

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 2218

SPONSOR: Finance and Taxation Committee and Senator Margolis

SUBJECT: Taxation

DATE: April 20, 2004 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|-----------------|------------|------------------|
| 1. | <u>Cibula</u> | <u>Lang</u> | <u>JU</u> | <u>Favorable</u> |
| 2. | <u>Cooper</u> | <u>Yeatman</u> | <u>CP</u> | <u>Favorable</u> |
| 3. | <u>Keating</u> | <u>Johansen</u> | <u>FT</u> | <u>Fav/CS</u> |
| 4. | _____ | _____ | <u>AGG</u> | _____ |
| 5. | _____ | _____ | <u>AP</u> | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

Committee Substitute for Senate Bill 2218 makes the following changes to current tax administration and taxes that are administered by the Department of Revenue. Specifically, the bill:

- Permits a personal representative of any estate regardless of the date of death of the decedent to execute an affidavit attesting that the estate is not taxable;
- Allows additional time to apply for a refund of estate tax resulting from taxes being paid to another state that will be credited against the Florida liability.
- Specifies dates that taxes resulting from the sale of timeshares are due to the department;
- Provides another method to determine the service address of a communications service;
- Extends for 2 years, the sunset of the sales tax exemption afforded to convention & exhibit halls, civic centers, theaters, arenas, auditoriums, sports stadiums, performing arts centers and publicly owned recreational facilities;
- Deletes a limitation on issuing of bonds for purposes of the local government infrastructure surtax;
- Provides that no tax shall be imposed on any vessel imported into Florida for the sole purpose of being offered for sale at retail by a yacht broker or dealer registered in Florida, provided the vessel remains under the care, custody, and control of the registered broker or dealer and the owner makes no personal use of the vessel during that time;
- Authorizes a sales tax dealer to elect to forego the collection allowance and direct that the collection allowance be deposited in to the Education Enhancement Trust Fund. The amendment provides for an appropriation to the Department of Revenue to implement the provisions of the amendment and provides that the GR appropriation be returned to GR Fund from first proceeds;

- Authorizes the imposition of criminal penalties on a person who willfully attempts to evade or defeat a tax or fee imposed under ch. 212, F.S.;
- Authorizes the department to compromise tax liability for tourist taxes administered under ch. 212, F.S., in addition to taxes imposed under ch. 212, F.S.;
- Provides a procedure for the department to dispose of unclaimed personal property obtained during an investigation or legal proceeding;
- Continues the authorization for certain counties to expend moneys derived from the “911” fee for non-emergency telecommunications;
- Provides a distribution of sales tax revenues proceeds to certain job training organizations not to exceed \$3 million annually for a period of 2 years;
- Provides that businesses that utilize a substitute communications system will not owe the communications services or gross receipts tax on the actual cost of operating the substitute communications system during the period of October 1, 2001 through December 31, 2005;
- Expands the municipal resort tax for cities with charters limiting ad valorem taxes to 2 mills in counties with populations between 170,000 and 180,000 and no cities with a population greater than 20,000; expands uses of the tax proceeds. The rate of the municipal resort tax is 2% and limited to transient rentals only; and
- Provides for severability.

This bill substantially amends the following sections of the Florida Statutes: 198.29, 198.32, 199.135, 201.02, 201.08, 201.11, 212.055, 212.06, 212.12, 213.21, and 365.171. The bill amends ss. 3 and 4 of chapter 2000-345, Laws of Florida and ss. 1 and 6 of chapter 67-930, Laws of Florida. The bill also creates section 213.758, Florida Statutes.

II. Present Situation:

See “Effect of Proposed Changes” section of this staff analysis.

III. Effect of Proposed Changes:

ESTATE TAX (Sections 1 and 2)

PRESENT SITUATION:

Florida’s estate tax is equal to the federal credit allowed for state death taxes paid.¹ Section 198.29, F.S., provides for refunds of excess estate tax paid. No refund of the estate tax shall be made nor shall any personal representative be entitled to bring any action for refund of estate tax after the expiration of 4 years from the date of payment of the tax to be refunded, unless there has been timely filed with the Department of Revenue (department), written notice of any administrative or judicial determination of the federal estate tax liability of the estate.

