

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Detert, Chair
Senator Abruzzo, Vice Chair

MEETING DATE: Tuesday, February 5, 2013
TIME: 9:00 —11:00 a.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Detert, Chair; Senator Abruzzo, Vice Chair; Senators Bean, Hays, Hukill, Margolis, Richter, Ring, Simpson, Stargel, and Thompson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 62 Transportation / Hays (Similar H 71)	Low-speed Vehicles; Authorizing the conversion of a vehicle titled or branded and registered as a low-speed vehicle to a golf cart; providing procedures; requiring an affidavit; requiring the Department of Highway Safety and Motor Vehicles to issue a decal; providing specifications for the decal, etc. TR 01/17/2013 Fav/CS CM 02/05/2013 Favorable ATD AP	Favorable Yeas 11 Nays 0
2	SB 98 Richter (Identical H 515)	New Markets Development Program; Revising limits on tax credits that may be claimed by qualified community development entities under the New Markets Development Program, etc. CM 02/05/2013 Favorable CA AFT AP	Favorable Yeas 10 Nays 1
3	SB 186 Diaz de la Portilla	Jurisdiction of the Courts; Providing that a person submits to the jurisdiction of the courts of this state by entering into a contract that specifies that the law of this state governs the contract and that the person agrees to submit to the jurisdiction of the courts of this state; providing that the initiation of arbitration in this state, or the making of a written agreement to arbitrate which provides for arbitration in this state, constitutes a consent to exercise in personam jurisdiction by the courts of this state, etc. CM 02/05/2013 Favorable JU RC	Favorable Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, February 5, 2013, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 316 Detert (Compare H 497, S 88)	Tax on Sales, Use, and Other Transactions; Revising the term "mail order sale" to specifically include sales of tangible personal property ordered through the Internet; providing that certain persons who make mail order sales and who have a substantial nexus with this state are subject to this state's power to levy and collect the sales and use tax when they engage in certain enumerated activities; specifying that dealers are not required to collect and remit sales and use tax unless certain circumstances exist; creating a rebuttable presumption that a dealer is subject to the state's power to levy and collect the sales or use tax under specified circumstances; revising the definition of the term "dealer," etc. CM 02/05/2013 Fav/CS AFT AP RC	Fav/CS Yeas 10 Nays 1
5	SB 306 Braynon (Similar H 165, Compare H 555, S 336)	Professional Sports Facilities; Providing that tourist development tax revenues may also be used to pay the debt service on bonds that finance the renovation of a professional sports facility that is publicly owned, or that is on land publicly owned, which is publicly operated or operated by the owner of a professional sports franchise or other lessee; requiring private contributions to the professional sports facility as a condition for the use of tourist development taxes; authorizing the use of certain tax revenues to pay for operation and maintenance costs of the renovated facility; prohibiting the Department of Economic Opportunity from certifying more than one professional sports franchise renovation facility, etc. CM 02/05/2013 Favorable AFT AP RC	Favorable Yeas 11 Nays 0
6	SB 336 Latvala (Identical H 555, Compare S 306)	Tourist Development Tax; Clarifying that the proceeds of the tax may be used for the benefit of certain museums or aquariums, etc. CM 02/05/2013 Fav/CS CA	Fav/CS Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, February 5, 2013, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	SB 406 Gardiner	Economic Development; Establishing the Economic Development Programs Evaluation; requiring the Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability to present the evaluation; requiring the offices to provide an analysis of certain economic development programs and specifying a schedule; limiting the office's evaluation for the purposes of tax credits, tax refunds, sales tax exemptions, cash grants, and similar programs; revising the date on which the Department of Economic Opportunity and Enterprise Florida, Inc., are required to report on the business climate and economic development in the state, etc. CM 02/05/2013 Favorable ATD AP	Favorable Yeas 11 Nays 0

Other Related Meeting Documents

An electronic copy of the Appearance Request form is available to download from any Senate committee page on the Senate's website, www.flsenate.gov.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 62

INTRODUCER: Transportation Committee and Senator Hays

SUBJECT: Low-Speed Vehicles

DATE: February 4, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	Fav/CS
2.	Smith	Hrdlicka	CM	Favorable
3.			ATD	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 62 establishes procedures to allow a vehicle titled or branded and registered as a low-speed vehicle (LSV) to be administratively converted to a golf cart upon verification of the conversion by the Department of Highway Safety & Motor Vehicles (DHSMV), which is accomplished by the owner's submittal of an affidavit, surrender of the registration license plate and current certificate of title, payment of a \$40 administrative fee, and placement of a specified decal on the rear of the converted vehicle.

This bill amends s. 319.14, F.S.

II. Present Situation:

While there are many types, LSVs generally resemble golf carts cosmetically but differ in that LSVs are manufactured and configured for street use. An LSV may be electrically- or gasoline-powered. Some models carry up to eight passengers. As of December 2012, there were 5,818 LSVs registered in the state.

Federal Law

Federal rule defines “low-speed vehicle” as a four-wheeled motor vehicle with a top speed of between 20 and 25 miles per hour on a paved level surface, and a gross vehicle weight rating of less than 3,000 pounds.¹ The rule requires that LSVs be equipped with headlamps, front and rear turn signal lamps, taillamps, stop lamps, reflex reflectors, mirrors, parking brakes, windshields, seat belts, and vehicle identification numbers. LSVs are not required to meet any criteria for vehicle crashworthiness.²

In 1998, the National Highway Traffic Safety Administration (NHTSA) established a limited set of safety standards for LSVs intended for vehicles used “to make short trips for shopping, social and recreational purposes primarily within retirement or other planned communities with golf courses.”³ In its discussion, NHTSA explained its determination to exclude conventional golf carts (which, by definition, are incapable of traveling more than 20 miles per hour) from application of the safety standards and to limit application to LSVs:

“The crash forces that 20 to 25 mile-per-hour vehicles will experience are significantly greater than those for 15 to 20 mile-per-hour golf cars and much greater than those for sub-15 mile-per-hour golf cars. Those greater forces make it necessary to require that LSVs be equipped with more safety features than the states and their local jurisdictions currently require for conventional golf cars used on-road.”⁴

Federal law, specifically 23 U.S.C. s. 217(h), prohibits any motorized vehicle on pedestrian walkways except for maintenance purposes; snowmobiles when snow conditions and state or local regulations permit; motorized wheelchairs; electric bicycles when state or local regulations permit; and such other circumstances as the Secretary of Transportation deems appropriate.

Section 30 of Title 26 of the United States Code provides for a tax credit for low-speed vehicles⁵ acquired after February 17, 2009, and before January 1, 2012, and that otherwise meet the requirements for receipt of the credit. The credit is limited to \$2,500. Taxpayers are authorized to apply for the credit on the basis of the manufacturer’s specified certification to the purchaser that an eligible vehicle meets all requirements that must be satisfied to claim the credit.

State Law

In 1999, the Legislature first authorized the operation of LSVs and set speed limits for LSVs and golf carts consistent with the final federal rule.⁶ Current state law is described below.

¹ 49 C.F.R. s. 571.3 (2003)

² 49 C.F.R. s. 571.500 (2003).

³ “Federal Motor Vehicle Safety Standards; Final Rule,” 63 Federal Register 116 (17 June 1998), pp. 33194 – 33217, at 33194.

⁴ Id. at 33198.

⁵ Defined as a vehicle that has at least four wheels; is manufactured primarily for use on public streets, roads and highways; is not manufactured primarily for off-road use, such as primarily for use on a golf course; whose speed attainable in one mile is more than 20 miles per hour and not more than 25 miles per hour on a paved level surface; and whose gross vehicle weight rating is less than 3,000 pounds. See *Notice 2009-58, 2009-30 Internal Revenue Bulletin 163*.

⁶ Chapter 99-163, L.O.F.

Low-speed Vehicles

Section 320.01(42), F.S., defines “low-speed vehicle” as any four-wheeled vehicle whose top speed is greater than 20 miles per hour but not greater than 25 miles per hour, including, but not limited to, neighborhood electric vehicles. A revision by the 2012 Legislature removed language restricting LSVs to electrical power, effectively expanding the definition to include gasoline-powered vehicles. LSVs must comply with the safety standards in 49 C.F.R. s. 571.500 and s. 316.2122, F.S.

Section 316.2122, F.S., authorizes the operation of LSVs on any road with the following restrictions:

- An LSV may be operated only on streets where the posted speed limit is 35 miles per hour or less. This does not prohibit an LSV from crossing a road or street at an intersection where the road or street has a posted limit of more than 35 miles per hour.
- An LSV must be equipped with headlamps, stop lamps, turn signal lamps, taillamps, reflex reflectors, parking brakes, rearview mirrors, windshields, seat belts, and vehicle identification numbers.
- An LSV must be registered and insured in accordance with s. 320.02, F.S., and titled pursuant to ch. 319, F.S.
- Any person operating an LSV must have in his or her possession a valid driver’s license.
- A county or municipality may prohibit the operation of LSVs on any road under its jurisdiction if the governing body of the county or municipality determines that such prohibition is necessary in the interest of safety.
- The Florida Department of Transportation (FDOT) may prohibit the operation of LSVs on any road under its jurisdiction if it determines that such prohibition is necessary in the interest of safety.

Operation of an LSV on sidewalks or sidewalk areas is not authorized under Florida law.

Golf Carts

Florida law defines a golf cart as a motor vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes and is not capable of exceeding speeds of 20 miles per hour.⁷

Section 322.04(1)(d), F.S., exempts a person operating a golf cart from provisions requiring the operator to have a driver license, and s. 320.105, F.S., exempts golf carts from provisions requiring the registration of vehicles or the display of license plates when operated in accordance with s. 316.212, F.S., or s. 316.2126, F.S.

Generally, golf carts may not be used on the public roads or streets. Section 316.212, F.S., prohibits the operation of a golf cart upon the public roads or streets except that:

- A golf cart may be operated only upon a county road or municipal street that has been designated by the respective county or municipality for use by golf carts provided that certain actions are taken by the local government.

⁷ ss. 316.003(68) and 320.01(22), F.S.

- A golf cart may be operated on a part of the State Highway System (SHS) only under the following conditions:
 - To cross a portion of the SHS if FDOT has reviewed and approved the location and design.
 - To cross, at midblock, a part of the SHS where a golf course is constructed on both sides of the highway if FDOT has reviewed and approved the location and design.
- A golf cart may be operated for the purpose of crossing a street or highway where a single mobile home park is located on both sides and is divided by that street or highway, provided that the location of the crossing is approved by the appropriate governmental authority.
- A golf cart may be operated on a road that is part of the State Park Road System if the posted speed limit is 35 miles per hour or less, when approved by the Department of Environmental Protection.

In all cases where a golf cart may be used on a public road, the golf cart must be equipped with efficient brakes, reliable steering apparatus, safe tires, a rearview mirror, and red reflectorized warning devices in both the front and rear.⁸ Further, a golf cart may be operated only during the hours between sunrise and sunset, unless the responsible governmental entity determines that a golf cart may be operated during the hours between sunset and sunrise and the golf cart is equipped with headlights, brake lights, turn signals, and a windshield.⁹ In no case may a golf cart be operated on a public road by any person under the age of 14.¹⁰

Under certain conditions, a local governmental entity may enact an ordinance allowing golf cart operation on sidewalks adjacent to public roads.¹¹ Where allowed, golf carts may not be operated at speeds above 15 miles per hour.

Section 316.2125, F.S., authorizes the reasonable operation of a golf cart, equipped and operated as provided in s. 316.212(5), (6), and (7), F.S., within any self-contained retirement community unless a county, municipality, or FDOT, for any street or highway under their respective jurisdictions, prohibits such operation in the interest of safety. A local governmental entity may enact a more restrictive ordinance regarding golf cart operation and equipment that applies only to an unlicensed driver and, upon enactment, must post appropriate signs or otherwise inform residents that such an ordinance exists and will be enforced.

Current law provides additional authorized uses of both LSVs and golf carts. Section 316.2126, F.S., authorizes municipal employees to operate golf carts upon any state, county, or municipal road within the corporate limits of such municipalities, upon certain sidewalks, and to cross a portion of the SHS under specified conditions; and state employees, state park volunteers, and state park visitors are authorized to operate golf carts upon public roads within the boundaries of state parks subject to specified conditions. Seasonal delivery personnel are also authorized to use LSVs and golf carts under the conditions specified from midnight October 15 until midnight

⁸ Section 316.212(6), F.S.

⁹ Section 316.212(5), F.S.

¹⁰ Section 316.212(7), F.S.

¹¹ Section 316.212(8)(b), F.S.

December 31 of each year. Lastly, s. 316.21265, F.S., authorizes law enforcement agencies to operate LSVs and golf carts, under the conditions specified, on any street, road, or highway in this state while carrying out its official duties.

DHSMV currently maintains a procedure allowing golf carts to be converted to LSVs, consistent with existing federal law, but current Florida law does not allow for conversion of an LSV to a golf cart. DHSMV has no mechanism for canceling the title and registration of a converted LSV or for removing an LSV vehicle identification number from its records.

