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## **Finance & Tax Council**

**Thursday, March 11, 2010**

**9:00 AM**

**404 HOB**

**Larry Cretul  
Speaker**

**Ellyn Setnor Bogdanoff  
Chair**

# Council Meeting Notice

## HOUSE OF REPRESENTATIVES

### Finance & Tax Council

**Start Date and Time:** Thursday, March 11, 2010 09:00 am

**End Date and Time:** Thursday, March 11, 2010 12:00 pm

**Location:** 404 HOB

**Duration:** 3.00 hrs

**Consideration of the following bill(s):**

HB 93 Cost and Benefit Analysis of Legislation by Crisafulli, Hudson  
HB 121 Economic and Demographic Research by Poppell  
HB 187 Tax on Sales, Use, and Other Transactions by Rouson  
CS/HB 557 Tangible Personal Property Tax Transparency by Insurance, Business & Financial Affairs Policy Committee, Workman  
HB 637 Admissions Tax by Dorworth

**Consideration of the following proposed council bill(s):**

PCB FTC 10-03 -- Working Waterfront Property  
PCB FTC 10-04 -- Department of Revenue  
PCB FTC 10-05 -- Criminal Penalties for Violations of Tax Statutes

Pursuant to rule 7.13, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Wednesday, March 10, 2010.

By request of the Chair, all council members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Wednesday, March 10, 2010.

**NOTICE FINALIZED on 03/09/2010 16:24 by BAI**



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 93 Cost and Benefit Analysis of Legislation

SPONSOR(S): Crisafulli and others

TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Council		Wilson <i>Wilson</i>	Langston <i>Langston</i>
2) Full Appropriations Council on Education & Economic Development			
3) Policy Council			
4) Rules & Calendar Council			
5)			

SUMMARY ANALYSIS

HB 93 creates s. 216.138, F.S., directing special impact sessions of the Revenue Estimating Conference to consider both the costs and benefits of proposed legislation. The request for such special impact sessions must be made by either the Speaker of the House of Representatives or the President of the Senate and must be made at least 90 days before the beginning of the subsequent legislative session. The results of these special impact sessions will be completed no later than the start of legislative session for which it has been requested.

The bill also provides that the Office of Economic and Demographic Research, in consultation with the principals of the Revenue Estimating Conference, will develop protocols and procedures for the estimation of costs and benefits of specific proposed legislation during special impact conference sessions. These protocols and procedures recommendations will be provided to the President of the Senate and Speaker of the House of Representatives for approval by October 1, 2010. If approved, the protocols and procedures are to be used by the Revenue Estimating conference as provided in s. 216.138, F.S., until affirmatively revoked.

The bill will likely require additional state government expenditures. The amount is not known at this time.

The bill shall take effect upon becoming a law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation:**

Chapter 216, Florida Statutes, establishes the planning and budgeting laws for the fiscal affairs of the state. These laws provide guidelines to the Legislature, the Governor's Office, state agencies, and the judicial branch in order to properly develop legislative budgets and administer the general appropriations act. An essential support for the state's planning and budgeting functions is the use of the consensus estimating conferences. Sections 216.133-216.137, F.S., provide statutory authority for the consensus estimating conference process.

Section 216.136, F.S., establishes 10 consensus estimating conferences:

1. Economic Estimating Conference
2. Demographic Estimating Conference
3. Revenue Estimating Conference
4. Education Estimating Conference
5. Criminal Justice Estimating Conference
6. Social Services Estimating Conference
7. Workforce Estimating Conference
8. Early Learning Programming Estimating Conference
9. Self-Insurance Estimating Conference
10. Florida Retirement System Actuarial Assumption Conference

These conferences develop official estimates of revenues, expenditures, and various other impacts related to budgeting and taxation. All state agencies and the judicial branch must use the official results of the conference in carrying out their duties under the state planning and budgeting system; however, the Legislature is not bound to use the official consensus forecasts. Nevertheless, the Florida Legislature has consistently used the results of these conferences in its official duties.<sup>1</sup> Each estimate considers a baseline forecast and an assumption that "current law, current administration"<sup>2</sup> remains in effect for the duration of the forecast period unless otherwise provided by law or decided by unanimous

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<sup>1</sup> Further information on the consensus forecasting process can be found on the Office of Economic and Demographic Research website. <http://edr.state.fl.us/conferences/confprocess.pdf> (last visited March 10, 2010)

<sup>2</sup> Section 216.134(1), F.S.

agreement of the principals. Section 216.133(3), F.S., defines "consensus" as "the unanimous consent of all of the principals." All of the principals must agree on the forecasts before they are finalized.

The voting members of each conference (i.e., the principals) consist of one representative from professional staff of the Governor's Office, the coordinator of the Office of Economic and Demographic Research, professional staff of the Senate designated by the President of the Senate, and professional staff of the House of Representatives designated by the Speaker of the House of Representatives. Non-voting participants may be requested to generate alternative forecasts and provide additional information for the conference. The conference principals consider information provided by participants in the development of its "official information."<sup>3</sup> All the conferences are open, public meetings.

A conference session may be convened at the call of any principal to review and reconsider any official information of the conference that a principal feels is no longer valid. Additionally, s. 216.137(1)(d), F.S., allows any principal to call a special impact session of the conference to develop official information that reflects the impact of proposed law changes related to a conference's subject area.

The Revenue Estimating Conference meets throughout the year to update estimates of various revenue sources. This conference also meets several times before, during, and after legislative sessions to estimate the anticipated state and local government revenue impacts of proposed or current law changes. Many of these impacts are analyzed by the conference numerous times before a final estimate is adopted. In 2009, the Revenue Estimating Conference completed 343 analyses: 240 (70%) analyses during the 60 day session with 140 (41%) analyses in the final 30 days.

Current law does not specify particular methods, techniques, or approaches to developing the official estimates of the consensus estimating conferences.

### **Proposed Changes:**

The bill creates s. 216.138, F.S., directing special impact sessions of the Revenue Estimating Conference to consider both the costs and benefits of proposed legislation. These special impact sessions will be in addition to the current special impact sessions conducted by the consensus estimating conference set in s. 216.137(1)(d), F.S. The request for special impact sessions to review costs and benefits of specific legislation must be made at least 90 days before the start of the subsequent legislative session. The results of the special impact sessions will be completed and made available to the public no later than the start of the legislative session for which it has been requested.

This bill also provides that the Office of Economic and Demographic Research, along with the principals of the Revenue Estimating Conference and, after receiving public input, will develop protocols and procedures for estimating the cost and benefits of specific proposed legislation during special impact conference sessions defined in s. 216.138, F.S. These protocols and procedures recommendations will be provided to the President of the Senate and the Speaker of the House of Representatives for approval by October 1, 2010. If approved, the protocols and procedures are to be used by the Revenue Estimating conference as provided in s. 216.138, F.S., until affirmatively revoked.

## **B. SECTION DIRECTORY:**

**Section 1:** Creates s. 216.138, F.S., to require special impact sessions of the Revenue Estimating Conference to consider both the costs and benefits of proposed legislation.

**Section 2:** Provides that the Office of Economic and Demographic Research, along with the principals of the Revenue Estimating Conference, will develop protocols and procedures for special impact sessions by October 1, 2010.

**Section 3:** Provides that the bill will take effect upon becoming a law.

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<sup>3</sup> Section 216.133, F.S., defines "Official information" as data, forecasts, estimates, analyses, studies, and other information which the principals of a consensus estimating conference unanimously adopt for the purpose of the state planning and budgeting system.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS below.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

The bill will likely create the need for additional staffing, hardware, software and data resources for the Office of Economic and Demographic Research. The cost is not known at this time. It will depend in part on the protocols and procedures developed for the expanded analysis process.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

### B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1                                   A bill to be entitled  
 2           An act relating to cost and benefit analysis of  
 3           legislation; creating s. 216.138, F.S.; authorizing the  
 4           President of the Senate or Speaker of the House of  
 5           Representatives to request special impact sessions of the  
 6           Revenue Estimating Conference to consider the costs and  
 7           benefits of proposed legislation; establishing timeframes;  
 8           requiring the Office of Economic and Demographic Research  
 9           and other principals to develop protocols and procedures;  
 10          establishing minimum requirements; requiring submission of  
 11          a report; requiring utilization of protocols and  
 12          procedures until the approval is affirmatively revoked;  
 13          providing an effective date.

14  
 15   Be It Enacted by the Legislature of the State of Florida:

16  
 17           Section 1.   Section 216.138, Florida Statutes, is created  
 18   to read:

19           216.138 Cost and benefit analysis of legislation.--The  
 20   President of the Senate or the Speaker of the House of  
 21   Representatives may request special impact sessions of the  
 22   Revenue Estimating Conference to consider both the costs and  
 23   benefits of proposed legislation. The request must be made at  
 24   least 90 days before the beginning of the subsequent legislative  
 25   session, and the information developed by the Revenue Estimating  
 26   Conference shall be completed no later than the start of the  
 27   legislative session for which it is requested. The information  
 28   used to develop the analyses shall be available to the public.



29           Section 2. The Office of Economic and Demographic  
 30 Research, acting in consultation with the principals of the  
 31 Revenue Estimating Conference, and after receiving public input,  
 32 shall by October 1, 2010, develop protocols and procedures for  
 33 the consistent estimation of costs and benefits of specific  
 34 proposed legislation. At a minimum, the protocols and procedures  
 35 must address appropriate economic techniques used in the  
 36 analysis of proposed legislation, the format for reporting  
 37 results, and proposed linkages to the appropriations and revenue  
 38 forecasting processes, including any statutory changes that  
 39 would be needed. The linkages must be consistent with the  
 40 constitutional requirement to have a balanced budget. The office  
 41 shall submit a report of its findings and recommendations to the  
 42 President of the Senate and Speaker of the House of  
 43 Representatives by October 1, 2010. Subject to approval by the  
 44 President of the Senate and Speaker of the House of  
 45 Representatives following the submission of the report, the  
 46 protocols and procedures shall be utilized for the analysis of  
 47 specific proposed legislation by the Revenue Estimating  
 48 Conference as provided in s. 216.138, Florida Statutes, unless  
 49 and until such approval is subsequently affirmatively revoked.

50           Section 3. This act shall take effect upon becoming a law.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 121  
**SPONSOR(S):** Poppell  
**TIED BILLS:**

Economic and Demographic Research

**IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Finance & Tax Council		Aldridge <i>A</i>	Langston <i>LS</i>
2)	Full Appropriations Council on Education & Economic Development			
3)	Policy Council			
4)	Rules & Calendar Council			
5)				

**SUMMARY ANALYSIS**

This bill requires the Office of Economic and Demographic Research to perform a longitudinal analysis of the economic impact of legislation that amends provisions of state law that relate to taxation. Findings of this analysis are to be released in three annual reports as follows:

1. The first report is due to the President of the Senate and the Speaker of the House of Representatives by September 1 of the year in which the legislation is enacted. This report will include an assessment of the likely economic impact of the legislation and a listing of the analytical measures to be used.
2. Additional annual reports will address any changes in the measures detected over the prior year and will provide an assessment of any deviations from the likely economic impact previously identified.
3. The final report will include an in-depth comparison of the predictions contained within the cost-benefit analysis conducted prior to the policy decision with the actual results after implementation.

This bill also requires the Office of Economic and Demographic Research to develop protocols and procedures for the consistent development of cost-benefit and return-on-investment techniques and their application to issues for consideration of special impact by Revenue Estimating Conferences. These protocols and procedures recommendations will be provided to the President of the Senate and the Speaker of the House of Representatives by December 1, 2010.

The bill will likely require additional state government expenditures. The amount is not known at this time.

The bill will take effect upon becoming a law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### CURRENT LAW

Chapter 216, Florida Statutes, establishes the planning and budgeting laws for the fiscal affairs of the state. These laws provide guidelines to the Legislature, the Governor's Office, state agencies, and the judicial branch in order to properly develop legislative budgets and administer the general appropriations act. An essential support for the state's planning and budgeting functions is the use of the consensus estimating conferences. Sections 216.133-216.137, F.S., provide statutory authority for the consensus estimating conference process.

Section 216.136, F.S., establishes 10 consensus estimating conferences:

1. Economic Estimating Conference
2. Demographic Estimating Conference
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8. Early Learning Programming Estimating Conference
9. Self-Insurance Estimating Conference
10. Florida Retirement System Actuarial Assumption Conference

These conferences develop official estimates of revenues, expenditures, and various other impacts related to budgeting and taxation. All state agencies and the judicial branch must use the official results of the conference in carrying out their duties under the state planning and budgeting system; however, the Legislature is not bound to use the official consensus forecasts. Nevertheless, the Florida Legislature has consistently used the results of these conferences in its official duties.<sup>1</sup> Each estimate considers a baseline forecast and an assumption that "current law, current administration"<sup>2</sup> remains in effect for the duration of the forecast period unless otherwise provided by law or decided by unanimous

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<sup>1</sup> Further information on the consensus forecasting process can be found on the Office of Economic and Demographic Research website. <http://edr.state.fl.us/conferences/confprocess.pdf> (last visited March 10, 2010)

<sup>2</sup> Section 216.134(1), F.S.

agreement of the principals. Section 216.133(3), F.S., defines "consensus" as "the unanimous consent of all of the principals." All of the principals must agree on the forecasts before they are finalized.

The voting members of each conference (i.e., the principals) consist of one representative from professional staff of the Governor's Office, the coordinator of the Office of Economic and Demographic Research, professional staff of the Senate designated by the President of the Senate, and professional staff of the House of Representatives designated by the Speaker of the House of Representatives. Non-voting participants may be requested to generate alternative forecasts and provide additional information for the conference. The conference principals consider information provided by participants in the development of its "official information."<sup>3</sup> All the conferences are open, public meetings.

A conference session may be convened at the call of any principal to review and reconsider any official information of the conference that a principal feels is no longer valid. Additionally, s. 216.137(1)(d), F.S., allows any principal to call a special impact session of the conference to develop official information that reflects the impact of proposed law changes related to a conference's subject area.

The Revenue Estimating Conference meets throughout the year to update estimates of various revenue sources. This conference also meets several times before, during, and after legislative sessions to estimate the anticipated state and local government revenue impacts of proposed or current law changes. Many of these impacts are analyzed by the conference numerous times before a final estimate is adopted. In 2009, the Revenue Estimating Conference completed 343 analyses: 240 (70%) analyses during the 60 day session with 140 (41%) analyses in the final 30 days.

Current law does not specify particular methods, techniques, or approaches to developing the official estimates of the consensus estimating conferences.

## **PROPOSED CHANGES**

This bill requires the Office of Economic and Demographic Research to perform a longitudinal analysis of the economic impact of legislation that amends provisions of state law that relate to taxation. Findings of this analysis are to be released in three annual reports as follows:

1. The first report is due to the President of the Senate and the Speaker of the House of Representatives by September 1 of the year in which the legislation is enacted. This report will include an assessment of the likely economic impact of the legislation and a listing of the analytical measures to be used.
2. Additional annual reports will address any changes in the measures detected over the prior year and will provide an assessment of any deviations from the likely economic impact previously identified.
3. The final report will include an in-depth comparison of the predictions contained within the cost-benefit analysis conducted prior to the policy decision with the actual results after implementation.

This bill also requires the Office of Economic and Demographic Research to develop protocols and procedures for the consistent development of cost-benefit and return-on-investment techniques and their application to issues for consideration of special impact by Revenue Estimating Conferences. These protocols and procedures recommendations will be provided to the President of the Senate and the Speaker of the House of Representatives by December 1, 2010.

## **B. SECTION DIRECTORY:**

**Section 1:** By law, requires the Office of Economic and Demographic Research to perform a longitudinal analysis of the economic impact of legislation that amends provisions of state law that relate to taxation.

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<sup>3</sup> Section 216.133, F.S., defines "Official information" as data, forecasts, estimates, analyses, studies, and other information which the principals of a consensus estimating conference unanimously adopt for the purpose of the state planning and budgeting system.

**Section 2:** By law, requires the Office of Economic and Demographic Research to develop protocols and procedures for the consistent development of cost-benefit and return-on-investment techniques and their application to issues for consideration of special impact by Revenue Estimating Conferences.

**Section 3:** Provides that the bill will take effect upon becoming a law.

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

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

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS below.

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

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

The bill will likely create the need for additional staffing, hardware, software and data resources for the Office of Economic and Demographic Research. The cost is not known at this time. It will depend in part on the protocols and procedures developed for the expanded analysis process.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

HB 121

2010

1                   A bill to be entitled  
 2           An act relating to economic and demographic research;  
 3           requiring the Office of Economic and Demographic Research  
 4           to annually perform certain economic impact analyses of  
 5           certain legislation; requiring reports to the Legislature;  
 6           providing reporting requirements; requiring the office to  
 7           develop certain protocols and procedures for certain  
 8           purposes; specifying requirements; requiring a report to  
 9           the Legislature; providing an effective date.

10  
 11 Be It Enacted by the Legislature of the State of Florida:

12  
 13           Section 1. (1) Each year, the Office of Economic and  
 14 Demographic Research shall perform a longitudinal analysis of  
 15 the economic impact of legislation that amends provisions of the  
 16 laws of this state relating to taxation. Findings of the  
 17 analysis shall be released in three annual reports. The first  
 18 report shall be due to the President of the Senate and the  
 19 Speaker of the House of Representatives by September 1 of the  
 20 year in which the legislation is enacted and shall include an  
 21 assessment of the likely impact of the legislation and a listing  
 22 of the analytical measures to be used. The remaining annual  
 23 reports shall address any changes in the measures detected over  
 24 the prior year and shall provide an assessment of any deviations  
 25 from the likely impact previously identified. The final report  
 26 shall also include an in-depth comparison of the predictions  
 27 contained within the cost-benefit analysis conducted prior to

HB 121

2010

28 | the policy decision with the actual results after  
 29 | implementation.

30 | (2) The Office of Economic and Demographic Research shall  
 31 | develop protocols and procedures for the consistent development  
 32 | of cost-benefit and return-on-investment techniques and their  
 33 | application to issues for consideration of special impact by  
 34 | Revenue Estimating Conferences. At a minimum, the protocols and  
 35 | procedures must address appropriate economic techniques to use  
 36 | in the analysis, the format for reporting results, and proposed  
 37 | linkages to the appropriations and revenue-forecasting  
 38 | processes, including any statutory changes that would be needed.  
 39 | Such linkages must be consistent with the constitutional  
 40 | requirement for a balanced budget. The office shall submit a  
 41 | report of its findings and recommendations to the President of  
 42 | the Senate and the Speaker of the House of Representatives by  
 43 | December 1, 2010.

44 | Section 2. This act shall take effect upon becoming a law.



COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 121 (2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED           \_\_\_ (Y/N)  
ADOPTED AS AMENDED       \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION   \_\_\_ (Y/N)  
FAILED TO ADOPT         \_\_\_ (Y/N)  
WITHDRAWN         \_\_\_ (Y/N)  
OTHER               \_\_\_

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1 Council/Committee hearing bill: Finance & Tax Council  
2 Representatives Poppell, Crisafulli and Hudson offered the  
3 following:  
4

5       **Amendment (with title amendment)**

6       Remove everything after the enacting clause and insert:

7       Section 1. Section 216.138, Florida Statutes, is created  
8 to read:

9       216.138 Authority to request additional analysis of  
10 legislation.—The President of the Senate or the Speaker of the  
11 House of Representatives may request special impact sessions of  
12 consensus estimating conferences to evaluate proposed  
13 legislation based on tools and models not generally employed by  
14 the conferences, including cost-benefit, return-on-investment,  
15 or dynamic scoring techniques, when suitable and appropriate for  
16 the legislation being evaluated. Unless exempt from s.  
17 119.07(1), information used to develop the analyses shall be  
18 available to the public.

Amendment No. 1

19           Section 2. The Office of Economic and Demographic  
20 Research, acting in consultation with the principals of the  
21 consensus estimating conferences and after receiving public  
22 input, shall develop protocols and procedures necessary to  
23 implement s. 216.138, Florida Statutes. At a minimum, the  
24 protocols and procedures to be used for evaluating specific  
25 proposed legislation shall include cost-benefit, return-on-  
26 investment, and dynamic scoring techniques and may include  
27 additional, appropriate economic techniques. Additionally, the  
28 protocols and procedures must address the format for reporting  
29 results and provide proposed linkages to the appropriations and  
30 revenue forecasting processes, including any statutory changes  
31 that may be needed. The linkages must be consistent with the  
32 constitutional requirement for a balanced budget. The office  
33 shall submit a report of its findings and recommendations to the  
34 President of the Senate and the Speaker of the House of  
35 Representatives by December 1, 2010. Subject to approval by the  
36 President of the Senate and the Speaker of the House of  
37 Representatives following the submission of the report, the  
38 protocols and procedures shall be used to the extent feasible  
39 for the analysis of specific proposed legislation by consensus  
40 estimating conferences as provided in s. 216.138, Florida  
41 Statutes, unless and until such approval is subsequently  
42 affirmatively revoked.

43           Section 3. Section 216.133, Florida Statutes, is amended  
44 to read:

45           216.133 Definitions; ss. 216.133-216.138 ~~216.133-216.137.~~-  
46 As used in ss. 216.133-216.138 ~~216.133-216.137:~~

Amendment No. 1

47 (1) "Consensus estimating conference" includes the  
48 Economic Estimating Conference, the Demographic Estimating  
49 Conference, the Revenue Estimating Conference, the Education  
50 Estimating Conference, the Criminal Justice Estimating  
51 Conference, the Occupational Forecasting Conference, the Early  
52 Learning Programs Estimating Conference, the Self-Insurance  
53 Estimating Conference, the Florida Retirement System Actuarial  
54 Assumption Conference, and the Social Services Estimating  
55 Conference.

56 (2) "Official information" means the data, forecasts,  
57 estimates, analyses, studies, and other information which the  
58 principals of a consensus estimating conference unanimously  
59 adopt for purposes of the state planning and budgeting system.

60 (3) "Consensus" means the unanimous consent of all of the  
61 principals of a consensus estimating conference.

62 Section 4. This act shall take effect upon becoming a law.  
63  
64

65 -----  
66 **T I T L E A M E N D M E N T**

67 Remove the entire title and insert:

68 A bill to be entitled  
69 An act relating to cost-benefit, return-on-investment, and  
70 dynamic scoring techniques; creating s. 216.138, F.S.;  
71 authorizing the President of the Senate or the Speaker of the  
72 House of Representatives to request special impact sessions of  
73 consensus estimating conferences to evaluate proposed  
74 legislation based on specified techniques; providing for the

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 121 (2010)

Amendment No. 1

75 information used in the evaluations to be available to the  
76 public unless otherwise exempt from disclosure; requiring the  
77 Office of Economic and Demographic Research to develop protocols  
78 and procedures to be used by the consensus estimating  
79 conferences when evaluating proposed legislation; establishing  
80 minimum requirements; requiring a report to the Legislature;  
81 requiring the use of the protocols and procedures following  
82 legislative approval until such approval is affirmatively  
83 revoked; amending s. 216.133, F.S.; conforming a cross-reference  
84 to changes made by the act; providing an effective date.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 187 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Rouson and others
TIED BILLS: IDEN./SIM. BILLS: SB 366

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Finance & Tax Council, Aldridge A, Langston [Signature]

SUMMARY ANALYSIS

Generally, under current law, the retail sale of tangible personal property is subject to six percent sales tax, plus any local option sales taxes that may apply in a given county.

The bill creates a new 25 percent surcharge, separate and apart from the state sales tax and local option sales taxes, on the sale of the following items, regardless of whether such items are sold for legal purposes or in violation of the law:

- Metal, wooden, acrylic, glass, stone, plastic, or ceramic smoking pipes, with or without screens, permanent screens, or punctured metal bowls
• Water pipes
• Carburetion tubes and devices
• Chamber pipes
• Carburetor pipes
• Electric pipes
• Air-driven pipes
• Chillums
• Bonges
• Ice pipes or chillers

The Revenue Estimating Conference has not estimated the revenue impact of the bill.

The bill has an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### CURRENT SITUATION

###### Taxes

Generally, the retail sale of tangible personal property is subject to a six percent state sales tax<sup>1</sup>, plus any discretionary sales surtaxes imposed by the county in which the sale occurred<sup>2</sup>. These taxes apply to the retail sale of smoking pipes and devices.

###### Drug Paraphernalia

###### Federal Law

Federal law defines "drug paraphernalia" as any "equipment, product, or material of any kind which is primarily intended or designed for use in . . . injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful . . . . [Drug paraphernalia] includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, [etc.] into the body."<sup>3</sup>

The statute lists items that constitute drug paraphernalia, including items listed in the bill, and more.<sup>4</sup> The same section makes it illegal for any person to sell or offer for sale drug paraphernalia.<sup>5</sup> It does not apply to any person authorized by local, state, or federal law to manufacture, possess, or distribute such items.<sup>6</sup> It also does not apply to any item that is imported, exported, transported, or sold through the mail or by any other means, and traditionally intended for use with tobacco products, including any pipe, paper, or accessory.<sup>7</sup>

---

<sup>1</sup> See s. 212.05(1), F.S.

<sup>2</sup> See s. 212.054, F.S.

<sup>3</sup> 21 U.S.C. § 863(d) (2002).

<sup>4</sup> See id.

<sup>5</sup> 21 U.S.C. § 863(a) (2002).

<sup>6</sup> 21 U.S.C. § 863(f) (2002).

<sup>7</sup> See id.

## Florida Law

In Florida, the definition of “drug paraphernalia” also provides an example list of items that constitute drug paraphernalia.<sup>8</sup> Florida law also similarly includes an element of intent whereby a court, jury, or other authority, must consider specific factors identified in statute when determining in a criminal case whether an object constitutes drug paraphernalia. Such factors include proximity of the object in time and space to a controlled substance, the existence of residue of controlled substances on the object, and expert testimony concerning its use.<sup>9</sup>

In Florida, it is a first-degree misdemeanor to use or possess drug paraphernalia to produce a controlled substance or introduce a controlled substance into the body<sup>10</sup>, or to advertise objects in a publication when it is known or reasonable to know that the purpose is to promote the sale of such objects for use as drug paraphernalia.<sup>11</sup>

It is a third-degree felony to deliver, manufacture with intent to deliver, or possess with intent to deliver drug paraphernalia when it is known or reasonable to know that it will be used to produce a controlled substance or introduce a controlled substance into the body.<sup>12</sup> It is also a third-degree felony to use, possess with the intent to use, or manufacture with the intent to use drug paraphernalia when it is known or reasonable to know that it will be used to transport a controlled substance or contraband as defined in s. 932.701(2)(a)1, F.S.<sup>13</sup>

It is a second-degree felony to deliver drug paraphernalia to a minor when it is known or reasonable to know that it will be used to produce or introduce into the body a controlled substance.<sup>14</sup>

The Florida Department of Corrections provides substance abuse treatment services to prison inmates and individuals subject to supervision and correctional programs who struggle with drug addiction.<sup>15</sup> These services are funded by recurring general appropriation funds and grant money through the Florida Department of Law Enforcement.

## **PROPOSED CHANGES**

The bill creates a new, and separate, 25 percent surcharge on the sale of the following items, regardless of whether such items are sold for legal purposes or in violation of the law:

- Metal, wooden, acrylic, glass, stone, plastic, or ceramic smoking pipes, with or without screens, permanent screens, or punctured metal bowls
- Water pipes
- Carburetion tubes and devices
- Chamber pipes
- Carburetor pipes
- Electric pipes
- Air-driven pipes
- Chillums
- Bongs
- Ice pipes or chillers

---

<sup>8</sup> See s. 893.145, F.S.

<sup>9</sup> See s. 893.146, F.S.

<sup>10</sup> See s. 893.147(1), F.S.

<sup>11</sup> See s. 893.147(5), F.S.

<sup>12</sup> See s. 893.147(2), F.S.

<sup>13</sup> See s. 893.147(4), F.S.

<sup>14</sup> See s. 893.147 (3), F.S.

<sup>15</sup> FLA. DEP'T OF CORR., SUBSTANCE ABUSE REPORT (2009) (as accessed at <http://www.dc.state.fl.us/pub/subabuse/inmates/07-08/index.html>).



The bill provides that collections of this surtax, less administrative costs, shall be distributed on a monthly basis to the Department of Corrections.

The bill provides that administrative costs for the Department of Revenue may not exceed three percent of the collections of the surtax and must be used to pay the administrative costs incurred in the collection, administration, enforcement, and distribution of the surtax.

**B. SECTION DIRECTORY:**

**Section 1:** Creates s. 212.05995, F.S., imposing a surcharge on the sale of certain smoking pipes and devices.

**Section 2:** Provides an effective date of July 1, 2010.

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

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

1. Revenues:

The Revenue Estimating Conference has not estimated the revenue impact of the bill. However, the bill is expected to have a positive state revenue impact.