¹ The Federal Economic Growth and Tax Relief Reconciliation Act of 2001 phases out the federal estate tax and repeals the state credit against the federal tax by 2005. Since Sec. 5, Art. VII of the Florida Constitution prohibits any estate tax in excess of the amount which may be credited upon or deducted from any similar tax levied by the United States or any state, the federal law change will eliminate Florida’s estate tax by 2005.

Every personal representative is required to give notice to the department of the decedent's death on a form specified by the department. If the estate is required to file a federal estate tax return, the estate must also file a Florida estate tax return.

Prior to January 1, 2000, estates that did not have to file a federal return still had to file a form with the department indicating that "no tax is due." When the department received the form indicating "no tax is due", it issued a certificate to the estate stating that "no tax is due." The estate then filed the certificate with the Clerk of the Court.

In 1999, s. 198.32, F.S., was amended to allow the estates of decedents who died on or after January 1, 2000, that are not required to file a federal return, to file and "Affidavit of No Florida Estate Tax Due" directly with the Clerk of the Court and not have to obtain a nontaxable certificate from the department. However, the estates for decedents who died prior to January 1, 2000, are still required to file the form with the department in order to obtain a nontaxable certificate.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 198.29, F.S., allowing a personal representative required to pay to another state or states estate tax that will be credited against the Florida liability to notify the Department of Revenue in writing of such a requirement within 4 years after the payment of Florida estate tax or within 60 days following the date the administrative or judicial determination of the federal estate tax liability of the estate becomes final.

The bill amends s. 198.32(2), F.S., to enable the personal representative of any estate, regardless of the date of death of the decedent, to eliminate the presumption that an estate owes taxes by executing an "Affidavit of No Florida Estate Tax Due" directly to the Clerk of the Court instead of first obtaining a nontaxable certificate from the Department of Revenue.

DOCUMENTARY STAMP TAX AND NON-RECURRING INTANGIBLE TAX ON TIMESHARES (Sections 3, 4 and 5)

PRESENT SITUATION:

Section 721.08, F.S., imposes special escrow requirements on purchaser's funds to protect consumers who purchase timeshare interests. The law is to protect the purchaser's funds prior to closing and allows release of funds from escrow only upon cancellation or noncompliance with the provisions of the statute.

Section 213.756, F.S., provides that certain monies collected from a purchaser under the representation that the funds are taxes and are state funds from the moment of collection and thus, are not subject to refund absent proof that such funds have been refunded previously to the purchaser.

The deeds and mortgages executed in conjunction with the sale of timeshare interest in real property are subject to the documentary stamp tax (Chapter 201) and the non-recurring intangible tax (Chapter 199).

Section 201.02, F.S., imposes a documentary stamp tax in the amount of 70 cents for each \$100 of consideration for deeds, instruments, or writings whereby lands, tenements, or other real property, or any interest therein, are granted, assigned, transferred, or vested in a person.

Section 201.08, F.S., imposes a documentary stamp tax in the amount of 35 cents for \$100 of a promissory note, nonnegotiable note, written obligation to pay money, or assignment of compensation, delivered, sold, transferred or assigned in this state. The amount of the tax may not exceed \$2,450, except on mortgages, trust deeds, security agreements, or other evidences of indebtedness filed or recorded in this state.

Section 199.133(1), F.S., imposes a one-time nonrecurring intangible tax of 2 mills on each dollar of just valuation of all notes, bonds, and other obligations for payment of money which are secured by mortgage, deed of trust, or other lien upon real property situated in Florida. Nonrecurring taxes must be paid the earlier of the date the written instrument creating the obligation is recorded by a clerk of a circuit court or 30 days after the creation of the obligation. Section 199.135, F.S., provides for the due date and payment of the nonrecurring tax.

The department has taken the position that taxes must be remitted when they become due pursuant to chapters 201 and 199. The timeshare industry believes that remitting taxes prior to the release of funds from escrow would violate the provisions of s. 721.08, F.S.

EFFECT OF PROPOSED CHANGES:

The bill amends ss. 199.135, 201.02, and 201.08, F.S., recognizing the special escrow requirements that apply to sale of timeshare interests. The bill provides that taxes on notes or other obligations and mortgages or other liens executed in conjunction with the sale of a developer of a timeshare interest in a timeshare plan are due on the earlier of the date on which:

1. The mortgage or other lien is recorded; or
2. All of the conditions precedent to the release of the purchaser's escrowed funds or other property pursuant to s. 721.08(2)(c), F.S., have been complied with, regardless of whether the developer has posted an alternative assurance.

