

**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 Infrastructure and Security

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BILL: CS/SB 844

INTRODUCER: Infrastructure and Security Committee and Senator Taddeo

SUBJECT: Sales Tax Exemption for Hurricane Shutters and Impact-resistant Windows

DATE: January 28, 2020

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Miller	IS	<b>FAV/CS</b>
2.			FT	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 844 provides, beginning July 1, 2020, for an exemption from state sales tax and local discretionary sales surtaxes on the first \$100 of each hurricane shutter and impact-resistant window that will be used for residential purposes and that are installed by a qualified contractor.

The CS defines the terms:

- Hurricane shutter;
- Impact-resistant window; and
- Qualified contractor.

The CS authorizes the Department of Revenue to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing the CS. The CS also provides that notwithstanding any other law, emergency rules adopted to implement the CS are effective for 6 months after adoption and may be renewed. The CS provides for an expiration date of July 1, 2021, for emergency rule making authority.

The Revenue Estimating Conference met on January 24, 2020, to discuss proposed language for House Bill 555, identical to the CS. The proposed language was determined to have a negative fiscal impact to the General Revenue Fund and to local government. See Section V. Fiscal Impact Statement for details.

The CS may have a local mandate and require the approval of two-thirds of the membership in each house of the Legislature. See Section IV. Constitutional Issues for details.

The CS takes effect upon becoming law.

## II. Present Situation:

### Florida Sales Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,<sup>1</sup> admissions,<sup>2</sup> transient rentals,<sup>3</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 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>4</sup> Sales tax receipts accounted for approximately 77 percent of the state's General Revenue in Fiscal Year 2018-2019.<sup>5</sup>

Section 212.055, F.S., authorizes counties to impose local discretionary sales surtaxes in addition to the state sales tax. 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>6</sup> The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax rates currently levied vary by county in a range of 0.5 to 2.5 percent.<sup>7</sup>

### *"Disaster Preparedness" Sales Tax Holidays*

Florida has enacted a "disaster preparedness" sales tax holiday six times since 2006, exempting specified items in preparation for the Atlantic hurricane season that officially begins June 1 of each year. The types and values of exempted items have varied, and the length of the exemption periods have varied from 3 to 12 days.<sup>8</sup>

### Florida Building Commission

The Florida Building Commission (FBC) develops, maintains, and interprets the Florida Building Code through a consensus-building process within a 25-member technical body. The FBC makes a continual study of the operation of the Florida Building Code and other laws relating to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, and facilities, including manufactured buildings, and code

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<sup>1</sup> Section 212.05(1)(a)1.a, F.S.

<sup>2</sup> Section 212.04(b), F.S.

<sup>3</sup> Section 212.03(1)(a), F.S.

<sup>4</sup> *See* s. 212.07(2), F.S.

<sup>5</sup> Office of Economic and Demographic Research, *Florida Tax Handbook*, 16 (2019), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited January 23, 2020).

<sup>6</sup> Section 212.054(2)(a), F.S.

<sup>7</sup> *Supra* note 5, at 225-226.

<sup>8</sup> *Id.* at 160.

enforcement, to ascertain their effect upon the cost of building construction and determine their effectiveness.<sup>9</sup>

The FBC updates the Florida Building Code every 3 years, determines the types of products which may be approved for statewide use and provides for the evaluation and approval of those products, materials, devices, and methods of construction for statewide use. The FBC may prescribe by rule a schedule of reasonable fees to provide for evaluation and approval of products, materials, devices, and methods of construction.<sup>10</sup>

### ***Hurricane Shutters and Impact-Resistant Windows***

According to the National Oceanic and Atmospheric Administration's (NOAA) Hurricane Research Division, the best type of shutters are those:

“that are affordable, are easy to install, and offer the greatest protection. Which of these properties is most important to (a person) depends on individual circumstances. For a disabled or elderly person it may be ease of installation with either an automatic closing mechanism or accordion type shutters. For those with limited incomes plywood shutters (at least 5/8 inch exterior grade) may be the only affordable option. For most people the best compromise would be steel panels, which offer good protection, but are expensive and take effort to install. Aluminum panels are lighter and easier to install, but offer less protection and may not meet the building code. Whichever type (a person) decides on it is important to remember that shutters are only as good as the quality of their installation. Ensure that the shutters or their anchors are installed by qualified workmen and that quality materials that meet the building code are used.”<sup>11</sup>