2. Expenditures:

None.

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

1. Revenues:

The Revenue Estimating Conference has not estimated the revenue impact of the bill.

2. Expenditures:

None.

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

**D. FISCAL COMMENTS:**

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

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

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

1                   A bill to be entitled  
 2           An act relating to the tax on sales, use, and other  
 3           transactions; creating s. 212.05995, F.S.; imposing a  
 4           surtax on the sales of certain smoking pipes and devices;  
 5           specifying the surtax is in addition to all applicable  
 6           sales and use taxes; specifying distribution of surtax  
 7           proceeds to the Department of Corrections for certain  
 8           purposes; providing for deduction of administrative costs;  
 9           providing a limitation; providing an effective date.

10  
 11   Be It Enacted by the Legislature of the State of Florida:

12  
 13           Section 1. Section 212.05995, Florida Statutes, is created  
 14   to read:

15           212.05995 Special provisions; smoking pipes and devices.--

16           (1) A surtax at the rate of 25 percent is charged on the  
 17           sales price of any of the following items, regardless of whether  
 18           such items are sold for legal purposes or in violation of the  
 19           law:

20           (a) Metal, wooden, acrylic, glass, stone, plastic, or  
 21           ceramic smoking pipes, with or without screens, permanent  
 22           screens, or punctured metal bowls.

23           (b) Water pipes.

24           (c) Carburetion tubes and devices.

25           (d) Chamber pipes.

26           (e) Carburetor pipes.

27           (f) Electric pipes.

28           (g) Air-driven pipes.

29        (h) Chillums.

30        (i) Bongs.

31        (j) Ice pipes or chillers.

32        (2) The surtax shall be in addition to all applicable  
 33 taxes imposed by this chapter.

34        (3) Collections received by the department from this sales  
 35 surtax, less costs of administration of this section, shall be  
 36 paid and returned monthly to the Department of Corrections for  
 37 use in accordance with the provisions of this section.

38        Administrative costs may not exceed 3 percent of the collections  
 39 and shall be used to pay the administrative costs incurred in  
 40 the collection, administration, enforcement, and distribution of  
 41 such tax.

42        Section 2. This act shall take effect July 1, 2010.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED           \_\_\_ (Y/N)  
ADOPTED AS AMENDED       \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION   \_\_\_ (Y/N)  
FAILED TO ADOPT         \_\_\_ (Y/N)  
WITHDRAWN         \_\_\_ (Y/N)  
OTHER             \_\_\_\_\_

---

1 Council/Committee hearing bill: Finance & Tax Council  
2 Representative Rouson offered the following:

3  
4       **Amendment (with title amendment)**

5       Remove everything after the enacting clause and insert:

6       Section 1. Section 569.0073, Florida Statutes, is created  
7 to read:

8       569.0073 Special provisions; smoking pipes and smoking  
9 devices.-

10       (1) It is unlawful for any person to offer for sale at  
11 retail any of the items listed in subsection (2) unless such  
12 person:

13       (a) Has a retail tobacco products dealer permit under s.  
14 569.003. The provisions of this chapter apply to any person that  
15 offers for retail sale any of the items listed in subsection  
16 (2).

17       (b) Derives at least 75 percent of its annual gross  
18 revenues from the retail sale of cigarettes, cigars, and other  
19 tobacco products.

Amendment No. 1

20 (c) Derives no more than 25 percent of its annual gross  
21 revenues from the retail sale of the items listed in subsection  
22 (2).

23 (2) The following smoking pipes and smoking devices are  
24 subject to the provisions of this section:

25 (a) Metal, wooden, acrylic, glass, stone, plastic, or  
26 ceramic smoking pipes, with or without screens, permanent  
27 screens, or punctured metal bowls.

28 (b) Water pipes.

29 (c) Carburetion tubes and devices.

30 (d) Chamber pipes.

31 (e) Carburetor pipes.

32 (f) Electric pipes.

33 (g) Air-driven pipes.

34 (h) Chillums.

35 (i) Bongs.

36 (j) Ice pipes or chillers.

37 (3) Any person who violates this section commits a  
38 misdemeanor of the first degree, punishable as provided in s.  
39 775.082 or s. 775.083.

40 Section 2. This act shall take effect July 1, 2010.

41

42

43 **T I T L E A M E N D M E N T**

44 Remove the entire title and insert:

45 A bill to be entitled

46 An act relating to retail sales of smoking pipes and  
47 smoking devices; creating s. 569.0073, F.S.; prohibiting

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 187 (2010)

Amendment No. 1

48 retail sales of certain smoking pipes and smoking devices  
49 under certain circumstances; specifying criteria for the  
50 lawful sales of such items; providing a criminal penalty  
51 for unlawful sales of such items; providing an effective  
52 date.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 557 Heavy Equipment Rental Property
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee, Workman
TIED BILLS: IDEN./SIM. BILLS: SB 1170

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: Insurance, Business & Financial Affairs Policy Committee; 12 Y, 0 N, As CS; Livingston; Cooper. Row 2: Finance & Tax Council; Diez-Arguelles; Langston.

SUMMARY ANALYSIS

The bill authorizes a person who engages in the business of renting heavy equipment under short-term rental agreements to collect a "tangible personal property tax recovery fee" on the rental of heavy equipment.

The bill provides a method for determining the amount of the fee. The rate of the recovery fee may not exceed the rate of the tangible personal property tax imposed by the county.

The bill provides definitions of "heavy equipment property" and "short term rental agreement."

The bill is not anticipated to have a fiscal impact on state or local governments.

The effective date of the bill is July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Florida law provides for ad valorem taxation of real and tangible personal property by local governments, including school districts and special districts authorized to levy ad valorem taxes (property taxes).

Tangible personal property (TPP) is statutorily defined to mean all goods, chattels, and other articles of value (not including most vehicular items) capable of manual possession and whose chief value is intrinsic to the article itself.<sup>1</sup> With the exception of household goods and inventory, TPP is subject to property taxes.

Owners of TPP subject to property tax are required to file a return indicating the value of the TPP subject to tax by April 1 of each year.<sup>2</sup>

The amount of tax owed by the owner of TPP is determined by multiplying the value of the TPP by the sum of the millage rates (tax rates)<sup>3</sup> imposed by all the taxing authorities authorized to levy property taxes where the property is physically present on January 1.<sup>4</sup> Special rules apply to TPP that may be in different locations throughout the year. Generally, the location for tax purposes is where the property is kept for use or storage or where it is consistently returned for use and storage.<sup>5</sup>

Currently, Chapter 196, F.S., does not contain any provision granting specific authority to companies that rent heavy equipment to charge a fee designed to recover annual tangible personal property taxes paid on rental TPP.

---

<sup>1</sup> Sec. 192.001(11)(d), F.S.

<sup>2</sup> Secs. 193.052 and 193.062, F.S.

<sup>3</sup> Property tax rates are expressed in terms of mills. One mill can also be expressed as 1/1000, .001, or .1 percent. For example, if the sum of the rates imposed by all taxing authorities is 20 mills, the taxpayer will pay a tax equal 2% of the TPP's value.

<sup>4</sup> Sec. 193.032, F.S., sets for the rules for determining the "situs," or location of property for tax purposes.

<sup>5</sup> Id.

## Effect of Proposed Changes

The bill authorizes a person who engages in the business of renting heavy equipment under short-term rental agreements to collect a "tangible personal property tax recovery fee" on the rental of heavy equipment. The bill states that "the purpose of the fee is to allow the owner of the heavy equipment to recover the tangible personal property taxes imposed on such equipment." The amount of the fee must be disclosed in the rental agreement.

The bill provides that the rate of the recovery fee may not exceed the rate of the tangible personal property tax imposed by the county in which the equipment rental business is located.

The bill provides a definition of the term "heavy equipment property" to mean "industrial or construction equipment and includes, but is not limited to, equipment described under North American Industry Classification System (NAICS) code 532412 . . ." NAICS code 532412, states:

53241 Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing

This industry comprises establishments primarily engaged in renting or leasing one or more of the following without operators: heavy construction, off-highway transportation, mining, and forestry machinery and equipment. Establishments in this industry may rent or lease products, such as aircraft, railroad cars, steamships, tugboats, bulldozers, earthmoving equipment, well-drilling machinery and equipment, or cranes.<sup>6</sup>

Finally, the bill provides that "short-term rental agreement" means "only a lease or rental agreement entered into for a term of less than 365 days or an at-will contract that does not specify the length of time of the contract. The term does not include any extension or renewal of a lease contract with an original term of 1 year or more."

### B. SECTION DIRECTORY:

Section 1. Creates a provision of general law to authorize heavy equipment rental companies to charge and collect a fee to recover annual tangible personal property taxes imposed on the rental equipment.

Section 2. Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None anticipated.

2. Expenditures:

None. The DOR anticipates no operational impact resulting from the provisions of the bill.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None anticipated.

2. Expenditures:

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<sup>6</sup> <http://www.census.gov/econ/census02/naics/sector53/53241.htm>, February 9, 2010.

None anticipated.

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

The DOR notes that "The fee proposed by this section would be paid by one private party to another private party. This fee would need to be included in the private contractual arrangement of the two private parties."<sup>7</sup>

**D. FISCAL COMMENTS:**

The DOR comments that "This fee would not be paid to, paid by, or administered by the property appraiser, tax collector, or any other public entity involved in assessing, administering, or collection of property taxes. The DOR has no authority to administer or enforce the fees collected by rental companies."<sup>8</sup>

Under current law, the entire amount paid for the rental of TPP is subject to sales tax under Chapter 212, F.S.<sup>9</sup> Since the fee proposed by this bill will be part of the amount paid for the rental, the amount of the fee will be subject to sales tax.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

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

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

**2. Other:**

None noted.

**B. RULE-MAKING AUTHORITY:**

None.

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

The intent of the bill appears to encompass property taxes levied by all taxing authorities that levy property taxes. The use of the word "county" in the bill may limit the provisions of the bill to taxes levied by county government only.

The bill does not specify the time periods needed to measure how the taxes are being recovered.

There is no guarantee that the fee proposed by the bill will result in the rental business recovering the amount of property taxes paid on the rental property. Based on the fee rate described in the bill, the business may recover more, or less, than what it paid in property taxes, depending on how many times and at what rental charges the equipment is rented. For example, if the business owns TPP valued at \$50,000 and the total property tax rate is 20 mills (2%), it will pay \$1,000 in taxes. In order to recover this exact amount through the recovery fee, the business will have to receive exactly \$50,000 in rental charges during some unspecified period.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

<sup>7</sup> DOR 2010 Bill Analysis, HB 557, DOR Legislative and Cabinet Services, dated 02/02/2010, page 1, available in committee files.

<sup>8</sup> Id.

<sup>9</sup> See s. 212,05(1)(c), F.S.

On February 17, 2010, the Insurance, Business, & Financial Affairs Policy Committee took up the bill, adopted a strike all amendment, and passed the bill as a Committee Substitute by a vote of 12-0.

The CS differs from the bill, as filed, in the following areas:

- creates an unnumbered section of the statutes;
- requires disclosure of the fee in the rental agreement;
- bases the calculation of the tax on the county where the business is located rather than the county where the rental property is located; and
- defines "short term rental" to mean an agreement for a term of less than one year.

1 A bill to be entitled

2 An act relating to tangible personal property tax  
 3 transparency; authorizing persons who rent certain heavy  
 4 equipment to collect a tangible personal property tax  
 5 recovery fee on certain heavy equipment property rentals  
 6 for certain purposes; requiring disclosure of the fee in  
 7 the rental agreement; providing a limitation; providing  
 8 definitions; providing an effective date.

9  
 10 Be It Enacted by the Legislature of the State of Florida:

11  
 12 Section 1. Heavy equipment rental; tangible personal  
 13 property tax recovery fee.—A person who engages in the business  
 14 of renting heavy equipment under short-term rental agreements  
 15 may collect a tangible personal property tax recovery fee on the  
 16 rental of heavy equipment. The purpose of the fee is to allow  
 17 the owner of the heavy equipment to recover the tangible  
 18 personal property taxes imposed upon such equipment. The amount  
 19 of the fee must be disclosed in the rental agreement. The rate  
 20 of the recovery fee may not exceed the rate of the tangible  
 21 personal property tax imposed on such property by the county in  
 22 which the equipment rental business is located. For purposes of  
 23 this section, the term "heavy equipment property" means  
 24 industrial or construction equipment and includes, but is not  
 25 limited to, equipment described under North American Industry  
 26 Classification System (NAICS) code 532412, as published in 2007  
 27 by the Office of Management and Budget, Executive Office of the  
 28 President. For purposes of this section, the term "short-term

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29 rental agreement" means only a lease or rental agreement entered  
30 into for a term of less than 365 days or an at-will contract  
31 that does not specify the length of time of the contract. The  
32 term does not include any extension or renewal of a lease  
33 contract with an original term of 1 year or more.

34 Section 2. This act shall take effect July 1, 2010.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

---

1 Council/Committee hearing bill: Finance & Tax Council

2 Representative(s) Workman offered the following:

3  
4 **Amendment**

5 Remove lines 19-22 and insert:

6 of the fee must be disclosed in the rental agreement. The rate  
7 of the recovery fee shall be the prior year's tax rate levied on  
8 the tangible personal property at the business location. The  
9 total recovery fee collected at each business location during a  
10 calendar year shall not exceed the total tangible personal  
11 property tax levied upon the location's tangible personal  
12 property in that calendar year. In the event that a business  
13 location collects any amount in excess of the personal property  
14 taxes levied upon the tangible personal property located at the  
15 business location, the business location shall credit or refund  
16 the overage back to each customer. For purposes of





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 637  
SPONSOR(S): Dorworth  
TIED BILLS:

Admissions Tax

IDEN./SIM. BILLS: SB 1128

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Finance & Tax Council		Aldridge <i>W</i>	Langston <i>W</i>
2)	Policy Council			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The bill will create a new exemption from sales tax on admissions to:

- A National Basketball Association all-star game
- A National Hockey League all-star game
- The Home Run Derby held by Major League Baseball prior to the Major League Baseball all-star game
- The National Football League's Pro Bowl
- Any events surrounding the all-star games for the National Basketball Association and the National Hockey League.

The Revenue Estimating Conference has not estimated the revenue impact of the bill.

The bill has an effective date of July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### CURRENT SITUATION

Section 212.04, F.S., imposes a six percent sales tax on admissions. Section 212.04(2)(a), provides exemptions from the sales tax on admissions. Among these are exemptions for admissions to:

- The National Football League championship game
- Any semifinal game or championship game of a national collegiate tournament
- A Major League Baseball all-star game
- Any postseason collegiate football game sanctioned by the National Collegiate Athletic Association

##### Background

The state of Florida has hosted the following events:

<u>Year</u>	<u>Event</u>	<u>Location</u>	<u>Attendance</u>
1990	NBA All-Star Game	Miami	14,810
1992	NBA All-Star Game	Orlando	14,272
1999	NHL All-Star Game	Tampa	19,758
2003	NHL All-Star Game	Sunrise	19,250
2010	NFL Pro Bowl	Miami Gardens	70,697

The Orlando Business Journal has reported that Orange County is in the bidding process for the 2012 National Basketball Association All-Star Game.<sup>1</sup>

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<sup>1</sup>" 2012 NBA All-Star Game may come to Orlando's Amway Center," Orlando Business Journal, Dec 11, 2009, <http://orlando.bizjournals.com/orlando/stories/2009/12/14/story1.html>

## PROPOSED CHANGES

The bill provides that admissions to the following events are also exempt from sales tax:

- A National Basketball Association all-star game
- A National Hockey League all-star game
- The Home Run Derby held by Major League Baseball prior to the Major League Baseball All-Star Game
- The National Football League's Pro Bowl
- Any events surrounding the all-star games for the National Basketball Association and the National Hockey League.

### B. SECTION DIRECTORY:

**Section 1:** Amends s. 212.04(2)(a)4., F.S., providing an exemption from the sales tax on admissions for specified events.

**Section 2:** Provides an effective date of July 1, 2010.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Revenue Estimating Conference has not estimated the revenue impact of the bill.

#### 2. Expenditures:

The Department of Revenue estimates an insignificant operational impact.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The Revenue Estimating Conference has not estimated the revenue impact of the bill.

#### 2. Expenditures:

The Department of Revenue estimates an insignificant operational impact.

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

If the bill encourages the newly exempt events to be held in Florida, then positive job and income impacts can be expected in the communities in which such events may be held.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

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

The bill reduces the authority that municipalities or counties have to raise revenues in the aggregate through local option sales taxes. As noted above, the Revenue Estimating Conference

has not estimated the revenue impact of the bill. Therefore, no definitive statement can be made at this time regarding whether this bill will be a mandate, requiring a 2/3ds vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2           An act relating to the admissions tax; amending s. 212.04,  
 3           F.S.; expanding an exemption from the tax for certain  
 4           sports championship or all-star games, certain other  
 5           professional sporting events, and events surrounding  
 6           certain professional sporting events; providing an  
 7           effective date.

8  
 9   Be It Enacted by the Legislature of the State of Florida:

10  
 11       Section 1. Paragraph (a) of subsection (2) of section  
 12       212.04, Florida Statutes, is amended to read:

13           212.04 Admissions tax; rate, procedure, enforcement.—  
 14           (2)(a)1. No tax shall be levied on admissions to athletic  
 15       or other events sponsored by elementary schools, junior high  
 16       schools, middle schools, high schools, community colleges,  
 17       public or private colleges and universities, deaf and blind  
 18       schools, facilities of the youth services programs of the  
 19       Department of Children and Family Services, and state  
 20       correctional institutions when only student, faculty, or inmate  
 21       talent is used. However, this exemption shall not apply to  
 22       admission to athletic events sponsored by a state university,  
 23       and the proceeds of the tax collected on such admissions shall  
 24       be retained and used by each institution to support women's  
 25       athletics as provided in s. 1006.71(2)(c).

26           2.a. No tax shall be levied on dues, membership fees, and  
 27       admission charges imposed by not-for-profit sponsoring  
 28       organizations. To receive this exemption, the sponsoring

29 organization must qualify as a not-for-profit entity under the  
 30 provisions of s. 501(c)(3) of the Internal Revenue Code of 1954,  
 31 as amended.

32 b. No tax shall be levied on admission charges to an event  
 33 sponsored by a governmental entity, sports authority, or sports  
 34 commission when held in a convention hall, exhibition hall,  
 35 auditorium, stadium, theater, arena, civic center, performing  
 36 arts center, or publicly owned recreational facility and when  
 37 100 percent of the risk of success or failure lies with the  
 38 sponsor of the event and 100 percent of the funds at risk for  
 39 the event belong to the sponsor, and student or faculty talent  
 40 is not exclusively used. As used in this sub-subparagraph, the  
 41 terms "sports authority" and "sports commission" mean a  
 42 nonprofit organization that is exempt from federal income tax  
 43 under s. 501(c)(3) of the Internal Revenue Code and that  
 44 contracts with a county or municipal government for the purpose  
 45 of promoting and attracting sports-tourism events to the  
 46 community with which it contracts. This sub-subparagraph is  
 47 repealed July 1, 2009.

48 3. No tax shall be levied on an admission paid by a  
 49 student, or on the student's behalf, to any required place of  
 50 sport or recreation if the student's participation in the sport  
 51 or recreational activity is required as a part of a program or  
 52 activity sponsored by, and under the jurisdiction of, the  
 53 student's educational institution, provided his or her  
 54 attendance is as a participant and not as a spectator.

55 4. No tax shall be levied on admissions to the National  
 56 Football League championship game, on admissions to any

57 semifinal game or championship game of a national collegiate  
 58 tournament, or on admissions to a Major League Baseball,  
 59 National Basketball Association, or National Hockey League all-  
 60 star game, to the Home Run Derby held by Major League Baseball  
 61 prior to the Major League Baseball All-Star Game, to the  
 62 National Football League's Pro Bowl, and to any events  
 63 surrounding the all-star games for the National Basketball  
 64 Association and the National Hockey League.

65 5. A participation fee or sponsorship fee imposed by a  
 66 governmental entity as described in s. 212.08(6) for an athletic  
 67 or recreational program is exempt when the governmental entity  
 68 by itself, or in conjunction with an organization exempt under  
 69 s. 501(c)(3) of the Internal Revenue Code of 1954, as amended,  
 70 sponsors, administers, plans, supervises, directs, and controls  
 71 the athletic or recreational program.

72 6. Also exempt from the tax imposed by this section to the  
 73 extent provided in this subparagraph are admissions to live  
 74 theater, live opera, or live ballet productions in this state  
 75 which are sponsored by an organization that has received a  
 76 determination from the Internal Revenue Service that the  
 77 organization is exempt from federal income tax under s.  
 78 501(c)(3) of the Internal Revenue Code of 1954, as amended, if  
 79 the organization actively participates in planning and  
 80 conducting the event, is responsible for the safety and success  
 81 of the event, is organized for the purpose of sponsoring live  
 82 theater, live opera, or live ballet productions in this state,  
 83 has more than 10,000 subscribing members and has among the  
 84 stated purposes in its charter the promotion of arts education



85 in the communities which it serves, and will receive at least 20  
 86 percent of the net profits, if any, of the events which the  
 87 organization sponsors and will bear the risk of at least 20  
 88 percent of the losses, if any, from the events which it sponsors  
 89 if the organization employs other persons as agents to provide  
 90 services in connection with a sponsored event. Prior to March 1  
 91 of each year, such organization may apply to the department for  
 92 a certificate of exemption for admissions to such events  
 93 sponsored in this state by the organization during the  
 94 immediately following state fiscal year. The application shall  
 95 state the total dollar amount of admissions receipts collected  
 96 by the organization or its agents from such events in this state  
 97 sponsored by the organization or its agents in the year  
 98 immediately preceding the year in which the organization applies  
 99 for the exemption. Such organization shall receive the exemption  
 100 only to the extent of \$1.5 million multiplied by the ratio that  
 101 such receipts bear to the total of such receipts of all  
 102 organizations applying for the exemption in such year; however,  
 103 in no event shall such exemption granted to any organization  
 104 exceed 6 percent of such admissions receipts collected by the  
 105 organization or its agents in the year immediately preceding the  
 106 year in which the organization applies for the exemption. Each  
 107 organization receiving the exemption shall report each month to  
 108 the department the total admissions receipts collected from such  
 109 events sponsored by the organization during the preceding month  
 110 and shall remit to the department an amount equal to 6 percent  
 111 of such receipts reduced by any amount remaining under the  
 112 exemption. Tickets for such events sold by such organizations

113 shall not reflect the tax otherwise imposed under this section.

114 7. Also exempt from the tax imposed by this section are  
 115 entry fees for participation in freshwater fishing tournaments.

116 8. Also exempt from the tax imposed by this section are  
 117 participation or entry fees charged to participants in a game,  
 118 race, or other sport or recreational event if spectators are  
 119 charged a taxable admission to such event.

120 9. No tax shall be levied on admissions to any postseason  
 121 collegiate football game sanctioned by the National Collegiate  
 122 Athletic Association.

123 Section 2. This act shall take effect July 1, 2010.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED                   \_\_\_ (Y/N)  
ADOPTED AS AMENDED           \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION       \_\_\_ (Y/N)  
FAILED TO ADOPT               \_\_\_ (Y/N)  
WITHDRAWN               \_\_\_ (Y/N)  
OTHER                       \_\_\_\_\_

1 Council/Committee hearing bill: Finance & Tax Council  
2 Representative Dorworth offered the following:

**Amendment (with title amendment)**

Remove lines 62-64 and insert:

3  
4  
5  
6 National Football League's Pro Bowl, and the National Basketball  
7 Association's Rookie Challenge, Celebrity Game, 3-Point Shooting  
8 Contest, and Slam Dunk Challenge.

9  
10  
11 -----  
12 **T I T L E A M E N D M E N T**

Remove lines 5-6 and insert:

13 professional sporting events, and certain professional sport  
14 sponsored events; providing an  
15



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB FTC 10-03 Working Waterfront Property

**SPONSOR(S):** Finance & Tax Council

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

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Finance & Tax Council		Diez-Arguelles	Langston
1)				
2)				
3)				
4)				
5)				

**SUMMARY ANALYSIS**

This bill implements Article VII, section 4, and Article XII, section 30 of the Florida Constitution, and creates s. 193.704, F.S., providing guidelines to be used by property appraisers in determining the assessment of property classified as working waterfront property.

The bill provides definitions and eligibility criteria for property that may be classified as "working waterfront" for purposes of an exception from just valuation assessments. Working waterfront properties consist of: land used predominantly for commercial fishing; land that is accessible to the public and used for vessel launches into waters that are navigable; marinas and drystackes that are open to the public; water-dependent marine manufacturing facilities; water-dependent commercial fishing facilities; water-dependent marine vessel construction and repair facilities and their support facilities; and water-dependent facilities located in a county defined in s. 125.011(1), F.S., used for the commercial transportation of goods and people to and from foreign ports or used to provide towing, storage and salvage in support of such facilities.

The bill provides that property classified as working waterfront must be assessed on the basis of current use. The property appraiser is directed to use the income approach to valuation, with a specified capitalization rate calculation, if that approach is appropriate and adequate information is available to the property appraiser. If the income approach is not appropriate or if the information needed is not available to the property appraiser, the property appraiser is directed to value the property at its present cash value as if it were required to remain in its current use for the foreseeable future. In no event will the assessed value of the property exceed just value. The portion of any working waterfront property that is not entitled to be classified as working waterfront must be assessed separately as provided under s. 193.011, F.S.

The bill provides application procedures and provides penalties for failure to report a change in the use of property to other than as a working waterfront property.

The property appraiser is required to retain at his or her office a list by ownership of all applications for classification as working waterfront property the office has received, showing the acreage of the property; the full valuation under s. 193.011, F.S.; the value of the land under the provisions of this act; and whether or not the classification was granted.

The Revenue Estimating Conference has not considered the fiscal impact of this bill. Council staff estimates that the provisions of the constitutional amendment, as implemented by this bill, will reduce local government revenues by \$37.4 million in FY 2010-11 and by \$37.8 million in 2011-12.

The bill has an effective date of "upon becoming law," and applies retroactively to January 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Just Valuation of Real Property

Article VII, section 4 of the Florida Constitution generally requires all property to be assessed at just value for the purposes of ad valorem taxation. Just value has been interpreted to mean fair market value.<sup>1</sup> Property appraisers determine the just value or market value of real property through the consideration of eight factors in s. 193.011, F.S. This section states that, in arriving at just valuation as required under Article VII, section 4 of the State Constitution, the property appraiser shall take into consideration the following factors:

- (1) The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;
- (2) The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration the legally permissible use of the property, including any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes, concurrency requirements, and permits necessary to achieve highest and best use, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;
- (3) The location of said property;
- (4) The quantity or size of said property;
- (5) The cost of said property and the present replacement value of any improvements thereon;
- (6) The condition of said property;
- (7) The income from said property; and

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<sup>1</sup> *Walter v. Schuler*, 176 So.2d 4 (Fla. 1965)

(8) The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.<sup>2</sup>

### Exceptions to Just Valuation

Article VII, section 4 of the Florida Constitution also authorizes exceptions from the requirement that property be assessed at just value. Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes are exceptions that may be assessed solely on the basis of their character or use.<sup>3</sup> Tangible personal property held for sale as stock in trade and livestock may be assessed at a specified percentage of its value or totally exempted.<sup>4</sup> In addition, the "Save Our Homes" assessment limitation to the Florida Constitution provides a limitation on the amount by which assessments for homesteads may be changed on January 1 of each year.<sup>5</sup> Annual increases in assessments of certain nonhomestead properties are also limited.<sup>6</sup> Land used for conservation purposes must be assessed solely on the basis of character or use.<sup>7</sup> Counties and municipalities may also authorize historic properties to be assessed solely on the basis of character and use.<sup>8</sup> Counties may provide for a reduction in the assessed value of homestead property improvements made to accommodate parents or grandparents in an existing homestead.<sup>9</sup> The legislature may prohibit consideration of changes or improvements made to improve wind resistance and the installation of renewable energy source devices in the determination of just value.<sup>10</sup> The assessment of working waterfront properties must be based on the current use of the property.<sup>11</sup>

The Legislature may not classify property to be valued at less than just value, unless authority to do so is explicitly mentioned in the constitution.<sup>12</sup> Similarly, the Legislature may only grant property tax exemptions that are authorized in the constitution, and modifications to property tax exemptions must be consistent with the constitutional provision authorizing the exemption.<sup>13</sup>

### Constitutional Amendment on Ad Valorem Taxation for Working Waterfront Property

The Florida Taxation and Budget Reform Commission (TBRC), in accordance with Article XI, section 6 of the Florida Constitution, convened, held workshops and public meetings, and ultimately proposed several constitutional amendments for the 2008 ballot for approval or rejection by Florida voters. One of the TBRC's amendments approved by the voters was Amendment 6: *Assessment of Working Waterfront Property Based upon Current Use*. Amendment 6 added a new subsection to Article VII, section 4, and created Article XII, section 30, of the Florida Constitution.

