

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 1429 Tourist And Convention Development Taxes

**SPONSOR(S):** Ways & Means Committee, Environment, Agriculture & Flooding Subcommittee, Avila and others

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 2008

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Environment, Agriculture & Flooding Subcommittee	17 Y, 0 N, As CS	Melkun	Moore
2) Ways & Means Committee	17 Y, 0 N, As CS	Berg	Aldridge
3) State Affairs Committee	21 Y, 2 N	Melkun	Williamson

### SUMMARY ANALYSIS

The Local Option Tourist Development Act authorizes counties to levy five separate taxes on transient rental transactions (tourist development taxes or TDTs). Depending on a county's eligibility to levy such taxes, the maximum tax rate varies from 3 percent to 6 percent. Current law authorizes counties to levy and spend local option TDTs as a mechanism for funding a variety of tourist-related uses and only requires a referendum for one of these taxes. The other four can be imposed through local ordinances enacted by governing bodies.

Certain counties or sub-parts of counties are authorized to levy convention development taxes (CDTs) on transient rental transactions. Depending on a jurisdiction's ability to levy such taxes, the maximum tax rate varies from a minimum of 1 percent to a maximum of 3 percent. CDTs are adopted by local ordinances.

The bill authorizes all TDT or CDT revenue to be used to finance flood mitigation projects or improvements.

The bill requires the imposition or increase of all TDTs and CDTs to be approved by referendum.

The bill makes each of the five TDTs stand-alone, independent propositions for renewal by removing the condition precedents related to the levy of the additional 1 percent tax and the additional sports facility tax. Specifically, the bill eliminates the requirement that a county must impose the original TDT for at least three years before imposing the additional 1 percent tax. In addition, the bill eliminates the requirement that a county must impose the initial professional sports franchise facility tax before imposing the additional professional sports franchise facility tax.

The Revenue Estimating Conference has not reviewed the bill for potential revenue impacts.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Tourist Development Taxes

The Local Option Tourist Development Act<sup>1</sup> authorizes counties to levy five separate taxes on transient rental<sup>2</sup> transactions (tourist development taxes or TDTs). Depending on a county's eligibility to levy such taxes, the maximum tax rate varies from a minimum of 3 percent to a maximum of 6 percent:

- The original TDT may be levied at the rate of 1 or 2 percent.<sup>3</sup>
- An additional 1 percent tax may be levied by counties who have previously levied a TDT at the 1 or 2 percent rate for at least three years.<sup>4</sup>
- A high tourism impact tax may be levied at an additional 1 percent.<sup>5</sup>
- A professional sports franchise facility tax may be levied up to an additional 1 percent.<sup>6</sup>
- An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.<sup>7</sup>

##### *TDT Process*

Each county that levies the original 1 or 2 percent tax is required to have a tourist development council.<sup>8</sup> The tourist development council is a group of residents from the county who are appointed by the county governing board.<sup>9</sup> The tourist development council, among other duties, makes recommendations to the county governing board for the effective operation of the special projects or for uses of the TDT revenue.<sup>10</sup>

Prior to the authorization of the original 1 or 2 percent TDT, the levy must be approved by a countywide referendum<sup>11</sup> and additional TDT levies must be authorized by a vote of the county's governing board or by voter approval of a countywide referendum.<sup>12</sup> Each county proposing to levy the original 1 or 2 percent tax must then adopt an ordinance for the levy and imposition of the tax,<sup>13</sup> which must include a plan for tourist development prepared by the tourist development council.<sup>14</sup> The plan for tourist development must include the anticipated net tax revenue to be derived by the county for the two years following the tax levy, as well as a list of the proposed uses of the tax and the approximate cost for

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<sup>1</sup> Section 125.0104, F.S.

<sup>2</sup> Section 125.0104(3)(a)(1), F.S. considers "transient rental" to be the rental or lease of any accommodation for a term of six months or less.

<sup>3</sup> Section 125.0104(3)(c), F.S. Sixty-two counties levy this tax, all at a rate of 2 percent. Office of Economic & Demographic Research (EDR), Local Option Tourist/Food & Beverage Tax Rates, available at <http://edr.state.fl.us/Content/local-government/data/county-municipal/2021LOTTRates.pdf> (last visited Mar. 5, 2021). These counties are expected to collect an estimated \$303 million in revenue in the 2020-21 fiscal year. EDR, *2020 Local Government Financial Information Handbook*, p. 255, available at <http://edr.state.fl.us/Content/local-government/reports/lgfih20.pdf> (last visited Mar. 5, 2021).