Several manufacturers' lines currently offer vehicles which are identical in outward appearance, but can be configured as either an LSV or a golf cart. The only difference between the configurations is internal gearing which provides for a 20 miles per hour maximum speed in the golf cart configuration and a 25 miles per hour maximum speed for the LSV model. With no outwardly apparent difference between the vehicles, law enforcement officers would be unable to ascertain whether a vehicle is required to be registered. Similarly, owners may be unaware of the need to title, register, and insure the vehicle, and unaware of the different allowable conditions under which the vehicle may be operated.

III. Effect of Proposed Changes:

CS/SB 62 creates s. 319.14(10), F.S., to authorize the conversion of a vehicle titled or branded and registered as an LSV to be converted to a golf cart pursuant to the following procedures:

- The owner of the converted vehicle must contact the DHSMV regional office to verify the conversion, surrender the registration plate and the current certificate of title, and pay a \$40 fee to cover DHSMV's cost of verification and associated administrative costs.
- The owner of the converted vehicle must provide an affidavit to DHSMV attesting that the vehicle has been modified to comply with the speed restrictions provided in s. 320.01(42), F.S., and acknowledging that the vehicle must be operated in accordance with s. 316.212, s. 316.2125, s. 316.2126, or s. 316.21265, F.S.
- Upon verification of the conversion, DHSMV must note in the vehicle record that the LSV has been converted to a golf cart and cancel the certificate of title and the registration of the vehicle.
- DHSMV must issue a decal reflecting the conversion of the vehicle to a golf cart, upon which is clearly legible the following text: "CONVERTED VEHICLE. Max speed 20 mph." The decal must be displayed on the rear of the vehicle, so that the decal is plainly visible.

The owner is no longer required to register the vehicle, display a license plate on the vehicle, or insure the vehicle. The vehicle operator is no longer required to have in his or her possession a valid driver license and a person 14 years of age or older may legally operate the vehicle in accordance with s. 316.212, F.S. In order to qualify for the conversion and meet the definition of a "golf cart" under current law, the vehicle must no longer be capable of exceeding 20 miles per hour. If the vehicle, despite the administrative process provided in the bill, continues to be capable of exceeding 20 miles per hour, the vehicles does not qualify as a "golf cart," remains an

LSV as defined in current law, and must be titled, licensed, and insured. Further, the vehicle may only be operated pursuant to provisions governing LSVs.

Reclassification to a golf cart will result in the converted vehicle no longer being able to be legally operated on public roads as currently permitted under s. 316.2122, F.S. However, the converted vehicle could be legally driven on public roads authorized for golf carts. Further, as a golf cart, the converted vehicle (which may weigh up to 2,999 pounds) could share certain sidewalks with pedestrians when the sidewalk has been authorized for golf cart use.¹² For comparison, a 2012 Honda Civic has a curb weight of 2,617 pounds.

DHSMV will verify the conversion of LSVs to golf carts on the basis of the affidavit signed by the owner of the vehicle verifying that the statements required by the bill and contained in the affidavit are true. Upon receipt of the affidavit, surrender of the title and registration, and payment of the fee, DHSMV will cancel the certificate of title and the registration of the vehicle, remove the vehicle identification number from its records, and issue the required decal, without any independent verification of the vehicle's capable speed. The owner of the converted vehicle must display the decal on the rear of the vehicle so that the decal is plainly visible.

Other Potential Implications:

The bill does not provide a process for owners of unregistered LSVs to convert their vehicles to a golf cart.

Converting an LSV for which a federal tax credit was taken may thwart the presumed purpose of the tax credit.

The potential severity of crashes between non-motorists (*e.g.*, bicyclists and pedestrians) and golf carts may be increased due to larger vehicles using sidewalks (where permitted) and other facilities generally reserved for non-motorized travel.

In those areas where golf carts may be legally operated on sidewalks and sidewalk areas, such facilities may be damaged by the larger converted vehicles, which can weigh up to 2,999 pounds.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹² *Id.* and s. 316.008(7), F.S.

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

None.

B. Private Sector Impact:

Vehicle owners choosing to convert an LSV to a golf cart must pay the \$40 registration fee. The practical effect of a conversion is to eliminate the need to register and insure the vehicle. If conversion is desired due to loss of ability to obtain a driver license required for operation of an LSV, and if authorized operation of the converted golf cart meets the owner's mobility needs, the owner's mobility is preserved. Vehicle owners will incur expenses associated with modification of the vehicle to ensure it is incapable of exceeding speeds of 20 miles per hour.

C. Government Sector Impact:

The number of LSVs that will be converted to golf carts is indeterminate.

According to DHSMV, its Information Systems Administration (ISA) will require approximately 93 hours, non-recurring, in order to implement the provisions of this bill. DHSMV states that these hours can be incorporated into ISA's normal workload.¹³

Due to fewer vehicles being insured, potential property damage, personal injury, and fatalities may result in increased litigation costs and utilization of court system resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

CS by Transportation on January 17, 2013:

The CS requires the owner of a converted vehicle to submit a specified affidavit to DHSMV, requires DHSMV to issue a specified decal, and requires the owner of the vehicle to display the decal on the rear of the converted vehicle.

¹³ Department of Highway Safety and Motor Vehicles, *Agency Bill Analysis: SB 36*, (January 7, 2013, on file with the Senate Commerce and Tourism Committee).

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



The Florida Senate

Committee Agenda Request

To: Senator Nancy Detert, Chair
Commerce and Tourism

CC: Jennifer Hrdlicka, Staff Director
Patty Blackburn, Administrative Assistant

Subject: Committee Agenda Request

Date: January 18, 2013

I respectfully request that **Senate Bill #62**, relating to Low-speed Vehicles, be placed on the:

committee agenda at your earliest possible convenience.

next committee agenda.

A handwritten signature in black ink that reads "Alan Hays".

Senator Alan Hays
Florida Senate, District 11
320 Senate Office Building
(850) 487-5011

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Commerce and Tourism Committee

BILL: SB 98

INTRODUCER: Senator Richter

SUBJECT: New Markets Development Program

DATE: February 4, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Hrdlicka	CM	Favorable
2.	_____	_____	CA	_____
3.	_____	_____	AFT	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 98 increases the cumulative amount of tax credits that may be awarded to the Florida New Markets Tax Credit Program from \$163.8 million to \$263.8 million. This bill also increases the amount of tax credits that the state may award to the program in a single fiscal year from \$33.6 million to \$53.6 million.

This bill substantially amends s. 288.9914, F.S.

II. Present Situation:

Florida New Markets Program

Florida’s New Markets Tax Credits Program was enacted in 2009.¹ The program was “established to encourage capital investment in rural and urban low-income communities by allowing taxpayers to earn credits against specified taxes by investing in qualified community development entities that make qualified low-income community investments in qualified active low-income community businesses to create and retain jobs.”²

Under this program, federally-certified Community Development Entities (CDE), which have entered into allocation agreements with the U.S. Treasury, have the ability to apply to the Department of Economic Opportunity (DEO) for a certification of Florida tax credits.³ The CDE must show that it is prepared to invest capital into qualified businesses in Florida’s low-income

¹ Florida’s New Markets Development Program Act is codified at ch. 288, part XII, F.S.

² Section 288.9912, F.S.

³ Section 288.9914, F.S.

communities. The certification process includes proof of the CDE's eligibility, identification of its investors, description of the investments to be raised by the CDE, information regarding how the investments will be used, and a description of the CDE's efforts to partner with local community-based groups. DEO is also able to request additional information needed to verify continued certification. DEO certifies qualified applications on a first-come, first-served basis. Once DEO certifies a CDE's qualified equity investment, the CDE has 30 days to raise its investment capital (the qualified equity investment) and then 12 months to invest a minimum of 85 percent of the purchase price in qualified low-income investments. Thereafter, the CDE must annually report to DEO information including:

- The entity's audited financial statements;
- The industries for the investments;
- The counties where investments were made;
- The number of jobs created and retained; and
- Verification that the average wages paid are at least equal to 115 percent of the federal poverty income guidelines for a family of four.⁴

Any failure by a CDE to follow either Florida or federal law may result in the state recapturing tax credits claimed, together with interest and penalties.⁵

Tax Credits

The Florida New Markets Tax Credit Program allows a tax credit to be taken against the corporate income tax under s. 220.11, F.S., or the insurance premium tax under s. 624.509, F.S.⁶ This credit may be claimed after the investment has been made and held for a minimum of 2 years. Therefore, no credit can be claimed in the first 2 years. In year 3, the annual credit is equal to 7 percent of the investment, and from the fourth year through the seventh year the annual credit is equal to 8 percent. Over 7 years this credit totals 39 percent of the total investment. Any unused portion of the tax credit may be carried forward for future tax years; however, all tax credits expire on December 31, 2022.

Additionally, the program has a cap of \$163.8 million on the total tax credits allowed to be allocated to all investments with the caveat that no more than \$33.6 million in tax credits may be claimed in a single state fiscal year. Current law does not allow the transfer or sale of tax credits, but does allow a tax credit to subsequent purchasers of a qualified investment.

Federal New Markets Tax Credit⁷

Florida's New Markets Tax Credit Program was mirrored after the federal program. The Federal New Markets Tax Credit (NMTC) Program permits taxpayers to receive a credit against federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs).⁸ The CDE must, in turn, invest the qualified equity investments in low-income

⁴ Section 288.9918, F.S.

⁵ Section 288.9920, F.S.

⁶ Section 288.9916, F.S.

⁷ Information on the federal New Markets Tax Credit Program can be found at

http://www.cdfifund.gov/what_we_do/programs_id.asp?programID=5 (last visited December 13, 2012).

⁸ 15 U.S.C. sec. 689, *et. seq.*

communities. The credit provided to the investor totals 39 percent of the cost of the investment and is claimed over a 7-year period. In each of the first 3 years, the investor receives a credit equal to 5 percent of the total amount paid for the stock or capital interest at the time of purchase. For the final 4 years, the credit is equal to 6 percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the 7-year period. An organization wishing to receive allocations under the federal NMTC Program must be certified as a CDE by the US Department of Treasury. To qualify as a CDE, an organization must:

- Be a domestic corporation or partnership at the time of the certification application;
- Demonstrate a primary mission of serving, or providing investment capital for low-income communities or low-income persons; and
- Maintain accountability to residents of low-income communities through representation on an entity's governing board or advisory board.

As stated above, the federal program and the state program each provide credits totaling 39 percent of the investment over a 7 year period. Therefore, a qualified taxpayer with a qualified investment approved for both the federal and state program could receive 78 percent of the purchase price of the investment in tax credits over 7 years. In addition to the tax credits that are received, the investor also has the potential to receive benefits from the results of the investment and eventual return of their principal.

III. Effect of Proposed Changes:

Section 1 amends s. 288.9914, F.S., by increasing the cumulative amount of tax credits that may be awarded to the New Markets Tax Credit program from \$163.8 million to \$263.8 million. This bill also increases the amount of tax credits that the state may award in a single fiscal year towards the program from \$33.6 million to \$53.6 million.

Section 2 provides that the bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

The Revenue Estimating Conference has not yet determined the impact of this bill.

B. Private Sector Impact:

The New Markets Development program is intended to attract private sector investment into low-income rural and urban communities that may not otherwise have occurred.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

COMMITTEES:

Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:

Joint Legislative Budget Commission

January 15, 2013

The Honorable Nancy C. Detert, Chair
Committee on Commerce and Tourism
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Detert:

Senate Bill 98, relating to increasing the total amount of tax credits available for the New Markets Development Program, has been referred to Commerce and Tourism as its first committee of reference. I would appreciate the placing of this bill on your committee's next available agenda.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Jennifer Hrdlicka, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/5/13
Meeting Date

Topic New Markets Development

Bill Number 98
(if applicable)

Name Carolyn Johnson

Amendment Barcode _____
(if applicable)

Job Title Director

Address 130 S Bronough St
Street

Phone _____

City _____ State _____ Zip 32311

E-mail _____

Speaking: For Against Information

Representing Florida chamber of commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

Topic NEW MARKET TAX CREDITS Bill Number SB 98
(if applicable)

Name JEFFREY SHARKEY Amendment Barcode _____
(if applicable)

Job Title _____

Address 106 E COLLEGE AVE # Phone 850 224 1660
Street

T2H FL 32301 E-mail JEFFREY.SHARKEY@GMAIL.COM
City State Zip

Speaking: For Against Information

Representing CAPITAL TRUST AGENCY

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/5/12
Meeting Date

Topic NEW MARKETS DEVELOPMENT PROGRAM Bill Number SB 98
(if applicable)

Name SLATER BAILLISS Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S. MONROE ST #602 Phone 850-222-8900
Street

TALLAHASSEE FL 32301 E-mail swb@cardenaspartners.com
City State Zip

Speaking: For Against Information

Representing STONE HENGE CAPITAL

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/5/13
Meeting Date

Topic New Markets

Bill Number SB 98
(if applicable)

Name Brewster Bevis

Amendment Barcode _____
(if applicable)

Job Title Senior VP

Address 516 N. Adams St
Street

Phone 850-521-2913

Tally FL 32301
City State Zip

E-mail bbevis@aif.com

Speaking: For Against Information

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/5/13

Meeting Date

Topic New Markets Development

Bill Number SB 98
(if applicable)

Name Justin Day

Amendment Barcode _____
(if applicable)

Job Title Director

Address 215 S. Monroe St. St. 602

Phone 222-8900

Street

Tallahassee

City

FL

State

32301

Zip

E-mail jcd@cardenaspartners.com

Speaking: For Against Information

Representing Advantage Capital

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 186

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Jurisdiction of the Courts

DATE: February 5, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Hrdlicka	CM	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 186 amends Florida’s long-arm, choice-of-law, and forum-selection statutes, as well as provisions of the Florida Enforcement of Foreign Judgment Act and Florida International Commercial Arbitration Act.