The new subsection added to Article VII, section 4, of the Florida Constitution reads as follows:

---

<sup>2</sup> Section 193.011, F.S.

<sup>3</sup> Art. VII, section 4(a) of the State Constitution.

<sup>4</sup> Art. VII, section 4(c) of the State Constitution.

<sup>5</sup> Art. VII, section 4(d) of the State Constitution provides that changes in the prior year assessment may not exceed the lesser of three percent or the percent change in the Consumer Price Index.

<sup>6</sup> Art. VII, section 4(g) and (h) of the State Constitution provides that annual assessment changes may not exceed 10% of the prior year's assessment.

<sup>7</sup> Art. VII, section 4(b) of the State Constitution.

<sup>8</sup> Art. VII, section 4(e) of the State Constitution.

<sup>9</sup> Art. VII, section 4(f) of the State Constitution.

<sup>10</sup> Art. VII, section 4(i) of the State Constitution.

<sup>11</sup> Art. VII, section 4(j) of the State Constitution.

<sup>12</sup> See, e.g., *Valencia Center, Inc. v. Bystrom*, 543 So.2d 214 (Fla. 1989); *Interlachen Lakes Estates, Inc. v. Snyder*, 304 So. 2d 433 (1973).

<sup>13</sup> See, e.g., *Sebring Airport Authority v. McIntyre*, 783 So.2d 238 (Fla. 2001).

- (j)(1) The assessment of the following working waterfront properties shall be based upon the current use of the property:
- a. Land used predominantly for commercial fishing purposes.
  - b. Land that is accessible to the public and used for vessel launches into waters that are navigable.
  - c. Marinas and drystackes that are open to the public.
  - d. Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.
- (2) The assessment benefit provided by this subsection is subject to conditions and limitations and reasonable definitions as specified by the legislature by general law.

Article XII, section 30 of the Florida Constitution provides that the assessment of working waterfront property based on current use shall first apply to assessments for tax years beginning January 1, 2010.

### **Effect of Proposed Changes**

This bill implements Article VII, section 4, and Article XII, section 30 of the Florida Constitution, and creates s. 193.704, F.S., providing guidelines to be used by property appraisers in determining the assessment of property classified as working waterfront property.

The bill provides definitions for the following terms: "accessible to the public," "commercial fishing operation," "drystack," "land used predominantly for commercial fishing purposes," "marina," "marine manufacturing facility," "marine vessel construction and repair facility" "open to the public," "right-of-way," "support facility," "water-dependent," "waterfront," and "waters that are navigable."

Pursuant to the bill, the following waterfront properties are eligible for classification as working waterfront property:

- Land used predominantly for commercial fishing purposes.
- Land that is accessible to the public and used for vessel launches into waters that are navigable.
- Marinas and drystackes that are open to the public.
- Water-dependent marine manufacturing facilities.
- Water-dependent commercial fishing facilities.
- Water-dependent marine vessel construction and repair facilities and their support activities.
- Water-dependent facilities located in a county defined in s. 125.011(1) (currently Dade County) used for the commercial transportation of goods and people to and from foreign ports, or used to provide towing, storage and salvage in support of such properties.

Property classified as working waterfront must be assessed on the basis of current use. The property appraiser is directed to use the income approach to valuation, with a specified capitalization rate calculation, if that approach is appropriate and adequate information is available to the property appraiser. If the income approach is not appropriate or if the information needed is not available to the property appraiser, the property appraiser is directed to value the property at its present cash value as if it were required to remain in its current use for the foreseeable future. In no event may the assessed value of the property exceed just value.

When a parcel of property contains both uses eligible for assessment as working waterfront property and uses that are not eligible for such assessment, those portions of the property that are not eligible must be assessed separately at just value (fair market value).

A property owner or lessee must file an application for the classification with the property appraiser on or before March 1 of each year in the county where the property is located. A short form provided by the Florida Department of Revenue may be used for classification renewals. A property owner that misses the March 1 deadline waives the classification privilege. However, the property appraiser may grant the classification upon review of a late-filed application for property that is found to be qualified to receive the classification.



A property appraiser may request a county governing body grant a waiver of the annual renewal application requirement for property classified as working waterfront within the county. A majority of the county governing body may grant and revoke such a waiver.

Whenever ownership of property that is classified as working waterfront changes, the property ceases to be used as working waterfront, or the status of the owner or lessee changes so as to change the status of the property, a new application for classification as working waterfront must be filed with the property appraiser.

A property appraiser is required to remove the working waterfront classification from a property if the classified use has been abandoned or discontinued, or the use has shifted to an unclassified use. Such property must be assessed as provided in s. 193.011, F.S.

An owner of property classified as working waterfront that is not required to file an annual application must promptly notify the property appraiser whenever the use of the property or the status or condition of the owner changes so as to necessitate a change of the classification status of the property. In the event a property owner fails to provide notice, the property appraiser is authorized to examine the use of a subject property for the prior ten years to determine if the owner was entitled to receive the benefits of the classification. For any year the property appraiser determines that the owner was not entitled to the classification, the owner is subject to taxes due (based on a just value assessment) plus 15 percent interest per annum and a penalty of 50 percent of the additional taxes owed. A property appraiser making a determination that an owner is not entitled to the classification shall record a tax lien in the county where the property is located against any property owned by the working waterfront owner. When filed, the lien attaches to any property identified in the notice of tax lien owned by the person or entity that improperly received the classification. If the person against whom the notice of tax lien is filed does not own property in the county, the property appraiser is required to record a notice of tax lien on any property the person owns in any other county or counties in the state.

The property appraiser is required to retain at his or her office a list by ownership of all applications for classification as working waterfront property the office has received, showing:

- The acreage of the property;
- The full valuation under s. 193.011, F.S.;
- The value of the land under the provisions of this act; and
- Whether or not the classification was granted.

A property appraiser is required to notify a property owner of the denial of the classification application in writing on or before July 1 of the year for which the application was filed. The written notification shall advise the applicant of his or her right to appeal to the Value Adjustment Board (VAB) and include the appeal filing deadline.

A property owner whose application for classification is denied by the property appraiser may appeal to the VAB by filing a petition on or before the 25<sup>th</sup> day following the mailing of the assessment notice by the property appraiser, and paying a \$15 filing fee. If the petitioner is entitled to receive the classification, the VAB may grant the petition and classification. A denial of the petition by the VAB may be appealed to a circuit court. Property that has received a classification from the VAB or the circuit court is entitled to receive the classification in any subsequent year until such use is abandoned or the ownership changes in any manner, as provided herein. The property appraiser is required to notify the property owner no later than January 31 or each year to certify that the ownership and the use of the property have not changed. By rule, the Department of Revenue shall prescribe the form of the notice to be used by the property appraiser. Notice and certification may also be waived by a majority vote of the county governing body.

The Department of Revenue is authorized to adopt emergency rules to administer newly-created s. 193.704, F.S.

The bill contains a severability clause.

Finally, the bill provides an effective date of "upon becoming law," and provides for retroactive application to January 1, 2010. For the 2010 calendar year, the bill provides that an application for classification as working waterfront must be filed on or before July 1, instead of on or before March 1.

**B. SECTION DIRECTORY:**

Section 1 creates s. 193.704, F.S.

Section 2 amends s. 195.073, F.S., to add working waterfront property to the list of classifications used for tax assessment purposes.

Section 3 contains a severability clause.

Section 4 authorizes the Department of Revenue to adopt emergency rules to administer s. 193.704, F.S.

Section 5 provides that the act will take effect upon becoming law and applies retroactively to January 1, 2010, and provides for applications to be filed by July 1 in 2010.

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

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

1. Revenues:

None.

2. Expenditures:

The Department of Revenue will incur some costs to promulgate emergency rules.

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

1. Revenues:

The Revenue Estimating Conference (REC) has not considered this bill. The REC has estimated that the provisions of a similar bill (SB 1408) will reduce local government revenues (including schools) by \$44.2 million in FY 2010-11 and by \$44.7 million in FY 2011-12. Based on that estimate and the differences between SB 1408 and this bill, council staff estimates that the provision of the constitutional amendment, as implemented by this bill, will reduce local government revenues by \$37.4 million in FY 2010-11 and by \$37.8 million in FY 2011-12.

2. Expenditures:

Property Appraisers may incur additional costs to administer the provisions of the bill.

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

See Part D, FISCAL COMMENTS.

**D. FISCAL COMMENTS:**

According to the TBRC's Staff Analysis and Economic Impact Statement for Real Property Assessments for Working Waterfront Parcels, dated March 26, 2008, the effect of the amendment may result in the reduction of the property taxes on working waterfront properties, and thereby reduce pressure on these properties to convert to highest and best use.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill implements a mandatory constitutional provision; therefore, it is not a mandate.

2. Other:

Article VII, Section 4 of the Florida Constitution states that, "By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation . . ." Section 4 then continues with a number of subsections that provide for the assessment of specified types of property at less than just value.<sup>14</sup>

Florida courts have interpreted Article VII, Section 4 of the Florida Constitution to limit the ability of the legislature to create additional classifications of property that result in assessments at other than just value. For example, in one case the Supreme Court determined that a statute providing for the assessment of unsold platted land on the same basis as unplatted acreage until 60% of the lots were sold violated the constitutional provision requiring the just valuation of all property.<sup>15</sup> In another case, the Supreme Court determined that a statute providing that the property appraiser must appraise property subject to a long-term lease based on the highest and best use allowed under the lease, rather than on the unqualified highest and best use, violated the constitutional provision requiring just valuation.<sup>16</sup>

The bill contains a provision that classifies properties used for the transportation of goods and people to and from foreign ports, and other properties used to provide support to such properties, as working waterfront properties for assessment purposes. This provision may implicate Article VII, section 4 of the Florida Constitution and the court decisions interpreting the constitutional provision.

#### B. RULE-MAKING AUTHORITY:

The Department of Revenue is authorized to adopt emergency rules to administer the provisions of newly-created s. 193.704, F.S.

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

None.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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<sup>14</sup> See text accompanying footnotes 3-11 for a list of these types of properties. "Just value" has been interpreted by the courts to mean "fair market value." *Walter v. Schuler*, 176 So.2d 1348 (Fla. 1965).

<sup>15</sup> *Interlachen Lakes Estates, Inc. v. Snyder*, 304 So.2d 433 (1973).

<sup>16</sup> *Valencia Center, Inc. v. Bystrom*, 543 So.2d 214 (Fla. 1989).

1 A bill to be entitled  
 2 An act relating to working waterfront property; creating  
 3 s. 193.704, F.S.; defining terms; specifying property that  
 4 is eligible for classification as working waterfront  
 5 property; requiring the assessment of working waterfront  
 6 property based on current use; requiring an application  
 7 for classification of property as working waterfront  
 8 property; authorizing a property appraiser to approve an  
 9 application that is not filed by a certain deadline due to  
 10 extenuating circumstances; providing for the waiver of  
 11 annual application requirements; providing for the loss of  
 12 classification upon a change of ownership or use;  
 13 requiring that property owners notify the property  
 14 appraiser of changes in use or ownership of property;  
 15 imposing a penalty on a property owner who fails to notify  
 16 the property appraiser of an event resulting in the  
 17 unlawful or improper classification of property as working  
 18 waterfront property; requiring the imposition of tax liens  
 19 to recover penalties and interest; providing for the  
 20 assessment of a portion of property within a working  
 21 waterfront property which is not used as working  
 22 waterfront property; requiring that a property appraiser  
 23 make a list relating to applications to certify property  
 24 as working waterfront property; providing an appeal  
 25 process for an application that has been denied; amending  
 26 s. 195.073, F.S.; providing for the classification of land  
 27 as working waterfront property on an assessment roll;  
 28 providing a severability clause; providing emergency

29 rulemaking authority; providing for retroactive  
 30 application; providing an alternate application date for  
 31 2010; providing an effective date.

32

33 Be It Enacted by the Legislature of the State of Florida:

34

35 Section 1. Section 193.704, Florida Statutes, is created  
 36 to read:

37 193.704 Working waterfront property; definitions;  
 38 classification and assessment; denial of classification and  
 39 appeal.—

40 (1) DEFINITIONS.—For purposes of granting a working  
 41 waterfront property classification under this section for  
 42 January 1, 2010, and thereafter, the term:

43 (a) "Accessible to the public" means routinely available  
 44 to the public from sunrise to sunset, with or without charge,  
 45 with appropriate accommodations, including, but not limited to,  
 46 public parking or public boat ramps that are available for use  
 47 by the general public.

48 (b) "Commercial fishing facility" means docks, piers,  
 49 processing houses, or other facilities that support a commercial  
 50 fishing operation or an aquaculture operation certified under  
 51 chapter 597.

52 (c) "Commercial fishing operation" has the same meaning as  
 53 provided in s. 379.2351.

54 (d) "Drystack" means a vessel storage facility or building  
 55 in which storage spaces for vessels are available for use by the  
 56 public on a first-come, first-served basis. The term excludes

57 | storage that is purchased, received, or rented as a result of  
 58 | homeownership or tenancy.

59 | (e) "Land used predominantly for commercial fishing  
 60 | purposes" means land used in good faith in a for-profit  
 61 | commercial fishing operation for the taking or harvesting of  
 62 | freshwater fish or saltwater products, as defined in s. 379.101,  
 63 | for which a commercial license to take, harvest, or sell such  
 64 | fish or products is required under chapter 379, or land used in  
 65 | an aquaculture operation certified under chapter 597.

66 | (f) "Marina" means a licensed commercial facility  
 67 | available for use by the public that provides secured public  
 68 | moorings or drystacks for vessels on a first-come, first-served  
 69 | basis. The term excludes mooring or storage that is purchased,  
 70 | received, or rented as a result of homeownership or tenancy.

71 | (g) "Marine manufacturing facility" means a facility that  
 72 | manufactures vessels for use in waters that are navigable.

73 | (h) "Marine vessel construction and repair facility" means  
 74 | a facility that constructs and repairs vessels that travel over  
 75 | waters that are navigable, including, but not limited to,  
 76 | shipyards and boatyards.

77 | (i) "Open to the public" means for hire to the general  
 78 | public and accessible during normal operating hours.

79 | (j) "Repair" includes retrofitting and maintenance of  
 80 | vessels.

81 | (k) "Right-of-way" has the same meaning as provided in s.  
 82 | 334.03.

83 | (l) "Support facility" means a facility that typically is  
 84 | colocated with marine vessel construction and repair facilities,

85 including, but not limited to, shops, equipment, and salvage  
 86 facilities.

87 (m) "Water-dependent" means that the activity performed in  
 88 the facility can be conducted only on, in, over, or adjacent to  
 89 waters that are navigable and requires direct access to water  
 90 and involves the use of water as an integral part of such  
 91 activity.

92 (n) "Waterfront" means property that is on, over, or  
 93 abutting waters that are navigable. Property that is separated  
 94 from property abutting waters that are navigable by a right-of-  
 95 way may be considered waterfront property, if:

96 1. The properties on both sides of the right-of-way are  
 97 under common ownership;

98 2. The properties on both sides of the right-of-way are  
 99 part of the same business enterprise; and

100 3. The property that is separated from the water by the  
 101 right-of-way has direct access to the water by crossing the  
 102 right-of-way.

103 (o) "Waters that are navigable" means waters that support  
 104 navigation by floating vessels of any description for the  
 105 purpose of transportation, recreation or commerce.

106 (2) CLASSIFICATION AND ASSESSMENT; LOSS; PENALTY.-

107 (a) The following waterfront properties are eligible for  
 108 classification as working waterfront property:

109 1. Land used predominantly for commercial fishing  
 110 purposes.

111 2. Land that is accessible to the public and used for  
 112 vessel launches into waters that are navigable.

- 113        3. Marinas and drystacks that are open to the public.
- 114        4. Water-dependent marine manufacturing facilities.
- 115        5. Water-dependent commercial fishing facilities.
- 116        6. Water-dependent marine vessel construction and repair  
 117 facilities and their support facilities.
- 118        7. Water-dependent facilities located in a county defined  
 119 in s. 125.011(1):
- 120        a. used for the commercial transportation of goods and  
 121 people to and from foreign ports, or
- 122        b. used to provide towing, storage and salvage in support  
 123 of the facilities described in sub-subparagraph a.
- 124        (b) Property classified as working waterfront property under  
 125 this section shall be assessed on the basis of current use.
- 126        1. If the income approach to valuation is appropriate to  
 127 the property and if adequate local data on market rental rates,  
 128 expense rates, and vacancy rates are available to the property  
 129 appraiser, the assessed value shall be calculated using the  
 130 income approach to value, using a capitalization rate based upon  
 131 the debt coverage ratio formula, adjusted for the effective tax  
 132 rate and the percentage of equity multiplied by the equity yield  
 133 rate. The capitalization rate shall be calculated and updated  
 134 annually and shall be based on local data.
- 135        2. If the conditions required for assessment under  
 136 subparagraph 1. are not satisfied, the property appraiser shall  
 137 value the property at its present cash value as if it were  
 138 required to remain in its current use into the foreseeable  
 139 future.
- 140        3. In no event shall the assessed value of the property



141 exceed just value.

142 4. When a parcel contains both uses eligible for  
 143 assessment under this section and uses that are not eligible for  
 144 assessment under this section, those portions of the property  
 145 that are not eligible for assessment under this section must be  
 146 assessed separately as otherwise provided by this chapter.

147 (c)1. Property may not be classified as working waterfront  
 148 property unless an application for such classification is filed  
 149 with the property appraiser on or before March 1 of each year in  
 150 the county in which the property is located. Before approving  
 151 such classification, the property appraiser may require the  
 152 applicant to establish that the property is actually used as  
 153 required under this section. The property appraiser may require  
 154 the applicant to furnish the property appraiser such information  
 155 as may reasonably be required to establish that such property  
 156 was actually used for working waterfront purposes, and to  
 157 establish the classified use value of the property, including  
 158 income and expense data. The owner or lessee of the property  
 159 classified as working waterfront property in the prior year may  
 160 reapply on a short form provided by the Department of Revenue.  
 161 The lessee of property may make original application or reapply  
 162 on a short form if the lease, or an affidavit executed by the  
 163 owner, provides that the lessee is empowered to make application  
 164 for the working waterfront classification on behalf of the owner  
 165 and a copy of the lease or affidavit accompanies the  
 166 application. An applicant may withdraw an application on or  
 167 before the 25th day following the mailing of the notice of  
 168 proposed property taxes pursuant to s. 200.069 in the year the

169 application was filed.

170 2. Failure of a property owner or lessee to apply for a  
 171 classification as working waterfront property by March 1  
 172 constitutes a waiver for 1 year of the privilege granted in this  
 173 section. However, a person who is qualified to receive a working  
 174 waterfront classification but who fails to timely apply for  
 175 classification may file an application for classification with  
 176 the property appraiser on or before the 25th day following the  
 177 mailing of proposed property taxes pursuant to s. 200.069. Upon  
 178 review of the application, if the applicant is qualified to  
 179 receive the classification and demonstrates particular  
 180 extenuating circumstances that warrant the classification, the  
 181 property appraiser may grant the classification.

182 3. A county, at the request of the property appraiser and  
 183 by a majority vote of its governing body, may waive the  
 184 requirement that an annual application or short form be filed  
 185 with the property appraiser for renewal of the classification of  
 186 property within the county as working waterfront property. Such  
 187 waiver may be revoked by a majority of the county governing  
 188 body.

189 4. Notwithstanding subparagraph 3., a new application for  
 190 classification as working waterfront property must be filed with  
 191 the property appraiser whenever any property granted the  
 192 classification as working waterfront property is sold or  
 193 otherwise disposed of, whenever ownership or the lessee changes  
 194 in any manner, whenever the owner or the lessee ceases to use  
 195 the property as working waterfront property, or whenever the  
 196 status of the owner or the lessee changes so as to change the

197 classified status of the property.

198 5. The property appraiser shall remove from the  
 199 classification as working waterfront property any property for  
 200 which the classified use has been abandoned or discontinued, or  
 201 if the property has been diverted to an unclassified use. Such  
 202 removed property shall be assessed at just value as provided in  
 203 s. 193.011.

204 6.a. The owner of any property classified as working  
 205 waterfront property who is not required to file an annual  
 206 application under this section, and the lessee if the  
 207 application was made by the lessee, shall notify the property  
 208 appraiser promptly whenever the use of the property or the  
 209 status or condition of the owner or lessee changes so as to  
 210 change the classified status of the property. If any such  
 211 property owner or lessee fails to notify the property appraiser  
 212 and the property appraiser determines that for any year within  
 213 the prior 10 years the owner was not entitled to receive such  
 214 classification, the owner of the property is subject to taxes  
 215 otherwise due and owing as a result of such failure plus 15  
 216 percent interest per annum and a penalty of 50 percent of the  
 217 additional taxes owed. However, the penalty may be waived if the  
 218 owner or lessee can demonstrate that they took reasonable care  
 219 to notify the property appraiser of the change in use, status,  
 220 or condition of the property.

221 b. The property appraiser making such determination shall  
 222 record in the public records of the county in which the working  
 223 waterfront property is located a notice of tax lien against any  
 224 property owned by the working waterfront property owner, and

225 such property must be identified in the notice of tax lien. Such  
 226 property is subject to the payment of all taxes and penalties.  
 227 Such lien, when filed, attaches to any property identified in  
 228 the notice of tax lien owned by the person or entity that  
 229 illegally or improperly received the classification. If such  
 230 person or entity no longer owns property in that county but owns  
 231 property in another county or counties in the state, the  
 232 property appraiser shall record in such other county or counties  
 233 a notice of tax lien identifying the property owned by the  
 234 working waterfront property owner in such county or counties  
 235 which shall become a lien against the identified property.

236 7. The property appraiser shall have available at his or  
 237 her office a list by ownership of all applications for  
 238 classification as working waterfront property received, showing  
 239 the acreage, the just valuation under s. 193.011, the value of  
 240 the land under the provisions of this subsection, and whether  
 241 the classification was granted.

242 (3) DENIAL OF CLASSIFICATION; APPEAL.—

243 (a) If an application for working waterfront  
 244 classification is made by March 1, the property appraiser shall  
 245 notify the applicant in writing of a denial of the application  
 246 on or before July 1 of the year for which the application was  
 247 filed. The notification shall advise the applicant of his or her  
 248 right to appeal to the value adjustment board and of the appeal  
 249 filing deadline.

250 (b) Any applicant whose application for classification as  
 251 working waterfront property is denied by the property appraiser  
 252 may appeal to the value adjustment board by filing a petition

253 | requesting that the classification be granted. The petition may  
 254 | be filed on or before the 25th day following the mailing of the  
 255 | assessment notice by the property appraiser as required under s.  
 256 | 194.011(1). The petitioner shall pay a nonrefundable fee of \$15  
 257 | upon filing the petition. Upon the value adjustment board's  
 258 | review of the petition, if the petitioner is qualified to  
 259 | receive the classification, the value adjustment board may grant  
 260 | the petition and classification.

261 | (c) A denial of a petition for classification by the value  
 262 | adjustment board may be appealed to a court of competent  
 263 | jurisdiction.

264 | (d) Property that has received a working waterfront  
 265 | classification from the value adjustment board or a court of  
 266 | competent jurisdiction under this subsection is entitled to  
 267 | receive such classification in any subsequent year until such  
 268 | use is changed, abandoned, or discontinued, or the ownership  
 269 | changes in any manner as provided in subparagraph (2)(c)4. The  
 270 | property appraiser shall, no later than January 31 of each year,  
 271 | provide notice to the property owner or lessee receiving a  
 272 | classification under this subsection requiring the property  
 273 | owner or a lessee qualified to make application to certify that  
 274 | the ownership and the use of the property has not changed. The  
 275 | department shall prescribe by rule the form of the notice to be  
 276 | used by the property appraiser.

277 | Section 2. Subsection (1) of section 195.073, Florida  
 278 | Statutes, is amended to read:

279 | 195.073 Classification of property.—All items required by  
 280 | law to be on the assessment rolls must receive a classification

281 based upon the use of the property. The department shall  
 282 promulgate uniform definitions for all classifications. The  
 283 department may designate other subclassifications of property.  
 284 No assessment roll may be approved by the department which does  
 285 not show proper classifications.

286 (1) Real property must be classified according to the  
 287 assessment basis of the land into the following classes:

288 (a) Residential, subclassified into categories, one  
 289 category for homestead property and one for nonhomestead  
 290 property:

- 291 1. Single family.
- 292 2. Mobile homes.
- 293 3. Multifamily.
- 294 4. Condominiums.
- 295 5. Cooperatives.
- 296 6. Retirement homes.
- 297 (b) Commercial and industrial.
- 298 (c) Agricultural.
- 299 (d) Nonagricultural acreage.
- 300 (e) High-water recharge.
- 301 (f) Historic property used for commercial or certain  
 302 nonprofit purposes.
- 303 (g) Exempt, wholly or partially.
- 304 (h) Centrally assessed.
- 305 (i) Leasehold interests.
- 306 (j) Time-share property.
- 307 (k) Land assessed under s. 193.501.
- 308 (l) Working waterfront property.

309 (m)~~(l)~~ Other.

310 Section 3. If any provision of this act or the application  
 311 thereof to any person or circumstance is held invalid, the  
 312 invalidity does not affect other provisions or applications of  
 313 the act which can be given effect without the invalid provision  
 314 or application, and to this end the provisions of this act are  
 315 severable.

316 Section 4. The Department of Revenue may adopt emergency  
 317 rules to administer s. 193.704, Florida Statutes, as created by  
 318 this act. The emergency rules shall remain in effect for 6  
 319 months after adoption and may be renewed during the pendency of  
 320 procedures to adopt rules addressing the subject of the  
 321 emergency rules.

322 Section 5. This act shall take effect upon becoming a law,  
 323 and applies retroactively to January 1, 2010. For the 2010  
 324 calendar year, an application for classification as working  
 325 waterfront must be filed on or before July 1 instead of on or  
 326 before March 1.





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB FTC 10-04 Department of Revenue  
**SPONSOR(S):** Finance & Tax Council  
**TIED BILLS:** **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Finance & Tax Council		Wilson <i>WJW</i>	Langston <i>DL</i>
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

This bill contains the Department of Revenue's (Department) recommendations for general tax administration improvements. The bill includes numerous statutory changes that will reduce the burden on taxpayers, reduce the Department's costs, increase efficiency in tax administration, and improve enforcement of tax laws.

This bill has not been analyzed by the 2010 Revenue Impact Estimating Conference. However, staff estimates the bill to have a positive but indeterminate impact on both state and local government revenues.

The bill shall take effect upon becoming a law, except as otherwise provided in the bill.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Section 1. Liens for unemployment tax obligations**

###### Present situation:

Section 55.204, F.S., governs the duration and continuation of judgement liens. A general provision is set forth that, except as provided elsewhere in the section, a judgment lien required under s. 55.202, F.S., lapses and becomes invalid 5 years after filing. An exception to the general rule is that liens securing the payment of child support or tax obligations as provided in s. 95.091(1)(b), F.S., shall not lapse until 20 years after the date of the original filing of the warrant or other document required by law to establish a lien.

###### Proposed change:

This section amends s. 55.204(2), F.S., to provide that liens securing the payment of unemployment tax obligations lapse 10 years after the date of the original filing of the notice of the lien. This provision is related to changes made in section 20.

##### **Section 2. Unemployment Tax Liens**

###### Present situation:

In s. 95.091(1)(a), F.S., except in the case of taxes for which certificates have been sold, taxes stated in s. 72.011, F.S. or tax liens issued under section 196.161, F.S., any tax lien will expire 5 years after the tax is assessed or becomes delinquent, whichever is later.

###### Proposed change:

This section amends 95.091(1)(a), F.S., to add s. 443.141, F.S., related to unemployment taxes to the exception from the 5 year limitation on tax liens. This provision is related to changes made in section 20, which provides that the duration of liens securing the payment of unemployment taxes is 10 years.

### **Section 3. Documentary Stamp Tax Treatment of Short Sale Transactions**

#### Present Situation:

Section 201.02(1), F.S., currently imposes documentary stamp tax on documents that transfer an interest in real property. The tax is calculated based on the "consideration" of the transfer. Consideration includes money paid or to be paid, the discharge of an obligation, and the amount of any mortgage or other encumbrance.

However, in "short sale" transactions because the purchase price of the property is less than the outstanding loan balance, the lender agrees to receive partial satisfaction of the loan obligation with the remaining debt cancelled. This cancelled debt has value to the seller because the seller is repaying less than what the seller borrowed to purchase the property; as a result, the issue arises as to whether the amount of cancelled debt should be treated as consideration for the transfer and therefore included in calculations for documentary stamp tax purposes under s. 201.02, F.S.