If moneys are designated on a closing statement as taxes collected from the purchaser, but the mortgage or other lien with respect to which the tax was collected is never recorded, the tax moneys shall be paid to the department on or before the 20th day of the month following the month in which the funds are available for release from escrow, unless the moneys are refunded to the purchaser before that date.

The bill authorizes the Department of Revenue to adopt ruled to implement the method for reporting taxes due under these provisions.

COMMUNICATION SERVICES TAX

(Section 6)

PRESENT SITUATION:

Chapter 202, F.S., imposes a communications services tax at the rate of 6.8 percent on the sales price of certain communication services and 10.8 percent on the sale of home satellite service. The term "service address" in ch. 202, F.S., is used to determine which local taxing jurisdictions may add additional taxes to a communications service. The current definition of "service address" in s. 202.11, F.S., does not provide guidance for sourcing or situsing communications services where a credit or payment mechanism not related to a service address is used and the location of the equipment from which the communications services originates or are received by the customer are not known.

EFFECT OF PROPOSED CHANGES:

Effective July 1, 2004, the bill amends s. 201.11, F.S., to provide an additional method to determine a service address of a communications service subject to the communications services tax. If the service address cannot be determined under the existing methods, the bill provides that the service address is the residential or business address of the customer. This new method is effective July 1, 2004. According to the department, the method provided by the bill to determine a service address is necessary to determine the service address of mobile communications equipment such as satellite radios that travel across multiple taxing jurisdictions.

EXTENTION OF SALES TAX EXEMPTIONS FOR CIVIC CENTERS

(Section 7)

PRESENT SITUATION:

Sections 3 and 4 of chapter 2000-345, L.O.F., amended s. 212.031, F.S., providing for a sales and use tax exemption for property rented, leased, subleased, or licensed by a convention hall, auditorium, sports stadium, exhibition hall, theater, arena, civic center, performing arts center or publicly-owned recreational facility to a concessionaire selling event-related products during an event at the facility when the rental, lease or license payment is based on a percentage of sales or profits and not on a fixed price. In addition, a sales tax exemption was created for separately stated charges by such facilities to a lessee or licensee for services required for the use of real property. Included are charges for laborers, stage hands, ticket takers, event staff, security personnel, cleaning staff, other event-related personnel, advertising and credit card processing.

Chapter 2000-345, L.O.F., also amended s. 212.04, F.S., to provide for the following:

- The value of an admission on which the sales tax rate is imposed does not include state or local seat surcharges, taxes or fees, or the service charges imposed by a facility ticket office or ticketing service if separately stated;

- A sales and use tax exemption on admission charges to events sponsored by a governmental entity, a sports authority, or a sports commission when held in a convention hall, auditorium, sports stadium, exhibition hall, theater, arena, civic center, performing arts center or publicly-owned recreational facility when 100 percent of the risk of success or failure lies with the governmental entity, sports authority, or sports commission sponsoring the event, and 100 percent of the funds at risk for the event belong to the facility; and
- The tax on admission to an event at a convention hall, auditorium, sports stadium, exhibition hall, theater, arena, civic center, performing arts center or publicly-owned recreational facility must be collected at the time of payment for the admission but is not due to the Department of Revenue until the first day of the month following the actual date of the event for which the admission is sold.

These provisions of chapter 2000-345, L.O.F., were scheduled to repeal effective July 1, 2003. Section 55 of chapter 2002-218, L.O.F., extended the repeal until July 1, 2006.

EFFECT OF PROPOSED CHANGES:

The bill amends sections 3 and 4 of chapter 2000-345, L.O.F., as amended by section 55 of chapter 2002-218, L.O.F., to extend the repeal of the sales tax exemptions to July 1, 2008.

DISCRETIONARY SALES SURTAXES

(Section 8)

PRESENT SITUATION:

Section 212.054(1), F.S., currently limits, exclusively to counties, the authority to levy the discretionary sales surtaxes authorized in and subject to the specifications in s. 212.055, F.S.