The bill expands the jurisdiction of the courts of this state to hear actions that do not bear a substantial or reasonable relation to this state or that do not involve a party who is a resident of this state or incorporated in this state. Specifically, the bill amends s. 48.193, F.S., referred to as the long-arm statute, by including language that extends the court’s jurisdiction to individuals entering into a contract that complies with Florida’s forum-selection statute. The bill also amends s. 685.101, F.S., by removing statutory language that prevents the enforcement of choice-of-law provisions found in contracts where each party is a nonresident. The amendments to ss. 685.101 and 685.102, F.S., will apply to contracts entered into on or after July 1, 2013.

Additionally, the term “foreign judgment” found in s. 55.502, F.S., of the Florida Enforcement of Foreign Judgment Act, is amended to mean “any judgment, decree, or order of a court which is entitled to full faith and credit in this state.”

Lastly, provisions from the Florida International Commercial Arbitration Act, ch. 684, F.S., are amended to correct cross-references within the act in order to conform exactly to the UNCITRAL Model Law on Commercial Arbitration. The bill creates s. 684.0049, F.S., which confers personal jurisdiction over parties who initiate arbitration in Florida or enter into written contracts that provide for arbitration in this state for any action that may arise out of the arbitration or the resulting award.

This bill substantially amends the following sections of the Florida Statutes: 48.193, 55.502, 684.0002, 684.0003, 684.0019, 684.0026, 685.101, and 685.102. F.S.

The bill creates the following section of the Florida Statutes: 684.049, F.S.

II. Present Situation:

Jurisdiction

The ability of a court to assert personal jurisdiction over a nonresident is subject to the constitutional requirements of the Due Process Clause of the Fourteenth Amendment.¹ The test for determining whether a court is able to assert personal jurisdiction over a nonresident is whether the nonresident has “minimum contacts” in the forum such that the commencement of a proceeding against that individual does “not offend traditional notions of fair play and justice.”² Foreseeability is key; thus, the principal inquiry is whether the nonresident’s conduct and connection with the forum state would lead him or her to believe that they could “reasonably anticipate being haled into court.”³

Florida Long-Arm Statute

The second limitation on a court’s ability to assert personal jurisdiction is derived from a state’s long-arm statute. Such statutes can be drafted broadly⁴ to reach the maximum bounds of the Due Process Clause or narrowly by enumerating specific acts or activities that would allow a court to assume personal jurisdiction in a particular case. Florida’s statute falls in the latter category.

In *Venetian Salami Co. v. J.S. Parthenais*, the Florida Supreme Court described the interplay between Florida’s long-arm statute and the due process requirements of the Fourteenth Amendment as follows:

By enacting section 48.193, the legislature has determined the requisite basis for obtaining jurisdiction over nonresident defendants as far as Florida is concerned. It has not specifically addressed whether the federal constitutional requirement of minimum contacts has been met. As a practical matter, it could not do so because each case will depend upon the facts.⁵

¹ U.S. Const. amend. XIV, s. 2 (“No state shall . . . deprive any person of life, liberty, or property without due process of law”); See *International Shoe Co. v. Washington, Office of Unemployment Comp. and Placement*, 326 U.S. 310, 316 (1945).

² *Id.* at 316.

³ *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985) (quoting *World-Wide Volkswagen Co. v. Woodson*, 444 U.S. 286, 297 (1980)).

⁴ As an example of a broad long-arm statute, California’s long-arm statute states: “A court of this state may exercise jurisdiction on any basis not inconsistent with the Constitution of this state or of the United States.” Cal. Civ. Proc. s. 410.10 (2012).

⁵ *Venetian Salami Co. v. J.S. Parthenais*, 554 So.2d 499, 500 (Fla. 1989).

Therefore, two inquiries must be satisfied. The first is whether there is a jurisdictional basis under the Florida long-arm statute to assert personal jurisdiction; and if so, whether the necessary minimum contacts exist.⁶

Florida' Choice-of-Law and Forum-Selection Statutes

Florida's choice-of-law and forum selection statutes, adopted in 1989, allow parties to a contract to choose Florida law to govern disputes relating to the contract and to select this state's courts as the forum for the resolution of any disputes. These statutes are based on a recommendation of the International Banking and Trade Study Commission which was created by the Legislature in 1988 to "advise on possible measures to reduce impediments to commerce in Florida."⁷ The House of Representatives' Staff Analysis for the legislation creating the statutes stated that the bill would "enhance Florida's attractiveness as an international commercial center."⁸

Choice-of-Law Statute

Florida's choice-of-law statute is drafted as a limitation on the power of persons to enter into contracts. However, the provision acts as a limitation on the power of a court to enforce a contractual provision designating Florida law as the law that will govern disputes relating to a contract.

Section 685.101(1), F.S., effectively grants broad authority to courts to enforce "to the extent permitted under the United States Constitution" a contractual provision designating Florida law as the law that will govern a contract valued at not less than \$250,000. Section 685.101(2), F.S., provides a list of exceptions to the broad grant of authority. Specifically, under s. 685.101(2)(a), F.S., the authority of a court to enforce a choice of law provision:

does not apply to any contract, agreement, or undertaking:

(a) Regarding any transaction which does not bear a substantial or reasonable relation to this state in which every party is either or a combination of:

1. A resident and citizen of the United States, but not of this state; or
2. Incorporated or organized under the laws of another state and does not maintain a place of business in this state

In interpreting s. 685.101, F.S., the court in *Jetbroadband WV, LLC v. MasTec North America, Inc.*, stated that the section only applies if: "1) the contract bears a substantial or reasonable relation to Florida, or 2) at least one of the parties is either a resident or citizen of Florida (if a person), or is incorporated or organized under the laws of Florida or maintains a place of business in Florida (if a business)."⁹

⁶ *Jetbroadband WV, LLC v. Mastec North America, Inc.*, 13 So.3d 159, 161 (Fla. 3rd DCA 2009).

⁷ Fla. H. R. Comm. on Commerce, SB 109 (1989) Staff Analysis (June 27, 1989).

⁸ *Id.*

⁹ *Jetbroadband*, at 162 (quoting Edward M. Mullins & Douglas J. Giuliano, *Contractual Waiver of Personal Jurisdiction Under F.S. § 685.102: The Long-Arm Statute's Little-Known Cousin*, 80 FLA Bar J. 36, 37 (May 2006)).

Additionally, the choice-of-law statute does not apply to contracts for labor, employment or relating to any transaction for personal, family, or household purposes.¹⁰

Forum-Selection Statute

The forum-selection statute, s. 685.102, F.S., was also adopted in 1989 along with its counterpart, the Florida choice-of-law statute. The forum-selection statute grants Florida courts jurisdiction to hear cases relating to any contracts that have been made consistent with s. 685.101, F.S., which, with some exceptions, authorizes parties to choose Florida law to govern a contract.

Regarding enforceability, the United States Supreme Court has held that a forum-selection clause should be upheld, unless it can be shown that its enforcement would be unreasonable or unjust, or that the clause was invalid as a result of fraud or overreaching.¹¹ As it relates to personal jurisdiction and the minimum contacts analysis, the United States Supreme Court has also held that the minimum contacts standard is met if a forum-selection clause exists that is freely negotiated and is not unreasonable and unjust.

Interaction of the Choice-of-Law and Forum-Selection Statutes

Read together, the choice-of-law and forum-selection statutes:

stand for the proposition that, if certain requirements are met, parties may, by contract alone, confer personal jurisdiction on the courts of Florida. To satisfy the statutory requirements, the contract, agreement, or undertaking must (1) include a choice of law provision designating Florida Law as the governing law, (2) include a provision whereby the non-resident agrees to submit to the jurisdiction of the courts of Florida, (3) involve consideration of not less than \$250,000, (4) not violate the United States Constitution, and (5) either bear a substantial or reasonable relation to Florida or have at least one of the parties be a resident of Florida or incorporated under its laws. Thus, as long as one of the parties is a resident of Florida or incorporated under its laws, and the other statutory requirements are met, sections 685.101-.102 operate irrespective of whether the underlying contract bears any relation to Florida and notwithstanding any law to the contrary.¹²

Modern Trends Regarding Choice-of-Law Clauses

In an effort to promote predictability and certainty in commercial relation disputes, the use of choice-of-law provisions in contracts has increased significantly. As such, the judicial enforcement of choice-of-law clauses has now become the norm.¹³ As one writer comments, there is evidence that states do compete for law business by enforcing contractual choice-of-law.¹⁴ His findings are summarized below:

¹⁰ Section 685.101(2)(b), and (c), F.S.

¹¹ *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972).

¹² *Jetbroadband*, at 162 (footnote omitted).

¹³ Larry E. Ribstein, *From Efficiency to Politics in Contractual Choice of Law*, 37 GA. L. REV. 363, 382 (Winter 2003).

¹⁴ *Id.* at 431.

First, there is evidence of the existence of a market for contractual choice. Many relatively large companies use choice-of-law clauses, thereby suggesting that there is a significant demand for enforcement. The University of Missouri's Contracting and Organizations Research Institute (CORI) has collected such contracts from publicly traded companies that disclose contracts in filings with the Securities and Exchange Commission A search of CORI's web database indicates that 4,507 of 8,583 contracts of various types had choice-of-law clauses. Second, a further indication of the existence of a choice-of-law market is that parties often contract for the law of one of a relatively small group of states, indicating that they are not choosing a party's domicile or the jurisdiction where the particular transaction is based. Eighty-nine percent of the contracts with choice-of-law clauses select the law of only ten states, seventy-two percent select the law of four states, and twenty-six percent select the law of Delaware, one of the smaller states.

....

Fourth, and most importantly for present purposes, the parties tend to choose states that have signaled their intent to compete in the choice-of-law market. The top five states, with a combined eighty percent market share - Delaware, New York, California, Texas, and Illinois - all have adopted statutes providing for enforcement of contractual choice of law in relatively large contracts, with the remaining statute state, Florida, in eighth place¹⁵

In addition, the cited benefits enjoyed by jurisdictions that have adopted statutes to authorize the enforcement of choice-of-law provisions found in contracts include the attraction of business activity into the forum state, as well as increased tourism.^{16, 17} Moreover, some propose that choice-of-law clauses reduce parties' litigation costs seeing that fewer resources will be devoted to presenting conflict-of-law arguments before the courts in an effort to determine which state law is applicable in the absence of a choice-of-law provision that designates the governing law.¹⁸

The American Law Institute has promulgated the Restatement (2d) of Conflict of Laws.¹⁹ Section 187 begins with the presumption that a contract's choice-of-law provision will be enforced, but sets out two exceptions referred to as the "nexus test" and the "fundamental policy test."²⁰ Under the nexus test, choice-of-law clauses will not be enforced if the chosen jurisdiction

¹⁵ *Id.* at 432-434.

¹⁶ Garrett L. Pendleton & Michael A. Tessitore, *Foreign Litigants Seek Forum to Litigate – Is Florida Open for Business?*, 79 FLA. BAR J., 20, 24 (Mar. 2005).

¹⁷ *But see*, Ribstein *supra* note 13, at 429. ("States have incentives not only to avoid repelling firms, but also to encourage them to establish significant local contacts, such as headquarters. The relevance of this factor depends on whether the rule regarding enforcement of contractual choice requires significant contacts in a state as a prerequisite to enforcing a contract applying that state's law. This depends on states' willingness not only to apply their own law where it is designated in the contract, but also to apply another state's law where it is designated and the state has contacts with the contracting parties, and to refuse to apply their own state's law where it is designated in the contract but where the state lacks significant contacts with the parties.")

¹⁸ *Id.* at 403.

¹⁹ Restatement Second of Conflict of Laws (1971).