#### Proposed change:

This bill will clarify the law governing the calculation of documentary stamp tax owed when real property is conveyed via short sale. The bill creates s. 201.02(11), F.S., to provide that consideration does not include the unpaid indebtedness that is forgiven or released by a mortgagee holding a mortgage on the property. The bill defines a short sale as the purchase and sale of real property in which:

- The grantor's (seller's) interest in the real property is encumbered by a mortgage or mortgages securing indebtedness in an aggregate amount greater than the purchase price paid by the grantee (buyer).
- A mortgagee releases the real property from its mortgage in exchange for a partial payment of less than the outstanding mortgage indebtedness owing to the releasing mortgagee.
- The releasing mortgagee does not receive, directly or indirectly, any interest in the property transferred.
- The releasing mortgagee is not controlled by or related to the grantor or the grantee.

This bill further codifies the Department's advisement<sup>1</sup> conclusion that in a short sale transaction, cancellation of debt is not consideration used to determine documentary stamps tax.

### **Section 4. Communication Services Tax**

#### Present situation:

In s. 202.124(1), F.S., an exemption from the communications services tax imposed by s. 202.12, F.S., exists for separately stated sales prices of communications services sold to residential households. This exemption does not apply to any residence that is a "public lodging establishment" as defined in ch. 509, F.S. However, ch. 2008-240, L.O.F., changed the definition of "public lodging establishment" under ch. 509, F.S., and created separate definitions for "transient" and "nontransient" public lodging establishments. This change has created uncertainty regarding the Department's administration of the sale of communication services sold to "nontransient" public lodging establishments that include residential units such as apartment complexes.

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<sup>1</sup> Florida Dep't of Revenue, *Technical Assistance Advisement No. 08B4-006, Documentary Stamp Tax – "Short Sales" of Florida Real Property*, 1 (Sept. 23, 2008), available at <https://taxlaw.state.fl.us/wordfiles/DOC%20TAA%2008B4-006.pdf> (last visited Feb. 28, 2010).

Proposed change:

This section amends s. 202.125(1), F.S., clarifying that the Department will not exempt the tax imposed by s. 202.12, F.S., from the sale of communication services sold explicitly to "transient" public lodging establishments.

**Section 5. SIC to NAICS Transition for Identifying Taxpayers**

Present situation:

During the 2009 Legislative Session, several statutory references to the Standard Industrial Classification System (SIC) were replaced with the North American Industry Classification System (NAICS) by ch. 2009-51, L.O.F. Currently, s. 212.05(1)(i)1.b., F.S., imposes a tax on nonresidential cleaning and nonresidential pest control services listed under NAICS National Numbers 561710 and 561720. NAICS Number 561720 includes "cleaning interiors of transportation equipment" such as aircraft, rail cars, and ships. This service was not listed and taxed prior to the 2009 law change.

Proposed change:

This section amends s. 212.05, F.S., clarifying that the 2009 industry classification change excluded the cleaning of interiors of transportation equipment from the tax imposed on cleaning services.

**Section 6. Vending Machine Operators Tax Information**

Present situation:

Vending machine owners are required by s. 212.0515(3)(a), F.S., to place a notice on each vending machine that includes the operator's name, address, and Federal Employer Identification Number or sales tax registration number. The Department has reported that there have been instances where operators of vending machines in correctional facilities have had inmates file fraudulent tax returns with the IRS, creating problems for the operator.

Proposed change:

This section will amend s. 212.0515, F.S., removing specific information regarding the vending machine operator from being included in the notice.

**Section 7. Tax Exemptions**

Present situation:

The State of Florida exempts from sales and use tax various products and materials in section 212.08, F.S. Particularly, this bill speaks to various subsections in s. 212.08, F.S., including groceries and building materials.

Certain food products are exempt from taxes provided in s. 212.08, F.S. In some cases, non-taxable food items are packaged with taxable items and sold together. The Department's rule 12A-1.011, F.A.C., states that the entire sale is exempt, if the value of the taxable item(s) does not exceed 25% of the value of the complete package. It has recently become clear that the Department does not have the requisite statutory basis for this rule.

In regards to s. 212.08(5)(g), F.S., building materials used in the rehabilitation of real property located in an enterprise zone are exempt from sales and use tax. The exemption is only available through a refund of previously paid taxes on materials used in these zones. As the enterprise zone program has

grown, various administrative questions have been raised regarding owner tax credit qualification, tax credit applications required for numerous properties, and permit requirements.

Proposed change:

This section amends s. 212.08, F.S., to provide that if the cost of a taxable nonfood item when packaged with a non-taxable food item exceeds 25% of the package cost, then the entire sales price is subject to tax. Otherwise the package price is exempt.

This section also amends s. 212.08(5)(g), F.S., clarifying that the owner of a property within an enterprise zone at the time improvements are made, is the only entity entitled to receive a refund of previously paid taxes. It also amends an application requirement allowing a permit issued by a local government building department to satisfy the permit requirement, and allowing a single application to be submitted for multiple, contiguous parcels that were part of a single parcel divided as part of the property rehabilitation.

Furthermore, this section clarifies that if a general contractor is not used in the rehabilitation of the property, the applicant must make the required sworn statement listing the building materials used, the actual costs of the materials, and the amount of sales tax paid. This section also allows that the application for refund can be filed with the Department by November 1 after the rehabilitated property is first subject to assessment.

## **Section 8. Department of Environmental Protection; Florida Energy and Climate Commission**

Present situation:

The Department is authorized to provide to the Department of Environmental Protection (DEP) information related to the current sales tax exemptions for equipment, machinery, and other materials related to renewable energy technologies. Information regarding the renewable energy technologies investment corporate income tax credit is also shared. Recent legislation in ch. 2008-227, L.O.F., transferred these duties from DEP to the Florida Energy and Climate Commission in regards to the renewable energy technologies tax credit. However, certain responsibilities for this credit were not transferred.

Proposed change:

The bill amends s. 213.053(8)(y), F.S., retroactively to July 1, 2008, to authorize these responsibilities to the Florida Energy and Climate Commission. This provision conforms to similar changes in section 15.

## **Section 9: Confidentiality and Information Sharing**

This section creates and amends various subsections in 213.053, F.S.

Present situation:

In s. 213.053, F.S., the Department is authorized to send general information to taxpayers, however it does not clearly specify through electronic means. Such information would be general tax law changes and reminders regarding tax due dates. This section also allows for the disclosure of taxpayer information to the Chief Financial Officer for exemptions claimed for international banking institutions in an annual report.

Unless specified by law, the Department is not permitted to disclose taxpayer information. The Department is currently permitted to disclose names, addresses, and sales tax registration with the Department of Business and Professional Regulation's Division of Hotels and Restaurants, but is unable to provide other sales and use tax information for conducting its official duties.

Current restrictions regarding confidential taxpayer information do not permit the Department to publish names of taxpayers who have current tax warrants. This information can be found in the public records in a County Courthouse or on the Department of State's website within a judgment lien searchable database.

Proposed change:

This bill amends s. 213.053(5)(b), F.S., authorizing the Department to send general information to taxpayers through regular electronic systems. General information includes such items as Taxpayer Information Publications, due date reminders, and other general notices. This section also removes a provision that allows information-sharing between the Department and the Chief Financial Officer (CFO) regarding exemptions claimed by international banking institutions. The annual report provided to the CFO's office by the Department related to the information-sharing agreement in 213.053(5)(b), F.S., is removed in section 26.

This bill amends s. 212.053(8)(d), F.S., authorizing the Department to share and provide information regarding the outstanding sales and use tax warrants or judgment liens with the Department of Business and Professional Regulation's Division of Hotels and Restaurants. This amended section conforms to similar changes in section 12.

This bill creates s. 212.053(8)(z), F.S., authorizing the Department to provide names and taxpayer identification numbers to financial institutions for the purposes of information-sharing agreements. These information-sharing agreements are provided by s. 213.0532, F.S., similar to a provision found in section 10.

This bill also creates s. 212.053(8)(aa), F.S., authorizing the Department to provide sales and use tax information to the Department of Environmental Protection for the use in the administration of submerged land leaseholders.

The bill creates s. 212.053(19), F.S., authorizing the Department to publish a list of taxpayers who have current warrants and judgment lien certificates. This list is permitted to be publicized on the Department's internet website that includes the name, amount of liability, and other publically available taxpayer information. This list shall be updated at least monthly. The Department is authorized to adopt rules in the administration of this provision.

Furthermore, this bill creates s. 212.053(20), F.S., authorizing the Department to disclose specified information related to taxpayers against whom the department has filed tax warrants, notice of liens, or judgment lien certificates.

## **Section 10. Information-Sharing Agreements with Financial Institutions**

Present situation:

In 2007, the Legislature passed ch. 2007-106, L.O.F., authorizing the Department to conduct a pilot project with financial institutions in Florida, to match financial records with Department information on delinquent taxes in order to identify possible taxpayer assets. The project identified accounts for 5% of the delinquent taxpayers submitted for match. The Department, however, was not authorized to take action against taxpayer accounts during the program.

Proposed change:

This bill creates s. 213.0532, F.S., which requires financial institutions with at least \$50 million in deposits to enter into information-sharing agreements with the Department in order to make the program permanent. The bill sets guidelines for both the Department and financial institutions in regards to the development and operation of the data match program. The Department can utilize this information to enforce the collection

of outstanding taxes and fees from account holders to the extent allowable by law. The financial institution is not required to provide notice to its customers and is not liable for disclosing any information required under s. 213.0532, F.S. The Department is authorized to adopt rules to administer the provisions of this section.

### **Section 11. Department Refunds & Credits; Unemployment Compensation Tax**

#### Present situation:

Section 213.25, F.S., allows the department to reduce a taxpayer's refund or credit by the amount of other taxes that the taxpayer owes. In 2007, this offset authority was added to ch. 443, F.S., related to unemployment compensation. The Agency for Workforce Innovation, which administers Florida's unemployment compensation program, has requested ch. 443, F.S., be specifically cited in s. 213.25, F.S.

#### Proposed change:

The bill amends s. 213.25, F.S., to clarify the Department's authority to reduce a taxpayer's refund or credit by the amount of any billings for unemployment compensation tax.

### **Section 12. Revocation of Corporate Charter or Hotel or Restaurant License; Refusal to Reinstate Charter or Hotel or Restaurant License**

#### Present situation:

The Department of Business and Professional Regulation (DBPR) in s. 213.50, F.S., currently does not have power to revoke or deny the application to renew a license of a hotel or restaurant license on the grounds of unpaid taxes.

#### Proposed change:

This bill creates s. 213.50(3) and 213.50(4), F.S., providing that DBPR may revoke and deny an application to renew a licenseholder if a tax warrant has been outstanding for more than 3 consecutive months.

### **Section 13. Garnishment**

#### Present situation:

In section 213.67(1), F.S., the Department is required by certified letter to notify financial institutions or other entities that may have assets of a delinquent taxpayer in their possession or control that the assets are to be garnished.

#### Proposed change:

The bill amends s. 213.67(1), F.S., expanding the method of required notification to financial institutions or other entities to include personal service, electronic means, or use of the Internet.

### **Section 14. Transfer of Tax Liabilities**

#### Present situation:

Current law does not provide a comprehensive statute for the transfer of tax liabilities when a business or business assets are sold or transferred.

#### Proposed change:

This bill creates s. 213.758, F.S., a comprehensive statute governing the transfer of tax liabilities to future owners of a business and/or business assets. It specifies that the seller remains liable for the debt, and

allows the department to obtain an injunction against the transferee if the acquired liability is not paid. The Department may request the Department of Legal Affairs to seek an injunction to prevent further business activity.

This bill provides that a taxpayer, who transfers a business or stock of goods, must make a final return and full payment for any taxes due, excluding corporate income tax, within 15 days of the date of transfer. This section clarifies that new owners can be liable even if the business or business assets were transferred to the new owner but were not purchased. The transferee of more than 50% of a business is liable for the tax, interest, or penalty owed by the transferor, unless the transferor provides the transferee a receipt or certificate from the Department showing that the transferor is not liable for taxes and the Department conducts an audit and finds that the transferor is not liable for taxes. The transferee may withhold a portion of consideration to pay the taxes, interest, and penalties owed from the operation of the business. If the consideration withheld is less than the transferor's liability, the transferor remains liable for the remaining amount owed. The Department may request the Department of Legal Affairs to seek an injunction to prevent further business activity.

The maximum liability of the transferee is limited to the fair market value or the purchase price of the property transferred, whichever is higher. The Department is authorized to adopt rules in order to administer the provisions of this section.

### **Section 15. Renewable Energy Technologies Investment Tax Credit**

#### Present situation:

The Department of Environmental Protection (DEP) is responsible for the application and administration of the renewable energy investment corporate income tax credit. Recent legislation in ch. 2008-227, L.O.F., transferred these duties from DEP to the Florida Energy and Climate Commission in regards to these credits. However, certain responsibilities for this credit were not transferred.

#### Proposed change:

The bill amends s. 220.192(4) and 220.192(5), F.S., retroactively to July 1, 2008, authorizing these responsibilities to the Florida Energy and Climate Commission. This amended provision is related to similar changes made in section 8.

### **Section 16. Levy of Ninth-Cent Fuel Tax on Motor Fuel and Diesel Fuel; Distributions**

#### Present situation:

Section 336.021, F.S., establishes the distribution of local option fuel taxes collected on the sales or use of diesel fuel throughout the State. These distributions are made monthly to each county based on three "tiers". The law generally requires these distribution "tiers" to be paid out in sequential order. "Tier one" distributions are made to counties based on the number of gallons sold, minus administrative charges and special allowances. "Tier two" distributions are made available to counties with qualified new retail stations. These retail stations have diesel sales exceeding 50 percent of the diesel sold in the county in which it was located in FY 1995-1996<sup>2</sup>. Currently, Gadsden and Walton Counties are the only counties that qualify for this distribution. "Third tier" distributions are based on additional taxes available for vehicular diesel storage capacities. Due to the growth in the fuel tax base, the Department has sufficient revenues to make "tier three" distributions before it receives data from "tier two" qualified counties.

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<sup>2</sup> Section 336.021(1)(c)1, F.S.



Proposed change:

The bill amends s. 336.021(1)(c), F.S., providing that the “tier” distributions of local option fuel taxes more accurately reflect the current fuel market. This section clarifies that “tier three” distributions that occur before “tier two” distribution data is available, will not affect the amounts provided for “tier two” qualified counties.

**Section 17. Tax Treatment of a Limited Liability Corporation (LLC)**

Present situation:

In s. 443.036(20), F.S., a limited liability company (LLC) is treated, for state unemployment tax purposes, as they are classified for federal income tax purposes. A single-member LLC may designate either the LLC or the owner as the “employer”. New Internal Revenue Service (IRS) regulations have changes how single member LLC’s report for federal employment tax purposes and require the LLC to be treated as the employer.

Proposed change:

This bill amends s. 443.036(20), F.S, requiring that a single-member LLC be treated as the employer, as stated under new federal IRS regulations.

**Section 18. Employers**

Present situation:

Section 443.1215(2)(b), F.S., incorrectly cites guidelines dealing with agricultural employers. Currently, by referencing “subsection (1)” the statute allows an agricultural employer to be considered a domestic employer without meeting the proper criteria.

Proposed change:

This bill amends 443.1215(2)(b), F.S., correcting the citation to reference “paragraph (1)(a)”.

**Section 19. Unemployment Tax Collection Services**

Present situation:

Section 443.1316(2), F.S., establishes the provisions that apply to the collection of unemployment contributions and reimbursements by the Department.

Proposed change:

This bill amends s. 443.1316(2)(b), F.S., to include new provisions created by this bill related to; information-sharing agreements with financial institutions in s. 213.0532, F.S, integrated enforcement authority in s. 213.692, F.S, and the transfer of tax liabilities in s. 213.758, F.S. These provisions are related to similar changes in sections 10, 14, and 23.

**Section 20. Collection of Contributions and Reimbursements; Unemployment Compensation Tax**

Present situation:

In s. 443.141(1)(b), F.S, employers are required to pay unemployment compensation tax and file quarterly wage reports. If these wage reports are not done correctly or are incomplete, there may be a delay in the payment of unemployment benefits to unemployed workers. The Department frequently receives

erroneous, incorrect, or insufficient reports and efforts to enforce the current reporting requirements have been unsuccessful.

Also, in s. 443.141(3), F.S., lien provisions for the payment of contributions or reimbursement are also established. The statute of limitations for unemployment tax liens is unclear. The State has asserted that the lien is valid for 10 years, but taxpayers have recently challenged the position. The Department needs further clarification in order to ensure proper enforcement of unemployment tax liens.

Proposed change:

This bill amends s. 441.141(1)(b), F.S., to include erroneous, incomplete or insufficient reports in the penalty provisions that will result in a fine of \$50 or 10% of the tax due on wage reports. The Department will be able to waive the penalty if a corrected report is filed within 30 days of the penalty notice. The penalty will not be waived more than once during a 12-month period. Employers will not be penalized for erroneous information supplied by employees, if the employer was unaware of the inaccuracy.

This section also amends s. 443.141(3), F.S., clarifying that unemployment tax liens expire 10 years after the filing of the notice with the clerk of court, and provides for extended collection efforts. This section is related to changes in sections 1 and 2 of the bill.

## **Section 21. Electronic Reporting and Remitting of Contributions and Reimbursements**

Present situation:

Section 443.163(2), F.S., requires certain employers to file the Employer's Quarterly Wage Report (UCT-6) electronically. If this report is not filed electronically, a penalty of \$10 will be assessed to the employer per report. These same provisions apply to a person who files a quarterly wage report for 100 or more employers. In both cases, current law allows for a waiver of the electronic filing requirement if they are unable to comply despite good faith efforts. This penalty has not proven to be a deterrent from noncompliance.

Proposed change:

This section amends s. 443.163(2), F.S., increasing the penalty to \$50 per report and \$1 per employee when the required information is not provided by approved electronic means.

## **Section 22. Electronic Reporting and Remitting of Contributions and Reimbursements**

Present situation:

Section 443.163(3), F.S., references "telefile" can be utilized when applying for a waiver from electronic filing with the Department. However, "telefile" is no longer utilized for unemployment tax purposes.

Proposed change:

This bill removes the obsolete terminology.

## **Section 23: Integrated Enforcement Authority**

Present situation:

Current law permits the Department to revoke a taxpayer's sales tax registration when they fail to pay their sales tax liability. However, the Department does not have the authority to revoke a sales tax registration from the same taxpayer who is delinquent in other tax liabilities owed to the State.

Proposed change:

This bill creates s. 213.692, F.S., establishing integrated enforcement authority for the Department in order to revoke a taxpayer's certificate of registration for any tax when the taxpayer owes any tax liability where a tax warrant, notice of lien, or judgment lien certificate has been issued. The Department must schedule an information conference with the taxpayer, before revocation, to allow the taxpayer to present evidence regarding the revocation action. The Department is also required to issue an administration complaint under Chapter 120, F.S., if the taxpayer fails to attend the informal conference or fails to comply with the executed compliance agreement.

The taxpayer whose certificates of registration, permits, or licenses have been revoked may not be issued a new one unless either the outstanding tax liabilities have been satisfied or the Department enters into a written agreement with the taxpayer regarding their liabilities. The Department will require a cash deposit, bond, or other security as a condition of issuing a new certificate of registration pursuant s. 212.14(4), F.S. The Department is authorized to adopt rules to administer the provisions of this section.

**Section 24: Emergency Rules for Integrated Enforcement Authority**

This section authorizes the Department to adopt emergency rules to administer s. 213.692, F.S., related to integrated enforcement authority. These emergency rules will remain in effect for 6 months after their adoption and may be renewed when permanent rules are established.

**Section 25: Repeal; Approved State Bidder List and Standard Contracts**

Present situation:

Section 195.095, F.S., requires the Department to maintain an Approved State Bidder List that contains a list of approved vendors for property assessment services and assessment related technologies that can be utilized by local governments. The Department is also required to promulgate a standard contract that contains the minimum requirements for all contracts with these vendors. Due to advancements in computer assisted mass appraisal technologies utilized by local government entities, the Department has found that these requirements are no longer necessary.

Proposed change:

This bill repeals s. 195.095, F.S., removing the Approved State Bidder List and standard contract requirements.

**Section 26: Repeal; International Banking Facilities Annual Report**

Present situation:

Florida's corporate income tax laws permits a deduction for international banking facilities. The Department is required to report the names and addresses of the banks that take this deduction to the Chief Financial Officer (CFO). The report is kept confidential by both the Department and the CFO's office, as it contains taxpayer information that may not be disclosed to other parties. Both the Department and the CFO's officer have deemed this annual report unnecessary.

Proposed change:

This bill repeals s. 213.054, F.S., which requires this annual report. This provision is related to changes in section 9.

## Section 27. Effective Date

This bill provides that except as otherwise provided, this bill takes effect upon becoming a law.

### B. SECTION DIRECTORY:

**Section 1:** Amends s. 55.204(2), F.S., providing liens securing the payment of unemployment tax obligations.

**Section 2:** Amends 95.091(1)(a), F.S., clarifying unemployment liens expire 10 years after the filing of the notice with the clerk of court.

**Section 3:** Creates s. 201.02(11), F.S., providing that consideration does not include the unpaid indebtedness that is forgiven or released by a mortgagee. The section also defines a short sale

**Section 4:** Amends s. 202.125(1), F.S., clarifying the tax treatment of communication services sold explicitly to "transient" public lodging establishments.

**Section 5:** Amends s. 212.05, F.S., clarifying the industry classification change related to the cleaning of interiors of transportation equipment.

**Section 6:** Amends s. 212.0515, F.S., removing specific information from vending machine notices.

**Section 7:** Creates s. 212.08(1)(f), F.S., clarifying the department's rules regarding the cost of a taxable food item sold with non-taxable food item exceeding 25%. Amends s. 212.08(5)(g), F.S., clarifying enterprise zone tax refunds and application requirements.

**Section 8:** Amends s. 213.053(8)(y), F.S., authorizing responsibilities to the Florida Energy and Climate Commission.

**Section 9:** Amends s. 213.053, F.S., authorizing the Department to send taxpayers information by electronic mail. This section also removes information sharing between the CFO and the Department. Amends s. 212.053(8)(d), F.S., regarding information sharing information for outstanding sale and use tax warrants or judgment liens with the Division of Hotels and Restaurants. Creates s. 212.053(8)(z), F.S., providing data for the purposes of information-sharing agreements with financial institutions. Creates s. 212.053(8)(aa), F.S., providing sales and use tax information to the Department of Environmental Protection. Creates s. 212.053(19) and s. 212.053(20), F.S., authorizing the disclosure and publication of specified information for taxpayers.

**Section 10:** Creates s. 213.0532, F.S., enabling the Department to enter into information-sharing agreements with financial institutions related to outstanding taxpayer liabilities.

**Section 11:** Amends s. 213.25, F.S., authorizing the Department to reduce a taxpayer's refund or credit.

**Section 12:** Creates s. 213.50(3) and 213.50(4), F.S., providing DBPR may revoke and deny an application to renew a license holder.

**Section 13:** Amends s. 213.67(1), F.S., expanding the method of required notification for garnishment.

**Section 14:** Creates s. 213.758, F.S., establishing a comprehensive statute governing the transfer of tax liabilities to future owner(s) of a business and/or business assets.

**Section 15:** Amends s. 220.192, F.S., clarifying the responsibilities of the Florida Energy and Climate Commission.

**Section 16:** Amends s. 336.021, F.S., clarify the distributions of the ninth-cent fuel tax.

**Section 17:** Amends s. 442.036(20), F.S., requiring that a single-member LLC be treated as the employer.

**Section 18:** Amends 442.1215(2)(b), F.S., to correct a citation.

**Section 19:** Amends s. 443.1316(2)(b), F.S., to include information-sharing agreements with financial institutions, integrated enforcement authority, and transfer of tax liabilities.

**Section 20:** Amends s. 441.141(1)(b) and 443.141(3), F.S., increasing penalties for inaccurate or incomplete wage reports and clarifying the expiration of unemployment tax liens.

**Section 21:** Amends s. 443.163(2), F.S., increasing penalties when required employee information is not provided by approved electronic means.

**Section 22:** Amends s. 443.163(3), F.S., removing obsolete provisions regarding telefile.

**Section 23:** Creates s. 213.692, F.S., establishing integrated enforcement authority for the Department in order to revoke a taxpayer's certificate of registration.

**Section 24:** Authorizes the department to adopt emergency rules to administer s. 213.692, F.S.

**Section 25:** Repeals s. 195.095, F.S., removing the Approved State Bidder List and standard contract requirement

**Section 26:** Repeals s. 213.054, F.S., requiring an annual report.

**Section 27:** Provides an effective date upon becoming a law, except as otherwise expressly provided in this bill.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

None.

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

This bill will reduce various taxpayer expenses. These reductions will be generated by the following provisions:

- Providing that the portion of a seller's debt cancelled by a lender pursuant to a short sale is not subject to the documentary stamp tax;

- Clarifying that the residential exemption for communications services sold to residential households in apartment complexes;
- Removing specified taxpayer information from required vending machine notices;
- Clarifying the Department's sale tax treatment of bundled food and non-food items;
- Authorizing the Department to provide general information to taxpayers by email;
- Providing a single application for enterprise zone sales tax refunds for multi-unit developments and the streamlining application requirements.

**D. FISCAL COMMENTS:**

The 2010 Revenue Estimating Conference has not analyzed this bill. However, staff estimates that the statutory changes provided are expected to have a positive indeterminate impact on both state and local government revenues. These revenues will be generated from reduction in Department's costs, increase efficiency in tax administration, and improved enforcement of current tax laws.

**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 an 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 a state tax shared with counties or municipalities.

2. Other:

**B. RULE-MAKING AUTHORITY:**

Section 9. The Department is authorized to adopt to administer provisions in s. 212.053(19), F.S., related to publishing a list of taxpayers whom it has filed a warrant, notice of a lien, or judgment lien certificate.

Section 10. The Department may adopt rules establishing the procedures and requirements for conducting automated data matches with financial institutions pursuant to s. 213.0532, F. S.

Section 14. The Department is authorized to adopt rules necessary to administer and enforce provisions in s. 213.758, F.S., related to the transfer of tax liabilities.

Section 23. The Department is authorized to adopt rules to administer s. 213.692, F.S., establishing integrated enforcement authority.

Section 24. The Department is authorized to adopt emergency rules to administer s. 213.692, F.S., related to integrated enforcement authority.