Section 212.055, F.S., authorizes counties to impose seven local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, and admissions. The sales amount is not subject to the tax if the property or service is delivered within a county that does not impose a surtax. In addition, the tax is not subject to any sales amount above \$5,000 on any item of tangible personal property and on long distance telephone service. This \$5,000 cap does not apply to the sale of any other service. The Department of Revenue is responsible to administer, collect, and enforce all sales taxes. Collections received by the department are returned monthly to the county imposing the tax.

Section 212.055(2), F.S., authorizes the governing board in each county, upon approval by referendum, to impose the Local Government Infrastructure Sales Surtax at a rate of 0.5 percent or 1 percent. In addition, the governing bodies of the municipalities representing a majority of the county's population may adopt uniform resolutions establishing the rate of the surtax, and upon county-wide referendum approval, may impose the surtax. With limited exceptions,

proceeds from the surtax may only be used to finance, plan, and construct infrastructure.² Local governments receiving proceeds from the infrastructure surtax may pledge such proceeds for the purpose of servicing new bond indebtedness incurred pursuant to law. Pursuant to s. 212.055(2)(e), F.S., local governments may not issue bonds more frequently than once per year. As of January 1, 2004, twenty-five counties impose the Local Government Infrastructure Sales Surtax.

EFFECT OF PROPOSED CHANGES:

The bill amends paragraph (2)(e) of s. 212.055, F.S., to remove the restriction against issuing bonds from surtax proceeds more than once a year.

SALES TAX ON VESSELS (Section 9)

PRESENT SITUATION:

Section 212.06(1)(e)1., F.S., provides that no sales or use tax is imposed on a vessel imported into Florida for the sole purpose of being offered for sale by a registered yacht broker/dealer. The Department of Revenue has issued a formal opinion confirming that this is the department's interpretation of the law.³ However, due to an older, informal opinion of the department, the yacht broker industry is concerned that the law needs to be clarified.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.06(1)(e), F.S., to clarify present law that no sales or use tax shall be imposed on a vessel imported into Florida for the sole purpose of being offered for sale by a registered Florida yacht broker/dealer, provided the vessel remains under the care and control of the registered Florida yacht broker/dealer and the owner of the vessel makes no personal use of the vessel during that time.

DEALER COLLECTION ALLOWANCE (Sections 10, 11, 12 & 13)

PRESENT SITUATION:

Section 212.12(1), F.S., provides a dealer collection allowance of 2.5 percent of the amount of the tax due for the purpose of compensating dealers for the keeping of prescribed records, filing timely tax returns, and the proper accounting and remitting of taxes by them. No collection

² "Infrastructure" is defined in subparagraph (2)(d)2. as "...any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities which have a life expectancy of 5 or more years and any land acquisition, land improvement, design, and engineering costs related thereto..." and "...a fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and such equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years.

³ Technical Assistance Advisement 03A-051.

allowance is allowed on taxable amounts over \$1,200 per month, for a maximum of \$30 per month. According to the Department of Revenue, there are approximately 465,000 sales tax dealers who receive a total of \$54 million annually in collection allowances. Of the 465,000, about 118,000 receive the maximum \$30 collection allowance monthly. Of the remaining 347,000 dealers, the average monthly collection allowance is \$9.00.

EFFECT OF PROPOSED CHANGES:

Effective January 1, 2005, the bill amends s. 212.12(1), F.S., to provide that a sales tax dealer entitled to a collection allowance may elect to forego the collection allowance and direct that it be deposited into the Educational Enhancement Trust Fund. Such election must be made with the timely filing of a return and cannot be rescinded once made. If a dealer who makes the election files a delinquent return, underpays the tax, or files an incomplete return, the amount deposited into the Educational Enhancement Trust Fund shall be the collection allowance remaining after resolution of liability for all of the tax, interest, and penalty due.

The Department of Revenue may adopt rules to carry out these provisions. The department is appropriated from the General Revenue Fund, \$236,465 for the purpose of administering these provisions. The bill requires that the department must retain all of the dealer collection allowance revenues directed to be deposited into the Educational Enhancement Trust Fund until the \$236,465 General Revenue Appropriation is recovered. The \$236,456 retained by the department shall be deposited into the General Revenue Fund.