<sup>4</sup> Section 125.0104(3)(d), F.S. Fifty-five of the eligible 59 counties levy this tax, with an estimated 2020-21 state fiscal year collection of \$123 million. *Id.* at 259.

<sup>5</sup> Section 125.0104(3)(m), F.S. Eight of the nine eligible counties levy this tax, with an estimated 2020-21 state fiscal year collection of \$79 million. *Id.* at 265.

<sup>6</sup> Section 125.0104(3)(l), F.S. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities or professional sports franchises, and convention centers and to promote and advertise tourism. Forty-five of the 67 eligible counties levy this additional tax, with an estimated 2020-21 state fiscal year collection of \$143 million. *Id.* at 263.

<sup>7</sup> Section 125.0104(3)(n), F.S. Thirty of the eligible 65 counties levy the additional professional sports franchise facility tax, with an estimated 2020-21 state fiscal year collection of \$106 million. *Id.* at 269.

<sup>8</sup> Section 125.0104(4)(e), F.S.

<sup>9</sup> *Id.*

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

<sup>11</sup> Section 125.0104(6), F.S.

<sup>12</sup> Section 125.0104(3)(d), F.S.

<sup>13</sup> Section 125.0104(4)(a), F.S.

<sup>14</sup> Section 125.0104(4), F.S.

each project or use.<sup>15</sup> The plan for tourist development may not be substantially amended except by ordinance enacted by an affirmative vote of a majority plus one additional member of the governing board.<sup>16</sup>

### *TDT Uses*

Current law authorizes counties to levy and spend local option TDTs as a mechanism for funding a variety of tourist-related uses, including tourism promotion and the financing and construction of public facilities needed to increase tourist-related business activities in the county, beach restoration and maintenance projects, and convention centers and professional sports franchise facilities.<sup>17</sup> More specifically, the revenues derived from TDTs may be used for:

- The acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum that is publicly owned and operated or owned and operated by a not-for-profit organization, or promotion of a zoo.
- Promotion and advertising of tourism in the state.
- Funding of convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies, or by contract with chambers of commerce or similar associations in the county.
- Financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river.<sup>18</sup>
- In counties with populations less than 950,000, the acquisition, construction, extension, enlargement, remodeling, repair, or improvement, maintenance, operation, or promotion of zoos, fishing piers, or nature centers which are publicly owned and operated or owned and operated by a not-for-profit organization and open to the public.<sup>19</sup>
- Securing revenue bonds issued by the county for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum or financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control.

In addition, up to 10 percent of the tax revenue received by a county located adjacent to the Gulf of Mexico or the Atlantic Ocean, except a county that receives revenue from taxes levied pursuant to a tourist impact tax within an area of critical state concern, may be used to reimburse expenses incurred in providing public safety services, including emergency medical services, and law enforcement services, which are needed to address impacts related to increased tourism and visitors to an area.<sup>20</sup>

Revenues received by a county from the original 1 percent levy or the additional 1 percent levy can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities or professional sports franchises, and to promote and advertise tourism. The original 1 percent levy may also be used to operate or maintain a convention center.

The use of TDT revenue for any purpose not expressly authorized in statute is expressly prohibited.<sup>21</sup>

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<sup>15</sup> See s. 125.0104(4), F.S.

<sup>16</sup> See s. 125.0104(4), F.S. The provisions found in ss. 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.

<sup>17</sup> Florida Legislative Committee on Intergovernmental Relations, *Issue Brief: Utilization of Local Option Tourist Taxes by Florida Counties in Fiscal Year 2009-10* (December 2009), available at <http://edr.state.fl.us/Content/local-government/reports/localopttourist09.pdf> (last visited Mar. 5, 2021).

<sup>18</sup> In counties with populations less than 100,000, up to 10 percent of tourist development tax revenues may be used for financing beach park facilities. See s. 125.0104(5)(a), F.S.

<sup>19</sup> Section 125.0104(5)(b), F.S.

<sup>20</sup> Section 125.0104(5)(c), F.S.

<sup>21</sup> Section 125.0104(5)(e), F.S.