Impact Resistant windows utilize impact-resistant glazing. Impact-resistant glazing is available as laminated glass and is also considered a type of safety glazing. Laminated glass consists of two or more panes of clear glass bonded together with clear plastic-like film (usually polyvinyl butyral) sandwiched between the two. This inner “filling” ranging in thickness from .015 to .090 inches, which can be ordered in various colored tints to help reduce UV damage in the home, tends to hold the glass together upon impact. If cracked or broken, the glass fragments tend to adhere to the plastic interlayer thus preventing water, wind or wind-borne debris from entering the structure.<sup>12</sup>

It is worth noting that the frames for laminated glass are generally heavier than for regular residential windows, because although the glass may not break, a strong force could hit the window hard enough to cause the entire frame to give way. When undergoing testing, the window is tested as a unit that includes the glass, frame, attachment hardware, and the

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<sup>9</sup> Section 553.77, F.S.

<sup>10</sup> *Id.*

<sup>11</sup> National Oceanic and Atmospheric Administration's (NOAA) Hurricane Research Division, *Hurricane Shutters FAQ*, available at <https://www.aoml.noaa.gov/hrd/shutters/index1.html> (last visited January 23, 2020).

<sup>12</sup> Florida Building Commission, *Window Systems* (May 2006), available at [http://www.floridabuilding.org/fbc/publications/Fact\\_Sheets\\_0307/WindowSystems061506revised.pdf](http://www.floridabuilding.org/fbc/publications/Fact_Sheets_0307/WindowSystems061506revised.pdf) (last visited January 23, 2020).

installation method. In addition, all glass other than impact-resistant window glass, even if tempered, reinforced or insulated needs to be protected during severe wind events.<sup>13</sup>

According to the National Oceanic and Atmospheric Administration’s (NOAA) Hurricane Research Division, plastic film and shatter resistant windows:

“are remarkable products that are being improved every year, (although) they are no substitute for shutters. If (a person) has windows that for some reason, such as access, can't be shuttered then (they) may wish to consider using the film or installing shatter resistant glass ... the film only protects the glass. The frame is still under pressure and the whole window could fail. Windows with these treatments will still suffer damage from the impact of debris and may have to be replaced after a storm, whereas a shutter would take most or all of the energy of such an impact. Films and special glasses also might not meet the building code.”<sup>14</sup>

### III. Effect of Proposed Changes:

The CS provides that effective July 1, 2020, an exemption is provided for state sales tax and local discretionary sales surtaxes on the first \$100 of each hurricane shutter and impact-resistant window that will be used for residential purposes and that are installed by a qualified contractor.

The CS defines a “hurricane shutter” to mean a product manufactured and marketed specifically for the purpose of preventing window or door damage to buildings or structures during a storm and which is rated for impact resistance and resistance to blow-off in accordance with any of the following most recent sets of test methods, standards, and specifications:

- ASTM International E1886 and E1996;
- American Architectural Manufacturers Association 506; or
- Florida Building Code Testing Application Standards 201, 202, and 203.

The CS defines a “impact-resistant window” to mean a laminated or polycarbonate glazing system designed to resist wind and windborne debris forces and which is rated for impact resistance and wind pressure in accordance with any of the following most recent sets of test methods, standards, and specifications:

- ASTM International E1886 and E1996;
- American Architectural Manufacturers Association 506; or
- Florida Building Code Testing Application Standards 201, 202, and 203.

The CS defines “qualified contractor” to mean a contractor licensed and bonded pursuant to chapter 489.

The CS authorizes the Department of Revenue to adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing the CS. The CS also provides that notwithstanding any other law, emergency rules adopted to implement the CS are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt

<sup>13</sup> *Id.*

<sup>14</sup> *Supra*, note 11.

permanent rules addressing the subject of the emergency rules. The CS provides for an expiration date of July 1, 2021, for emergency rule making authority.