²⁰ Richard T. Franch, et. al., *Choice of law and choice of forum are both crucial: Parties to international agreement should give careful thought to each*, The Nat'l Law J., Feb. 2002.

bears “no substantial relationship” to the parties or transaction, and there is “no other reasonable basis” for the choice.²¹ Under the fundamental policy test, choice-of-law clauses will not be enforced if the application of the chosen law would offend “the fundamental policy of a state” with an interest in the transaction materially greater than that of the chosen jurisdiction and whose law would apply “in the absence of an effective choice-of-law by the parties.”²²

Although persuasive and instructive, it should be noted that a Restatement is not considered to be a primary source of law, but serves as general resource for understanding and researching a specific area of the law. As such, several jurisdictions, including New York, Delaware, California, and Illinois, have removed the substantial relationship requirement from their choice-of-law statutes.²³

Florida Enforcement of Foreign Judgments Act

Article IV, clause 1 of the United States Constitution provides that “Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State.”²⁴ Accordingly, under the Florida Enforcement of Foreign Judgments Act (act), ss. 55.501-55.509, F.S., foreign judgments from sister jurisdictions may be enforced in Florida upon being recorded in the office of the clerk of the circuit court of any county.²⁵

In its current statutory form, the foreign judgments that may be enforced under the act include “any judgment, decree, or order of a court of any other state or of the United States if such judgment, decree, or order is entitled to full faith and credit in this state.”²⁶ Absent from this definition is any reference to territories or possessions of the United States that are also entitled to full faith and credit under federal law.²⁷

In *Rodriguez v. Nasrallah*,²⁸ a Florida court held that “[j]udgments of courts in Puerto Rico are entitled to full faith and credit in the same manner as judgments from courts of sister States.” As a result, the court permitted the enforcement of a Puerto Rican judgment in Florida. However, taken literally, a judgment from a Puerto Rican court would not qualify as a judgment from a *state court* under s. 55.502(1), F.S.

Florida International Commercial Arbitration Act

Chapter 2010-60, L.O.F., repealed the then current law relating to international commercial arbitration and adopted instead the United Nations Commission on International Trade Law

²¹ Restatement Second of Conflict of Laws at s. 187(2)(a).

²² *Id.* at s. 187(2)(b)

²³ N.Y. GEN OBLIG. LAW ss. 5-1401, 1402 (2011); DEL. CODE ANN. Tit. 6, s. 2708(a) (2011), CAL. CIVIL CODE s. 1646.5 (2011), 735 IL COMP. STAT. ANN. 105/5-5 (2011).

²⁴ U.S. CONST. art. IV, cl 1.

²⁵ Section 55.503, F.S.

²⁶ Section 55.502(1), F.S.

²⁷ See 28 U.S.C. s. 1738 (“The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.”).

²⁸ *Rodriguez v. Nasrallah*, 659 So. 2d 437, 439 (Fla. 1st DCA 1995).

Model Law on International Commercial Arbitration (UNCITRAL Model Law) as amended in 2006 by the General Assembly.

Chapter 684, F.S., in accordance with the UNCITRAL Model Law, applies to any international commercial arbitration subject to an agreement between the United States of America and any other country. The law provides definitions, principles under which the law is to be interpreted, procedural requirements, discovery and evidentiary requirements, as well as arbitral tribunal powers and immunity.

Presently, two of the statutes in the Florida International Commercial Arbitration Act contain inadvertent clerical errors as they relate to cross-references. As such, in its current form, the statute does not conform exactly to the UNCITRAL Model Law.

III. Effect of Proposed Changes:

Jurisdiction (Sections 1, 7, 8, and 9)

The bill amends s. 48.193, F.S., to provide an express jurisdictional basis for Florida courts to assert personal jurisdiction over a nonresident who enters into a contract that complies with s. 685.102, F.S.²⁹ As a result, courts may have personal jurisdiction in contracts cases involving only nonresidents if they enter into a contract where the parties agree to designate Florida law as governing the contract, and contractually agree to personal jurisdiction in this state.

The bill amends s. 685.101, F.S., by repealing the substantial relationship requirements from the choice-of-law statute.³⁰ The deletion of the requirements appears to expand the jurisdiction of the courts of this state.

The changes to the choice-of-law and forum-selection statutes apply to contracts entered into on or after July 1, 2013.

Additionally, s. 684.009, F.S., is created to provide that initiating arbitration in Florida or the making of a written contract agreeing to arbitrate in this state constitutes consent for the courts of this state to assert personal jurisdiction over that parties in any action arising out of or in connection with the arbitration and any resulting order or award. This provision previously existed in statute and was removed upon the enactment of the UNCITRAL Model law.³¹

Florida Enforcement of Foreign Judgments Act (Section 2)

The bill amends s. 55.502(1), F.S., relating to the definition of a foreign judgment to remove the limitation to only those orders from the 50 states that comprise the Union. This will allow for

²⁹ Several other jurisdictions have similar language in their respective long-arm statutes. MICH. COMP. LAWS s. 600.705 (2011); MONT. CODE ANN. s. 25-20-4(b)(1)(E) (2011); S.D. CODIFIED LAWS s. 15-7-2(5) (2011); TENN CODE ANN. s. 20-2-214 (2011) (“Entering into a contract for services to be rendered or for materials to be furnished in [this state] by such person.”).

³⁰ For further discussion of the current Choice-of-Law Statute, see the Choice-of-Law Statute subsection under the Present Situation section of this report.

³¹ See s. 684.30, F.S. (2009).

judgments, orders, and decrees from U.S. territories, such as Puerto Rico, to be recognized in Florida Courts.

Florida International Commercial Arbitration Act (Sections 3, 4, 5, and 6)

The bill amends ss. 684.0002, 684.0003, 684.0019, 684.0026, F.S., to correct cross-references and conform the Florida International Commercial Arbitration Act to the UNCITRAL Model Law on Commercial Arbitration.

Section 10 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

With respect to choice-of-law conflicts, the United States Supreme Court, in *Hague v. Allstate Insurance Company*, held that “for a State’s substantive law to be selected in a constitutionally permissible manner, the State must have significant contact or a significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair.”³² Accordingly, the removal of the requirement of “significant contacts” or “reasonable relationship” from a state’s choice-of-law statute could potentially trigger a due process challenge under the Fourteenth Amendment. However, it should be noted that when the Supreme Court rendered its holding in *Hague*, the facts presented in that case did not include a contract where the parties agreed to be governed by a specific state’s law. Instead, the question before the Court was which state law applied in the absence of an agreement that designated any state’s law as governing.

To date, committee staff is unaware of any constitutional challenges to the New York choice-of-law statute, which is the model for the amendments in SB 186. In any event, ss. 685.101 and 685.102, F.S., will continue to preserve existing language that limits the application of the statutes “to the extent permitted under the United States Constitution.”³³

³² *Allstate Ins. Co. v. Hague*, 449 U.S. 302, 312-313 (1981).

³³ Sections 685.101 and 685.102, F.S.

Furthermore, it has been stated that the “choice of the law of an unrelated jurisdiction will often stand the best chance of being honored if it is reinforced with a forum-selection clause designating the same jurisdiction.”³⁴ Sections 685.101 and 685.102, F.S., as amended by this bill, under the statutes will have that effect, allowing them to stand on stronger constitutional ground.

Lastly, the United States Supreme Court has already stated that in the commercial context the minimum contacts standard is met if a forum-selection clause exists that is freely negotiated and is not unreasonable and unjust.³⁵

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector impact of this bill cannot be accurately determined. According to The Florida Bar, International Law Section, the bill enhances the business climate in Florida by clarifying and streamlining existing legislation related to international law matters in order to increase Florida’s attractiveness as a business friendly state.

C. Government Sector Impact:

The government sector impact of this bill cannot be accurately determined. According to the Office of the State Courts Administrator’s 2013 Judicial Impact Statement, SB 186 could increase the number of contract actions filed in circuit court. While the bill would likely impact workload, the office was unable to quantify to what extent.³⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

³⁴ Franch, *supra*, note 20 (“This is especially true in jurisdictions such as New York where the courts give substantial recognition to the parties’ freedom to contract.”).

³⁵ *Burger King*, 471 U.S. at 473, n. 14; *See also, Elandia International, Inc. v. Koy, et al.*, 690 F. Supp. 2d 1317, 1340 (S.D. Fla. 2010).

³⁶ Office of State Courts Administrator, *2013 Judicial Impact Statement* (Jan. 11, 2013) (on file with the Senate Commerce and Tourism Committee).

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Criminal and Civil Justice
Appropriations Subcommittee on Finance and Tax
Banking and Insurance
Children, Families, and Elder Affairs
Ethics and Elections
Rules
Transportation

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR MIGUEL DIAZ de la PORTILLA

40th District

January 14, 2013

The Honorable Nancy Detert
Chair
Senate Committee on Commerce & Tourism

Via email

Dear Chair Detert:

My Senate Bill 186, Jurisdiction of the Courts, has been referred to the Senate Committee on Commerce and Tourism. I respectfully request that the bill be adjourned at the next opportunity.

Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla
State Senator, District 40

Cc: Ms. Jennifer Hrdlicka, Staff Director
Ms. Patty Blackburn, Committee Administrative Assistant

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

✓

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/5/13

Meeting Date

Topic Jurisdiction of the Courts

Bill Number SB 186
(if applicable)

Name Eduardo Palmer

Amendment Barcode _____
(if applicable)

Job Title _____

Address 255 Aragon Ave, 2nd Floor

Phone 305-476-1100

Coral Gables, FL 33134
Street City State Zip

E-mail ep@epalmerlaw.com

Speaking: For Against Information

Representing International Law Section, Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

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2/5/13

Meeting Date

Topic Jurisdiction of the Courts

Bill Number 1800
(if applicable)

Name Carolyn Johnson

Amendment Barcode _____
(if applicable)

Job Title Director

Address 130 S Bronough St

Phone _____

Street

Tallahassee 32311

E-mail _____

City

State

Zip

Speaking: For Against Information

Representing FL member of Commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 316

INTRODUCER: Commerce and Tourism Committee and Senators Detert and Margolis

SUBJECT: Taxes

DATE: February 5, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	Fav/CS
2.	_____	_____	AFT	_____
3.	_____	_____	AP	_____
4.	_____	_____	RU	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/SB 316 amends Florida’s tax laws related to sales by out-of-state retailers, the communication services tax, and the sales tax exemption for manufacturing and equipment.

Related to sales by out-of-state retailers, the bill amends Florida law to require out-of-state retailers that conduct business over the Internet to collect and remit Florida sales tax on sales made to Florida customers. Specifically, the bill creates two new situations under which an out-of-state retailer may be required to collect and remit Florida sales tax:

1. When a person with nexus to Florida does one of a number of acts, including selling a similar line of products as a dealer or operates under the same name and uses similar trademarks as a dealer, then the dealer must collect and remit Florida sales tax. However, the bill bases the requirement to collect sales tax on the fact that the activities conducted in Florida on behalf of the dealer are significantly associated with the dealer’s ability to establish and maintain a market in Florida.

2. If the dealer enters into an agreement with one or more Floridians, under which the person directly or indirectly refers potential customers to the dealer for a commission or other

consideration, and the cumulative gross receipts for referrals are in excess of \$10,000 during the previous 12 months, then a rebuttable presumption arises that the dealer must collect and remit Florida sales tax.

The bill requires the Department of Revenue to develop a tracking system to determine the amount of additional sales tax collected due to the provisions in this bill and report its determinations annually. The Revenue Estimating Conference is required to use the information to determine the amount of sales taxes collected in the past calendar year and estimate the amount that may be collected in the next year. The bill permits a future Legislature to use the information to provide tax relief in addition to that provided in the bill.

The bill revises the definition of “dealer” to exclude common carriers that maintain or use warehouses in Florida from the definition.

Related to the communication services tax, the bill reduces the tax rate imposed on the sales price of communication services from 6.65 percent to 5.65 percent, and lowers the tax rate imposed on the sales price of direct-to-home satellite service from 10.8 percent to 9.8 percent.

Related to the sales tax exemption for machinery and equipment, the bill expands the availability of the exemption for new or expanding businesses to all businesses by eliminating the 5 percent productivity requirement for expanding businesses to qualify for the sales tax exemption.

This bill amends ss. 202.12, 202.12001, 203.001, 212.06, 212.08, and 212.0596, F.S.

This bill creates general law not contained in a designated section of the Florida Statutes.

II. Present Situation:

Because Florida has no personal state income tax, the state primarily depends on consumption-based taxes for its general revenue. Sales tax collections make up over 70 percent of general revenue.¹ Forty-five states and the District of Columbia impose sales and use taxes.² States that do not have a personal income tax – Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming – rely most heavily on sales tax collections.³

Florida Sales and Use Tax

Chapter 212, F.S., contains the state’s statutory provisions authorizing the levying and collection of Florida’s sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. A 6 percent sales and use tax is levied on most tangible personal property, admissions, storage, transient rentals, commercial rentals, motor vehicles, and

¹ See Florida Revenue Estimating Conference (REC), 2012 Florida Tax Handbook. Revenues from the sales and use tax for FY 2011-12 totaled over \$17 billion.

² Alaska, Delaware, Montana, New Hampshire, and Oregon do not impose a state sales and use tax, although Alaska permits local governments to impose sales and use taxes.

³ New Hampshire and Tennessee both have income taxes, but the taxes are not imposed on wages or other income other than dividends and interest.

a limited number of services.⁴ The statutes currently provide more than 200 different exemptions.⁵

A sales tax of 6 percent is levied on the sales price of tangible personal property sold at retail in Florida.⁶ Sales tax is added to the price of the taxable goods or service and collected from the purchaser at the time of sale.