### Convention Development Taxes

The Convention Development Tax Act<sup>22</sup> authorizes certain counties or sub-parts of counties to levy convention development taxes (CDTs) on transient rental transactions. Depending on a jurisdiction's ability to levy such taxes, the maximum tax rate varies from a minimum of 1 percent to a maximum of 3 percent:

- The consolidated county convention tax may be levied at 2 percent.<sup>23</sup>
- The charter county convention tax may be levied at 3 percent.<sup>24</sup>
- The special district, special, and subcounty convention tax may be levied at a rate up to 3 percent.<sup>25</sup>

Duval County (as a county consolidated with a municipality), Miami-Dade County (as a charter county), and parts of Volusia County currently levy the maximum CDT allowable in their respective jurisdictions.<sup>26</sup>

### *CDT Process*

CDT levies must be authorized pursuant to an ordinance enacted by the county's governing body.<sup>27</sup> A certified copy of the ordinance imposing the levy must be furnished by the county to the Department of Revenue (DOR) within 10 days after approval of such ordinance.<sup>28</sup> The effective date of imposition of the levy can be the first day of any month at least 60 days after enactment of the ordinance. Revenues must be deposited in a convention development trust fund, established by the county before they can receive any CDT funds.<sup>29</sup>

The charter county development tax has an exception for municipalities in which a municipal tourist tax is levied and in which a resolution prohibiting imposition of the charter county convention development levy within such municipality has been adopted.<sup>30</sup> The CDT levy is imposed by the county in all other areas of the county except municipalities which have a municipal tourist tax and which have adopted a resolution. No CDT funds may be used in a municipality that has adopted such a resolution. In Miami-Dade County, three jurisdictions have a municipal tourist tax and have adopted a resolution under this provision. Those jurisdictions are Bal Harbour, Miami Beach, and Surfside.<sup>31</sup>

### *CDT Uses*

Generally, the revenues raised by CDT levies may be used for capital construction of convention centers and other tourist-related facilities, as well as tourism promotion; however, the authorized uses vary by levy.

### **Effect of the Bill**

#### Tourist Development Taxes

The bill authorizes all TDT revenue to be used to finance flood mitigation projects or improvements.

The bill requires all new or increased TDTs to be approved by referendum.

The bill makes each of the five TDTs stand-alone, independent propositions for renewal by removing the condition precedents related to the levy of the additional 1 percent tax and the additional sports facility tax. Specifically, the bill eliminates the requirement that a county must impose the original TDT

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<sup>22</sup> Section 212.0305, F.S.

<sup>23</sup> Section 212.0305(4)(a), F.S.

<sup>24</sup> Section 212.0305(4)(b), F.S.

<sup>25</sup> Sections 212.0305(4)(c), (d), and (e), F.S.

<sup>26</sup> Office of Economic & Demographic Research (EDR), *Local Option Tourist / Food & Beverage Tax Rates*, available at <http://edr.state.fl.us/Content/local-government/data/county-municipal/> (last visited Mar. 23, 2021).

<sup>27</sup> Section 212.0305(4)(b)1., F.S.

<sup>28</sup> Section 212.0305(4)(b)6., F.S.

<sup>29</sup> Section 212.0305(4)(b)7., F.S.

<sup>30</sup> Section 212.0305(4)(b)3., F.S.

<sup>31</sup> EDR, *Local Option Tourist / Food & Beverage Tax Rates*, available at <http://edr.state.fl.us/Content/local-government/data/county-municipal/> (last visited Mar. 23, 2021).

for at least three years before imposing the additional 1 percent tax. In addition, the bill eliminates the requirement that a county must impose the initial professional sports franchise facility tax before imposing the additional professional sports franchise facility tax.

#### Convention Development Taxes

The bill authorizes all CDT revenue to be used to finance flood mitigation projects or improvements.

The bill requires all new or increased CDTs to be approved by referendum.

The bill requires the governing board of a county levying a CDT to place a question on the ballot at a regular or special election held within the county, substantially as follows:

- ....FOR the Convention Development Tax.
- ....AGAINST the Convention Development Tax.

If a majority of the electors voting on the question approve the levy, the ordinance will take effect at a specified time.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 125.0104, F.S., relating to TDTs.

Section 2. Amends s. 212.0305, F.S., relating to CDTs.

Section 3. Amends s. 212.03055, F.S., relating to CDTs.

Section 4. Provides an effective date of July 1, 2021.

### **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not estimated the revenue impacts of the bill on local governments.

2. Expenditures:

None.

#### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive impact on the private sector from local investment in flood mitigation projects and improvements, both from the direct investment and the resulting resilience to flood damage.

#### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2021, the Environment, Agriculture & Flooding Subcommittee adopted a technical amendment and reported the bill favorably as a committee substitute.

On March 22, 2021, the Ways & Means Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment removed language requiring 5-year renewals of TDTs and CDTs by referendum and made changes ensuring all future new or increased TDTs and CDTs will be subject to voter referendum. The amendment also made conforming changes related to CDTs to ensure local governments imposing each CDT will have the option to use revenue for flood mitigation projects.

This analysis is drafted to the committee substitute as approved by the Ways & Means Committee.