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

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

1 A bill to be entitled  
 2 An act relating to the Department of Revenue; amending s.  
 3 55.204, F.S.; specifying the duration of liens securing  
 4 the payment of unemployment compensation tax obligations;  
 5 amending s. 95.091, F.S.; creating an exception to a limit  
 6 on the duration of tax liens for certain tax liens  
 7 relating to unemployment compensation taxes; amending s.  
 8 201.02, F.S.; excluding certain unpaid indebtedness from  
 9 the taxable consideration for short sale transfers of real  
 10 property; defining the term "short sale"; amending s.  
 11 202.125, F.S.; providing that an exemption from the  
 12 communications services tax does not apply to transient  
 13 public lodging establishments; amending s. 212.05, F.S.;  
 14 specifying that the tax on sales, use, and other  
 15 transactions applies to charges for nonresidential  
 16 building cleaning and nonresidential building pest  
 17 control; amending s. 212.0515, F.S.; revising the contents  
 18 of the notice that must be posted on vending machines;  
 19 amending s. 212.08, F.S.; providing criteria to determine  
 20 whether the tax on sales, use, and other transactions  
 21 applies to a package containing exempt food products and  
 22 taxable nonfood products; providing that the tax exemption  
 23 for building materials used in the rehabilitation of real  
 24 property in an enterprise zone applies only while the  
 25 property is being rehabilitated; providing that a single  
 26 application for a tax refund of taxes paid on building  
 27 materials used in the rehabilitation of real property may  
 28 be used for certain contiguous parcels; revising the

29 information that must be included in an application for a  
 30 tax refund; providing that the tax exemption for building  
 31 materials used in an enterprise zone may inure to a unit  
 32 of government; revising the date by which an application  
 33 for a tax refund for taxes paid on building materials used  
 34 in an enterprise zone must be submitted to the department;  
 35 amending s. 213.053, F.S.; authorizing the department to  
 36 provide certain confidential taxpayer information to the  
 37 Florida Energy and Climate Commission; providing for such  
 38 authority to operate retroactively; providing that  
 39 restrictions on disclosure of confidential taxpayer  
 40 information do not prohibit the department from using  
 41 certain methods of electronic communication for certain  
 42 purposes; providing that the department may release  
 43 confidential taxpayer information relating to a  
 44 corporation having an outstanding tax warrant to the  
 45 Department of Business and Professional Regulation;  
 46 authorizing the department to share taxpayer names and  
 47 identification numbers for purposes of information-sharing  
 48 agreements with financial institutions; authorizing the  
 49 department to share certain information relating to the  
 50 tax on sales, use, and other transactions with the  
 51 Department of Environmental Protection; authorizing the  
 52 department to publish a list of taxpayers against whom it  
 53 has filed a warrant or judgment lien certificate;  
 54 requiring the department to update the list at least  
 55 monthly; authorizing the department to adopt rules;  
 56 authorizing the department to provide confidential



57 taxpayer information relating to collections from  
 58 taxpayers against whom it has taken a collection action;  
 59 creating s. 213.0532, F.S.; defining terms; requiring the  
 60 department and certain financial institutions to enter  
 61 into information-sharing agreements to enable the  
 62 department to obtain the account balances and personally  
 63 identifying information of taxpayers; authorizing the  
 64 department and certain financial institutions to enter  
 65 into information-sharing agreements to enable the  
 66 department to obtain the account balances and personally  
 67 identifying information of taxpayers; limiting the use of  
 68 information gathered for the purpose of enforcing the  
 69 collection of certain taxes and fees; requiring the  
 70 department to pay a fee to the financial institutions for  
 71 their services; limiting the liability for certain acts of  
 72 financial institutions that enter into an information-  
 73 sharing agreement; authorizing the department to adopt  
 74 rules; amending s. 213.25, F.S.; authorizing the  
 75 department to reduce a tax refund or credit owing to a  
 76 taxpayer to the extent of liability for unemployment  
 77 compensation taxes; amending s. 213.50, F.S.; authorizing  
 78 the Department of Business and Professional Regulation to  
 79 revoke or deny the renewal of a license for a hotel or  
 80 restaurant having an outstanding tax warrant for a certain  
 81 period of time; amending s. 213.67, F.S.; specifying  
 82 additional methods by which the department may give notice  
 83 of a tax delinquency; creating s. 213.758, F.S.; defining  
 84 terms; providing for the transfer of tax liabilities to

85 the transferee of a business or a stock of goods under  
 86 certain circumstances; providing exceptions; requiring a  
 87 taxpayer who quits a business to file a final tax return;  
 88 authorizing the Department of Legal Affairs to seek  
 89 injunctions to prevent business activities until taxes are  
 90 paid; requiring the transferor of a business or stock of  
 91 goods to file a final tax return and make a full tax  
 92 payment after a transfer; authorizing a transferee of a  
 93 business or stock of goods to withhold a portion of the  
 94 consideration for the transfer for the payment of certain  
 95 taxes; authorizing the Department of Legal Affairs to seek  
 96 an injunction to prevent business activities by a  
 97 transferee until the taxes are paid; providing that the  
 98 transferees are jointly and severally liable with the  
 99 transferor for the payment of taxes, interest, or  
 100 penalties under certain circumstances; limiting the  
 101 transferee's liability to the value or purchase price of  
 102 the transferred property; specifying a time period within  
 103 which a transferee may file certain actions; authorizing  
 104 the department to adopt rules; amending s. 220.192, F.S.;  
 105 providing for the administration of certain portions of  
 106 the renewable energy technologies tax credit program by  
 107 the Florida Energy and Climate Commission; providing for  
 108 retroactive application; amending s. 336.021, F.S.;  
 109 revising the distribution of the ninth-cent fuel tax on  
 110 motor fuel and diesel fuel; amending s. 443.036, F.S.;  
 111 providing for the treatment of a single-member limited  
 112 liability company as the employer for purposes of

113 unemployment compensation; amending s. 443.1215, F.S.;

114 correcting a cross-reference; amending s. 443.1316, F.S.;

115 conforming cross-references; amending s. 443.141, F.S.;

116 providing penalties for erroneous, incomplete, or

117 insufficient reports relating to unemployment compensation

118 taxes; authorizing a waiver of the penalty under certain

119 circumstances; defining a term; authorizing the Agency for

120 Workforce Innovation and the state agency providing

121 unemployment compensation tax collection services to adopt

122 rules; providing an expiration date for liens for

123 contributions and reimbursements; amending s. 443.163,

124 F.S.; increasing penalties for failing to file Employers

125 Quarterly Reports by means other than approved electronic

126 means; revising the conditions under which the electronic

127 filing requirement may be waived; creating s. 213.692,

128 F.S.; authorizing the department to revoke all

129 certificates of registration, permits, or licenses issued

130 to a taxpayer against whose property the department has

131 filed a warrant or tax lien; requiring the scheduling of

132 an informal conference before revocation of the

133 certificates of registration, permits, or licenses;

134 prohibiting the department from issuing a certificate of

135 registration, permit, or license to a taxpayer whose

136 certificate of registration, permit, or license has been

137 revoked; providing exceptions; requiring security as a

138 condition of issuing a new certificate of registration to

139 a person whose certificate of registration, permit, or

140 license has been revoked after the filing of a warrant or

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141 tax lien certificate; authorizing the department to adopt  
 142 rules, including emergency rules; repealing s. 195.095,  
 143 F.S., relating to the authority of the Department of  
 144 Revenue to develop lists of bidders that are approved to  
 145 contract with property appraisers, tax collectors, or  
 146 county commissions for assessment or collection services;  
 147 repealing s. 213.054, F.S., relating to monitoring and  
 148 reporting on the use of a tax deduction claimed by  
 149 international banking institutions; providing an effective  
 150 date.

151

152 Be It Enacted by the Legislature of the State of Florida:

153

154 Section 1. Section 55.204, Florida Statutes, is amended to  
 155 read:

156 55.204 Duration and continuation of judgment lien;  
 157 destruction of records.—

158 (1) Except as provided in this section, a judgment lien  
 159 acquired under s. 55.202 lapses and becomes invalid 5 years  
 160 after the date of filing the judgment lien certificate.

161 (2) Liens securing the payment of child support or tax  
 162 obligations under as set forth in s. 95.091(1)(b) ~~shall not~~  
 163 lapse ~~until~~ 20 years after the date of the original filing of  
 164 the warrant or other document required by law to establish a  
 165 lien. Liens securing the payment of unemployment tax obligations  
 166 lapse 10 years after the date of the original filing of the  
 167 notice of lien. A ~~No~~ second lien based on the original filing  
 168 may not be obtained.

169 (3) At any time within 6 months before or 6 months after  
 170 the scheduled lapse of a judgment lien under subsection (1), the  
 171 judgment creditor may acquire a second judgment lien by filing a  
 172 new judgment lien certificate. The effective date of the second  
 173 judgment lien is the date and time on which the judgment lien  
 174 certificate is filed. The second judgment lien is a new judgment  
 175 lien and not a continuation of the original judgment lien. The  
 176 second judgment lien permanently lapses and becomes invalid 5  
 177 years after its filing date, and no additional liens based on  
 178 the original judgment or any judgment based on the original  
 179 judgment may be acquired.

180 (4) A judgment lien continues only as to itemized property  
 181 for an additional 90 days after lapse of the lien. Such judgment  
 182 lien will continue only if:

183 (a) The property was ~~had been~~ itemized and its location  
 184 described with sufficient particularity in the instructions for  
 185 levy to permit the sheriff to act;

186 (b) The instructions for the levy had been delivered to  
 187 the sheriff before ~~prior to~~ the date of lapse of the lien; and

188 (c) The property was located in the county in which the  
 189 sheriff has jurisdiction at the time of delivery of the  
 190 instruction for levy. Subsequent removal of the property does  
 191 not defeat the lien. A court may order continuation of the lien  
 192 beyond the 90-day period on a showing that extraordinary  
 193 circumstances have prevented levy.

194 (5) The date of lapse of a judgment lien whose  
 195 enforceability has been temporarily stayed or enjoined as a  
 196 result of any legal or equitable proceeding is tolled until 30

197 days after the stay or injunction is terminated.

198 (6) If a ~~ne~~ second judgment lien is not filed, the  
 199 Department of State shall maintain each judgment lien file and  
 200 all information contained therein for a minimum of 1 year after  
 201 the judgment lien lapses in accordance with this section. If a  
 202 second judgment lien is filed, the department shall maintain  
 203 both files and all information contained in such files for a  
 204 minimum of 1 year after the second judgment lien lapses.

205 (7) ~~Nothing in~~ This section does not ~~shall be construed to~~  
 206 extend the life of a judgment lien beyond the time that the  
 207 underlying judgment, order, decree, or warrant otherwise expires  
 208 or becomes invalid pursuant to law.

209 Section 2. Section 95.091, Florida Statutes, is amended to  
 210 read:

211 95.091 Limitation on actions to collect taxes.-

212 (1)(a) Except in the case of taxes for which certificates  
 213 have been sold, taxes enumerated in s. 72.011, or tax liens  
 214 issued under s. 196.161 or s. 443.141, any tax lien granted by  
 215 law to the state or any of its political subdivisions, any  
 216 municipality, any public corporation or body politic, or any  
 217 other entity having authority to levy and collect taxes shall  
 218 expire 5 years after the date the tax is assessed or becomes  
 219 delinquent, whichever is later. An ~~No~~ action ~~may be begun~~ to  
 220 collect any tax may not be commenced after the expiration of the  
 221 lien securing the payment of the tax.

222 (b) Any tax lien granted by law to the state or any of its  
 223 political subdivisions for any tax enumerated in s. 72.011 or  
 224 any tax lien imposed under s. 196.161 expires ~~shall expire~~ 20

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225 years after the last date the tax may be assessed, after the tax  
 226 becomes delinquent, or after the filing of a tax warrant,  
 227 whichever is later. An action to collect any tax enumerated in  
 228 s. 72.011 may not be commenced after the expiration of the lien  
 229 securing the payment of the tax.

230 (2) If a ~~ne~~ lien to secure the payment of a tax is not  
 231 provided by law, an ~~ne~~ action ~~may be begun~~ to collect the tax  
 232 may not be commenced after 5 years following ~~from~~ the date the  
 233 tax is assessed or becomes delinquent, whichever is later.

234 (3) (a) With the exception of taxes levied under chapter  
 235 198 and tax adjustments made pursuant to ss. 220.23 and  
 236 624.50921, the Department of Revenue may determine and assess  
 237 the amount of any tax, penalty, or interest due under any tax  
 238 enumerated in s. 72.011 which it has authority to administer and  
 239 the Department of Business and Professional Regulation may  
 240 determine and assess the amount of any tax, penalty, or interest  
 241 due under any tax enumerated in s. 72.011 which it has authority  
 242 to administer:

243 1.a. For taxes due before July 1, 1999, within 5 years  
 244 after the date the tax is due, any return with respect to the  
 245 tax is due, or such return is filed, whichever occurs later; and  
 246 for taxes due on or after July 1, 1999, within 3 years after the  
 247 date the tax is due, any return with respect to the tax is due,  
 248 or such return is filed, whichever occurs later;

249 b. Effective July 1, 2002, notwithstanding sub-  
 250 subparagraph a., within 3 years after the date the tax is due,  
 251 any return with respect to the tax is due, or such return is  
 252 filed, whichever occurs later;

253 2. For taxes due before July 1, 1999, within 6 years after  
 254 the date the taxpayer either makes a substantial underpayment of  
 255 tax, or files a substantially incorrect return;

256 3. At any time while the right to a refund or credit of  
 257 the tax is available to the taxpayer;

258 4. For taxes due before July 1, 1999, at any time after  
 259 the taxpayer has filed a grossly false return;

260 5. At any time after the taxpayer has failed to make any  
 261 required payment of the tax, has failed to file a required  
 262 return, or has filed a fraudulent return, except that for taxes  
 263 due on or after July 1, 1999, the limitation prescribed in  
 264 subparagraph 1. applies if the taxpayer has disclosed in writing  
 265 the tax liability to the department before the department has  
 266 contacted the taxpayer; or

267 6. In any case in which there has been a refund of tax  
 268 erroneously made for any reason:

269 a. For refunds made before July 1, 1999, within 5 years  
 270 after making such refund; and

271 b. For refunds made on or after July 1, 1999, within 3  
 272 years after making such refund,

273  
 274 or at any time after making such refund if it appears that any  
 275 part of the refund was induced by fraud or the misrepresentation  
 276 of a material fact.

277 (b) For the purpose of this paragraph, a tax return filed  
 278 before the last day prescribed by law, including any extension  
 279 thereof, shall be deemed to have been filed on such last day,  
 280 and payments made prior to the last day prescribed by law shall



281 | be deemed to have been paid on such last day.

282 | (4) If administrative or judicial proceedings for review of the  
 283 | tax assessment or collection are initiated by a taxpayer within  
 284 | the period of limitation prescribed in this section, the running  
 285 | of the period is ~~shall be~~ tolled during the pendency of the  
 286 | proceeding. Administrative proceedings shall include taxpayer  
 287 | protest proceedings initiated under s. 213.21 and department  
 288 | rules.

289 | Section 3. Effective July 1, 2010, subsection (11) is added  
 290 | to section 201.02, Florida Statutes, to read:

291 | 201.02 Tax on deeds and other instruments relating to real  
 292 | property or interests in real property.-

293 | (11) The taxable consideration for a short sale transfer  
 294 | does not include unpaid indebtedness that is forgiven or  
 295 | released by a mortgagee holding a mortgage on the grantor's  
 296 | interest in the property. For purposes of this subsection, the  
 297 | term "short sale" means a purchase and sale of real property in  
 298 | which all of the following apply:

299 | (a) The grantor's interest is encumbered by a mortgage or  
 300 | mortgages securing indebtedness in an aggregate amount greater  
 301 | than the consideration paid or given by the grantee.

302 | (b) A mortgagee releases the real property from its  
 303 | mortgage in exchange for a payment of less than the total of the  
 304 | outstanding mortgage indebtedness owed to the releasing  
 305 | mortgagee.

306 | (c) The releasing mortgagee does not receive, directly or  
 307 | indirectly, any interest in the property transferred.

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308        (d) The releasing mortgagee is not controlled by or  
 309        related to the grantor or the grantee.

310            Section 4. Subsection (1) of section 202.125, Florida  
 311        Statutes, is amended to read:

312            202.125 Sales of communications services; specified  
 313        exemptions.—

314        (1) The separately stated sales price of communications  
 315        services sold to residential households is exempt from the tax  
 316        imposed by s. 202.12. This exemption does ~~shall~~ not apply to any  
 317        residence that constitutes all or part of a transient public  
 318        lodging establishment as defined in chapter 509, any mobile  
 319        communications service, any cable service, or any direct-to-home  
 320        satellite service.

321            Section 5. Paragraph (i) of subsection (1) of section  
 322        212.05, Florida Statutes, is amended to read:

323            212.05 Sales, storage, use tax.—It is hereby declared to  
 324        be the legislative intent that every person is exercising a  
 325        taxable privilege who engages in the business of selling  
 326        tangible personal property at retail in this state, including  
 327        the business of making mail order sales, or who rents or  
 328        furnishes any of the things or services taxable under this  
 329        chapter, or who stores for use or consumption in this state any  
 330        item or article of tangible personal property as defined herein  
 331        and who leases or rents such property within the state.

332        (1) For the exercise of such privilege, a tax is levied on  
 333        each taxable transaction or incident, which tax is due and  
 334        payable as follows:

335            (i)1. At the rate of 6 percent on charges for all:

336 a. Detective, burglar protection, and other protection  
 337 services (NAICS National Numbers 561611, 561612, 561613, and  
 338 561621). Any law enforcement officer, as defined in s. 943.10,  
 339 who is performing approved duties as determined by his or her  
 340 local law enforcement agency in his or her capacity as a law  
 341 enforcement officer, and who is subject to the direct and  
 342 immediate command of his or her law enforcement agency, and in  
 343 the law enforcement officer's uniform as authorized by his or  
 344 her law enforcement agency, is performing law enforcement and  
 345 public safety services and is not performing detective, burglar  
 346 protection, or other protective services, if the law enforcement  
 347 officer is performing his or her approved duties in a  
 348 geographical area in which the law enforcement officer has  
 349 arrest jurisdiction. Such law enforcement and public safety  
 350 services are not subject to tax irrespective of whether the duty  
 351 is characterized as "extra duty," "off-duty," or "secondary  
 352 employment," and irrespective of whether the officer is paid  
 353 directly or through the officer's agency by an outside source.  
 354 The term "law enforcement officer" includes full-time or part-  
 355 time law enforcement officers, and any auxiliary law enforcement  
 356 officer, when such auxiliary law enforcement officer is working  
 357 under the direct supervision of a full-time or part-time law  
 358 enforcement officer.

359 b. Nonresidential cleaning, excluding cleaning of the  
 360 interiors of transportation equipment, and nonresidential  
 361 building pest control services (NAICS National Numbers 561710  
 362 and 561720).

363 2. As used in this paragraph, "NAICS" means those

364 | classifications contained in the North American Industry  
 365 | Classification System, as published in 2007 by the Office of  
 366 | Management and Budget, Executive Office of the President.

367 |         3. Charges for detective, burglar protection, and other  
 368 | protection security services performed in this state but used  
 369 | outside this state are exempt from taxation. Charges for  
 370 | detective, burglar protection, and other protection security  
 371 | services performed outside this state and used in this state are  
 372 | subject to tax.

373 |         4. If a transaction involves both the sale or use of a  
 374 | service taxable under this paragraph and the sale or use of a  
 375 | service or any other item not taxable under this chapter, the  
 376 | consideration paid must be separately identified and stated with  
 377 | respect to the taxable and exempt portions of the transaction or  
 378 | the entire transaction shall be presumed taxable. The burden  
 379 | shall be on the seller of the service or the purchaser of the  
 380 | service, whichever applicable, to overcome this presumption by  
 381 | providing documentary evidence as to which portion of the  
 382 | transaction is exempt from tax. The department is authorized to  
 383 | adjust the amount of consideration identified as the taxable and  
 384 | exempt portions of the transaction. ‡ However, a determination  
 385 | that the taxable and exempt portions are inaccurately stated and  
 386 | that the adjustment is applicable must be supported by  
 387 | substantial competent evidence.

388 |         5. Each seller of services subject to sales tax pursuant  
 389 | to this paragraph shall maintain a monthly log showing each  
 390 | transaction for which sales tax was not collected because the  
 391 | services meet the requirements of subparagraph 3. for out-of-

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392 state use. The log must identify the purchaser's name, location  
 393 and mailing address, and federal employer identification number,  
 394 if a business, or the social security number, if an individual,  
 395 the service sold, the price of the service, the date of sale,  
 396 the reason for the exemption, and the sales invoice number. The  
 397 monthly log shall be maintained pursuant to the same  
 398 requirements and subject to the same penalties imposed for the  
 399 keeping of similar records pursuant to this chapter.

400 Section 6. Paragraph (a) of subsection (3) of section  
 401 212.0515, Florida Statutes, is amended to read:

402 212.0515 Sales from vending machines; sales to vending  
 403 machine operators; special provisions; registration; penalties.—

404 (3) (a) An operator of a vending machine may not operate or  
 405 cause to be operated in this state any vending machine until the  
 406 operator has registered with the department, has obtained a  
 407 separate registration certificate for each county in which such  
 408 machines are located, and has affixed a notice to each vending  
 409 machine selling food or beverages ~~which states the operator's~~  
 410 ~~name, address, and Federal Employer Identification (FEI) number.~~  
 411 ~~If the operator is not required to have an FEI number, the~~  
 412 ~~notice shall include the operator's sales tax registration~~  
 413 ~~number.~~ The notice must be conspicuously displayed on the  
 414 vending machine when it is being operated in this state and  
 415 shall contain the following language in conspicuous type: NOTICE  
 416 TO CUSTOMER: FLORIDA LAW REQUIRES THIS NOTICE TO BE POSTED ON  
 417 ALL FOOD AND BEVERAGE VENDING MACHINES. REPORT ANY MACHINE  
 418 WITHOUT A NOTICE TO (TOLL-FREE NUMBER). YOU MAY BE ELIGIBLE FOR

419 A CASH REWARD. DO NOT USE THIS NUMBER TO REPORT PROBLEMS WITH  
 420 THE VENDING MACHINE SUCH AS LOST MONEY OR OUT-OF-DATE PRODUCTS.

421 Section 7. Subsection (1) and paragraph (g) of subsection  
 422 (5) of section 212.08, Florida Statutes, is amended to read:

423 212.08 Sales, rental, use, consumption, distribution, and  
 424 storage tax; specified exemptions.—The sale at retail, the  
 425 rental, the use, the consumption, the distribution, and the  
 426 storage to be used or consumed in this state of the following  
 427 are hereby specifically exempt from the tax imposed by this  
 428 chapter.

429 (1) EXEMPTIONS; GENERAL GROCERIES.—

430 (a) Food products for human consumption are exempt from the  
 431 tax imposed by this chapter.

432 (b) For the purpose of this chapter, as used in this  
 433 subsection, the term "food products" means edible commodities,  
 434 whether processed, cooked, raw, canned, or in any other form,  
 435 which are generally regarded as food. This includes, but is not  
 436 limited to, all of the following:

437 1. Cereals and cereal products, baked goods, oleomargarine,  
 438 meat and meat products, fish and seafood products, frozen foods  
 439 and dinners, poultry, eggs and egg products, vegetables and  
 440 vegetable products, fruit and fruit products, spices, salt,  
 441 sugar and sugar products, milk and dairy products, and products  
 442 intended to be mixed with milk.

443 2. Natural fruit or vegetable juices or their concentrates  
 444 or reconstituted natural concentrated fruit or vegetable juices,  
 445 whether frozen or unfrozen, dehydrated, powdered, granulated,  
 446 sweetened or unsweetened, seasoned with salt or spice, or

447 | unseasoned; coffee, coffee substitutes, or cocoa; and tea,  
 448 | unless it is sold in a liquid form.

449 |         3. Bakery products sold by bakeries, pastry shops, or like  
 450 | establishments that do not have eating facilities.

451 |         (c) The exemption provided by this subsection does not  
 452 | apply to:

453 |             1. ~~When the~~ Food products that are sold as meals for  
 454 | consumption on or off the premises of the dealer.

455 |             2. ~~When the~~ Food products that are furnished, prepared, or  
 456 | served for consumption at tables, chairs, or counters or from  
 457 | trays, glasses, dishes, or other tableware, whether provided by  
 458 | the dealer or by a person with whom the dealer contracts to  
 459 | furnish, prepare, or serve food products to others.

460 |             3. ~~When the~~ Food products that are ordinarily sold for  
 461 | immediate consumption on the seller's premises or near a  
 462 | location at which parking facilities are provided primarily for  
 463 | the use of patrons in consuming the products purchased at the  
 464 | location, even though such products are sold on a "take out" or  
 465 | "to go" order and are actually packaged or wrapped and taken  
 466 | from the premises of the dealer.

467 |             4. ~~The~~ Sandwiches sold ready for immediate consumption on or  
 468 | off the seller's premises.

469 |             5. ~~When the~~ Food products that are sold ready for immediate  
 470 | consumption within a place, the entrance to which is subject to  
 471 | an admission charge.

472 |             6. ~~When the~~ Food products that are sold as hot prepared  
 473 | food products.

474 |             7. ~~The~~ Soft drinks, which include, but are not limited to,

475 any nonalcoholic beverage, any preparation or beverage commonly  
 476 referred to as a "soft drink," or any noncarbonated drink made  
 477 from milk derivatives or tea, if ~~when~~ sold in cans or similar  
 478 containers.

479 8. ~~The~~ Ice cream, frozen yogurt, and similar frozen dairy or  
 480 nondairy products in cones, small cups, or pints, popsicles,  
 481 frozen fruit bars, or other novelty items, whether or not sold  
 482 separately.

483 9. ~~The~~ Food that is prepared, whether on or off the  
 484 premises, and sold for immediate consumption. This does not  
 485 apply to food prepared off the premises and sold in the original  
 486 sealed container, or the slicing of products into smaller  
 487 portions.

488 10. ~~When the~~ Food products that are sold through a vending  
 489 machine, pushcart, motor vehicle, or any other form of vehicle.

490 11. ~~The~~ Candy and any similar product that is regarded as  
 491 candy or confection, based on its normal use, as indicated on  
 492 the label or advertising thereof.

493 12. ~~The~~ Bakery products that are sold by bakeries, pastry  
 494 shops, or like establishments having ~~that have~~ eating  
 495 facilities, except if ~~when~~ sold for consumption off the seller's  
 496 premises.

497 13. ~~When~~ Food products that are served, prepared, or sold  
 498 in or by restaurants, lunch counters, cafeterias, hotels,  
 499 taverns, or other like places of business.

500 (d) As used in this subsection, the term:

501 1. "For consumption off the seller's premises" means that  
 502 the food or drink is intended by the customer to be consumed at



503 a place away from the dealer's premises.

504 2. "For consumption on the seller's premises" means that  
 505 the food or drink sold may be immediately consumed on the  
 506 premises where the dealer conducts his or her business. In  
 507 determining whether an item of food is sold for immediate  
 508 consumption, ~~there shall be considered~~ the customary consumption  
 509 practices prevailing at the selling facility shall be  
 510 considered.

511 3. "Premises" shall be construed broadly, and means, but is  
 512 not limited to, the lobby, aisle, or auditorium of a theater;  
 513 the seating, aisle, or parking area of an arena, rink, or  
 514 stadium; or the parking area of a drive-in or outdoor theater.  
 515 The premises of a caterer with respect to catered meals or  
 516 beverages shall be the place where such meals or beverages are  
 517 served.

518 4. "Hot prepared food products" means those products,  
 519 items, or components which have been prepared for sale in a  
 520 heated condition and which are sold at any temperature that is  
 521 higher than the air temperature of the room or place where they  
 522 are sold. "Hot prepared food products," for the purposes of this  
 523 subsection, includes a combination of hot and cold food items or  
 524 components where a single price has been established for the  
 525 combination and the food products are sold in such combination,  
 526 such as a hot meal, a hot specialty dish or serving, or a hot  
 527 sandwich or hot pizza, including cold components or side items.

528 (e)1. Food or drinks not exempt under paragraphs (a), (b),  
 529 (c), and (d) are ~~shall be~~ exempt, notwithstanding those  
 530 paragraphs, if ~~when~~ purchased with food coupons or Special

531 Supplemental Food Program for Women, Infants, and Children  
 532 vouchers issued under authority of federal law.

533 2. This paragraph is effective only while federal law  
 534 prohibits a state's participation in the federal food coupon  
 535 program or Special Supplemental Food Program for Women, Infants,  
 536 and Children if there is an official determination that state or  
 537 local sales taxes are collected within that state on purchases  
 538 of food or drinks with such coupons.

539 3. This paragraph does ~~shall~~ not apply to any food or  
 540 drinks on which federal law shall permit sales taxes without  
 541 penalty, such as termination of the state's participation.

542 (f) The application of the tax on a package that contains  
 543 exempt food products and taxable nonfood products depends upon  
 544 the essential character of the complete package.

545 1. If the taxable items represent more than 25 percent of  
 546 the cost of the complete package and a single charge is made,  
 547 the entire sales price of the package is taxable. If the taxable  
 548 items are separately stated, the separate charge for the taxable  
 549 items is subject to tax.

550 2. If the taxable items represent 25 percent or less of the  
 551 cost of the complete package and a single charge is made, the  
 552 entire sales price of the package is exempt from tax. The person  
 553 preparing the package is liable for the tax on the cost of the  
 554 taxable items going into the complete package. If the taxable  
 555 items are separately stated, the separate charge is subject to  
 556 tax.

557 (5) EXEMPTIONS; ACCOUNT OF USE.—

558 (g) *Building materials used in the rehabilitation of real*

559 *property located in an enterprise zone.—*

560       1. Building materials used in the rehabilitation of real  
 561 property located in an enterprise zone are ~~shall be~~ exempt from  
 562 the tax imposed by this chapter upon an affirmative showing to  
 563 the satisfaction of the department that the items have been used  
 564 for the rehabilitation of real property located in an enterprise  
 565 zone. Except as provided in subparagraph 2., this exemption  
 566 inures to the owner, lessee, or lessor at the time of ~~of~~ the  
 567 ~~rehabilitated~~ real property is rehabilitated, but located in an  
 568 ~~enterprise zone~~ only through a refund of previously paid taxes.  
 569 To receive a refund pursuant to this paragraph, the owner,  
 570 lessee, or lessor of the rehabilitated real property ~~located in~~  
 571 ~~an enterprise zone~~ must file an application under oath with the  
 572 governing body or enterprise zone development agency having  
 573 jurisdiction over the enterprise zone where the business is  
 574 located, as applicable. A single application for a refund may be  
 575 submitted for multiple, contiguous parcels that were part of a  
 576 single parcel that was divided as part of the rehabilitation of  
 577 the property. All other requirements of this paragraph apply to  
 578 each parcel on an individual basis. The application must  
 579 include, which includes:

- 580       a. The name and address of the person claiming the refund.
- 581       b. An address and assessment roll parcel number of the  
 582 rehabilitated real property ~~in an enterprise zone~~ for which a  
 583 refund of previously paid taxes is being sought.
- 584       c. A description of the improvements made to accomplish the  
 585 rehabilitation of the real property.
- 586       d. A copy of a valid ~~the~~ building permit issued by the

587 county or municipal building department for the rehabilitation  
 588 of the real property.