A use tax of 6 percent is levied on the cost price of tangible personal property when it is used, consumed, distributed, or stored, rather than sold, in Florida.⁷ This tax is levied when sales tax was not paid at the time of purchase. For example, use tax is owed when a person buys:⁸

- A taxable item in Florida and does not pay sales tax;
- An item tax-exempt intending to resell it, and then the item is used in a business or for personal use; or
- A taxable item outside Florida and brings or has it delivered into the state within 6 months of the purchase date, and sales tax was not paid on the purchase.

If the item brought into Florida is subject to tax, a credit is allowed for taxes paid to another state, a U.S. territory, or Washington, D.C. Credit is not given for taxes paid to another country.

The Florida Department of Revenue (DOR) is responsible for administering, collecting, and enforcing all sales taxes. Collections of discretionary sales surtaxes received by DOR are returned monthly to the county imposing the tax. Further, there are several state-shared revenue programs that allocate some portion of the state sales and use tax to local governments. A few revenue sharing programs require as a prerequisite that the county or municipality meet eligibility criteria. While general law restricts the use of some shared revenues, proceeds derived from other shared revenues may be used for the general revenue needs of local governments.⁹

Local Discretionary Sales Surtax

A “surtax” is an extra tax or charge.¹⁰ Sections 212.054 and 212.055, F.S., authorize Florida counties to charge a discretionary sales surtax on all transactions subject to the state sales and use tax. Only those surtaxes specifically designated may be levied.

Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions and on communications services, defined in ch. 202, F.S.¹¹ The maximum discretionary sales surtax that any county can levy depends upon the county’s eligibility for the taxes listed in s. 212.055, F.S. Currently, the maximum surtax actually

⁴ Of the limited services that are taxable, some, such as cable, are taxed at a higher rate.

⁵ For a list of exemptions and history, see REC, 2012 Florida Tax Handbook. Exemptions are estimated to total about \$10 billion.

⁶ Section 212.05(1)(a)1.a., F.S.

⁷ Section 212.05(1)(b), F.S.

⁸ Department of Revenue, Florida’s Sales and Use Tax, available at http://dor.myflorida.com/dor/taxes/sales_tax.html#tab1 (last visited 1/31/2013).

⁹ For more information see REC, 2012 Florida Tax Handbook.

¹⁰ Black’s Law Dictionary (9th ed., 2009), tax.

¹¹ The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

imposed is 1.5 percent in several counties;¹² however, the theoretical maximum rate ranges between 2 percent and 3.5 percent, depending on the specifics of each individual county. In general, the levy of a particular tax is subject to county voter approval.

The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered into, and is levied in addition to the state tax. The sales amount is not subject to the tax if the property or service is delivered within a county that does not impose a surtax. The surtax does not apply to a sales amount above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service, rentals of real property, or transient rentals.

Internet Sales and Out of State Vendors¹³

Under Florida law, each sale is subject to sales tax unless such transaction is specifically exempt. Sales made over the Internet are not exempt from the provisions of ch. 212, F.S.¹⁴ Use taxes are difficult for states to enforce because they must rely on out-of-state vendors to collect the tax money or purchasers must remit the tax themselves. Out-of-state vendors argue that states have no jurisdiction over them. A state's ability to compel an out-of-state seller to collect and remit sales tax is limited by the Commerce Clause and the Due Process Clause of the U.S. Constitution.¹⁵ The U.S. Supreme Court has held that the states' disparate state and local sales tax systems make collecting taxes an undue burden on out-of-state retailers.¹⁶

In order for sales occurring over the Internet to be subject to the sales tax, there must be sufficient nexus between the seller and the state. Nexus has been found to exist when a seller:

- Has agents in this state who solicit or transact business on behalf of the seller and as a result receive orders for merchandise to be delivered to the purchaser in this state;
- Has a physical location in this state;
- Delivers merchandise into this state in vehicles which are leased or owned by the seller;
- Owns land or buildings located in this state;
- Stores merchandise in this state for sale or use; or
- Rents or leases merchandise that is located in Florida in the possession of a lessee.¹⁷

Section 212.0596, F.S., generally imposes tax on a "mail order sale," which is defined to mean "a sale of tangible personal property, ordered by mail or other means of communication, from a

¹² See DOR Form DR-15 DSS, Discretionary Sales Surtax Information, available at <http://dor.myflorida.com/dor/forms/2013/dr15dss.pdf> (last visited 1/31/2013).

¹³ For an in depth analysis, see Senate Budget Subcommittee on Finance and Tax, Interim Report 2012-107: Application of Florida's Sales Tax to Sales by Out-of-State Retailers (August 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/BFT1072012-107ft.pdf> (last visited 1/28/2013).

¹⁴ See DOR, Florida Consumer Information website on remitting use tax for Internet sales, available at <http://dor.myflorida.com/dor/taxes/consumer.html> (last visited 1/31/2013).

¹⁵ Due Process requires some minimal contact with the taxing state for a taxing statute to be upheld. Upholding a statute against a Commerce Clause challenge is dependent upon satisfaction of a 4-part test: (1) the tax is applied to an activity with a substantial nexus with the taxing state; (2) the tax is fairly apportioned; (3) the tax does not discriminate against interstate commerce; and (4) the tax is fairly related to a service provided by the taxing state. See Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977), rehearing denied, 430 U.S. 976 (1977).

¹⁶ See Closing the Online Tax Loophole, Blackston, Michelle, NCSL's State Legislatures, April 2008.

¹⁷ Depending on the jurisdiction, courts have found that these situations satisfy nexus while others have found that they were insufficient alone.

dealer who receives the order in another state of the United States, or in a commonwealth, territory, or other area under the jurisdiction of the United States, and transports the property or causes the property to be transported, whether or not by mail, from any jurisdiction of the United States, including this state, to a person in this state, including the person who ordered the property.”¹⁸

Section 212.0596(2), F.S., requires dealers doing mail order business in Florida to collect and remit Florida sales tax if the dealer has nexus with Florida, and provides what activities constitute nexus for purposes of mail order sales. These include when:

- The dealer has agents in Florida who solicit or transact business on behalf of the dealer, whether the resulting mail orders result from or are related to the agent’s solicitation or transaction of business;
- The property was delivered in Florida in fulfillment of a sales contract entered into in Florida;
- The dealer creates nexus with Florida by purposefully or systematically exploiting Florida’s market by any media assisted, media facilitated, or media solicited means;
- Another U.S. jurisdiction uses its taxing power over the retailer in support of Florida’s taxing power;
- The dealer is subject to service of process; or
- The dealer without nexus with Florida is a corporation that is a member of an affiliated group of corporations under s. 1504 of the Internal Revenue Code and whose members are eligible to file a consolidated federal corporate income tax return.

If the person selling the property into this state does not have sufficient nexus or is not registered with DOR as a dealer to collect sales tax, and the goods are delivered in Florida, then use tax applies and is due from the purchaser.

According to the U.S. Census Bureau about 70 percent of U.S. households have Internet access.¹⁹ The U.S. Census Bureau estimated that national e-commerce sales over the last 4 quarters total over \$216 billion dollars. However, e-commerce sales make up only about 5 percent of total retail sales in the U.S.²⁰

The issue of sales and use taxes on e-commerce is important to the states for three main reasons:

- The continued growth in e-commerce points to an increasing number of transactions on which sales taxes will not be collected, resulting in sales tax revenue losses for state and local governments;
- Since out-of-state sellers do not have to collect sales taxes, except in states where they have “nexus,” they enjoy a competitive advantage over “brick and mortar” businesses; and

¹⁸ Section 212.0596(1), F.S.

¹⁹ 2010 data available at <http://www.census.gov/population/www/socdemo/computer.html> (last visited 1/28/2013).

²⁰ Quarterly Retail E-Commerce Sales, 3rd Quarter 2012, available at http://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf (last visited 1/28/2013).

- Because of allowances for on-line retailers, consumers who can afford access to the Internet escape paying sales and use taxes while forcing those without access to shoulder a heavier burden of the sales tax.²¹

While studies estimate differing amounts of lost sales tax revenue, the most recent, a September 2011 report by Arudin, Laffer, and Moore Econometrics, estimated tax revenue losses of \$374 million in 2010 and between \$449.6 million and \$454.0 million in 2012.²² It is difficult to determine the actual amount of lost sales tax revenue due to the over 200 sales tax exemptions in Florida law and the 67 different state and local taxing jurisdictions in the state. Due to the numerous exemptions and taxing jurisdictions, an out-of-state retailer may find it difficult to collect and remit sales taxes. There are about 7,500 different taxing jurisdictions at the state and local levels in the U.S.

Federal Involvement in the Issue

Since the power to regulate interstate commerce resides at the federal level, federal legislation appears to be the only comprehensive solution for states to have the authority to require out-of-state retailers to collect sales tax. Multiple bills have been filed in Congress over the years to try to address the issue, but none have been voted on by either the House or Senate.²³

Actions of Other States

Other states have attempted to address the issue of taxing sales by out-of-state retailers through various methods.

Some states have passed legislation to fully participate in the Streamlined Sales and Use Tax Agreement (SSUTA).²⁴ These states have “modernized” their sales and use tax structures to create a uniform, simplified taxing system that would apply to all businesses collecting sales and use taxes. However, participation in collecting sales tax under the agreement is voluntary for sellers who do not have a physical presence or “nexus” within a state. Currently, over 1,000 businesses have voluntarily agreed to collect taxes on out-of-state sales. The end goal of the effort is for Congress to require collection from all sellers for all types of commerce.

Other states have enacted laws which attempt to establish the necessary nexus to require an out-of-state seller to collect and remit sales taxes. Generally it appears that there are three approaches:

1. Establish nexus through affiliates of an out-of-state retailer. When a state resident is an “affiliate” of an out-of-state retailer and the total sales by the out-of-state retailer that result from all referrals from affiliates in the state exceed a certain total (generally

²¹Graham Williams, “Streamlined Sales Tax for the New Economy,” National Conference of State Legislatures, Nov./Dec. 2000, Vol. 8, No. 44.

²² Report on file with the Senate Commerce and Tourism Committee.

²³ Legislation was filed most recently in the 112th Congress titled the “Main Street Fairness Act,” that authorized states that were members of the SSUTA to require out-of-state retailers to collect and remit state sales and use tax. See H.R. 2701 and S. 1452 (112th Congress). No related legislation has been filed in the 113th Congress as of the publication of this analysis.

²⁴ Florida legislative action in response to this project includes s. 213.27, F.S., which grants DOR authority to enter into contracts with public or private vendors to develop and implement a voluntary system for sales and use tax collection and administration (ch. 2000-355, L.O.F.), and ch. 2001-225, L.O.F., which among other things, created the Simplified Sales and Use Tax Act, authorizing Florida to participate in the next phase of discussions with other states for the purposes of developing the project. See the SSUTA website for more information: <http://www.streamlinedsalestax.org/>.

- \$10,000), then the retailer must collect and remit state sales tax. Total sales by the out-of-state retailer as a result of referrals must exceed the threshold before tax is required to be collected by the out-of-state retailer.
2. Establish nexus through commission arrangements by Internet retailers with other websites owned by state residents for referring sales (also known as “click-through”). Similar to the affiliate relationship with out-of-state retailers, this approach also requires sales of a certain amount before liability for collection of state sales tax arises.
 3. Require the retailer to notify the customer that sales and use tax may be due in the customer’s state. This approach does not require collection of sales tax by the retailer. Instead the retailer is required to provide notice to the consumer, and in one state is also required to remit information to the state department of revenue related to sales to that state’s residents.

Some states have enacted one of the approaches listed above or a hybrid. Some states take the approach of establishing nexus through existing state laws related to mail order sales. Pennsylvania is attempting to require out-of-state retailers to collect sales tax under the state’s existing law.²⁵

Other states have elected to exempt certain retailers from collecting and remitting sales tax if the seller agrees to make a substantial investment in the state in the form of a distribution center and create a certain number of jobs. For example, South Carolina’s statute requires a \$125 million investment and 2,000 new jobs in exchange for exemption from sales tax collections until 2016. However, Internet retailers must notify a purchaser in a confirmation email that the purchaser may owe South Carolina use tax on the total sales price.

States that have enacted laws or taken the above approaches have been challenged by out-of-state retailers for violation of the U.S. Constitution. While some retailers have been awarded an injunction from enforcement of the state’s statutes, there have been no final decisions affording a resolution of the issues. In 2012, Amazon began to collect and remit sales taxes in some states (or to provide a service to its sellers to collect and remit sales tax), while also lobbying Congress to enact federal legislation to require out-of-state sellers to collect and remit sales tax.

Communication Services Tax

Communication services include telecommunications, cable, direct-to-home satellite, and related services.²⁶

Generally, the communication services tax includes a state tax portion of 6.65 percent and a gross receipts tax portion of 2.52 percent for a combined rate of 9.17 percent.²⁷ In addition, local governments impose a local tax rate of up to 7.12 percent.²⁸

²⁵ See Pennsylvania Department of Revenue, Nexus Resources for Retailers, available at http://www.revenue.state.pa.us/portal/server.pt/community/nexus_resources/20610 (last visited 1/20/2012).

²⁶ Chapter 202, F.S.

