

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/SB 356

INTRODUCER: Finance and Tax Committee and Senator Jones

SUBJECT: Sales Tax Holiday for ENERGY STAR and WaterSense Products

DATE: January 27, 2022

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 356 establishes a three-day sales tax holiday period, from April 22, 2023, to April 24, 2023, on the retail sale of a new ENERGY STAR or WaterSense product.

The Revenue Estimating Conference (REC) has not analyzed this version of the bill. Staff estimates that the bill will reduce General Revenue Fund receipts by approximately \$4.4 million and local government revenues by \$1.3 million.

The bill 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,¹ admissions,² transient rentals,³ 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 sales. Sales tax is added to the sales price of the taxable good or service and collected from the purchaser at the time of sale.⁴

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.

⁴ Section 212.07(2), F.S.

Counties are authorized to impose local discretionary sales surtaxes in addition to the state sales tax.⁵ 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.”⁶ 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 may be levied in a range of 0.5 to 2.5 percent.⁷

ENERGY STAR and WaterSense

In 1992, the United States Environmental Protection Agency (EPA) established the ENERGY STAR program under the authority of section 103(g) of the Clean Air Act to promote energy efficiency.⁸ The program provides unbiased information on the energy consumption of products to consumers and businesses.⁹ The EPA ensures that each product that earns the ENERGY STAR label is independently certified to deliver energy efficiency. In Florida, approximately 530 businesses and organizations participate in the program.¹⁰

WaterSense is a voluntary partnership program sponsored by the EPA with a mission to encourage water efficiency through the use of a label for water-efficient products. WaterSense maintains partnerships with manufacturers, retailers and distributors, homebuilders, and utilities throughout the United States.¹¹

Emergency Rulemaking

State agencies with rulemaking authority in a specific area generally may adopt emergency rules in that area if there is an immediate danger to the public health, safety, or welfare.¹² Emergency rules typically are effective only for 90 days and may not be renewed except in certain circumstances.¹³

III. Effect of Proposed Changes:

The bill establishes a three-day sales tax holiday period, from April 22, 2023, to April 24, 2023, on the retail sale of a new ENERGY STAR or WaterSense product.

⁵ Section 212.055, F.S.

⁶ Section 212.054(2)(a), F.S.

⁷ Office of Economic and Demographic Research, *Florida Tax Handbook*, 227-228 (2021), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2021.pdf> (last visited Dec. 06, 2021).

⁸ ENERGY STAR, *EPA's Role*, available at https://www.energystar.gov/about/origins_mission/epas_role_energy_star (last visited Dec. 01, 2021).

⁹ ENERGY STAR, *What is ENERGY STAR*, available at <https://www.energystar.gov/about> (last visited Dec. 01, 2021).

¹⁰ ENERGY STAR, *Florida Fact Sheet* (April 2021), available at https://www.energystar.gov/sites/default/files/asset/document/2020_State_Fact_Sheet_FL_508.pdf (last visited Dec. 01, 2021).

¹¹ United States Environmental Protection Agency, *About WaterSense*, available at <https://www.epa.gov/watersense/about-watersense> (last visited Dec. 01, 2021).

¹² Section 120.54(4), F.S.

¹³ Section 120.54(4)(c), F.S. Emergency rules typically may be renewed only if the agency has initiated rulemaking to adopt permanent rules on the same subject and either a challenge to those proposed rules is pending or the proposed rule is still pending legislative ratification.

The bill defines an “ENERGY STAR” product as a room air conditioner, air purifier, ceiling fan, clothes washer or dryer, dehumidifier, dishwasher, freezer, refrigerator, water heater, swimming pool pump, or a package of light bulbs. Additionally, each product must be affixed with an ENERGY STAR label.

The bill defines a “WaterSense” product as a bathroom sink faucet, faucet accessory, high-efficiency toilet or urinal, showerhead, or weather- or sensor-based irrigation controller. Each product must be affixed with a WaterSense label.

The bill provides that only ENERGY STAR products designated by the EPA and the United States Department of Energy as meeting or exceeding each agency’s requirements under the ENERGY STAR program or WaterSense products recognized as water efficient by the WaterSense program by April 1, 2023, qualify for the sales tax holiday.

The Department of Revenue may adopt emergency rules pursuant to s. 120.54(4), F.S.

The bill 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 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,^{14, 15} which is \$2.3 million or less for Fiscal Year 2022-2023.¹⁶

The Revenue Estimating Conference has not analyzed this version of the bill. Postponing the exemption period by one year may not significantly change the REC’s analysis for the originally filed bill, which determined that the bill will reduce the authority that counties have to raise revenue from the local option sales tax by \$700,000 in Fiscal Year 2021-

¹⁴ FLA. CONST. art. VII, s. 18(d).

¹⁵ 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 Dec. 01, 2021).

¹⁶ 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 Jan. 27, 2022).

2022. Therefore, it appears that the mandates provision does not apply because the impact is insignificant.

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 has not analyzed this version of the bill. Staff estimates that postponing the exemption period by one year will not significantly change the REC's analysis of the originally filed bill, which reduced the General Revenue Fund receipts by \$4.4 million and local government revenues by \$1.3 million.

B. Private Sector Impact:

Persons purchasing certain ENERGY STAR or WaterSense products during the sales tax holiday will realize savings.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that only ENERGY STAR products meeting or exceeding the requirements under the ENERGY STAR program by April 1, 2023, or WaterSense products recognized as water efficient by the WaterSense program by April 1, 2023, qualify for the sales tax holiday.

Dealers may not be aware of the date an item is made eligible under the program; however, the bill says that to qualify the items have to have been recognized by April 1, 2023. Therefore, dealers may find it difficult to know if any of their products are ineligible because they were recognized after April 1, 2023.

VIII. Statutes Affected:

The bill creates an undesignated section of chapter law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Finance and Tax on January 27, 2022:

The CS:

- Changes the dates of the holiday from April 22, 2022, through April 24, 2022, to the same days in April of 2023.

B. Amendments:

None.