SALES AND USE TAX – FRAUD DEFINITION (Section 14)

PRESENT SITUATION:

Chapter 212, F.S., establishes the state sales tax rate of 6 percent on the retail sale of tangible personal property. Sales taxes must typically be collected by a dealer and submitted to the department with a return. Section 212.12(2), F.S., provides specific penalties for a taxpayer who:

- fails to timely file a return or timely remit tax;
- fails to disclose a tax or fee due with a return;
- knowingly and with a willful intent to evade tax fails to file six consecutive returns (criminal penalty);
- makes a false or fraudulent return with a willful intent to evade payment (criminal penalty);
- fails to timely remit the proper estimated payment; or
- fails to timely remit the proper estimated payment with a consolidated return.

Presently there is no specific penalty for willfully attempting to evade a tax or fee imposed under chapter 212.

EFFECT OF PROPOSED CHANGES:

Effective July 1, 2004, the bill amends s. 212.12(2), F.S., to provide that effective July 1, 2004, a “person who willfully attempts” to “evade or defeat” a tax imposed under ch. 212, F.S., commits a felony of the third degree and may be punished by the imposition of the following penalties:

- A penalty of 100 percent of the tax bill;
- A fine of up to \$5,000;
- Imprisonment of up to 5 years; or
- Imprisonment of up to 10 years if the person is a habitual felony offender.

PROCEDURES FOR COMPROMISING TAX LIABILITY
(Sections 15 and 16)

PRESENT SITUATION:

Section 213.21(10), F.S., provides procedures for the department to compromise a taxpayer’s liability “solely for the purpose of administering the tax imposed by chapter 212.” Taxes such as the tourist impact tax imposed under ss. 125.0108 and 125.0104, F.S., however, are administered under ch. 212, F.S.,

Chapter 2002-213, Laws of Florida, amended s. 212.21(10), F.S., to allow the department to automatically waive penalties for taxes under chapter 212 for a one-time noncompliant tax return for an otherwise compliant taxpayer. Previously, such a taxpayer would have had to request the penalty waiver in writing. The question has arisen whether this compromise authority applies to other taxes and fees that are not imposed under chapter 212, F.S., but are administered under the provisions found in chapter 212, F.S.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 213.21(10), F.S., to specify and clarify that all taxes administered under chapter 212, F.S., qualify for the automatic penalty compromise. The bill authorizes the department to compromise tax liability for tourist taxes, imposed pursuant to ss. 125.0108 and 125.0104, F.S., but administered under ch. 212, F.S. In addition, the department is restricted from compromising tax liability for the rental car surcharge imposed pursuant to s. 212.0606, F.S.

Section 16 specifies that this authority specified in section 15 of this bill is retroactive to July 1, 2003.

UNCLAIMED EVIDENCE

(Section 17)

PRESENT SITUATION:

Florida law contains no provisions for the disposition of unclaimed evidence at the conclusion of a criminal investigation by the department. As soon as practical after the disposition of a case, the department returns the records to the person or entity from which the records were received. Sometimes the department is unable to locate the appropriate party to return the records or documents and other times no claim is made for the records or documents. These unclaimed documents are currently stored by the department indefinitely and at a growing expense to the state.

EFFECTS OF PROPOSED CHANGES:

Effective July 1, 2004, the bill creates s. 213.758, F.S., to authorize the department to retain title to property that it has seized pursuant to an investigation or obtained for use as evidence in a legal proceeding that remains unclaimed by the owner for 60 days or more after the conclusion of a proceeding. The bill authorizes the department to retain the property or transfer it to another state agency. If the property has little to no value the department may destroy it.

The department is authorized to prescribe by rule procedures to be followed when transferring title or record of ownership of property of appreciable value or when destroying property not of appreciable value. The rule shall also set forth criteria regarding treatment of unclaimed evidence or unclaimed tangible personal property, including, but not limited to, notice and timing requirements.

This provision of the bill is important to the department because of the increasing costs of storing unclaimed evidence.

NON-EMERGENCY TELECOMMUNICATIONS SYSTEMS

(Section 18)

PRESENT SITUATION:

The Florida Emergency Telephone Act, pursuant to s. 365.171, F.S., establishes and implements a statewide emergency telephone number system, administered through the counties, to provide citizens with rapid direct access to public safety agencies by dialing the telephone number "911." Use of this system reduces the response time to situations requiring law enforcement, fire, medical, rescue and other emergency services.

