

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 266

SPONSOR: Fiscal Resource Committee and Senator Sebesta

SUBJECT: Manufactured Asphalt/Indexed Tax

DATE: March 8, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Keating</u>	<u>Wood</u>	<u>FR</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill increases the partial exemption for manufactured asphalt that is used for any federal, state or local government public works project to 40 percent effective July 1, 2000.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes:
212.06

II. Present Situation:

Pursuant to s. 212.06(1)(c), F.S., persons who manufacture asphalt for their own use, in the performance of either public works or non-public works projects, are subject to use tax calculations upon the cost of the materials which become a component part or are an ingredient of the finished asphalt and upon the cost of the transportation of such components and ingredients. Additionally, an index tax, originally set at \$.38 per ton and adjusted on July 1 of each year according to the Consumer Price Index from the U.S. Department of Labor, is currently levied at a rate of \$.48 per ton. Pursuant to ch. 99-334, L.O.F., as of July 1, 1999, the indexed tax rate is reduced by 20 percent if the manufactured asphalt is used in a state or local public works contract.

According to the Department of Revenue, subjecting a federal public works project to taxation while exempting state and local government public works projects appears to be contrary to the findings of the U.S. Supreme Court in Davis v. Michigan Department of Treasury, 489 U.S. 803 (U.S. Mich. 1989). There, the Court upheld the doctrine of intergovernmental tax immunity, which, generally, bars state taxes that discriminate against the federal government. The Department has therefore interpreted the exemption as extending to federal projects. In its Legislative package for the 2000 session, the Department has recommended remedial clarifying language.

III. Effect of Proposed Changes:

The bill amends s. 212.06(1)(c), F.S., providing that the partial exemption for manufactured asphalt that is used for any federal, state or local government public works project is increased to 40 percent effective July 1, 2000.

The bill provides that it is the intent of the Legislature that the amendment including federal public works projects is remedial in nature and merely clarifies existing law.

The bill takes effect July 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill initially falls under subsection (b) of section 18 of Article VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989 to raise revenues in the aggregate. By adding an exemption to the state sales tax, the bill has the effect of adding an exemption to the local option county sales surtax. Since the annual local revenue loss is estimated to be less than \$1.4 million, the bill will be exempt from the requirements of subsection (b) due to the insignificant negative fiscal impact as permitted under subsection (d) of section 18 of Article VII. (See subsection (d) of s. 18, Art. VII, Florida Constitution, for various types of general laws, including those with insignificant fiscal impact.)

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The increase to 40 percent on the partial sales tax exemption for manufactured asphalt that is used for any federal, state or local government public works project is estimated to reduce State General Revenue by \$0.6 million on a recurring basis. Local government sales tax revenue is estimated to be reduced by \$0.1 million on a recurring basis.

Issue/Fund	General Revenue		Trust		Local		Total	
	1st Year \$	Recurring \$	1st Year \$	Recurring \$	1st Year \$	Recurring \$	1st Year \$	Recurring \$
Phase-out of Sales Tax on Asphalt	(0.6)	(0.6)	(*)	(*)	(0.1)	(0.1)	(0.7)	(0.7)

* Insignificant
 ** Indeterminate

B. Private Sector Impact:

The bill will reduce the amount of tax that manufacturer's of asphalt would have to pay on asphalt used in federal, state or local government public works projects.

C. Government Sector Impact:

The bill should reduce the cost of public works projects for federal, state and local governments.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
