

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 Finance and Tax

BILL: CS/CS/SB 1146

INTRODUCER: Finance and Tax Committee; Commerce and Tourism Committee; and Senator Rodriguez

SUBJECT: Taxation of Investigative Services

DATE: February 10, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Sachmorov</u>	<u>Babin</u>	<u>FT</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1146 provides an exemption from the sales and use tax for investigative services provided by a small private investigative agency.

The Revenue Estimating Conference analyzed an earlier version of the bill and determined it will reduce General Revenue Fund receipts by \$300,000 in Fiscal Year 2022-2023 with a recurring impact of \$300,000. The bill will reduce local revenues by \$100,000 in Fiscal Year 2022-2023 with a recurring local impact of \$100,000. Staff estimates that the current version of the bill has a similar fiscal impact.

The bill takes effect July 1, 2022.

II. Present Situation:

Florida Sales and Use Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,¹ admissions,² transient rentals,³ and a limited number of services. Chapter 212, F.S.,

¹ Section 212.05(1)(a)1.a., F.S.

² Section 212.04(1)(b), F.S.

³ Section 212.03(1)(a), 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.⁴

Currently, charges for detective, burglar protection, and other protection services listed under the North American Industry Classification System (NAICS) National Numbers 561611 (investigative services), 561612 (security guards and patrol services), 561613 (armored car services), and 561621 (security systems services, except locksmiths) are subject to the 6 percent sales and use tax.⁵

Private Investigative Services

The Division of Licensing within the Department of Agriculture and Consumer Services oversees the regulation of licensing of private investigative services.⁶ As of December 31, 2021, the Division has issued 2,627 private investigative agency licenses and 6,992 private investigator licenses.⁷

A "private investigator" is defined as any individual who, for consideration, advertises as providing or performs private investigation.⁸ A "private investigative agency" means any person who, for consideration, advertises as providing or is engaged in the business of furnishing private investigations.⁹ Private investigation is defined as an investigation to obtain information on any of the following matters:

- Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.
- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- The credibility of witnesses or other persons.
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
- The location or recovery of lost or stolen property.
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.
- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation thereof.¹⁰

⁴ Section 212.07(2), F.S.

⁵ Section 212.05(1)(i)1., F.S.

⁶ Chapter 493, F.S.

⁷ Department of Agriculture and Consumer Services, *Division of Licensing Statistical Reports* (as of December 31, 2021), available at <https://www.fdacs.gov/Divisions-Offices/Licensing/Statistical-Reports> (last visited Feb. 02, 2022).

⁸ Section 493.6101(16), F.S.

⁹ Section 493.6101(15), F.S.

¹⁰ Section 493.6101(17), F.S.

III. Effect of Proposed Changes:

The bill exempts investigative services provided by a small private investigative agency from the sales and use tax.

The bill defines a “small private investigative agency” as a private investigator licensed under s. 493.6201, F.S., which:

- Employs three or fewer full-time or part-time employees, including those performing services pursuant to an employment leasing arrangement as defined in s. 468.520(4), F.S.; and
- Reported less than \$150,000 in taxable sales during the previous calendar year for providing private investigation services for all its businesses related through common ownership.

The bill grants emergency rule making authority for the Department of Revenue.

The bill takes effect July 1, 2022.

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 Art. VII, s. 18 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,^{11, 12} which is \$2.3 million or less for Fiscal Year 2022-2023.¹³

The Revenue Estimating Conference determined that language very similar to that contained in the bill will reduce the authority that counties have to raise revenue from the local option sales tax by \$100,000 in Fiscal Year 2022-2023. Therefore, the mandates provision may not apply as the impact is insignificant.

¹¹ FLA. CONST. art. VII, s. 18(d).

¹² 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 Feb 03, 2022).

¹³ Based on the Demographic Estimating Conference’s estimated population adopted on March 3, 2021. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/archives/210303demographic.pdf> (last visited Feb. 02, 2022).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Section 19 of Article VII, Florida Constitution requires increased taxes or fees to be passed in a separate bill and by two-thirds vote of the membership of each house of the Legislature. This bill does not increase any taxes or fees; therefore, the increased tax or fee requirements do not apply.

E. Other Constitutional Issues:

None identified.

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

The Revenue Estimating Conference analyzed an earlier version of the bill and determined it will reduce General Revenue Fund receipts by \$300,000 in Fiscal Year 2022-2023 with a recurring impact of \$300,000. The bill will reduce local revenues by \$100,000 in Fiscal Year 2022-2023 with a recurring local impact of \$100,000. Staff estimates that the current version of the bill has a similar fiscal impact.

B. Private Sector Impact:

Certain small private investigative agencies may incur savings due to the sales and use tax exemption on the sale of investigative services.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.08 of the Florida Statutes.

IX. Additional Information:

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

CS by Commerce and Tourism January 31, 2022:

- Modifies the definition of a “small private investigative agency” to provide that the agency must have received less than \$50,000 for each employee in taxable compensation during the previous calendar year for providing private investigative services.

CS by Finance and Tax February 10, 2022:

- Modifies the definition of a “small private investigative agency” to provide that the agency must have reported less than \$150,000 in taxable sales during the previous calendar year for providing private investigative services.
- Grants emergency rule making authority for the Department of Revenue.

- B. **Amendments:**

None.