County "911" systems are funded by a monthly fee of up to 50 cents per subscriber on local wire-line exchanges. Most counties also use general revenue to subsidize "911" system operating

and capital costs. In some cases, state general revenue has been allocated to select under-funded rural “911” systems.⁴ All counties currently levy the “911” fee.

In response to the Federal Communications Commission (FCC) mandates to provide “911” services for wireless phones, the Legislature enacted s. 365.172, F.S., the Wireless Emergency Communications Act. This act authorizes the state to levy a monthly fee of 50 cents on certain wireless subscribers to fund Enhanced “911,” or “E911” services. A Wireless “911” Board was created to administer the fund and adjust the allocation of proceeds from the fee or to reduce the fee.

In 1996, as part of the Federal government’s *Community Involved Policing* initiatives, the “311” number was designated by the FCC for use by municipal and county governments for non-emergency calls. The “311” system is a service dedicated to handling the reporting of non-emergency situations such as abandoned vehicles, noise complaints, and the reporting of incidents that have already happened (such as break-in, auto theft, or illegal dumping). Use of this system for non-emergency calls allows the “911” calling system to respond to true emergency situations. A number of local governments nationwide have implemented “311” calling systems.

In 2001, the Legislature amended s. 365.171(13)(a)6., F.S., to authorize Miami-Dade County to use “911” fee proceeds to pay “...such expenses related to a nonemergency “311” system, or similar nonemergency system, which improves the overall efficiency of an existing “911” system or reduces “911” emergency response time for a 2-year pilot project that ends June 30, 2003. However, no wireless telephone service provider shall be required to participate in this pilot project or to otherwise implement a nonemergency “311” system or similar nonemergency system.”⁵

To date, Miami-Dade County has not implemented their “311” calling system

EFFECT OF PROPOSED CHANGES:

Effective July 1, 2004, the bill amends s. 365.171(13)(a)6., F.S., to delay the repeal, from June 30, 2003 to June 30, 2009, of the pilot-project which allows Miami-Dade County to use “911” fees for non-emergency telecommunication expenses.

SALES TAX EXEMPTION FOR QUALIFIED JOB TRAINING ORGANIZATIONS (Section 19)

PRESENT SITUATION:

Chapter 212, F.S., governs taxes on sales, use, and other transactions. Section 212.20, F.S., governs the distribution of most of those funds collected or received by the Department of

⁴ According to staff of the State Technology Office, 64 of 67 counties used funding other than 911 fees to support the 911 system in 2000.

⁵ Section 1 of ch.2001-133, L.O.F.

Revenue. Several provisions within s. 212.20, F.S., provide assistance to certain economic sectors. For example, facilities designated as new professional sports franchises or facilities for a retained professional sports franchise receive funding distributions from the department after certification by the Governor's Office of Tourism, Trade, and Economic Development.⁶

EFFECT OF PROPOSED CHANGES:

The bill requires the Department of Revenue to distribute to "qualified job training organizations" the proceeds⁷ from the sales and use taxes collected by the organizations. The department is required to distribute the tax proceeds monthly to each qualified job training organization and the distributions must equal the previous month's tax proceeds generated by the organization and remitted on the organization's sales and use tax return, not to exceed \$3 million annually. The bill defines a "qualified job training organization" as an organization that:

- Is located in Florida;
- Is exempt from federal income taxation under s. 501(c)3 or s. 501(c)4 of the Internal Revenue Code;
- Specializes in the retail sale of donated items;
- Provides job training and employment services to individuals with workplace disadvantages and disabilities; and
- Uses a majority of its revenues for job training and placement programs that create jobs and foster economic development.

The bill requires each qualified job training organization to be certified by the Agency for Workforce Innovation (AWI) as meeting these criteria in order to receive the tax distributions. The bill designates the AWI as the state agency for screening applicants for these tax distributions and requires the AWI to adopt rules for the receipt and processing of applications for the tax distributions. The bill directs the department to begin the monthly distributions 60 days following notification of certification by the AWI. The bill also provides that a qualified job training organization may not continue to receive the tax distributions for more than 2 years.

