports news or sports recap show; a pornographic production; or any production deemed obscene under chapter 847. A production may be produced on or by film, tape, or otherwise by means of a motion picture camera; electronic camera or device; tape device; computer; any combination of the foregoing; or any other means, method, or device.” Section 288.1254(1)(g), F.S.

productions receiving county tax revenues to include “Created in Florida” or “Filmed in Florida” in the production credits.

Section 2 provides the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Depending on a county’s implementation, expending public funds to defray the costs of film or television production for private parties may be unconstitutional under Article VII, section 10 of the Florida Constitution.³⁵ The judiciary may scrutinize the constitutionality of county film production outlay under the public purpose test.³⁶ Counties may have to demonstrate that appropriations for the promotion or incentivization of a private production venture sufficiently serve a reasonable and adequate public interest to pass constitutional muster under this organic law test.³⁷

³⁵ See Fla. Const. Art. VII, s. 10. “Neither the state nor any county, school district, municipality, special district, or agency of any of them, shall become a joint owner with, or stockholder of, or give, lend or use its taxing power or credit to aid any corporation, association, partnership or person[.]”

³⁶ See *Jackson-Shaw Co. v. Jacksonville Aviation Authority*, 8 So.3d 1076, 33 Fla. L. Weekly S972 (Fla. 2008) at 1095 “If the State or a political subdivision has not given, lent, or used its credit, a project must merely serve a public purpose.” See also *Bannon v. Port of Palm Beach Dist.*, 246 So.2d 737 (Fla. 1971) at 741 (When ruling that the district’s involvement in a private enterprise served a public purpose, the court observed that the district’s participation was limited to that of a lessor and did not involve responsibility for the financing, promotion, or development of the proposed project.)

³⁷ See *Linscott v. Orange County Indus. Development Authority*, 443 So.2d 97 (Fla. 1983) at 101 “Of course, public bodies cannot appropriate public funds indiscriminately, or for the benefit of private parties, where there is not a reasonable and adequate public interest. An indirect public benefit may be adequate to support the public participation in a project which imposes no obligation on the public, and the qualification of the direct beneficiary complies with the principles of due process and equal protection.”

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Visitors to Florida may incur increased taxes if additional counties decide to levy a tourist development tax in response to the film production use. Private sector film and television industries would have access to tax funds as capital for productions. Private sector businesses may also benefit depending on the efficacy of film to induce tourism.

C. Government Sector Impact:

The bill may cause counties to sustain nominal costs in updating tourist development plan ordinances to include film and television expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill references s. 288.1254(1), F.S., which defines “production” to also include digital media projects.³⁸ This definition may incorporate more than just “film or television productions.”

The bill may require a legislative statement specifying that the expenditure of public funds to promote or incentivize film or television productions serves a public purpose. Funds used for these purposes may not fall within the provisions of s. 125.045, F.S.³⁹

VIII. Statutes Affected:

This bill substantially amends section 125.0104 of the Florida Statutes.

³⁸ “Digital media project means a production of interactive entertainment that is produced for distribution in commercial or educational markets. The term includes a video game or production intended for Internet or wireless distribution, an interactive website, digital animation, and visual effects, including, but not limited to, three-dimensional movie productions and movie conversions. The term does not include a production that contains content that is obscene as defined in s. 847.001.” See Section 288.1254(1)(b), F.S.

³⁹ See section 125.045(3), F.S. “For the purposes of this section, it constitutes a public purpose to expend public funds for economic development activities, including, but not limited to, developing or improving local infrastructure, issuing bonds to finance or refinance the cost of capital projects for industrial or manufacturing plants, leasing or conveying real property, and making grants to private enterprises for the expansion of businesses existing in the community or the attraction of new businesses to the community.”

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.