589 e. A sworn statement, under ~~the~~ penalty of perjury, from  
 590 the general contractor licensed in this state with whom the  
 591 applicant contracted to make the improvements necessary to  
 592 rehabilitate ~~accomplish the rehabilitation of~~ the real property,  
 593 which ~~statement~~ lists the building materials used to  
 594 rehabilitate ~~in the rehabilitation of~~ the real property, the  
 595 actual cost of the building materials, and the amount of sales  
 596 tax paid in this state on the building materials. ~~If In the~~  
 597 ~~event that~~ a general contractor was ~~has~~ not been used, the  
 598 applicant, rather than the general contractor, must make the  
 599 sworn statement, required by this sub-subparagraph ~~shall provide~~  
 600 ~~this information in a sworn statement, under the penalty of~~  
 601 ~~perjury.~~ Copies of the invoices that ~~which~~ evidence the purchase  
 602 of the building materials used in the ~~such~~ rehabilitation and  
 603 the payment of sales tax on the building materials must ~~shall~~ be  
 604 attached to the sworn statement provided by the general  
 605 contractor or by the applicant. Unless the actual cost of  
 606 building materials used in the rehabilitation of real property  
 607 and the payment of sales taxes ~~due thereon~~ is documented by a  
 608 general contractor or by the applicant in this manner, the cost  
 609 of the ~~such~~ building materials is deemed to ~~shall~~ be an amount  
 610 equal to 40 percent of the increase in assessed value for ad  
 611 valorem tax purposes.

612 f. The identifying number assigned pursuant to s. 290.0065  
 613 to the enterprise zone in which the rehabilitated real property  
 614 is located.

615 g. A certification by the local building code inspector  
 616 that the improvements necessary to rehabilitate ~~accomplish the~~  
 617 ~~rehabilitation of~~ the real property are substantially completed.

618 h. A statement of whether the business is a small business  
 619 as defined by s. 288.703(1).

620 i. If applicable, the name and address of each permanent  
 621 employee of the business, including, for each employee who is a  
 622 resident of an enterprise zone, the identifying number assigned  
 623 pursuant to s. 290.0065 to the enterprise zone in which the  
 624 employee resides.

625 2. This exemption inures to a municipality ~~city~~, county,  
 626 other governmental unit or agency, or nonprofit community-based  
 627 organization through a refund of previously paid taxes if the  
 628 building materials used in the rehabilitation ~~of real property~~  
 629 ~~located in an enterprise zone~~ are paid for from the funds of a  
 630 community development block grant, State Housing Initiatives  
 631 Partnership Program, or similar grant or loan program. To  
 632 receive a refund ~~pursuant to this paragraph~~, a municipality  
 633 ~~city~~, county, other governmental unit or agency, or nonprofit  
 634 community-based organization must file an application that ~~which~~  
 635 includes the same information required ~~to be provided~~ in  
 636 subparagraph 1. ~~by an owner, lessee, or lessor of rehabilitated~~  
 637 ~~real property~~. In addition, the application must include a sworn  
 638 statement signed by the chief executive officer of the  
 639 municipality ~~city~~, county, other governmental unit or agency, or  
 640 nonprofit community-based organization seeking a refund which  
 641 states that the building materials for which a refund is sought  
 642 were funded by ~~paid for from the funds of~~ a community

643 development block grant, State Housing Initiatives Partnership  
 644 Program, or similar grant or loan program.

645 3. Within 10 working days after receipt of an application,  
 646 the governing body or enterprise zone development agency shall  
 647 review the application to determine if it contains all the  
 648 information required by ~~pursuant to~~ subparagraph 1. or  
 649 subparagraph 2. and meets the criteria set out in this  
 650 paragraph. The governing body or agency shall certify all  
 651 applications that contain the required information ~~required~~  
 652 ~~pursuant to subparagraph 1. or subparagraph 2.~~ and are ~~meet~~ the  
 653 ~~criteria set out in this paragraph~~ as eligible to receive a  
 654 refund. If applicable, the governing body or agency shall also  
 655 certify if 20 percent of the employees of the business are  
 656 residents of an enterprise zone, excluding temporary and part-  
 657 time employees. The certification must ~~shall~~ be in writing, and  
 658 a copy of the certification shall be transmitted to the  
 659 executive director of the Department of Revenue. The applicant  
 660 is ~~shall be~~ responsible for forwarding a certified application  
 661 to the department within the time specified in subparagraph 4.

662 4. An application for a refund ~~pursuant to this paragraph~~  
 663 must be submitted to the department within 6 months after the  
 664 rehabilitation of the property is deemed to be substantially  
 665 completed by the local building code inspector or by November 1  
 666 ~~September 1~~ after the rehabilitated property is first subject to  
 667 assessment.

668 5. Only ~~Not more than~~ one exemption through a refund of  
 669 previously paid taxes for the rehabilitation of real property is  
 670 ~~shall be~~ permitted for any single parcel of property unless

671 | there is a change in ownership, a new lessor, or a new lessee of  
 672 | the real property. A ~~No~~ refund may not ~~shall~~ be granted pursuant  
 673 | ~~to this paragraph~~ unless the amount to be refunded exceeds \$500.  
 674 | A ~~No~~ refund may not ~~granted pursuant to this paragraph shall~~  
 675 | exceed the lesser of 97 percent of the Florida sales or use tax  
 676 | paid on the cost of the building materials used in the  
 677 | rehabilitation of the real property as determined pursuant to  
 678 | sub-subparagraph 1.e. or \$5,000, or, if at least ~~no less than~~ 20  
 679 | percent of the employees of the business are residents of an  
 680 | enterprise zone, excluding temporary and part-time employees,  
 681 | the amount of refund may ~~granted pursuant to this paragraph~~  
 682 | ~~shall~~ not exceed the lesser of 97 percent of the sales tax paid  
 683 | on the cost of the ~~such~~ building materials or \$10,000. A refund  
 684 | ~~approved pursuant to this paragraph~~ shall be made within 30 days  
 685 | after ~~of~~ formal approval by the department of the application  
 686 | for the refund. ~~This subparagraph shall apply retroactively to~~  
 687 | ~~July 1, 2005.~~

688 |         6. The department shall adopt rules governing the manner  
 689 | and form of refund applications and may establish guidelines as  
 690 | to the requisites for an affirmative showing of qualification  
 691 | for exemption under this paragraph.

692 |         7. The department shall deduct an amount equal to 10  
 693 | percent of each refund granted under the provisions of this  
 694 | paragraph from the amount transferred into the Local Government  
 695 | Half-cent Sales Tax Clearing Trust Fund pursuant to s. 212.20  
 696 | for the county area in which the rehabilitated real property is  
 697 | located and shall transfer that amount to the General Revenue  
 698 | Fund.

699 8. For the purposes of the exemption provided in this  
 700 paragraph, the term:

701 a. "Building materials" means tangible personal property  
 702 which becomes a component part of improvements to real property.

703 b. "Real property" has the same meaning as provided in s.  
 704 192.001(12).

705 c. "Rehabilitation of real property" means the  
 706 reconstruction, renovation, restoration, rehabilitation,  
 707 construction, or expansion of improvements to real property.

708 d. "Substantially completed" has the same meaning as  
 709 provided in s. 192.042(1).

710 9. This paragraph expires on the date specified in s. 290.016  
 711 for the expiration of the Florida Enterprise Zone Act.

712 Section 8. Effective upon this act becoming a law and  
 713 operating retroactively to July 1, 2008, paragraph (y) of  
 714 subsection (8) of section 213.053, Florida Statutes, is amended  
 715 to read:

716 213.053 Confidentiality and information sharing.—

717 (8) Notwithstanding any other provision of this section,  
 718 the department may provide:

719 (y) Information relative to ss. 212.08(7)(ccc) and 220.192  
 720 to the Florida Energy and Climate Commission ~~Department of~~  
 721 ~~Environmental Protection~~ for use in the conduct of its official  
 722 business.

723

724 Disclosure of information under this subsection shall be  
 725 pursuant to a written agreement between the executive director  
 726 and the agency. Such agencies, governmental or nongovernmental,



727 shall be bound by the same requirements of confidentiality as  
 728 the Department of Revenue. Breach of confidentiality is a  
 729 misdemeanor of the first degree, punishable as provided by s.  
 730 775.082 or s. 775.083.

731 Section 9. Effective July 1, 2010, subsection (5) and  
 732 paragraph (d) of subsection (8) of section 213.053, Florida  
 733 Statutes, are amended, paragraphs (z) and (aa) are added to  
 734 subsection (8), and subsections (19) and (20) are added to that  
 735 section, to read:

736 213.053 Confidentiality and information sharing.—

737 (5) ~~Nothing contained in~~ This section does not shall  
 738 prevent the department from:

739 (a) Publishing statistics so classified as to prevent the  
 740 identification of particular accounts, reports, declarations, or  
 741 returns; or

742 (b) Using telephones, electronic mail, facsimile machines,  
 743 or other electronic means to:

744 1. Distribute information relating to changes in law, tax  
 745 rates, or interest rates, or other information that is not  
 746 specific to a particular taxpayer;

747 2. Remind taxpayers of due dates;

748 3. Respond to a taxpayer to an electronic mail address that  
 749 does not support encryption if the use of that address is  
 750 authorized by the taxpayer; or

751 4. Notify taxpayers to contact the department ~~Disclosing to~~  
 752 ~~the Chief Financial Officer the names and addresses of those~~  
 753 ~~taxpayers who have claimed an exemption pursuant to former s.~~  
 754 ~~199.185(1)(i) or a deduction pursuant to s. 220.63(5).~~

755 (8) Notwithstanding any other provision of this section,  
 756 the department may provide:

757 (d) Names, addresses, ~~and~~ sales tax registration  
 758 information, and information relating to a hotel or restaurant  
 759 having an outstanding tax warrant, notice of lien, or judgment  
 760 lien certificate to the Division of Hotels and Restaurants of  
 761 the Department of Business and Professional Regulation in the  
 762 conduct of its official duties.

763 (z) Taxpayer names and identification numbers for the  
 764 purposes of information-sharing agreements with financial  
 765 institutions pursuant to s. 213.0532.

766 (aa) Information relative to chapter 212 to the Department  
 767 of Environmental Protection in the conduct of its official  
 768 duties in the administration of s. 253.03(7)(b) and (11).

769  
 770 Disclosure of information under this subsection shall be  
 771 pursuant to a written agreement between the executive director  
 772 and the agency. Such agencies, governmental or nongovernmental,  
 773 shall be bound by the same requirements of confidentiality as  
 774 the Department of Revenue. Breach of confidentiality is a  
 775 misdemeanor of the first degree, punishable as provided by s.  
 776 775.082 or s. 775.083.

777 (19) (a) The department may publish a list of taxpayers  
 778 against whom it has filed a warrant, notice of lien, or judgment  
 779 lien certificate. The list may include the name and address of  
 780 each taxpayer; the amounts and types of delinquent taxes, fees  
 781 or surcharges, penalties, or interest; and the employer  
 782 identification number or other taxpayer identification number.

783       (b) The department shall update the list at least monthly  
 784 to reflect payments for resolution of deficiencies and to  
 785 otherwise add or remove taxpayers from the list.

786       (c) The department may adopt rules to administer this  
 787 subsection.

788       (20) The department may disclose information relating to  
 789 taxpayers against whom it has filed a warrant, notice of lien or  
 790 judgment lien certificate. Such information includes the name  
 791 and address of the taxpayer; the actions taken; the amounts and  
 792 types of liabilities; and the amount of any collections made.

793       Section 10. Effective July 1, 2010, section 213.0532,  
 794 Florida Statutes, is created to read:

795       213.0532 Information-sharing agreements with financial  
 796 institutions.—

797       (1) As used in this section, the term:

798       (a) "Account" means a demand deposit account, checking or  
 799 negotiable withdrawal order account, savings account, time  
 800 deposit account, or money-market mutual fund account.

801       (b) "Department" means the Department of Revenue.

802       (c) "Financial institution" means:

803       1. A depository institution as defined in 12 U.S.C. s.  
 804 1813(c);

805       2. An institution-affiliated party as defined in 12 U.S.C.  
 806 s. 1813(u);

807       3. A federal credit union or state credit union as defined  
 808 in 12 U.S.C. s. 1752, including an institution-affiliated party  
 809 of such a credit union as defined in 12 U.S.C. s. 1786(r); or

810       4. A benefit association, insurance company, safe-deposit

811 company, money-market mutual fund, or similar entity authorized  
 812 to do business in this state.

813 (d) "Obligor" means any person against whose property the  
 814 department has filed a warrant or judgment lien certificate.

815 (e) "Person" has the same meaning as provided in s. 212.02.

816 (2) The department shall request information and assistance  
 817 from a financial institution as necessary to enforce the tax  
 818 laws of the state. Pursuant to this subsection, financial  
 819 institutions doing business in the state and having deposits of  
 820 at least \$50 million shall enter into agreements with the  
 821 department to develop and operate a data match system, using an  
 822 automated data exchange to the maximum extent feasible, in which  
 823 the financial institution must provide, to the extent allowable  
 824 by law, for each calendar quarter the name, record address,  
 825 social security number or other taxpayer identification number,  
 826 average daily account balance, and other identifying information  
 827 for:

828 (a) Each obligor who maintains an account at the financial  
 829 institution as identified to the institution by the department  
 830 by name and social security number or other taxpayer  
 831 identification number; or

832 (b) At the financial institution's option, each person who  
 833 maintains an account at the institution.

834 (3) The department may enter into agreements to operate an  
 835 automated data exchange with financial institutions having  
 836 deposits that do not exceed \$50 million.

837 (4) The department may use the information received  
 838 pursuant to this section only for the purpose of enforcing the

839 collection of taxes and fees administered by the department.

840 (5) The department shall, to the extent possible and in  
 841 compliance with state and federal law, administer this section  
 842 in conjunction with s. 409.25657 in order to avoid duplication  
 843 and reduce the burden on financial institutions.

844 (6) The department shall pay a reasonable fee to the  
 845 financial institution for conducting the data match provided for  
 846 in this section, which may not exceed actual costs incurred by  
 847 the financial institution.

848 (7) A financial institution is not required to provide  
 849 notice to its customers and is not liable to any person for:

850 (a) Disclosing to the department any information required  
 851 under this section.

852 (b) Encumbering or surrendering any assets held by the  
 853 financial institution in response to a notice of lien or levy  
 854 issued by the department.

855 (c) Disclosing any information in connection with a data  
 856 match.

857 (d) Taking any other action in good faith to comply with  
 858 the requirements of this section.

859 (8) Any financial records obtained pursuant to this section  
 860 may be disclosed only for the purpose of, and to the extent  
 861 necessary, to administer and enforce the tax laws of this state.

862 (9) The department may adopt rules establishing the procedures  
 863 and requirements for conducting automated data matches with  
 864 financial institutions pursuant to this section.

865 Section 11. Effective July 1, 2010, section 213.25, Florida  
 866 Statutes, is amended to read:

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867 | 213.25 Refunds; credits; right of setoff.—~~If in any instance~~  
 868 | ~~that a taxpayer has a tax refund or tax credit is due to a~~  
 869 | ~~taxpayer for an overpayment of taxes assessed under any of the~~  
 870 | ~~chapters specified in s. 72.011(1),~~ the department may reduce  
 871 | the such refund or credit to the extent of any billings not  
 872 | subject to protest under s. 213.21 or chapter 443 for ~~the same~~  
 873 | ~~or any other~~ tax owed by the ~~same~~ taxpayer.

874 | Section 12. Effective July 1, 2010, section 213.50, Florida  
 875 | Statutes, is amended to read:

876 | 213.50 Failure to comply; revocation of corporate charter  
 877 | or hotel or restaurant license; refusal to reinstate charter or  
 878 | license.—

879 | (1) Any corporation of this state which has an outstanding  
 880 | tax warrant that has existed for more than 3 consecutive months  
 881 | is subject to the revocation of its charter as provided in s.  
 882 | 607.1420.

883 | (2) A request for reinstatement of a corporate charter may  
 884 | not be granted by the Division of Corporations of the Department  
 885 | of State if an outstanding tax warrant has existed for that  
 886 | corporation for more than 3 consecutive months.

887 | (3) The Department of Business and Professional Regulation  
 888 | may revoke the hotel or restaurant license of a licenseholder if  
 889 | a tax warrant has been outstanding against the licenseholder for  
 890 | more than 3 months.

891 | (4) The Department of Business and Professional Regulation  
 892 | may deny an application to renew the hotel or restaurant license  
 893 | of a licenseholder if a tax warrant has been outstanding against  
 894 | the licenseholder for more than 3 months.

895 Section 13. Effective July 1, 2010, subsection (1) of  
 896 section 213.67, Florida Statutes, is amended to read:  
 897 213.67 Garnishment.—  
 898 (1) If a person is delinquent in the payment of any taxes,  
 899 penalties, and interest owed to the department, the executive  
 900 director or his or her designee may give notice of the amount of  
 901 such delinquency by registered mail, personal service, or by  
 902 electronic means, including, but not limited to, facsimile  
 903 transmissions, electronic data interchange, or use of the  
 904 Internet, to all persons having in their possession or under  
 905 their control any credits or personal property, exclusive of  
 906 wages, belonging to the delinquent taxpayer, or owing any debts  
 907 to such delinquent taxpayer at the time of receipt by them of  
 908 such notice. Thereafter, any person who has been notified may  
 909 not transfer or make any other disposition of such credits,  
 910 other personal property, or debts until the executive director  
 911 or his or her designee consents to a transfer or disposition or  
 912 until 60 days after the receipt of such notice. However, except  
 913 ~~that~~ the credits, other personal property, or debts that ~~which~~  
 914 exceed the delinquent amount stipulated in the notice are ~~shall~~  
 915 not be subject to ~~the provisions of~~ this section, wherever held,  
 916 if in any case in which the taxpayer does not have a prior  
 917 history of tax delinquencies. If during the effective period of  
 918 the notice to withhold, any person so notified makes any  
 919 transfer or disposition of the property or debts required to be  
 920 withheld under this section hereunder, he or she is liable to  
 921 the state for any indebtedness owed to the department by the  
 922 person with respect to whose obligation the notice was given to

923 | the extent of the value of the property or the amount of the  
 924 | debts thus transferred or paid if, solely by reason of such  
 925 | transfer or disposition, the state is unable to recover the  
 926 | indebtedness of the person with respect to whose obligation the  
 927 | notice was given. If the delinquent taxpayer contests the  
 928 | intended levy in circuit court or under chapter 120, the notice  
 929 | under this section remains effective until that final resolution  
 930 | of the contest. Any financial institution receiving such notice  
 931 | will maintain a right of setoff for any transaction involving a  
 932 | debit card occurring on or before the date of receipt of such  
 933 | notice.

934 |         Section 14. Section 213.758, Florida Statutes, is created  
 935 | to read:

936 |         213.758 Transfer of tax liabilities.-

937 |         (1) As used in this section, the term:

938 |         (a) "Involuntary transfer" means a transfer of a business  
 939 | or stock of goods made without the consent of the transferor,  
 940 | including, but not limited to, a transfer:

941 |             1. That occurs due to the foreclosure of a security  
 942 | interest issued to a person who is not an insider as defined in  
 943 | s. 726.102;

944 |             2. That results from an eminent domain or condemnation  
 945 | action;

946 |             3. Pursuant to chapter 61, chapter 702, or the United  
 947 | States Bankruptcy Code;

948 |             4. To a financial institution, as defined in s. 655.005, if  
 949 | the transfer is made to satisfy the transferor's debt to the  
 950 | financial institution; or



951 5. To a third party to the extent that the proceeds are  
 952 used to satisfy the transferor's indebtedness to a financial  
 953 institution as defined in s. 655.005. If the third party  
 954 receives assets worth more than the indebtedness, the transfer  
 955 of the excess may not be deemed an involuntary transfer.

956 (b) "Transfer" means every mode, direct or indirect, with  
 957 or without consideration, of disposing of or parting with a  
 958 business or stock of goods, and includes, but is not limited to,  
 959 assigning, conveying, demising, gifting, granting, or selling.

960 (2) A taxpayer who is liable for any tax, interest,  
 961 penalty, surcharge, or fee administered by the department  
 962 pursuant to chapter 443 or described in s. 72.011(1), excluding  
 963 corporate income tax, and who quits a business without the  
 964 benefit of a purchaser, successor, or assignee, or without  
 965 transferring the business or stock of goods to a transferee,  
 966 must file a final return and make full payment within 15 days  
 967 after quitting the business. A taxpayer who fails to file a  
 968 final return and make payment may not engage in any business in  
 969 this state until the final return has been filed and all taxes,  
 970 interest, or penalties due have been paid. The Department of  
 971 Legal Affairs may seek an injunction at the request of the  
 972 department to prevent further business activity until such tax,  
 973 interest, or penalties are paid. A temporary injunction  
 974 enjoining further business activity may be granted by a court  
 975 without notice.

976 (3) A taxpayer who is liable for taxes, interest, or  
 977 penalties levied under chapter 443 or any of the chapters  
 978 specified in s. 213.05, excluding corporate income tax, who

979 transfers the taxpayer's business or stock of goods, must file a  
 980 final return and make full payment within 15 days after the date  
 981 of transfer.

982 (4) (a) A transferee, or a group of transferees acting in  
 983 concert, of more than 50 percent of a business or stock of goods  
 984 is liable for any tax, interest, or penalties owed by the  
 985 transferor unless:

986 1. The transferor provides a receipt or certificate from  
 987 the department to the transferee showing that the transferor is  
 988 not liable for taxes, interest, or penalties from the operation  
 989 of the business; and

990 2. The department finds that the transferor is not liable  
 991 for taxes, interest, or penalties after an audit of the  
 992 transferor's books and records. The audit may be requested by  
 993 the transferee or the transferor. The department may charge a  
 994 fee for the cost of the audit if it has not issued a notice of  
 995 intent to audit by the time the request for the audit is  
 996 received.

997 (b) A transferee may withhold a portion of the  
 998 consideration for a business or stock of goods to pay the taxes,  
 999 interest, or penalties owed to the state from the operation of  
 1000 the business. The transferee shall pay the withheld  
 1001 consideration to the state within 30 days after the date of the  
 1002 transfer. If the consideration withheld is less than the  
 1003 transferor's liability, the transferor remains liable for the  
 1004 deficiency.

1005 (c) A transferee who acquires the business or stock of  
 1006 goods and fails to pay the taxes, interest, or penalties due,

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1007 | may not engage in any business in the state until the taxes,  
 1008 | interest, or penalties are paid. The Department of Legal Affairs  
 1009 | may seek an injunction at the request of the department to  
 1010 | prevent further business activity until such tax, interest, or  
 1011 | penalties are paid. A temporary injunction enjoining further  
 1012 | business activity may be granted by a court without notice.

1013 | (5) The transferee, or transferees acting in concert, of  
 1014 | more than 50 percent of a business or stock of goods are jointly  
 1015 | and severally liable with the transferor for the payment of the  
 1016 | taxes, interest, or penalties owed to the state from the  
 1017 | operation of the business by the transferor.

1018 | (6) The maximum liability of a transferee pursuant to this  
 1019 | section is equal to the fair market value of the property  
 1020 | transferred or the total purchase price, whichever is greater.

1021 | (7) After notice by the department of transferee liability  
 1022 | under this section, the transferee has 60 days within which to  
 1023 | file an action as provided in chapter 72.

1024 | (8) This section does not impose liability on a transferee  
 1025 | of a business or stock of goods pursuant to an involuntary  
 1026 | transfer.

1027 | (9) The department may adopt rules necessary to administer  
 1028 | and enforce this section.

1029 | Section 15. Effective upon this act becoming a law and  
 1030 | operating retroactively to July 1, 2008, subsections (4) and (5)  
 1031 | of section 220.192, Florida Statutes, are amended to read:

1032 | 220.192 Renewable energy technologies investment tax  
 1033 | credit.—

1034 | (4) TAXPAYER APPLICATION PROCESS.—To claim a credit under

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1035 | this section, each taxpayer must apply to the Florida Energy and  
 1036 | Climate Commission ~~Department of Environmental Protection~~ for an  
 1037 | allocation of each type of annual credit by the date established  
 1038 | by the Florida Energy and Climate Commission ~~Department of~~  
 1039 | ~~Environmental Protection~~. The application form may be  
 1040 | established by the Florida Energy and Climate Commission. The  
 1041 | form must ~~Department of Environmental Protection and shall~~  
 1042 | include an affidavit from each taxpayer certifying that all  
 1043 | information contained in the application, including all records  
 1044 | of eligible costs claimed as the basis for the tax credit, are  
 1045 | true and correct. Approval of the credits under this section  
 1046 | shall be accomplished on a first-come, first-served basis, based  
 1047 | upon the date complete applications are received by the Florida  
 1048 | Energy and Climate Commission ~~Department of Environmental~~  
 1049 | ~~Protection~~. A taxpayer shall submit only one complete  
 1050 | application based upon eligible costs incurred within a  
 1051 | particular state fiscal year. Incomplete placeholder  
 1052 | applications will not be accepted and will not secure a place in  
 1053 | the first-come, first-served application line. If a taxpayer  
 1054 | does not receive a tax credit allocation due to the exhaustion  
 1055 | of the annual tax credit authorizations, then such taxpayer may  
 1056 | reapply in the following year for those eligible costs and will  
 1057 | have priority over other applicants for the allocation of  
 1058 | credits.

1059 | (5) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF CREDITS.—

1060 | (a) In addition to its existing audit and investigation  
 1061 | authority, the Department of Revenue may perform any additional  
 1062 | financial and technical audits and investigations, including

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1063 examining the accounts, books, and records of the tax credit  
 1064 applicant, which ~~that~~ are necessary to verify the eligible costs  
 1065 included in the tax credit return and to ensure compliance with  
 1066 this section. The Florida Energy and Climate Commission  
 1067 ~~Department of Environmental Protection~~ shall provide technical  
 1068 assistance when requested by the Department of Revenue on any  
 1069 technical audits or examinations performed pursuant to this  
 1070 section.

1071 (b) It is grounds for forfeiture of previously claimed and  
 1072 received tax credits if the Department of Revenue determines, as  
 1073 a result of ~~either~~ an audit or examination or from information  
 1074 received from the Florida Energy and Climate Commission  
 1075 ~~Department of Environmental Protection~~, that a taxpayer received  
 1076 tax credits pursuant to this section to which the taxpayer was  
 1077 not entitled. The taxpayer is responsible for returning  
 1078 forfeited tax credits to the Department of Revenue, and such  
 1079 funds shall be paid into the General Revenue Fund of the state.

1080 (c) The Florida Energy and Climate Commission ~~Department of~~  
 1081 ~~Environmental Protection~~ may revoke or modify any written  
 1082 decision granting eligibility for tax credits under this section  
 1083 if it is discovered that the tax credit applicant submitted any  
 1084 false statement, representation, or certification in any  
 1085 application, record, report, plan, or other document filed in an  
 1086 attempt to receive tax credits under this section. The Florida  
 1087 Energy and Climate Commission ~~Department of Environmental~~  
 1088 ~~Protection~~ shall immediately notify the Department of Revenue of  
 1089 any revoked or modified orders affecting previously granted tax  
 1090 credits. Additionally, the taxpayer must notify the Department

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1091 of Revenue of any change in its tax credit claimed.

1092 (d) The taxpayer shall file with the Department of Revenue  
 1093 an amended return or such other report as the Department of  
 1094 Revenue prescribes by rule and shall pay any required tax and  
 1095 interest within 60 days after the taxpayer receives notification  
 1096 from the Florida Energy and Climate Commission ~~Department of~~  
 1097 ~~Environmental Protection~~ that previously approved tax credits  
 1098 have been revoked or modified. If the revocation or modification  
 1099 order is contested, the taxpayer shall file an amended return or  
 1100 other report as provided in this paragraph within 60 days after  
 1101 a final order is issued following proceedings.

1102 (e) A notice of deficiency may be issued by the Department of  
 1103 Revenue at any time within 3 years after the taxpayer receives  
 1104 formal notification from the Florida Energy and Climate  
 1105 Commission ~~Department of Environmental Protection~~ that  
 1106 previously approved tax credits have been revoked or modified.  
 1107 If a taxpayer fails to notify the Department of Revenue of any  
 1108 changes to its tax credit claimed, a notice of deficiency may be  
 1109 issued at any time.