²⁷ See ss. 202.12(1)(a) and 203.01(1)(b), F.S. The gross receipts tax is 2.37 percent, plus an additional 0.15 percent for certain services.

²⁸ Section 202.19, F.S.

Direct-to-home satellite service is taxed at a rate of 10.8 percent, and is also subject to the 2.37 percent gross receipts tax. Since local tax does not apply to these services, the total tax rate for direct-to-home satellite services is 13.17 percent.

For FY 2012-13, the Revenue Estimating Conference estimated that collections for the state tax will total \$945.61 million.

Local, long distance, and toll telephone services sold to a residential household are exempt from the 6.65 percent state tax and 0.15 percent gross receipts tax.²⁹

The state taxes collected – including taxes collected on direct-to-home satellite service – are deposited into the general revenue fund and a portion is distributed to local governments.³⁰ Gross receipts tax collections are deposited into the Public Education Capital Outlay and Debt Service Trust Fund and are used for the capital funding of public schools, community colleges, and universities. DOR provides tax collection services for local government, and local communication services taxes are distributed to local governments.

Sales Tax Exemption for Machinery and Equipment

Florida statutes currently provide more than 200 different exemptions from the sales and use tax. Currently the purchase of industrial machinery and equipment³¹ is exempt from sales and use tax when it is purchased for certain uses by new or expanding businesses.³²

For new businesses, the purchase must be made for:

- Exclusive use by a new business in spaceport activities;³³ and
- Use by a new business that manufacturers, processes, compounds, or produces for sale items of tangible personal property at fixed locations.

The new business must prove to DOR that the items are going to be used in a new business. The purchases have to be made before the date the business begins productive operations and delivery of the tax-exempt items must be made within 12 months of that date.

For expanding businesses, the purchase must be made for:

- Exclusive use by an expanding facility engaged in spaceport activities; and
- Use in an expanding manufacturing facility or plant unit which manufacturers, processes, compounds, or produces for sale items of tangible personal property at fixed locations in Florida.

The expanding business must prove to DOR that the items are going to be used to increase the productive output of the expanded facility or business by 5 percent or more. Productive output is measured for a 12-month period selected by the business after installing the machinery or

²⁹ Sections 202.125 and 203.01(1)(b)3., F.S.

³⁰ Section 202.18, F.S.

³¹ Exempt purchases are limited to tangible personal property that has a depreciable life of 3 or more years. See s. 212.08(5)(b)6.a., F.S.

³² Section 212.08(5)(b), F.S. The exemption does apply to phosphate or other solid minerals severance, mining, or processing operations.

³³ The term “spaceport activities” is defined in s. 212.02(22), F.S.

equipment (within 2 years of the installation) that is compared to the output level for the 12-months immediately preceding the installation of the items.³⁴

Businesses must apply to DOR for a temporary tax permit, which must be returned to DOR after all the machinery and equipment is purchased. If a qualifying business fails to apply for the permit or if DOR incorrectly determines that the business was not qualified for the permit, a business can still receive the exemption through a tax refund. DOR may conduct an audit to ensure that the purchases were made pursuant to the requirements for the exemption. If DOR finds that the purchases did not meet the requirements for the exemption, the amount of taxes exempted at the time of purchase become immediately due, plus penalties and interest.

The exemption does not apply to machinery or equipment purchased or used by electric utility companies, communications companies, oil or gas exploration or production operations, publishing firms that do not export at least 50 percent of their finished product out of the state, or any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

III. Effect of Proposed Changes:

CS/SB 316 amends Florida's tax laws related to sales by out-of-state retailers, the communication services tax, and the sales tax exemption for manufacturing and equipment.

Out-of-state Retailers

The bill amends Florida law to require out-of-state retailers that conduct business over the Internet to collect and remit Florida sales tax on sales made to Florida customers.

Section 4 amends s. 212.0596, F.S., to provide that a "mail order sale" includes the sale of tangible personal property over the Internet.

The bill revises provisions related to when dealers who make mail order sales are required to collect and remit Florida sales tax. The bill provides that a representative of a dealer, in addition to an agent, soliciting or transacting business in the state may cause the dealer to have nexus for mail order sales.

Additionally, the bill creates two new situations:

Affiliates –

When a person with nexus to Florida sells a similar line of products as a dealer; does business under the same name and uses similar trademarks; maintains an office, warehouse, or similar place of business to facilitate the delivery of property sold by the dealer; facilitates delivery or pick-up of the property in Florida; assembles, installs, or performs maintenance services for the dealer in Florida; or conducts other activities in Florida that are "significantly associated with the dealer's ability to establish and maintain a market in Florida," then the dealer must collect and remit Florida sales tax.

³⁴ Section 212.08(5)(b)6.b., F.S.

The bill provides that a dealer is required to collect and remit sales tax if the dealer:

- Has a physical presence in the state, or
- The activities conducted in Florida on behalf of the dealer are significantly associated with the dealer's ability to establish and maintain a market in Florida.

Commission Arrangements –

If the dealer enters into an agreement with one or more Floridians, under which the person directly or indirectly refers potential customers to the dealer for a commission or other consideration, and the cumulative gross receipts for referrals are in excess of \$10,000 during the previous 12 months, then a rebuttable presumption arises that the dealer must collect and remit Florida sales tax. Such referrals may be made by a link on a website, an in-person presentation, telemarketing, or otherwise.

The dealer may rebut the presumption by submitting evidence that the Floridians with which the dealer has agreements did not engage in activity that was significantly associated with the dealer's ability to establish and maintain a market in Florida for the previous 12 months. Such evidence may include sworn affidavits from the Floridians attesting that they did not engage in any solicitation in Florida on the dealer's behalf in the previous year.

Section 5 amends s. 212.06, F.S., relating to the definition of "dealer." The bill exempts common carriers from the definition of dealer. This section also makes stylistic changes.

Section 7 provides a mechanism for the Legislature to return any taxes collected as a result of this bill to Florida taxpayers in addition to the relief already provided in the bill.

DOR, in consultation with the Revenue Estimating Conference, must develop a tracking system to determine the amount of sales tax collected by out-of-state dealers who would not be required to collect and remit sales taxes in the absence of the bill. The Revenue Estimating Conference will use the information provided by DOR to determine the amount of sales taxes remitted in the previous calendar year and estimate the amount of sales taxes collected that will be expected in the following fiscal year. The Legislature is required to use the estimates to reduce taxes in an amount not less than the amount estimated by the Revenue Estimating Conference, taking into account the reductions already provided for in the bill to the communication services tax and the sales tax exemption for machinery and equipment.

Communication Services Tax

Section 1 amends s. 202.12, F.S., to reduce the rate charged against the sales price of communication services from 6.65 percent to 5.65 percent, and the rate charged against the sales price of direct-to-home satellite service from 10.8 percent to 9.8 percent.

Sections 2 and 3 amend ss. 202.12001 and 203.001, F.S., respectively, to make conforming changes to reflect the reduced rate for the communication services tax. Under the bill, a dealer of communication services may collect a combined rate of 5.8 percent.

These three sections are effective January 1, 2014.

Sales Tax Exemption for Machinery and Equipment

Section 6 amends s. 212.08(5), F.S., to expand the availability of the sales tax exemption for machinery and equipment from new or expanding businesses to all businesses. Under the bill, industrial machinery and equipment is exempt from sales tax when it is purchased for use:

- In a business that manufactures, processes, compounds, or produces for sale tangible personal property at a fixed location; or
- In a spaceport activity, defined as an activity directed or sponsored by Space Florida on spaceport territory pursuant to its powers and responsibilities under the Space Florida Act.³⁵

At the time of purchase, in order to use the exemption, the purchaser has to present a signed certificate that states that the exempt items are for exclusive use as provided above. The certificate relieves the seller of any liability to collect the tax, and if DOR later determines that tax was due, it must pursue payment from the purchaser. The exemption is available for use at any time; under current law, qualified businesses receive a temporary exemption permit.

Such expansion eliminates the 5 percent productivity requirement for expanding businesses to use the sales tax exemption. The bill eliminates the provisions to apply to DOR for a tax exemption permit. The bill also eliminates audit authority for DOR to review exempt purchases for adherence to the law. The bill eliminates rulemaking authority for DOR.

The bill makes conforming changes to the sales tax exemptions for machinery and equipment used under federal contract and for business property used in an enterprise zone.

Effective Date

Section 8 provides an effective date of July 1, 2013, except as otherwise provided in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

³⁵ Section 212.02(22), F.S.

D. Other Constitutional Issues:

Many of the states who have enacted similar laws have become involved in lawsuits challenging the constitutionality of their laws. If this bill were to become law, Florida may be subject to such lawsuits. As discussed above in the Present Situation, a state's ability to compel an out-of-state seller to collect and remit sales tax is primarily limited by the Commerce Clause of the U.S. Constitution.³⁶

Upholding a statute against a Commerce Clause challenge is dependent upon satisfaction of a 4-part test: (1) the tax is applied to an activity with a substantial nexus with the taxing state; (2) the tax is fairly apportioned; (3) the tax does not discriminate against interstate commerce; and (4) the tax is fairly related to a service provided by the taxing state. See Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977).

The nexus requirement outlined in Complete Auto has generally been interpreted to require that in order to require an out-of-state retailer to collect sales tax, the retailer must have a "physical presence" in the state.³⁷

In Scripto, Inc. v. Carson, the U.S. Supreme Court held that an out-of-state retailer with agents in Florida was a dealer required to collect and remit Florida sales tax.³⁸ The agents of the out-of-state retailer represented the retailer pursuant to a contract that authorized the Florida merchants to solicit orders and otherwise obtain business for the retailer in Florida in return for compensation to be paid in the form of a commission.

The U.S. Supreme Court held in Tyler Pipe Industries, Inc., v. Washington State Dept. of Revenue, that "the crucial factor governing nexus is whether the activities performed in this state on behalf of the taxpayer are significantly associated with the taxpayer's ability to establish and maintain a market in this state for the sales."³⁹ The Court found that this standard was satisfied because of the activities of the business's sales representatives in the state.

Many of the cases related to this issue were decided before the emergence of the Internet, and thus it is unclear how the case law should be applied to sales over the Internet. Many of the states that have enacted similar laws have become involved in lawsuits challenging the constitutionality of their laws. There have been no final decisions affording a resolution of the issues.

³⁶ See AMJUR STATELOCL s. 157; 71 A.L.R.5th 671.

³⁷ See Quill Corporation v. North Dakota, 504 U.S. 298 (1992).

³⁸ Scripto, Inc., v. Carson, 362 U.S. 207, 211 (1960).

³⁹ Tyler Pipe Industries, Inc., v. Washington State Dept. of Revenue, 483 U.S. 232, 250 – 251 (1987).

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

The Revenue Estimating Conference has not yet determined the impact of this bill.

The provisions related to the reduction in the communication services tax rate (statewide and direct-to-home satellite) could result in a general revenue loss of \$151.6 million, annually. The reduction will also affect distributions to local governments.

The provisions related to the expansion of the machinery and equipment sales tax exemption could result in a general revenue loss of \$114 million, annually.

B. Private Sector Impact:

Businesses and consumers would benefit from the reduction in the communication services tax and the expansion of the machinery and equipment sales tax exemption.

C. Government Sector Impact:

The impact of the required tracking system on DOR's operational costs has not been determined.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Related to the sales tax exemption for machinery and equipment, the bill does not provide any requirements for the "signed certificate" to be used to receive the exemption. It is unclear how a certificate is obtained and who signs it. The bill also eliminates audit authority for DOR to review exempt purchases for adherence to the law. Additionally by eliminating specified rulemaking authority for DOR, the department does not have specific authority to adopt rules to implement these provisions of the bill.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Commerce and Tourism on February 5, 2013:**

The committee substitute differs from the bill as originally filed in the following ways:

- Restores current law related to nexus established for a dealer that is affiliated with a corporation doing business in Florida;
- Reduces the rate charged against the sales price of communication services and direct-to-home satellite services, and makes conforming changes; these provisions are effective on January 1, 2014; and

- Expands the sales tax on machinery and equipment to all businesses by eliminating the 5 percent productivity requirement for expanding businesses to qualify for the exemption.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



862170

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2013	.	
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	.	
	.	