The CS takes effect 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, limit the ability of counties and municipalities to raise revenue, or 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. The CS exempts the first \$100 of each hurricane shutter and impact-resistant window that will be used for residential purposes and that are installed by a qualified contractor from state sales tax and local discretionary sales surtaxes. However, the mandates requirements do not apply to laws having an insignificant impact,<sup>15, 16</sup> which is \$2.2 million or less for Fiscal Year 2020-2021.<sup>17</sup>

The Revenue Estimating Conference met on January 24, 2020, to discuss proposed language for House Bill 555, identical to the CS. For Fiscal Year 2020-2021 the proposed language was determined to have a negative \$2.1 million cash impact, and a negative \$2.3 million recurring fiscal impact to local government discretionary sales surtax revenue.<sup>18</sup> The CS may have a local mandate and require the approval of two-thirds of the membership in each house of the Legislature.

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

None.

##### C. Trust Funds Restrictions:

None.

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<sup>15</sup> FLA. CONST. art. VII, s. 18(d).

<sup>16</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 January 23, 2020).

<sup>17</sup> Based on the Demographic Estimating Conference's population adopted on July 8, 2019. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited January 23, 2020).

<sup>18</sup> Office of Economic and Demographic Research, *01/24/20 Revenue Impact Results* (HB 555 – Proposed Language), available at [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/\\_pdf/page311-315.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/_pdf/page311-315.pdf) (last visited January 28, 2020).

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

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Those purchasing exempted hurricane shutters and impact-resistant windows for residential purposes and having them installed by a qualified contractor will not have to pay state sales tax and local discretionary sales surtaxes on the first \$100 of each hurricane shutter and impact-resistant window.

**C. Government Sector Impact:**

The Revenue Estimating Conference met on January 24, 2020, to discuss proposed language for House Bill 555, identical to the CS. The proposed language was determined to have a negative fiscal impact to the General Revenue Fund and to local government as follows:<sup>19</sup>

<b>Fiscal Year</b>	<b>General Revenue</b>	<b>Total Local Impact<sup>20</sup></b>	<b>Total Impact</b>
<b>2020-21</b>	<b>(13.8)</b>	<b>(4.0)</b>	<b>(17.8)</b>
<b>2021-22</b>	<b>(13.8)</b>	<b>(4.1)</b>	<b>(17.9)</b>
<b>2022-23</b>	<b>(13.9)</b>	<b>(4.1)</b>	<b>(18.0)</b>
<b>2023-24</b>	<b>(13.9)</b>	<b>(4.1)</b>	<b>(18.0)</b>
<b>2024-25</b>	<b>(14.0)</b>	<b>(4.1)</b>	<b>(18.1)</b>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Department of Revenue provided the following additional comments:

<sup>19</sup> *Id.*

<sup>20</sup> Total Local Impact is inclusive of Revenue Sharing under s. 218.23, F.S., Local Government Half-Cent Sales Tax under s. 218.64, F.S., and Local Government Discretionary Sales Surtaxes under s. 212.055, F.S.

- For the exemption provided, the CS does not specify who can make the purchase exempt from tax. It only stipulates that the hurricane shutters and impact-resistant windows have to be installed by a qualified contractor.
- To assure the proper exempt use of the hurricane shutter and impact-resistant windows, the selling dealer would have to obtain from the purchaser a certificate attesting to the exempt nature of the sale transactions.
- Relating to the installation of the hurricane shutters and impact-resistant windows by a qualified contractor, no timeframe for the installation period is established.<sup>21</sup>

#### **VIII. Statutes Affected:**

This CS substantially amends the following sections of the Florida Statutes: 212.08

#### **IX. Additional Information:**

##### **A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

##### **CS by Infrastructure and Security on January 27, 2020:**

- Limits the sales tax exemption to the first \$100 of each hurricane shutter and impact-resistant window that will be used for residential purposes.

##### **B. Amendments:**

None.

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

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<sup>21</sup> Florida Department of Revenue, Agency Analysis of SB 844 (December 10, 2019).