The bill requires that the tax distributions must be used by the qualified job training organizations "solely to encourage and provide economic development through capital construction, improvements, or equipment that will result in expanded employment opportunities." The bill specifies that failure to use the proceeds for these authorized purposes is grounds for revoking the organization's certification to continue receiving the tax distributions. The bill authorizes the Department of Revenue to audit a qualified job training organization to verify that the organization used the tax proceeds for the authorized purposes. The bill authorizes the department, if the department determines that the tax distributions are not used for the authorized purposes, to pursue recovery of the proceeds under the "laws and rules governing the assessment of taxes."

These provisions take effect October 1, 2004 and expires September 30, 2006.

⁶ Section 212.20(6)(d)7.d., F.S.

⁷ The bill cites to s. 212.20(5)(a), F.S., which defines the term "proceeds" as all tax or fee revenue collected or received by the Department of Revenue, including interest and penalties.

COMMUNICATIONS SERVICES TAX ON
SUBSTITUTE COMMUNICATIONS SYSTEMS
(Section 20)

PRESENT SITUATION:

In 1985, the Legislature added a substitute telephone or telecommunication system to the list of services subject to gross receipts and sales tax. At that time, most of the communications services available today did not exist.

The Legislature substantially rewrote Florida's communications tax law in the 2000 Regular Session. Chapter 202, F. S., creates the Communications Services Tax Simplification Law (CST) which became effective January 1, 2002. Communications services are now subject to a uniform statewide tax rate and a local tax administered by the Department of Revenue. The gross receipts tax on communications services imposed by s. 203.01, F.S., is administered under ch. 202, F.S. While many issues were addressed in the rewrite, substitute communications systems were not, except to change the term "telephone service or telecommunication service" to the conforming term "communications service." Presently, the term "substitute communications system" is defined in s. 202.11(16), F.S., to mean:

Any telephone system, or other system capable of providing communications services, which a person purchases, installs, rents or leases for his or her own use to provide himself or herself with services used as a substitute for any switched service or dedicated facility by which a dealer of communications services provides a communication path.

The intent of taxing substitute telephone service or telecommunications services was to provide equal tax treatment on an in-house telephone system and telephone service purchased from a commercial provider. Today, there is uncertainty as to the proper interpretation of a "substitute communications system."

To address that uncertainty, the department issued a draft rule, 12A-19.036 on substitute communications systems to initiate discussion of this issue. A public workshop was held on August 1, 2003. At the workshop, many members of the business community expressed concern that the department's interpretation of the term was too broad. The department has not taken further steps in the rulemaking process for this rule.

EFFECT OF PROPOSED CHANGES:

The bill provides that the communications services tax and the gross receipts tax shall not be levied on the actual cost of operating a substitute communications system during the period from the effective date of the bill through December 31, 2005. The bill also prohibits the Department of Revenue from assessing the communications services tax or the gross receipts tax on the costs of operating a substitute communications system for the period October 1, 2001 through the effective date of the bill. In addition, the department may not issue any refunds of any tax that had been remitted to the department on the costs of operating a substitute communications system prior to the effective date of the bill.

MUNICIPAL RESORT TAX
(Section 21 and 22)

PRESENT SITUATION:

Chapter 67-930, Laws of Florida, as amended, authorizes certain municipalities in Florida to levy the Municipal Resort Tax, at a rate of up to 4 percent on transient rental transactions, and up to 2 percent on the sale of food and beverages consumed in restaurants and bars. Tax revenues may be used for tourism promotion activities, capital construction and maintenance of convention and cultural facilities, and relief of ad valorem taxes used for those purposes.

Only those municipalities located in any county of the state which had a total county population based on the 1960 Census of between 330,000 and 340,000 (Broward) or more than 900,000 (Miami-Dade) and whose charter specifically provided for the levy of this tax at the original rate of up to 2 percent prior to January 1, 1968, are authorized to levy a tax. Currently, only Bal Harbour, Miami Beach, and Surfside (Miami-Dade County) are eligible to impose the tax.