The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Amendment

Delete lines 91 - 128
and insert:

(g)~~(k)~~ The dealer, while not having nexus with this state on any of the bases described in paragraphs (a)-(f) ~~(a)-(j)~~ or paragraphs (h)-(i) ~~paragraph (l)~~, is a corporation that is a member of an affiliated group of corporations, as defined in s. 1504(a) of the Internal Revenue Code, whose members are includable under s. 1504(b) of the Internal Revenue Code and whose members are eligible to file a consolidated tax return for federal corporate income tax purposes and any parent or



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13 subsidiary corporation in the affiliated group has nexus with
14 this state on one or more of the bases described in paragraphs
15 (a)-(f) ~~(a)-(j)~~ or paragraphs (h)-(i) ~~paragraph (l)~~; or

16 (h) A person, other than a person acting in the capacity of
17 a common carrier, has nexus with this state and:

18 1. Sells a similar line of products as the dealer and does
19 so under the same or a similar business name;

20 2. Maintains an office, distribution facility, warehouse,
21 storage place, or similar place of business in this state to
22 facilitate the delivery of property or services sold by the
23 dealer to the dealer's customers;

24 3. Uses trademarks, service marks, or trade names in this
25 state which are the same or substantially similar to those used
26 by the dealer;

27 4. Delivers, installs, assembles, or performs maintenance
28 services for the dealer's customers in this state;

29 5. Facilitates the dealer's delivery of property to
30 customers in this state by allowing the dealer's customers to
31 pick up property sold by the dealer at an office, distribution
32 facility, warehouse, storage place, or similar place of business
33 maintained by the person in this state; or

34 6. Conducts any other activities in this state which are
35 significantly associated with the dealer's ability to establish
36 and maintain a market in this state for the dealer's sales; or

37 (i) ~~(l)~~ The dealer or the dealer's activities have
38 sufficient connection with or relationship to this state or its
39 residents of some type other than those described in paragraphs
40 (a)-(h) ~~(a)-(k)~~ to create a nexus empowering this state to tax
41 its mail order sales or to require the dealer to collect sales



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42 tax or accrue use tax.



444784

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/07/2013	.	
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The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Amendment (with title amendment)

Between lines 300 and 301
insert:

Section 3. Paragraphs (b), (d), and (h) of subsection (5)
of section 212.08, Florida Statutes, are amended to read:

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



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13 (5) EXEMPTIONS; ACCOUNT OF USE.-

14 (b) Industrial machinery and equipment used by
15 manufacturers or used exclusively in spaceport activities ~~to~~
16 ~~increase productive output.-~~

17 1. Industrial machinery and equipment purchased for
18 ~~exclusive use in businesses that manufacture, process, compound,~~
19 ~~or produce for sale items of tangible personal property at fixed~~
20 ~~locations or for exclusive use by a new business in spaceport~~
21 ~~activities as defined by s. 212.02 or for use in new businesses~~
22 ~~that manufacture, process, compound, or produce for sale items~~
23 ~~of tangible personal property at fixed locations are exempt from~~
24 ~~the tax imposed by this chapter if, at the time of purchase, the~~
25 ~~purchaser furnishes the seller with a signed certificate stating~~
26 ~~that the items to be exempted are for exclusive use as provided~~
27 ~~in this paragraph. The certificate relieves the seller of the~~
28 ~~responsibility of collecting the tax on the sale of such items~~
29 ~~and the department shall look solely to the purchaser for~~
30 ~~recovery of the tax if it determines that the purchaser was not~~
31 ~~entitled to the exemption upon an affirmative showing by the~~
32 ~~taxpayer to the satisfaction of the department that such items~~
33 ~~are used in a new business in this state. Such purchases must be~~
34 ~~made before the date the business first begins its productive~~
35 ~~operations, and delivery of the purchased item must be made~~
36 ~~within 12 months after that date.~~

37 ~~2. Industrial machinery and equipment purchased for~~
38 ~~exclusive use by an expanding facility which is engaged in~~
39 ~~spaceport activities as defined by s. 212.02 or for use in~~
40 ~~expanding manufacturing facilities or plant units which~~
41 ~~manufacture, process, compound, or produce for sale items of~~



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42 ~~tangible personal property at fixed locations in this state are~~
43 ~~exempt from any amount of tax imposed by this chapter upon an~~
44 ~~affirmative showing by the taxpayer to the satisfaction of the~~
45 ~~department that such items are used to increase the productive~~
46 ~~output of such expanded facility or business by not less than 5~~
47 ~~percent.~~

48 ~~3.a. To receive an exemption provided by subparagraph 1. or~~
49 ~~subparagraph 2., a qualifying business entity shall apply to the~~
50 ~~department for a temporary tax exemption permit. The application~~
51 ~~shall state that a new business exemption or expanded business~~
52 ~~exemption is being sought. Upon a tentative affirmative~~
53 ~~determination by the department pursuant to subparagraph 1. or~~
54 ~~subparagraph 2., the department shall issue such permit.~~

55 ~~b. The applicant shall maintain all necessary books and~~
56 ~~records to support the exemption. Upon completion of purchases~~
57 ~~of qualified machinery and equipment pursuant to subparagraph 1.~~
58 ~~or subparagraph 2., the temporary tax permit shall be delivered~~
59 ~~to the department or returned to the department by certified or~~
60 ~~registered mail.~~

61 ~~c. If, in a subsequent audit conducted by the department,~~
62 ~~it is determined that the machinery and equipment purchased as~~
63 ~~exempt under subparagraph 1. or subparagraph 2. did not meet the~~
64 ~~criteria mandated by this paragraph or if commencement of~~
65 ~~production did not occur, the amount of taxes exempted at the~~
66 ~~time of purchase shall immediately be due and payable to the~~
67 ~~department by the business entity, together with the appropriate~~
68 ~~interest and penalty, computed from the date of purchase, in the~~
69 ~~manner prescribed by this chapter.~~

70 ~~d. If a qualifying business entity fails to apply for a~~



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71 ~~temporary exemption permit or if the tentative determination by~~
72 ~~the department required to obtain a temporary exemption permit~~
73 ~~is negative, a qualifying business entity shall receive the~~
74 ~~exemption provided in subparagraph 1. or subparagraph 2. through~~
75 ~~a refund of previously paid taxes. No refund may be made for~~
76 ~~such taxes unless the criteria mandated by subparagraph 1. or~~
77 ~~subparagraph 2. have been met and commencement of production has~~
78 ~~occurred.~~

79 ~~4. The department shall adopt rules governing applications~~
80 ~~for, issuance of, and the form of temporary tax exemption~~
81 ~~permits; provisions for recapture of taxes; and the manner and~~
82 ~~form of refund applications, and may establish guidelines as to~~
83 ~~the requisites for an affirmative showing of increased~~
84 ~~productive output, commencement of production, and qualification~~
85 ~~for exemption.~~

86 ~~2.5. The exemption does exemptions provided in~~
87 ~~subparagraphs 1. and 2. do not apply to machinery or equipment~~
88 ~~purchased or used by electric utility companies, communications~~
89 ~~companies, oil or gas exploration or production operations,~~
90 ~~publishing firms that do not export at least 50 percent of their~~
91 ~~finished product out of the state, any firm subject to~~
92 ~~regulation by the Division of Hotels and Restaurants of the~~
93 ~~Department of Business and Professional Regulation, or any firm~~
94 ~~that does not manufacture, process, compound, or produce for~~
95 ~~sale items of tangible personal property or that does not use~~
96 ~~such machinery and equipment in spaceport activities as required~~
97 ~~by this paragraph. The exemption does apply exemptions provided~~
98 ~~in subparagraphs 1. and 2. shall apply to machinery and~~
99 ~~equipment purchased for use in phosphate or other solid minerals~~



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100 severance, mining, or processing operations.

101 ~~3.6. For the purposes of the exemption, the term exemptions~~
102 ~~provided in subparagraphs 1. and 2., these terms have the~~
103 ~~following meanings:~~

104 a. "industrial machinery and equipment" means tangible
105 personal property or other property that has a depreciable life
106 of 3 years or more and ~~that~~ is used as an integral part in the
107 manufacturing, processing, compounding, or production of
108 tangible personal property for sale or is exclusively used in
109 spaceport activities. A building and its structural components
110 are not industrial machinery and equipment unless the building
111 or structural component is so closely related to the industrial
112 machinery and equipment that it houses or supports that the
113 building or structural component can be expected to be replaced
114 when the machinery and equipment are replaced. Heating and air-
115 conditioning systems are not industrial machinery and equipment
116 unless the sole justification for their installation is to meet
117 the requirements of the production process, even though the
118 system may provide incidental comfort to employees or serve, to
119 an insubstantial degree, nonproduction activities. The term
120 includes parts and accessories for industrial machinery and
121 equipment only to the extent that the exemption thereof is
122 ~~consistent with the provisions of this paragraph.~~

123 b. ~~"Productive output" means the number of units actually~~
124 ~~produced by a single plant, operation, or product line in a~~
125 ~~single continuous 12-month period, irrespective of sales.~~
126 ~~Increases in productive output shall be measured by the output~~
127 ~~for 12 continuous months selected by the expanding business~~
128 ~~after completion of the installation of such machinery or~~



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129 ~~equipment over the output for the 12 continuous months~~
130 ~~immediately preceding such installation. However, in no case may~~
131 ~~such time period begin later than 2 years after completion of~~
132 ~~the installation of the new machinery and equipment. The units~~
133 ~~used to measure productive output shall be physically comparable~~
134 ~~between the two periods, irrespective of sales.~~

135 (d) *Machinery and equipment used under federal procurement*
136 *contract.*—

137 1. Industrial machinery and equipment purchased by an
138 expanding business that ~~which~~ manufactures tangible personal
139 property pursuant to federal procurement regulations at fixed
140 locations in this state are exempt from the tax imposed in this
141 chapter upon an affirmative showing by the taxpayer to the
142 satisfaction of the department that such items are used to
143 increase the implicit productive output of the expanded business
144 by not less than 10 percent. The percentage of increase is
145 measured as deflated implicit productive output for the calendar
146 year during which the installation of the machinery or equipment
147 is completed or during which commencement of production
148 utilizing such items is begun divided by the implicit productive
149 output for the preceding calendar year. ~~In no case may~~ The
150 commencement of production may not begin later than 2 years
151 after completing ~~following completion of~~ installation of the
152 machinery or equipment.

153 2. The amount of the exemption allowed must ~~shall~~ equal the
154 taxes otherwise imposed by this chapter on qualifying industrial
155 machinery or equipment reduced by the percentage of gross
156 receipts from cost-reimbursement type contracts attributable to
157 the plant or operation to total gross receipts so attributable,



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158 accrued for the year of completion or commencement.

159 3. The exemption provided by this paragraph shall inure to
160 the taxpayer only through a refund of previously paid taxes.
161 Such refund shall be made within 30 days after ~~of~~ formal
162 approval by the department of the taxpayer's application, which
163 application may be made on an annual basis following
164 installation of the machinery or equipment.

165 4. For the purposes of this paragraph, the term:

166 a. "Cost-reimbursement type contracts" has the same meaning
167 as in 32 C.F.R. s. 3-405.

168 b. "Deflated implicit productive output" means the product
169 of implicit productive output times the quotient of the national
170 defense implicit price deflator for the preceding calendar year
171 divided by the deflator for the year of completion or
172 commencement.

173 c. "Eligible costs" means the total direct and indirect
174 costs, as defined in 32 C.F.R. ss. 15-202 and 15-203, excluding
175 general and administrative costs, selling expenses, and profit,
176 defined by the uniform cost-accounting standards adopted by the
177 Cost-Accounting Standards Board created pursuant to 50 U.S.C. s.
178 2168.

179 d. "Implicit productive output" means the annual eligible
180 costs attributable to all contracts or subcontracts subject to
181 federal procurement regulations of the single plant or operation
182 at which the machinery or equipment is used.

183 e. "Industrial machinery and equipment" means tangible
184 personal property or other property that has a depreciable life
185 of 3 years or more, that qualifies as an eligible cost under
186 federal procurement regulations, and that is used as an integral



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187 part of the process of production of tangible personal property.
188 A building and its structural components are not industrial
189 machinery and equipment unless the building or structural
190 component is so closely related to the industrial machinery and
191 equipment that it houses or supports that the building or
192 structural component can be expected to be replaced when the
193 machinery and equipment are replaced. Heating and air-
194 conditioning systems are not industrial machinery and equipment
195 unless the sole justification for their installation is to meet
196 the requirements of the production process, even though the
197 system may provide incidental comfort to employees or serve, to
198 an insubstantial degree, nonproduction activities. The term
199 includes parts and accessories only to the extent that the
200 exemption of such parts and accessories is consistent with the
201 provisions of this paragraph.

202 f. "National defense implicit price deflator" means the
203 national defense implicit price deflator for the gross national
204 product as determined by the Bureau of Economic Analysis of the
205 United States Department of Commerce.

206 5. The exclusions provided in subparagraph (b)2. ~~(b)5.~~
207 apply to this exemption. This exemption applies only to
208 machinery or equipment purchased pursuant to production
209 contracts with the United States Department of Defense and Armed
210 Forces, the National Aeronautics and Space Administration, and
211 other federal agencies for which the contracts are classified
212 for national security reasons. ~~In no event shall~~ The provisions
213 of this paragraph do not apply to an ~~any~~ expanding business
214 whose ~~the~~ increase in productive output is measurable ~~of which~~
215 ~~could be measured under the provisions of sub-subparagraph~~



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216 ~~(b)6.b. as physically comparable between the two periods. As~~
217 used in this subparagraph, the term "productive output" means
218 the number of units actually produced by a single plant,
219 operation, or product line in a single continuous 12-month
220 period, irrespective of sales. Increases in productive output
221 shall be measured by dividing the output for 12 continuous
222 months selected by the expanding business after completing the
223 installation of machinery or equipment by the output for the 12
224 continuous months immediately preceding such installation.
225 However, such time period may not commence 2 years after
226 completing the installation. The units used to measure
227 productive output must be physically comparable between the two
228 periods, irrespective of sales.