1110 Section 16. Effective July 1, 2010, paragraph (c) of  
 1111 subsection (1) of section 336.021, Florida Statutes, is amended  
 1112 to read:

1113 336.021 County transportation system; levy of ninth-cent  
 1114 fuel tax on motor fuel and diesel fuel.—

1115 (1)

1116 (c) Local option taxes collected on sales or use of diesel  
 1117 fuel in this state shall be distributed in the following manner:

1118 1. The fiscal year of July 1, 1995, through June 30, 1996,

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1119 shall be the base year for all distributions.

1120           2. Each year the tax collected, less the service and  
 1121 administrative charges enumerated in s. 215.20 and the  
 1122 allowances allowed under s. 206.91, on the number of gallons  
 1123 reported, up to the total number of gallons reported in the base  
 1124 year, shall be distributed to each county using the distribution  
 1125 percentage calculated for the base year.

1126           3. After the distribution of taxes pursuant to subparagraph  
 1127 4. 2., additional taxes available for distribution shall first  
 1128 be distributed pursuant to this subparagraph. A distribution  
 1129 shall be made to each county in which a qualified new retail  
 1130 station is located. A qualified new retail station is a retail  
 1131 station that began operation after June 30, 1996, and that has  
 1132 sales of diesel fuel exceeding 50 percent of the sales of diesel  
 1133 fuel reported in the county in which it is located during the  
 1134 1995-1996 state fiscal year. The determination of whether a new  
 1135 retail station is qualified shall be based on the total gallons  
 1136 of diesel fuel sold at the station during each full month of  
 1137 operation during the 12-month period ending January 31, divided  
 1138 by the number of full months of operation during those 12  
 1139 months, and the result multiplied by 12. The amount distributed  
 1140 pursuant to this subparagraph to each county in which a  
 1141 qualified new retail station is located shall equal the local  
 1142 option taxes due on the gallons of diesel fuel sold by the new  
 1143 retail station during the year ending January 31, less the  
 1144 service charges enumerated in s. 215.20 and the dealer allowance  
 1145 provided for by s. 206.91. Gallons of diesel fuel sold at the  
 1146 qualified new retail station shall be certified to the

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1147 department by the county requesting the additional distribution  
 1148 by June 15, 1997, and by March 1 in each subsequent year. The  
 1149 certification shall include the beginning inventory, fuel  
 1150 purchases and sales, and the ending inventory for the new retail  
 1151 station for each month of operation during the year, the  
 1152 original purchase invoices for the period, and any other  
 1153 information the department deems reasonable and necessary to  
 1154 establish the certified gallons. The department may review and  
 1155 audit the retail dealer's records provided to a county to  
 1156 establish the gallons sold by the new retail station.  
 1157 Notwithstanding the provisions of this subparagraph, when more  
 1158 than one county qualifies for a distribution pursuant to this  
 1159 subparagraph and the requested distributions exceed the total  
 1160 taxes available for distribution, each county shall receive a  
 1161 prorated share of the moneys available for distribution.  
 1162 4. After the distribution of taxes pursuant to subparagraph 2.  
 1163 ~~3.~~, all additional taxes available for distribution, except the  
 1164 taxes described in subparagraph 3., shall be distributed based  
 1165 on vehicular diesel fuel storage capacities in each county  
 1166 pursuant to this subparagraph. The total vehicular diesel fuel  
 1167 storage capacity shall be established for each fiscal year based  
 1168 on the registration of facilities with the Department of  
 1169 Environmental Protection as required by s. 376.303 for the  
 1170 following facility types: retail stations, fuel user/nonretail,  
 1171 state government, local government, and county government. Each  
 1172 county shall receive a share of the total taxes available for  
 1173 distribution pursuant to this subparagraph equal to a fraction,  
 1174 the numerator of which is the storage capacity located within



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1175 | the county for vehicular diesel fuel in the facility types  
 1176 | listed in this subparagraph and the denominator of which is the  
 1177 | total statewide storage capacity for vehicular diesel fuel in  
 1178 | those facility types. The vehicular diesel fuel storage capacity  
 1179 | for each county and facility type shall be that established by  
 1180 | the Department of Environmental Protection by June 1, 1997, for  
 1181 | the 1996-1997 fiscal year, and by January 31 for each succeeding  
 1182 | fiscal year. The storage capacities so established shall be  
 1183 | final. The storage capacity for any new retail station for which  
 1184 | a county receives a distribution pursuant to subparagraph 3.  
 1185 | shall not be included in the calculations pursuant to this  
 1186 | subparagraph.

1187 |       Section 17. Subsection (20) of section 443.036, Florida  
 1188 | Statutes, is amended to read:

1189 |       443.036 Definitions.—As used in this chapter, the term:

1190 |       (20) "Employing unit" means an individual or type of  
 1191 | organization, including a partnership, limited liability  
 1192 | company, association, trust, estate, joint-stock company,  
 1193 | insurance company, or corporation, whether domestic or foreign;  
 1194 | the receiver, trustee in bankruptcy, trustee, or successor of  
 1195 | any of the foregoing; or the legal representative of a deceased  
 1196 | person, which has or had in its employ one or more individuals  
 1197 | performing services for it within this state.

1198 |       (a) Each individual employed to perform or to assist in  
 1199 | performing the work of any agent or employee of an employing  
 1200 | unit is deemed to be employed by the employing unit for the  
 1201 | purposes of this chapter, regardless of whether the individual  
 1202 | was hired or paid directly by the employing unit or by an agent

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1203 or employee of the employing unit, if the employing unit had  
 1204 actual or constructive knowledge of the work.

1205 (b) Each individual performing services in this state for  
 1206 an employing unit maintaining at least two separate  
 1207 establishments in this state is deemed to be performing services  
 1208 for a single employing unit for the purposes of this chapter.

1209 (c) A person who is an officer of a corporation, or a  
 1210 member of a limited liability company classified as a  
 1211 corporation for federal income tax purposes, and who performs  
 1212 services for the corporation or limited liability company in  
 1213 this state, regardless of whether those services are continuous,  
 1214 is deemed an employee of the corporation or the limited  
 1215 liability company during all of each week of his or her tenure  
 1216 of office, regardless of whether he or she is compensated for  
 1217 those services. Services are presumed to be rendered for the  
 1218 corporation in cases in which the officer is compensated by  
 1219 means other than dividends upon shares of stock of the  
 1220 corporation owned by him or her.

1221 (d) A limited liability company shall be treated as having the  
 1222 same status as it is classified for federal income tax purposes.  
 1223 However, a single-member limited liability company shall be  
 1224 treated as the employer.

1225 Section 18. Paragraph (b) of subsection (2) of section  
 1226 443.1215, Florida Statutes, is amended to read:

1227 443.1215 Employers.—

1228 (2)

1229 (b) In determining whether an employing unit for which service,  
 1230 other than agricultural labor, is also performed is an employer

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1231 | under paragraph (1)(a), paragraph (1)(b), paragraph (1)(c), or  
 1232 | subparagraph (1)(d)2., the wages earned or the employment of an  
 1233 | employee performing service in agricultural labor may not be  
 1234 | taken into account. If an employing unit is determined to be an  
 1235 | employer of agricultural labor, the employing unit is considered  
 1236 | an employer for purposes of paragraph (1)(a) ~~subsection (1)~~.

1237 | Section 19. Subsection (2) of section 443.1316, Florida  
 1238 | Statutes, is amended to read:

1239 | 443.1316 Unemployment tax collection services; interagency  
 1240 | agreement.—

1241 | (2) (a) The Department of Revenue is considered to be  
 1242 | administering a revenue law of this state when the department  
 1243 | implements this chapter, or otherwise provides unemployment tax  
 1244 | collection services, under contract with the Agency for  
 1245 | Workforce Innovation through the interagency agreement.

1246 | (b) Sections 213.015(1)-(3), (5)-(7), (9)-(19), and (21);  
 1247 | 213.018; 213.025; 213.051; 213.053; 213.0532; 213.0535; 213.055;  
 1248 | 213.071; 213.10; 213.21(4); 213.2201; 213.23; 213.24; 213.25;  
 1249 | 213.27; 213.28; 213.285; 213.34(1), (3), and (4); 213.37;  
 1250 | 213.50; 213.67; 213.69; 213.692; 213.73; 213.733; 213.74; ~~and~~  
 1251 | 213.757; and 213.758 apply to the collection of unemployment  
 1252 | contributions and reimbursements by the Department of Revenue  
 1253 | unless prohibited by federal law.

1254 | Section 20. Subsections (1) through (3) of section 443.141,  
 1255 | Florida Statutes, is amended to read:

1256 | 443.141 Collection of contributions and reimbursements.—

1257 | (1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT,  
 1258 | ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.—

1259 (a) *Interest.*—Contributions or reimbursements unpaid on the  
 1260 date due shall bear interest at the rate of 1 percent per month  
 1261 from and after that date until payment plus accrued interest is  
 1262 received by the tax collection service provider, unless the  
 1263 service provider finds that the employing unit has or had good  
 1264 reason for failure to pay the contributions or reimbursements  
 1265 when due. Interest collected under this subsection must be paid  
 1266 into the Special Employment Security Administration Trust Fund.

1267 (b) *Penalty for delinquent, erroneous, incomplete, or*  
 1268 *insufficient reports.*—

1269 1. An employing unit that fails to file any report  
 1270 required by the Agency for Workforce Innovation or its tax  
 1271 collection service provider, in accordance with rules for  
 1272 administering this chapter, shall pay to the tax collection  
 1273 service provider for each delinquent report the sum of \$25 for  
 1274 each 30 days or fraction thereof that the employing unit is  
 1275 delinquent, unless the agency or its service provider, whichever  
 1276 required the report, finds that the employing unit has or had  
 1277 good reason for failure to file the report. The agency or its  
 1278 service provider may assess penalties only through the date of  
 1279 the issuance of the final assessment notice. However, additional  
 1280 penalties accrue if the delinquent report is subsequently filed.

1281 2.a. An employing unit that files an erroneous, incomplete,  
 1282 or insufficient report with the Agency for Workforce Innovation  
 1283 or its tax collection service provider, shall pay a penalty. The  
 1284 amount of the penalty is \$50 or 10 percent of any tax due,  
 1285 whichever is greater, but no more than \$300 per report. The  
 1286 penalty shall be added to any tax, penalty, or interest

1287 otherwise due.

1288 b. The agency or its tax collection service provider shall  
 1289 waive the penalty if the employing unit files an accurate,  
 1290 complete, and sufficient report within 30 days after a penalty  
 1291 notice is issued to the employing unit. The penalty may not be  
 1292 waived pursuant to this subparagraph more than one time during a  
 1293 12-month period.

1294 c. As used in this subsection, the term "erroneous,  
 1295 incomplete, or insufficient report" means a report so lacking in  
 1296 information, completeness, or arrangement that the report cannot  
 1297 be readily understood, verified, or reviewed. Such reports  
 1298 include, but are not limited to, reports having missing wage or  
 1299 employee information, missing or incorrect social security  
 1300 numbers, or illegible entries; reports submitted in a format  
 1301 that is not approved by the agency or its tax collection service  
 1302 provider; and reports showing gross wages that do not equal the  
 1303 total of the wages of each employee. However, the term does not  
 1304 include a report that merely contains inaccurate data that was  
 1305 supplied to the employer by the employee, if the employer was  
 1306 unaware of the inaccuracy.

1307 ~~3.2. Sums collected as Penalties imposed pursuant to this~~  
 1308 ~~paragraph shall under subparagraph 1. must be deposited in the~~  
 1309 ~~Special Employment Security Administration Trust Fund.~~

1310 ~~4.3. The penalty and interest for a delinquent, erroneous,~~  
 1311 ~~incomplete, or insufficient report may be waived if when the~~  
 1312 ~~penalty or interest is inequitable. The provisions of s.~~  
 1313 ~~213.24(1) apply to any penalty or interest that is imposed under~~  
 1314 ~~this section.~~

1315 5. The Agency for Workforce Innovation and the state agency  
 1316 providing unemployment tax collection services may adopt rules  
 1317 to administer this subsection.

1318 (c) *Application of partial payments.*—~~If~~ ~~When~~ a delinquency  
 1319 exists in the employment record of an employer not in  
 1320 bankruptcy, a partial payment less than the total delinquency  
 1321 amount shall be applied to the employment record as the payor  
 1322 directs. In the absence of specific direction, the partial  
 1323 payment shall be applied to the payor's employment record as  
 1324 prescribed in the rules of the Agency for Workforce Innovation  
 1325 or the state agency providing tax collection services.

1326 (2) REPORTS, CONTRIBUTIONS, APPEALS.—

1327 (a) *Failure to make reports and pay contributions.*—If an  
 1328 employing unit determined by the tax collection service provider  
 1329 to be an employer subject to this chapter fails to make and file  
 1330 any report as and when required by this chapter or by any rule  
 1331 of the Agency for Workforce Innovation or the state agency  
 1332 providing tax collection services, for the purpose of  
 1333 determining the amount of contributions due by the employer  
 1334 under this chapter, or if any filed report is found by the  
 1335 service provider to be incorrect or insufficient, and the  
 1336 employer, after being notified in writing by the service  
 1337 provider to file the report, or a corrected or sufficient  
 1338 report, as applicable, fails to file the report within 15 days  
 1339 after the date of the mailing of the notice, the tax collection  
 1340 service provider may:

1341 1. Determine the amount of contributions due from the  
 1342 employer based on the information readily available to it, which

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1343 determination is deemed to be prima facie correct;

1344 2. Assess the employer the amount of contributions  
1345 determined to be due; and

1346 3. Immediately notify the employer by mail of the  
1347 determination and assessment including penalties as provided in  
1348 this chapter, if any, added and assessed, and demand payment  
1349 together with interest on the amount of contributions from the  
1350 date that amount was due and payable.

1351 (b) *Hearings.*—The determination and assessment are final 15  
1352 days after the date the assessment is mailed unless the employer  
1353 files with the tax collection service provider within the 15  
1354 days a written protest and petition for hearing specifying the  
1355 objections thereto. The tax collection service provider shall  
1356 promptly review each petition and may reconsider its  
1357 determination and assessment in order to resolve the  
1358 petitioner's objections. The tax collection service provider  
1359 shall forward each petition remaining unresolved to the Agency  
1360 for Workforce Innovation for a hearing on the objections. Upon  
1361 receipt of a petition, the Agency for Workforce Innovation shall  
1362 schedule a hearing and notify the petitioner of the time and  
1363 place of the hearing. The Agency for Workforce Innovation may  
1364 appoint special deputies to conduct hearings and to submit their  
1365 findings together with a transcript of the proceedings before  
1366 them and their recommendations to the agency for its final  
1367 order. Special deputies are subject to the prohibition against  
1368 ex parte communications in s. 120.66. At any hearing conducted  
1369 by the Agency for Workforce Innovation or its special deputy,  
1370 evidence may be offered to support the determination and

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1371 assessment or to prove it is incorrect. In order to prevail,  
 1372 however, the petitioner must either prove that the determination  
 1373 and assessment are incorrect or file full and complete corrected  
 1374 reports. Evidence may also be submitted at the hearing to rebut  
 1375 the determination by the tax collection service provider that  
 1376 the petitioner is an employer under this chapter. Upon evidence  
 1377 taken before it or upon the transcript submitted to it with the  
 1378 findings and recommendation of its special deputy, the Agency  
 1379 for Workforce Innovation shall either set aside the tax  
 1380 collection service provider's determination that the petitioner  
 1381 is an employer under this chapter or reaffirm the determination.  
 1382 The amounts assessed under the final order, together with  
 1383 interest and penalties, must be paid within 15 days after notice  
 1384 of the final order is mailed to the employer, unless judicial  
 1385 review is instituted in a case of status determination. Amounts  
 1386 due when the status of the employer is in dispute are payable  
 1387 within 15 days after the entry of an order by the court  
 1388 affirming the determination. However, any determination that an  
 1389 employing unit is not an employer under this chapter does not  
 1390 affect the benefit rights of any individual as determined by an  
 1391 appeals referee or the commission unless:

1392 1. The individual is made a party to the proceedings before  
 1393 the special deputy; or

1394 2. The decision of the appeals referee or the commission  
 1395 has not become final or the employing unit and the Agency for  
 1396 Workforce Innovation were not made parties to the proceedings  
 1397 before the appeals referee or the commission.

1398 (c) *Appeals.*—The Agency for Workforce Innovation and the



1399 state agency providing unemployment tax collection services  
 1400 shall adopt rules prescribing the procedures for an employing  
 1401 unit determined to be an employer to file an appeal and be  
 1402 afforded an opportunity for a hearing on the determination.  
 1403 Pending a hearing, the employing unit must file reports and pay  
 1404 contributions in accordance with s. 443.131.

1405 (3) COLLECTION PROCEEDINGS.—

1406 (a) *Lien for payment of contributions or reimbursements.*—

1407 1. ~~There is created~~ A lien exists in favor of the tax  
 1408 collection service provider upon all the property, both real and  
 1409 personal, of any employer liable for payment of any contribution  
 1410 or reimbursement levied and imposed under this chapter for the  
 1411 amount of the contributions or reimbursements due, together with  
 1412 any interest, costs, and penalties. If any contribution or  
 1413 reimbursement imposed under this chapter or any portion of that  
 1414 contribution, reimbursement, interest, or penalty is not paid  
 1415 within 60 days after becoming delinquent, the tax collection  
 1416 service provider may file ~~subsequently issue~~ a notice of lien  
 1417 ~~that may be filed~~ in the office of the clerk of the circuit  
 1418 court of any county in which the delinquent employer owns  
 1419 property or conducts or has conducted business. The notice of  
 1420 lien must include the periods for which the contributions,  
 1421 reimbursements, interest, or penalties are demanded and the  
 1422 amounts due. A copy of the notice of lien must be mailed to the  
 1423 employer at the employer's ~~her or his~~ last known address. The  
 1424 notice of lien may not be filed ~~issued and recorded~~ until 15  
 1425 days after the date the assessment becomes final under  
 1426 subsection (2). Upon filing ~~presentation of the notice of lien,~~

1427 | the clerk of the circuit court shall record the notice of lien  
 1428 | ~~it~~ in a book maintained for that purpose, and the amount of the  
 1429 | notice of lien, together with the cost of recording and interest  
 1430 | accruing upon the amount of the contribution or reimbursement,  
 1431 | becomes a lien upon the title to and interest, whether legal or  
 1432 | equitable, in any real property, chattels real, or personal  
 1433 | property of the employer against whom the notice of lien is  
 1434 | issued, in the same manner as a judgment of the circuit court  
 1435 | docketed in the office of the circuit court clerk, with  
 1436 | execution issued to the sheriff for levy. This lien is prior,  
 1437 | preferred, and superior to all mortgages or other liens filed,  
 1438 | recorded, or acquired after the notice of lien is filed. Upon  
 1439 | the payment of the amounts due, or upon determination by the tax  
 1440 | collection service provider that the notice of lien was  
 1441 | erroneously issued, the lien is satisfied when the service  
 1442 | provider acknowledges in writing that the lien is fully  
 1443 | satisfied. A lien's satisfaction does not need to be  
 1444 | acknowledged before any notary or other public officer, and the  
 1445 | signature of the director of the tax collection service provider  
 1446 | or his or her designee is conclusive evidence of the  
 1447 | satisfaction of the lien, which satisfaction shall be recorded  
 1448 | by the clerk of the circuit court who receives the fees for  
 1449 | those services.

1450 |         2. The tax collection service provider may subsequently  
 1451 | issue a warrant directed to any sheriff in this state,  
 1452 | commanding him or her to levy upon and sell any real or personal  
 1453 | property of the employer liable for any amount under this  
 1454 | chapter within his or her jurisdiction, for payment, with the

1455 added penalties and interest and the costs of executing the  
 1456 warrant, together with the costs of the clerk of the circuit  
 1457 court in recording and docketing the notice of lien, and to  
 1458 return the warrant to the service provider with payment. The  
 1459 warrant may only be issued and enforced for all amounts due to  
 1460 the tax collection service provider on the date the warrant is  
 1461 issued, together with interest accruing on the contribution or  
 1462 reimbursement due from the employer to the date of payment at  
 1463 the rate provided in this section. In the event of sale of any  
 1464 assets of the employer, however, priorities under the warrant  
 1465 shall be determined in accordance with the priority established  
 1466 by any notices of lien filed by the tax collection service  
 1467 provider and recorded by the clerk of the circuit court. The  
 1468 sheriff shall execute the warrant in the same manner prescribed  
 1469 by law for executions issued by the clerk of the circuit court  
 1470 for judgments of the circuit court. The sheriff is entitled to  
 1471 the same fees for executing the warrant as for a writ of  
 1472 execution out of the circuit court, and these fees must be  
 1473 collected in the same manner.

1474 3. The lien expires 10 years after the filing of a notice  
 1475 of lien with the clerk of court. An action to collect amounts  
 1476 due under this chapter may not be commenced after the expiration  
 1477 of the lien securing the payment of the amounts owed.

1478 (b) *Injunctive procedures to contest warrants after*  
 1479 *issuance.*—An injunction or restraining order to stay the  
 1480 execution of a warrant may not be issued until a motion is  
 1481 filed; reasonable notice of a hearing on the motion for the  
 1482 injunction is served on the tax collection service provider; and

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1483 the party seeking the injunction either pays into the custody of  
 1484 the court the full amount of contributions, reimbursements,  
 1485 interests, costs, and penalties claimed in the warrant or enters  
 1486 into and files with the court a bond with two or more good and  
 1487 sufficient sureties approved by the court in a sum at least  
 1488 twice the amount of the contributions, reimbursements,  
 1489 interests, costs, and penalties, payable to the tax collection  
 1490 service provider. The bond must also be conditioned to pay the  
 1491 amount of the warrant, interest, and any damages resulting from  
 1492 the wrongful issuing of the injunction, if the injunction is  
 1493 dissolved, or the motion for the injunction is dismissed. Only  
 1494 one surety is required when the bond is executed by a lawfully  
 1495 authorized surety company.

1496 (c) *Attachment and garnishment.*—Upon the filing of notice  
 1497 of lien as provided in subparagraph (a)1., the tax collection  
 1498 service provider is entitled to remedy by attachment or  
 1499 garnishment as provided in chapters 76 and 77, as for a debt  
 1500 due. Upon application by the tax collection service provider,  
 1501 these writs shall be issued by the clerk of the circuit court as  
 1502 upon a judgment of the circuit court duly docketed and recorded.  
 1503 These writs shall be returnable to the circuit court. A bond may  
 1504 not be required of the tax collection service provider as a  
 1505 condition required for the issuance of these writs of attachment  
 1506 or garnishment. Issues raised under proceedings by attachment or  
 1507 garnishment shall be tried by the circuit court in the same  
 1508 manner as a judgment under chapters 76 and 77. Further, the  
 1509 notice of lien filed by the tax collection service provider is  
 1510 valid for purposes of all remedies under this chapter until

1511 satisfied under this chapter, and revival by scire facias or  
 1512 other proceedings are not necessary before pursuing any remedy  
 1513 authorized by law. Proceedings authorized upon a judgment of the  
 1514 circuit court do not make the lien a judgment of the circuit  
 1515 court upon a debt for any purpose other than as are specifically  
 1516 provided by law as procedural remedies.

1517 (d) *Third-party claims.*—Upon any levy made by the sheriff  
 1518 under a writ of attachment or garnishment as provided in  
 1519 paragraph (c), the circuit court shall try third-party claims to  
 1520 property involved as upon a judgment thereof and all proceedings  
 1521 authorized on third-party claims in ss. 56.16, 56.20, 76.21, and  
 1522 77.16 shall apply.

1523 (e) *Proceedings supplementary to execution.*—At any time  
 1524 after a warrant provided for in subparagraph (a)2. is returned  
 1525 unsatisfied by any sheriff of this state, the tax collection  
 1526 service provider may file an affidavit in the circuit court  
 1527 affirming the warrant was returned unsatisfied and remains valid  
 1528 and outstanding. The affidavit must also state the residence of  
 1529 the party or parties against whom the warrant is issued. The tax  
 1530 collection service provider is subsequently entitled to have  
 1531 other and further proceedings in the circuit court as upon a  
 1532 judgment thereof as provided in s. 56.29.

1533 (f) *Reproductions.*—In any proceedings in any court under  
 1534 this chapter, reproductions of the original records of the  
 1535 Agency for Workforce Innovation, its tax collection service  
 1536 provider, the former Department of Labor and Employment  
 1537 Security, or the commission, including, but not limited to,  
 1538 photocopies or microfilm, are primary evidence in lieu of the

1539 original records or of the documents that were transcribed into  
 1540 those records.

1541 (g) *Jeopardy assessment and warrant.*—If the tax collection  
 1542 service provider reasonably believes that the collection of  
 1543 contributions or reimbursements from an employer will be  
 1544 jeopardized by delay, the service provider may assess the  
 1545 contributions or reimbursements immediately, together with  
 1546 interest or penalties when due, regardless of whether the  
 1547 contributions or reimbursements accrued are due, and may  
 1548 immediately issue a notice of lien and jeopardy warrant upon  
 1549 which proceedings may be conducted as provided in this section  
 1550 for notice of lien and warrant of the service provider. Within  
 1551 15 days after mailing the notice of lien by registered mail, the  
 1552 employer may protest the issuance of the lien in the same manner  
 1553 provided in paragraph (2)(a). The protest does not operate as a  
 1554 supersedeas or stay of enforcement unless the employer files  
 1555 with the sheriff seeking to enforce the warrant a good and  
 1556 sufficient surety bond in twice the amount demanded by the  
 1557 notice of lien or warrant. The bond must be conditioned upon  
 1558 payment of the amount subsequently found to be due from the  
 1559 employer to the tax collection service provider in the final  
 1560 order of the Agency for Workforce Innovation upon protest of  
 1561 assessment. The jeopardy warrant and notice of lien are  
 1562 satisfied in the manner provided in this section upon payment of  
 1563 the amount finally determined to be due from the employer. If  
 1564 enforcement of the jeopardy warrant is not superseded as  
 1565 provided in this section, the employer is entitled to a refund  
 1566 from the fund of all amounts paid as contributions or

1567 reimbursements in excess of the amount finally determined to be  
 1568 due by the employer upon application being made as provided in  
 1569 this chapter.

1570 Section 21. Effective July 1, 2010, subsection (2) of  
 1571 section 443.163, Florida Statutes, is amended to read:

1572 443.163 Electronic reporting and remitting of contributions  
 1573 and reimbursements.—

1574 (2) (a) An employer who is required by law to file an  
 1575 Employers Quarterly Report (UCT-6) by approved electronic means,  
 1576 but who files the report by a means other than approved  
 1577 electronic means, is liable for a penalty of \$50 ~~\$10~~ for that  
 1578 report and \$1 for each employee. This penalty, ~~which~~ is in  
 1579 addition to any other ~~applicable~~ penalty provided by this  
 1580 chapter. However, unless the penalty does not apply if employer  
 1581 first obtains a waiver of this requirement from the tax  
 1582 collection service provider waives the electronic filing  
 1583 requirement in advance. An employer who fails to remit  
 1584 contributions or reimbursements by approved electronic means as  
 1585 required by law is liable for a penalty of \$50 ~~\$10~~ for each  
 1586 remittance submitted by a means other than approved electronic  
 1587 means. This penalty, ~~which~~ is in addition to any other  
 1588 ~~applicable~~ penalty provided by this chapter.

1589 (b) A person who prepared and reported for 100 or more  
 1590 employers in any quarter during the preceding state fiscal year,  
 1591 but who fails to file an Employers Quarterly Report (UCT-6) for  
 1592 each calendar quarter in the current calendar year by approved  
 1593 electronic means ~~as required by law~~, is liable for a penalty of  
 1594 \$50 ~~\$10~~ for that report and \$1 for each employee. This penalty,

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1595 ~~which~~ is in addition to any other ~~applicable~~ penalty provided by  
 1596 this chapter. However, unless the penalty does not apply if  
 1597 ~~person first obtains a waiver of this requirement from the tax~~  
 1598 collection service provider waives the electronic filing  
 1599 requirement in advance.

1600 Section 22. Subsection (3) of section 443.163, Florida  
 1601 Statutes, is amended to read:

1602 443.163 Electronic reporting and remitting of contributions  
 1603 and reimbursements.—

1604 (3) The tax collection service provider may waive the  
 1605 requirement to file an Employers Quarterly Report (UCT-6) by  
 1606 electronic means for employers that are unable to comply despite  
 1607 good faith efforts or due to circumstances beyond the employer's  
 1608 reasonable control.

1609 (a) As prescribed by the Agency for Workforce Innovation or  
 1610 its tax collection service provider, grounds for approving the  
 1611 waiver include, but are not limited to, circumstances in which  
 1612 the employer does not:

1613 1. Currently file information or data electronically with  
 1614 any business or government agency; or

1615 2. Have a compatible computer that meets or exceeds the  
 1616 standards prescribed by the Agency for Workforce Innovation or  
 1617 its tax collection service provider.