EFFECT OF PROPOSED CHANGES:

Section 21 of the bill amends s. 1 of chapter 67-930, L.O.F., as amended by chapters 93-286 and 94-344, L.O.F., to expand the Municipal Resort Tax to counties with a population between 170,000 and 180,000 with no municipality in such county having a population greater than 20,000, according to the latest official decennial census, and each municipality in such counties having a charter limiting ad valorem taxes to 2 mills. Such counties may impose the municipal resort tax on transient rentals only at the rate of 2 percent. The municipal resort tax must be approved by referendum and once a municipality qualifies and imposes the tax, it shall continue to qualify for as long as the ordinance remains valid. The City of Destin in Okaloosa County is the only city at this time that qualifies to impose the municipal resort tax under the bill.

Section 22 of the bill amends s. 6 of chapter 67-930, L.O.F., to expand the authorized uses of the municipal resort tax proceeds to include transportation improvements, including, but not limited to, sidewalks, pathways and bike lanes, and beach restoration, artificial reef construction, stormwater management, and land acquisition.

Section 23 of the bill provides for severability.

Section 24 provides an effective date stating that, except as otherwise provide in the bill, the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Issues in the bill with a fiscal impact have been analyzed by the Revenue Estimating Impact Conference. The estimated loss to the General Revenue Fund in fiscal year 2004-05 is \$2.2 million non-recurring. (See chart below for details).

| Issue | 2004-05 | | | | | | | |
|---|-----------------|------------|-------------|------------|--------------|-----------|--------------|-----------|
| | General Revenue | | State Trust | | Local Trust | | Total | |
| | Non-recurr. | Recurr. | Non-recurr. | Recurr. | Non-recurr. | Recurr. | Non-recurr. | Recurr. |
| 2 yr. extension - Civic Center sales tax exempt. | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
| 2 yr. sales tax distribution to Qualified Job Training Org. | (2.0) | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | (2.0) | 0.0 |
| CST Holiday – Substitute Comm. Systems | (0.2) | 0.0 | (*) | 0.0 | (0.1) | 0.0 | (0.3) | 0.0. |
| Expand Municipal Resort Tax | 0.0 | 0.0 | 0.0 | 0.0 | ** | ** | ** | ** |
| Total | (2.2) | 0.0 | (*) | 0.0 | (0.1) | ** | (2.3) | ** |

* Insignificant
 ** Indeterminate

The timing of the receipt of taxes in conjunction with the sale of timeshares will change slightly.

B. Private Sector Impact:

Estates will be given additional time to apply for a refund of estate tax resulting from taxes being paid to another state that will be credited against Florida’s estate tax liability.

Businesses that utilize a substitute communications system will not owe unpaid communications services tax on the actual cost of operating such system for the time period of October 1, 2001 through December 31, 2005.

Beginning October 1, 2004 through September 30, 2006, Goodwill Industries, Inc. can become qualified to receive a distribution of sales and use tax proceeds of up to \$3 million annually.

If the voters of the City of Destin approve the municipal resort tax, tourists would be subject to an additional tourist tax, at the rate of 2 percent on transient rentals.

C. Government Sector Impact:

Convention and exhibit halls, civic centers, auditoriums, sports stadiums, theaters, arenas, civic centers, performing arts centers and publicly-owned recreational facilities will be able to enjoy the sales tax exemptions pursuant to ss. 212.031 and 212.04, F.S., for an additional two years.

The bill will allow Miami-Dade County to use “911” fees for non-emergency telecommunication expenses through June 30, 2009.

By deleting the once a year limitation on bonding of the local government infrastructure surtax, local governments will have greater flexibility to refinance bonds supported by the infrastructure surtax to take advantage of favorable market conditions.

If the voters of the City of Destin approve the municipal resort tax, the city may incur costs associated with administration of the tax.

In so far as sales tax dealers elect to forego the collection allowance and direct that the collection allowance be deposited into the Educational Enhancement Trust Fund, local school boards will benefit by receiving additional revenues.

The bill provides for a General Revenue Fund appropriation of \$236,456 to the Department of Revenue for the purpose of administering the voluntary election to divert the dealer collection allowance to the Educational Enhancement Trust Fund. The bill provides for the \$236,456 to be returned to the General Revenue Fund from the first proceeds of the collection allowance for education.

The bill will enable the Department of Revenue to compromise tourist taxes even though not imposed under ch. 212, F.S.

The bill clarifies provisions of law related to the administration of taxes. As a result, the Department of Revenue may be able to collect taxes due more efficiently. The bill also clarifies which local taxing jurisdictions may tax a particular communications service.

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.