1618 (b) The tax collection service provider shall accept other  
 1619 reasons for requesting a waiver from the requirement to submit  
 1620 the Employers Quarterly Report (UCT-6) by electronic means,  
 1621 including, but not limited to:

1622 1. That the employer needs additional time to program his



1623 or her computer;

1624 2. That complying with this requirement causes the employer  
1625 financial hardship; or

1626 3. That complying with this requirement conflicts with the  
1627 employer's business procedures.

1628 (c) The Agency for Workforce Innovation or the state agency  
1629 providing unemployment tax collection services may establish by  
1630 rule the length of time a waiver is valid and may determine  
1631 whether subsequent waivers will be authorized, based on this  
1632 subsection; ~~however, the tax collection service provider may~~  
1633 ~~only grant a waiver from electronic reporting if the employer~~  
1634 ~~timely files the Employers Quarterly Report (UCT-6) by telefile,~~  
1635 ~~unless the employer wage detail exceeds the service provider's~~  
1636 ~~telefile system capabilities.~~

1637 Section 23. Effective July 1, 2010, section 213.692,  
1638 Florida Statutes, is created to read:

1639 213.692 Integrated enforcement authority.-

1640 (1) If the department files a warrant, notice of lien, or  
1641 judgment lien certificate against the property of a taxpayer,  
1642 the department may also revoke all certificates of registration,  
1643 permits, or licenses issued by the department to that taxpayer.

1644 (a) Before the department may revoke the certificates of  
1645 registration, permits, or licenses, the department must schedule  
1646 an informal conference that the taxpayer is required to attend.  
1647 At the conference, the taxpayer may present evidence regarding  
1648 the department's intended action or enter into a compliance  
1649 agreement. The department must provide written notice to the  
1650 taxpayer of the department's intended action and the time, date,

1651 and place of the conference. The department shall issue an  
 1652 administrative complaint to revoke the certificates of  
 1653 registration, permits, or licenses if the taxpayer does not  
 1654 attend the conference, enter into a compliance agreement, or  
 1655 comply with the compliance agreement.

1656 (b) The department may not issue a certificate of  
 1657 registration, permit, or license to a taxpayer whose certificate  
 1658 of registration, permit, or license has been revoked unless:

1659 1. The outstanding liabilities of the taxpayer have been  
 1660 satisfied; or

1661 2. The department enters into a written agreement with the  
 1662 taxpayer regarding any outstanding liabilities and, as part of  
 1663 such agreement, agrees to issue a certificate of registration,  
 1664 permit, or license.

1665 (c) The department shall require a cash deposit, bond, or  
 1666 other security as a condition of issuing a new certificate of  
 1667 registration pursuant to the requirements of s. 212.14(4).

1668 (2) If the department files a warrant or a judgment lien  
 1669 certificate in connection with a jeopardy assessment, the  
 1670 department must comply with the procedures in s. 213.732 before  
 1671 or in conjunction with those provided in this section.

1672 (3) The department may adopt rules to administer this  
 1673 section.

1674 Section 24. Effective July 1, 2010, the Department of  
 1675 Revenue is authorized to adopt emergency rules to administer s.  
 1676 213.692, Florida Statutes. The emergency rules shall remain in  
 1677 effect for 6 months after adoption and may be renewed during the

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1678 | pendency of procedures to adopt rules addressing the subject of  
1679 | the emergency rules.

1680 |       Section 25. Section 195.095, Florida Statutes, is repealed.

1681 |       Section 26. Section 213.054, Florida Statutes, is repealed.

1682 |       Section 27. Except as otherwise expressly provided in this  
1683 | bill, this bill shall take effect upon becoming a law.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB FTC 10-05 Criminal Penalties for Violations of Tax Statutes  
**SPONSOR(S):** Finance & Tax Council  
**TIED BILLS:** **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Finance & Tax Council		Wilson <i>WJW</i>	Langston <i>RL</i>
1)				
2)				
3)				
4)				
5)				

**SUMMARY ANALYSIS**

Chapter 212, F.S., provides that sales tax dealers are required to collect and remit sales tax back to the Department of Revenue (Department). The failure of a dealer to register with the State or collect and remit sales tax, after written notification from the Department, may result in civil and criminal penalties provided in s. 212.12(2), F.S. Dealer's that provide false or fraudulent tax returns, with the willful intent to evade the payment of taxes, are also subject to similar penalties.

The Department has determined that the criminal penalties provisions in s. 212.12, F.S, may be unclear, due to the current grouping of various violations in s. 212.12(d), F.S. Furthermore, the Department has also identified that the levels of offenses provided within this section may lack the detail needed for proper enforcement.

This bill contains recommendations of the Department that clarify the criminal penalties provisions found within s. 212.12(d), F.S., providing for violations of the tax statutes related to dealers who intentionally fail to register and/or collect and remit taxes and fees, or any person who fraudulently files returns with the intent to evade the payment of taxes and fees owed to the State.

This bill has not been analyzed by the 2010 Revenue Impact Estimating Conference. However, staff estimates the bill to have a positive but indeterminate impact on revenues due to stricter provisions that will enable increased enforcement and encourage higher levels of voluntary compliance with Florida's tax code.

The bill shall take effect upon becoming a law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present situation:

Florida law requires any person engaging in or conducting business in Florida to register with the Department of Revenue (Department), pursuant to s. 212.18, F.S. Chapter 212, F.S., provides that sales tax dealers are required to collect and remit sales tax to the Department. In addition to penalties prescribed in s. 212.12(2), F.S, various civil and criminal penalties are imposed on registration, collection, and reporting violations of taxes, surcharges, and fees.

Under s. 212.12(2), F.S., any person who intentionally fails to register, after the Department has provided written notice of the requirement to register, is subject to an additional penalty of 100% of any unreported tax or fee and is subject to a fine and punishment. The Department is also required to adopt a rule providing procedures on how a person may challenge the requirement to register with the Department.

Also, under s. 212.12(2), F.S., any person who intentionally fails to collect tax, after the Department has provided written notice of the requirement to collect tax on specified transactions, is subject to an additional penalty of 100% of any uncollected tax or fee and is subject to a fine and punishment. The Department is again required to adopt a rule providing procedures on how a person may challenge the requirement to register with the Department.

Lastly, under s. 212.12(2), F.S., any person who provides a false or fraudulent return, with the willful intent to evade the payment of any tax or fee, is subject to an additional penalty of 100% of any unreported tax or fee and is subject to a fine and punishment.

Section 212.12(2)(d), F.S., provides that the levels of various offenses subject to fines and punishments pursuant to s. 775.082, s.775.083, and s.775.084, F.S.,<sup>1</sup> for each of these violations are as follows:

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<sup>1</sup> Sections 775.082, 775.083, and 775.084, F.S., provide for general criminal penalties, fines, and the treatment of habitual felony offenders.

- For uncollected taxes or fees less than \$300 – The first offense is a misdemeanor of the second degree, the second offense is a misdemeanor in the first degree, and the third and all subsequent offenses are felonies in the third degree.
- For uncollected taxes and fees between \$300 and \$20,000 – The offense is a felony of the third degree.
- For uncollected taxes and fees between \$20,000 and \$100,000 – The offense is a felony of the second degree.
- For uncollected taxes and fees of \$100,000 or more – The offense is a felony of the first degree.

However, the Department has determined that the criminal penalties provisions in s. 212.12, F.S., may be unclear, due to the statutory placement of the various violations in s. 212.12(2), F.S. The Department has also identified that the levels of offenses provided within this section may lack the detail needed for proper enforcement.

Proposed changes:

This bill will clarify current statutory language provided in s. 212.12(2), F.S., transferring certain criminal penalties provisions, in this chapter, to sections that deal directly with the respective violations. This bill will also provide greater detail for the penalties incurred.

This bill amends s. 212.07, F.S., simplifying the graduated penalties imposed for the intentional failure to collect tax currently in s. 212.12(2), F.S., and placing them in 212.07(3), F.S. The penalties will be imposed on any person who “willfully” fails to collect taxes or fees imposed under Chapter 212, F.S., after the Department has provided written notice. Section 212.07(3)(d), F.S. is created to require the Department to provide written notice of the duty to collect taxes or fees to the dealer by personal service, registered mail, or by both personal service and mail.

This bill also amends s. 212.12(2)(d), F.S., simplifying the graduated penalties currently imposed for any person who makes a false or fraudulent tax return with the “willful” intent to evade the payment of taxes or fees. The bill removes from s. 212.12(2)(d), F.S., provisions for both the failure to collect tax and the intentional failure to register with the Department, after written notice,

This bill amends s. 212.18, F.S., clarifying penalty provisions imposed for the intentional failure to register, after written notice with the Department, in s. 212.12(2), F.S., and placing them in 212.18(3), F.S. The bill creates s. 212.18(3)(c)2., F.S., providing that any person who “willfully” fails to register as dealer, after the Department provides written notice, commits a felony of the third degree, punishable under s. 775.082, s. 775.083, or s. 775.084, F.S. This bill creates s. 212.18(3)(c)2.b., F.S., requiring the Department to provide written notice of the duty to collect taxes or fees to the dealer by personal service, registered mail, or by both personal service and mail.

The bill establishes a definition for the term “willful”, meaning a voluntary and intentional violation of a known legal duty, in both s. 212.07 and s. 212.18, F.S.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 212.07(3), F.S. simplifying the graduated penalties for the failure to collect tax or fees. Creates s. 212.07(3)(d), F.S., providing for written notice by personal service and/or registered mail. This section also provides for the definition of “willful”.

**Section 2:** Amends s. 212.12(2)(d), F.S., simplifying the graduated penalties for making a false or fraudulent tax return.

**Section 3:** Amends s. 212.18(3), F.S., clarifying penalty provisions for failure to register. Creates s. 212.18(3)(c)2., F.S., provides penalties for the failure to register as a dealer, after notice from the Department. Creates s. 212.18(3)(c)2.b., F.S., providing for written notice by personal service and/or registered mail. This section also provides for the definition of "willful".

**Section 4:** This bill shall take effect upon becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

This bill has not been analyzed by the 2010 Revenue Impact Estimating Conference. However, staff estimates the bill to have a positive but indeterminate impact on revenues due to stricter provisions that will enable increased enforcement and encourage higher levels of voluntary compliance with Florida's tax code.

## 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 an 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 a state tax shared with counties or municipalities.

2. Other



B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

1 A bill to be entitled  
 2 An act relating to criminal penalties for violations of  
 3 tax statutes; amending s. 212.07, F.S.; conforming a  
 4 cross-reference; imposing criminal penalties on a dealer  
 5 who willfully fails to collect certain taxes or fees after  
 6 notice of a duty to collect the taxes or fees by the  
 7 Department of Revenue; defining the term "willful";  
 8 specifying authorized means of notice; amending s. 212.12,  
 9 F.S.; revising provisions imposing criminal penalties on a  
 10 person who makes a false or fraudulent return with a  
 11 willful intent to evade payment of taxes or fees; deleting  
 12 provisions relating to criminal penalties for failing to  
 13 register as a dealer or to collect tax after notice from  
 14 the Department of Revenue; amending s. 212.18, F.S.;  
 15 providing criminal penalties for willfully failing to  
 16 register as a dealer after notice from the Department of  
 17 Revenue; defining the term "willful"; requiring the  
 18 department to send written notice of the duty to register  
 19 by certain specified means; providing an effective date.  
 20

21 Be It Enacted by the Legislature of the State of Florida:  
 22

23 Section 1. Subsections (1) and (3) of section 212.07,  
 24 Florida Statutes, are amended to read:

25 212.07 Sales, storage, use tax; tax added to purchase  
 26 price; dealer not to absorb; liability of purchasers who cannot  
 27 prove payment of the tax; penalties; general exemptions.—

28 (1) (a) The privilege tax herein levied measured by retail

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29 sales shall be collected by the dealers from the purchaser or  
 30 consumer.

31 (b) A resale must be in strict compliance with s. 212.18  
 32 and the rules and regulations, and any dealer who makes a sale  
 33 for resale which is not in strict compliance with s. 212.18 and  
 34 the rules and regulations shall himself or herself be liable for  
 35 and pay the tax. Any dealer who makes a sale for resale shall  
 36 document the exempt nature of the transaction, as established by  
 37 rules promulgated by the department, by retaining a copy of the  
 38 purchaser's resale certificate. In lieu of maintaining a copy of  
 39 the certificate, a dealer may document, prior to the time of  
 40 sale, an authorization number provided telephonically or  
 41 electronically by the department, or by such other means  
 42 established by rule of the department. The dealer may rely on a  
 43 resale certificate issued pursuant to s. 212.18(3)(d) ~~s.~~  
 44 ~~212.18(3)(e)~~, valid at the time of receipt from the purchaser,  
 45 without seeking annual verification of the resale certificate if  
 46 the dealer makes recurring sales to a purchaser in the normal  
 47 course of business on a continual basis. For purposes of this  
 48 paragraph, "recurring sales to a purchaser in the normal course  
 49 of business" refers to a sale in which the dealer extends credit  
 50 to the purchaser and records the debt as an account receivable,  
 51 or in which the dealer sells to a purchaser who has an  
 52 established cash or C.O.D. account, similar to an open credit  
 53 account. For purposes of this paragraph, purchases are made from  
 54 a selling dealer on a continual basis if the selling dealer  
 55 makes, in the normal course of business, sales to the purchaser  
 56 no less frequently than once in every 12-month period. A dealer

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57 | may, through the informal protest provided for in s. 213.21 and  
 58 | the rules of the Department of Revenue, provide the department  
 59 | with evidence of the exempt status of a sale. Consumer  
 60 | certificates of exemption executed by those exempt entities that  
 61 | were registered with the department at the time of sale, resale  
 62 | certificates provided by purchasers who were active dealers at  
 63 | the time of sale, and verification by the department of a  
 64 | purchaser's active dealer status at the time of sale in lieu of  
 65 | a resale certificate shall be accepted by the department when  
 66 | submitted during the protest period, but may not be accepted in  
 67 | any proceeding under chapter 120 or any circuit court action  
 68 | instituted under chapter 72.

69 | (c) Unless the purchaser of tangible personal property  
 70 | that is incorporated into tangible personal property  
 71 | manufactured, produced, compounded, processed, or fabricated for  
 72 | one's own use and subject to the tax imposed under s.  
 73 | 212.06(1)(b) or is purchased for export under s. 212.06(5)(a)1.  
 74 | extends a certificate in compliance with the rules of the  
 75 | department, the dealer shall himself or herself be liable for  
 76 | and pay the tax.

77 | (3) (a) ~~A Any~~ dealer who fails, neglects, or refuses to  
 78 | collect the tax or fees imposed under this chapter herein  
 79 | ~~provided, either~~ by himself or herself or through the dealer's  
 80 | agents or employees, ~~is,~~ in addition to ~~the penalty of~~ being  
 81 | liable for and paying the tax ~~himself or herself,~~ commits guilty  
 82 | ~~of~~ a misdemeanor of the first degree, punishable as provided in  
 83 | s. 775.082 or s. 775.083.

84 | (b) A dealer who willfully fails to collect a tax or fee

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85 after the department provides notice of the duty to collect the  
 86 tax or fee is liable for a specific penalty of 100 percent of  
 87 the uncollected tax or fee. This penalty is in addition to any  
 88 other penalty that may be imposed by law. A dealer who willfully  
 89 fails to collect taxes or fees totaling:

90 1. Less than \$300:

91 a. For a first offense, commits a misdemeanor of the  
 92 second degree, punishable as provided in s. 775.082 or s.  
 93 775.083.

94 b. For a second offense, commits a misdemeanor of the  
 95 first degree, punishable as provided in s. 775.082 or s.  
 96 775.083.

97 c. For a third or subsequent offense, commits a felony of  
 98 the third degree, punishable as provided in s. 775.082, s.  
 99 775.083, or s. 775.084.

100 2. Three hundred dollars or more, but less than \$20,000,  
 101 commits a felony of the third degree, punishable as provided in  
 102 s. 775.082, s. 775.083, or s. 775.084.

103 3. Twenty thousand dollars or more, but less than  
 104 \$100,000, commits a felony of the second degree, punishable as  
 105 provided in s. 775.082, s. 775.083, or s. 775.084.

106 4. One hundred thousand dollars or more, commits a felony  
 107 of the first degree, punishable as provided in s. 775.082, s.  
 108 775.083, or s. 775.084.

109 (c) As used in this subsection, the term "willful" means a  
 110 voluntary and intentional violation of a known legal duty.

111 (d) The department shall give written notice of the duty  
 112 to collect taxes or fees to the dealer by personal service, by

113 sending notice to the dealer's last known address by registered  
 114 mail, or by both personal service and mail.

115 Section 2. Paragraph (d) of subsection (2) of section  
 116 212.12, Florida Statutes, is amended to read:

117 212.12 Dealer's credit for collecting tax; penalties for  
 118 noncompliance; powers of Department of Revenue in dealing with  
 119 delinquents; brackets applicable to taxable transactions;  
 120 records required.-

121 (2)

122 (d) A ~~Any~~ person who makes a false or fraudulent return  
 123 with a willful intent to evade payment of any tax or fee imposed  
 124 under this chapter is; ~~any person who, after the department's~~  
 125 ~~delivery of a written notice to the person's last known address~~  
 126 ~~specifically alerting the person of the requirement to register~~  
 127 ~~the person's business as a dealer, intentionally fails to~~  
 128 ~~register the business; and any person who, after the~~  
 129 ~~department's delivery of a written notice to the person's last~~  
 130 ~~known address specifically alerting the person of the~~  
 131 ~~requirement to collect tax on specific transactions,~~  
 132 ~~intentionally fails to collect such tax, shall, in addition to~~  
 133 ~~the other penalties provided by law, be liable for a specific~~  
 134 ~~penalty of 100 percent of any unreported or any uncollected tax~~  
 135 ~~or fee. This penalty is in addition to any other penalty~~  
 136 provided by law. A person who makes a false or fraudulent return  
 137 with a willful intent to evade payment of taxes or fees  
 138 totaling:

139 1. Less than \$300:

140 a. For a first offense, commits a misdemeanor of the

141 second degree, punishable as provided in s. 775.082 or s.  
 142 775.083.

143 b. For a second offense, commits a misdemeanor of the  
 144 first degree, punishable as provided in s. 775.082 or s.  
 145 775.083.

146 c. For a third or subsequent offense, commits a felony of  
 147 the third degree, punishable as provided in s. 775.082, s.  
 148 775.083, or s. 775.084.

149 2. Three hundred dollars or more, but less than \$20,000,  
 150 commits a felony of the third degree, punishable as provided in  
 151 s. 775.082, s. 775.083, or s. 775.084.

152 3. Twenty thousand dollars or more, but less than  
 153 \$100,000, commits a felony of the second degree, punishable as  
 154 provided in s. 775.082, s. 775.083, or s. 775.084.

155 4. One hundred thousand dollars or more, commits a felony  
 156 of the first degree, punishable as provided in s. 775.082, s.  
 157 775.083, or s. 775.084. and, upon conviction, for fine and  
 158 punishment as provided in s. 775.082, s. 775.083, or s. 775.084.  
 159 ~~Delivery of written notice may be made by certified mail, or by~~  
 160 ~~the use of such other method as is documented as being necessary~~  
 161 ~~and reasonable under the circumstances. The civil and criminal~~  
 162 ~~penalties imposed herein for failure to comply with a written~~  
 163 ~~notice alerting the person of the requirement to register the~~  
 164 ~~person's business as a dealer or to collect tax on specific~~  
 165 ~~transactions shall not apply if the person timely files a~~  
 166 ~~written challenge to such notice in accordance with procedures~~  
 167 ~~established by the department by rule or the notice fails to~~  
 168 ~~clearly advise that failure to comply with or timely challenge~~

169 ~~the notice will result in the imposition of the civil and~~  
 170 ~~eriminal penalties imposed herein.~~

171 ~~1. If the total amount of unreported or uncollected taxes~~  
 172 ~~or fees is less than \$300, the first offense resulting in~~  
 173 ~~conviction is a misdemeanor of the second degree, the second~~  
 174 ~~offense resulting in conviction is a misdemeanor of the first~~  
 175 ~~degree, and the third and all subsequent offenses resulting in~~  
 176 ~~conviction is a misdemeanor of the first degree, and the third~~  
 177 ~~and all subsequent offenses resulting in conviction are felonies~~  
 178 ~~of the third degree.~~

179 ~~2. If the total amount of unreported or uncollected taxes~~  
 180 ~~or fees is \$300 or more but less than \$20,000, the offense is a~~  
 181 ~~felony of the third degree.~~

182 ~~3. If the total amount of unreported or uncollected taxes~~  
 183 ~~or fees is \$20,000 or more but less than \$100,000, the offense~~  
 184 ~~is a felony of the second degree.~~

185 ~~4. If the total amount of unreported or uncollected taxes~~  
 186 ~~or fees is \$100,000 or more, the offense is a felony of the~~  
 187 ~~first degree.~~

188 Section 3. Subsection (3) of section 212.18, Florida  
 189 Statutes, is amended to read:

190 212.18 Administration of law; registration of dealers;  
 191 rules.—

192 (3) (a) Every person desiring to engage in or conduct  
 193 business in this state as a dealer, ~~as defined in this chapter,~~  
 194 or to lease, rent, or let or grant licenses in living quarters  
 195 or sleeping or housekeeping accommodations in hotels, apartment  
 196 houses, roominghouses, or tourist or trailer camps that are



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197 | subject to tax under s. 212.03, or to lease, rent, or let or  
 198 | grant licenses in real property, ~~as defined in this chapter,~~ and  
 199 | every person who sells or receives anything of value by way of  
 200 | admissions, must file with the department an application for a  
 201 | certificate of registration for each place of business. The  
 202 | application must include, ~~showing~~ the names of the persons who  
 203 | have interests in the ~~such~~ business and their residences, the  
 204 | address of the business, and ~~such~~ other data reasonably required  
 205 | by ~~as~~ the department ~~may reasonably require~~. However, owners and  
 206 | operators of vending machines or newspaper rack machines are  
 207 | required to obtain only one certificate of registration for each  
 208 | county in which such machines are located. The department, by  
 209 | rule, may authorize a dealer that uses independent sellers to  
 210 | sell its merchandise to remit tax on the retail sales price  
 211 | charged to the ultimate consumer in lieu of having the  
 212 | independent seller register as a dealer and remit the tax. The  
 213 | department may appoint the county tax collector as the  
 214 | department's agent to accept applications for registrations. The  
 215 | application must be made to the department before the person,  
 216 | firm, copartnership, or corporation may engage in such business,  
 217 | and it must be accompanied by a registration fee of \$5. However,  
 218 | a registration fee is not required to accompany an application  
 219 | to engage in or conduct business to make mail order sales. The  
 220 | department may waive the registration fee for applications  
 221 | submitted through the department's Internet registration  
 222 | process.

223 |           (b) The department, upon receipt of such application,  
 224 | shall ~~will~~ grant to the applicant a separate certificate of

225 registration for each place of business, which certificate may  
 226 be canceled by the department or its designated assistants for  
 227 any failure by the certificateholder to comply with any of the  
 228 provisions of this chapter. The certificate is not assignable  
 229 and is valid only for the person, firm, copartnership, or  
 230 corporation to which issued. The certificate must be placed in a  
 231 conspicuous place in the business or businesses for which it is  
 232 issued and must be displayed at all times. Except as provided in  
 233 this subsection, a ne person may not shall engage in business as  
 234 a dealer or in leasing, renting, or letting of or granting  
 235 licenses in living quarters or sleeping or housekeeping  
 236 accommodations in hotels, apartment houses, roominghouses,  
 237 tourist or trailer camps, or real property or as hereinbefore  
 238 ~~defined, nor shall any person~~ sell or receive anything of value  
 239 by way of admissions, without a valid first having obtained such  
 240 a certificate. A or after such certificate has been canceled; no  
 241 person may not shall receive a any license from any authority  
 242 within the state to engage in any such business without a valid  
 243 first having obtained such a certificate or after such  
 244 eertificate has been canceled. A person may not engage The  
 245 ~~engaging~~ in the business of selling or leasing tangible personal  
 246 property or services or as a dealer; engage, as defined in this  
 247 ~~chapter, or the engaging~~ in leasing, renting, or letting of or  
 248 granting licenses in living quarters or sleeping or housekeeping  
 249 accommodations in hotels, apartment houses, roominghouses, or  
 250 tourist or trailer camps that are taxable under this chapter, or  
 251 real property; r or engage the engaging in the business of  
 252 selling or receiving anything of value by way of admissions,

253 without a valid ~~such~~ certificate ~~first being obtained or after~~  
 254 ~~such certificate has been canceled by the department, is~~  
 255 ~~prohibited.~~

256 (c)1. A ~~The failure or refusal of any person who engages~~  
 257 in acts requiring a certificate of registration under this  
 258 subsection and who fails or refuses to register, commits, firm,  
 259 copartnership, or corporation to so qualify when required  
 260 ~~hereunder is~~ a misdemeanor of the first degree, punishable as  
 261 provided in s. 775.082 or s. 775.083. Such acts are, ~~or~~ subject  
 262 to injunctive proceedings as provided by law. A person who  
 263 engages in acts requiring a certificate of registration and who  
 264 fails or refuses to register is also subject ~~Such failure or~~  
 265 ~~refusal also subjects the offender~~ to a \$100 initial  
 266 registration fee in lieu of the \$5 registration fee required by  
 267 ~~authorized in~~ paragraph (a). However, the department may waive  
 268 the increase in the registration fee if it finds ~~is determined~~  
 269 ~~by the department~~ that the failure to register was due to  
 270 reasonable cause and not to willful negligence, willful neglect,  
 271 or fraud.

272 2. A person who willfully fails to register after the  
 273 department provides notice of the duty to register as a dealer  
 274 commits a felony of the third degree, punishable as provided in  
 275 s. 775.082, s. 775.083, or s. 775.084.

276 a. As used in this subsection, the term "willful" means a  
 277 voluntary and intentional violation of a known legal duty.

278 b. The department shall give written notice of the duty to  
 279 register to the person by personal service, by sending notice by  
 280 registered mail to the person's last known address, or by both

281 personal service and mail.

282 ~~(d)(e)~~ In addition to the certificate of registration, the  
 283 department shall provide to each newly registered dealer an  
 284 initial resale certificate that will be valid for the remainder  
 285 of the period of issuance. The department shall provide each  
 286 active dealer with an annual resale certificate. For purposes of  
 287 this section, "active dealer" means a person who is currently  
 288 registered with the department and who is required to file at  
 289 least once during each applicable reporting period.

290 ~~(e)(d)~~ The department may revoke a ~~any~~ dealer's  
 291 certificate of registration if ~~when~~ the dealer fails to comply  
 292 with this chapter. Prior to revocation of a dealer's certificate  
 293 of registration, the department must schedule an informal  
 294 conference at which the dealer may present evidence regarding  
 295 the department's intended revocation or enter into a compliance  
 296 agreement with the department. The department must notify the  
 297 dealer of its intended action and the time, place, and date of  
 298 the scheduled informal conference by written notification sent  
 299 by United States mail to the dealer's last known address of  
 300 record furnished by the dealer on a form prescribed by the  
 301 department. The dealer is required to attend the informal  
 302 conference and present evidence refuting the department's  
 303 intended revocation or enter into a compliance agreement with  
 304 the department which resolves the dealer's failure to comply  
 305 with this chapter. The department shall issue an administrative  
 306 complaint under s. 120.60 if the dealer fails to attend the  
 307 department's informal conference, fails to enter into a  
 308 compliance agreement with the department resolving the dealer's

309 noncompliance with this chapter, or fails to comply with the  
 310 executed compliance agreement.

311 (f)~~(e)~~ As used in this paragraph, the term "exhibitor"  
 312 means a person who enters into an agreement authorizing the  
 313 display of tangible personal property or services at a  
 314 convention or a trade show. The following provisions apply to  
 315 the registration of exhibitors as dealers under this chapter:

316 1. An exhibitor whose agreement prohibits the sale of  
 317 tangible personal property or services subject to the tax  
 318 imposed in this chapter is not required to register as a dealer.

319 2. An exhibitor whose agreement provides for the sale at  
 320 wholesale only of tangible personal property or services subject  
 321 to the tax imposed in this chapter must obtain a resale  
 322 certificate from the purchasing dealer but is not required to  
 323 register as a dealer.

324 3. An exhibitor whose agreement authorizes the retail sale  
 325 of tangible personal property or services subject to the tax  
 326 imposed in this chapter must register as a dealer and collect  
 327 the tax imposed under this chapter on such sales.

328 4. Any exhibitor who makes a mail order sale pursuant to  
 329 s. 212.0596 must register as a dealer.

330  
 331 Any person who conducts a convention or a trade show must make  
 332 their exhibitor's agreements available to the department for  
 333 inspection and copying.

334 Section 4. This act shall take effect upon becoming a law.