229 (h) *Business property used in an enterprise zone.—*

230 1. Business property purchased for use by businesses
231 located in an enterprise zone which is subsequently used in an
232 enterprise zone is shall be exempt from the tax imposed by this
233 chapter. This exemption inures to the business only through a
234 refund of previously paid taxes. A refund shall be authorized
235 upon an affirmative showing by the taxpayer, to the satisfaction
236 of the department, that the requirements of this paragraph have
237 been met.

238 2. To receive a refund, the business must file ~~under oath~~
239 with the governing body or enterprise zone development agency
240 having jurisdiction over the enterprise zone where the business
241 is located, as applicable, an application, under oath, which
242 includes:

243 a. The name and address of the business claiming the
244 refund.



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245 b. The identifying number assigned pursuant to s. 290.0065
246 to the enterprise zone in which the business is located.

247 c. A specific description of the property for which a
248 refund is sought, including its serial number or other permanent
249 identification number.

250 d. The location of the property.

251 e. The sales invoice or other proof of purchase of the
252 property, showing the amount of sales tax paid, the date of
253 purchase, and the name and address of the sales tax dealer from
254 whom the property was purchased.

255 f. Whether the business is a small business as defined in
256 ~~by~~ s. 288.703.

257 g. If applicable, the name and address of each permanent
258 employee of the business, including, for each employee who is a
259 resident of an enterprise zone, the identifying number assigned
260 pursuant to s. 290.0065 to the enterprise zone in which the
261 employee resides.

262 3. Within 10 working days after receipt of an application,
263 the governing body or enterprise zone development agency shall
264 review the application to determine if it contains all the
265 information required pursuant to subparagraph 2. and meets the
266 criteria set out in this paragraph. The governing body or agency
267 shall certify all applications that contain the information
268 required pursuant to subparagraph 2. and meet the criteria set
269 out in this paragraph as eligible to receive a refund. If
270 applicable, the governing body or agency shall also certify if
271 20 percent of the employees of the business are residents of an
272 enterprise zone, excluding temporary and part-time employees.
273 The certification must ~~shall~~ be in writing, and a copy of the



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274 certification ~~shall be~~ transmitted to the executive director of
275 the Department of Revenue. The business is ~~shall be~~ responsible
276 for forwarding a certified application to the department within
277 the time specified in subparagraph 4.

278 4. An application for a refund pursuant to this paragraph
279 must be submitted to the department within 6 months after the
280 tax is due on the business property that is purchased.

281 5. The amount refunded on purchases of business property
282 under this paragraph shall be the lesser of 97 percent of the
283 sales tax paid on such business property or \$5,000, or, if up to
284 ~~no less than~~ 20 percent of the employees of the business are
285 residents of an enterprise zone, excluding temporary and part-
286 time employees, the amount ~~refunded on purchases of business~~
287 ~~property under this paragraph~~ shall be the lesser of 97 percent
288 of the sales tax paid on such business property or \$10,000. A
289 refund must ~~approved pursuant to this paragraph shall~~ be made
290 within 30 days after formal approval by the department of the
291 application for the refund. A refund may not be granted ~~under~~
292 ~~this paragraph~~ unless the amount to be refunded exceeds \$100 in
293 sales tax paid on purchases made within a 60-day time period.

294 6. The department shall adopt rules governing the manner
295 and form of refund applications and may establish guidelines as
296 to the requisites for an affirmative showing of qualification
297 for exemption under this paragraph.

298 7. If the department determines that the business property
299 is used outside an enterprise zone within 3 years after ~~from~~ the
300 date of purchase, the amount of taxes refunded to the business
301 purchasing such business property is ~~shall~~ immediately ~~be~~ due
302 and payable to the department by the business, together with the



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303 appropriate interest and penalty, computed from the date of
304 purchase, in the manner provided by this chapter.

305 Notwithstanding this subparagraph, business property used
306 exclusively in:

- 307 a. Licensed commercial fishing vessels,
- 308 b. Fishing guide boats, or
- 309 c. Ecotourism guide boats

310

311 that leave and return to a fixed location within an area
312 designated under s. 379.2353, Florida Statutes 2010, are
313 eligible for the exemption ~~provided under this paragraph~~ if all
314 requirements of this paragraph are met. Such vessels and boats
315 must be owned by a business that is eligible to receive the
316 exemption ~~provided under this paragraph~~. This exemption does not
317 apply to the purchase of a vessel or boat.

318 8. The department shall deduct an amount equal to 10
319 percent of each refund granted under this paragraph from the
320 amount transferred into the Local Government Half-cent Sales Tax
321 Clearing Trust Fund pursuant to s. 212.20 for the county area in
322 which the business property is located and ~~shall~~ transfer that
323 amount to the General Revenue Fund.

324 9. For the purposes of this exemption, the term "business
325 property" means new or used property defined as "recovery
326 property" in s. 168(c) of the Internal Revenue Code of 1954, as
327 amended, except:

328 a. Property classified as 3-year property under s.
329 168(c) (2) (A) of the Internal Revenue Code of 1954, as amended;

330 b. Industrial machinery and equipment as defined in
331 subparagraph (b)3. ~~sub-subparagraph (b)6.a.~~ and eligible for



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332 exemption under paragraph (b);

333 c. Building materials as defined in sub-subparagraph
334 (g)8.a.; and

335 d. Business property having a sales price of under \$5,000
336 per unit.

337 10. This paragraph expires on the date specified in s.
338 290.016 for the expiration of the Florida Enterprise Zone Act.

339 Section 4. (1) The Department of Revenue shall develop a
340 tracking system, in consultation with the Revenue Estimating
341 Conference, to determine the amount of sales taxes remitted by
342 out-of-state dealers who would otherwise not be required to
343 collect and remit sales taxes in the absence of the amendments
344 made to s. 212.0596, Florida Statutes, in section 1 of this act.
345 By February 1 of each year, the Department of Revenue shall
346 submit a report to the Governor, the President of the Senate,
347 and the Speaker of the House of Representatives which sets forth
348 the amount of sales taxes collected and remitted by such dealers
349 in the previous calendar year and the methodology used to
350 determine the amount.

351 (2) By March 1 of each year, the Revenue Estimating
352 Conference shall use the information provided by the Department
353 of Revenue pursuant to subsection (1) to determine the amount of
354 sales taxes remitted in the previous calendar year by such out-
355 of-state dealers who would otherwise not be required to collect
356 and remit sales taxes and estimate the amount that may be
357 expected in the following fiscal year.

358 (3) The Legislature shall use the information provided by
359 the Department of Revenue and the Revenue Estimating Conference
360 to develop legislation designed to return the amount of those



361 sales taxes collected to the taxpayers of this state. The
362 Legislature shall reduce taxes in an amount not less than the
363 amount determined by the Revenue Estimating Conference. If the
364 amount collected is determined to be of a recurring nature and
365 sufficient to lower tax rates, the Legislature must first reduce
366 the tax rate imposed on communications services under chapter
367 202 or the tax rate imposed on commercial rentals under s.
368 212.031, or may provide other permanent tax relief as it deems
369 appropriate.

370
371 ===== T I T L E A M E N D M E N T =====

372 And the title is amended as follows:

373 Delete line 22

374 and insert:

375 "dealer"; amending s. 212.08, F.S.; revising the sales
376 tax exemption from the sales tax for certain business
377 purchases of industrial machinery and equipment and
378 spaceport activities; deleting certain limitations on,
379 and procedural requirements relating to, the
380 exemption; conforming cross-references; requiring that
381 the Department of Revenue develop a tracking system,
382 in consultation with the Revenue Estimating
383 Conference, to determine the amount of sales tax
384 remitted by out-of-state dealers who would otherwise
385 not be required to collect and remit sales taxes but
386 for the amendments made by the act; requiring that the
387 department submit a report to the Governor and
388 Legislature by a specified date each year; requiring
389 that the report contain certain information; requiring



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390 that the Revenue Estimating Conference use such
391 information to determine the amount of sales taxes
392 remitted in the previous calendar year by such out-of-
393 state dealers and estimate the amount that may be
394 expected in the following fiscal year; requiring that
395 the Legislature use the information to reduce tax
396 rates for communications services under chapter 202,
397 commercial services under s. 212.031, or other taxes
398 as deemed appropriate; providing an effective date.
399
400



405190

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2013	.	
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	.	
	.	

The Committee on Commerce and Tourism (Detert) recommended the following:

1 **Senate Substitute for Amendment (444784) (with title**
2 **amendment)**

3
4 Delete line 301

5 and insert:

6 Section 3. Effective January 1, 2014, paragraphs (a) and
7 (b) of subsection (1) of section 202.12, Florida Statutes, are
8 amended to read:

9 202.12 Sales of communications services.—The Legislature
10 finds that every person who engages in the business of selling
11 communications services at retail in this state is exercising a
12 taxable privilege. It is the intent of the Legislature that the



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13 tax imposed by chapter 203 be administered as provided in this
14 chapter.

15 (1) For the exercise of such privilege, a tax is levied on
16 each taxable transaction, and the tax is due and payable as
17 follows:

18 (a) Except as otherwise provided in this subsection, at a
19 rate of 5.65 percent ~~6.65 percent~~ applied to the sales price of
20 the communications service which:

- 21 1. Originates and terminates in this state, or
- 22 2. Originates or terminates in this state and is charged to
23 a service address in this state,

24
25 when sold at retail, computed on each taxable sale for the
26 purpose of remitting the tax due. The gross receipts tax imposed
27 by chapter 203 shall be collected on the same taxable
28 transactions and remitted with the tax imposed by this
29 paragraph. If no tax is imposed by this paragraph by reason of
30 s. 202.125(1), the tax imposed by chapter 203 shall nevertheless
31 be collected and remitted in the manner and at the time
32 prescribed for tax collections and remittances under this
33 chapter.

34 (b) At the rate of 9.8 percent ~~10.8 percent~~ on the retail
35 sales price of any direct-to-home satellite service received in
36 this state. The proceeds of the tax imposed under this paragraph
37 shall be accounted for and distributed in accordance with s.
38 202.18(2). The gross receipts tax imposed by chapter 203 shall
39 be collected on the same taxable transactions and remitted with
40 the tax imposed by this paragraph.

41 Section 4. Effective January 1, 2014, section 202.12001,



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42 Florida Statutes, is amended to read:

43 202.12001 Combined rate for tax collected pursuant to ss.
44 202.12(1)(a) and 203.01(1)(b).—In complying with ss. 1-3, ch.
45 2010-149, Laws of Florida, the dealer of communication services
46 may collect a combined rate of 5.8 percent ~~6.8 percent~~ comprised
47 of 5.65 percent ~~6.65 percent~~ and 0.15 percent required by ss.
48 202.12(1)(a) and 203.01(1)(b)3., respectively, as long as the
49 provider properly reflects the tax collected with respect to the
50 two provisions as required in the return to the Department of
51 Revenue.

52 Section 5. Effective January 1, 2014, section 203.001,
53 Florida Statutes, is amended to read:

54 203.001 Combined rate for tax collected pursuant to ss.
55 202.12(1)(a) and 203.01(1)(b).—In complying with ss. 1-3, ch.
56 2010-149, Laws of Florida, the dealer of communication services
57 may collect a combined rate of 5.8 percent ~~6.8 percent~~ comprised
58 of 5.65 percent ~~6.65 percent~~ and 0.15 percent required by ss.
59 202.12(1)(a) and 203.01(1)(b)3., respectively, as long as the
60 provider properly reflects the tax collected with respect to the
61 two provisions as required in the return to the Department of
62 Revenue.

63 Section 6. Paragraphs (b), (d), and (h) of subsection (5)
64 of section 212.08, Florida Statutes, are amended to read:

65 212.08 Sales, rental, use, consumption, distribution, and
66 storage tax; specified exemptions.—The sale at retail, the
67 rental, the use, the consumption, the distribution, and the
68 storage to be used or consumed in this state of the following
69 are hereby specifically exempt from the tax imposed by this
70 chapter.



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71 (5) EXEMPTIONS; ACCOUNT OF USE.-

72 (b) Industrial machinery and equipment used by
73 manufacturers or used exclusively in spaceport activities ~~to~~
74 ~~increase productive output.-~~

75 1. Industrial machinery and equipment purchased for
76 ~~exclusive use in businesses that manufacture, process, compound,~~
77 ~~or produce for sale items of tangible personal property at fixed~~
78 ~~locations or for exclusive use by a new business in spaceport~~
79 ~~activities as defined by s. 212.02 or for use in new businesses~~
80 ~~that manufacture, process, compound, or produce for sale items~~
81 ~~of tangible personal property at fixed locations are exempt from~~
82 ~~the tax imposed by this chapter if, at the time of purchase, the~~
83 ~~purchaser furnishes the seller with a signed certificate stating~~
84 ~~that the items to be exempted are for exclusive use as provided~~
85 ~~in this paragraph. The certificate relieves the seller of the~~
86 ~~responsibility of collecting the tax on the sale of such items~~
87 ~~and the department shall look solely to the purchaser for~~
88 ~~recovery of the tax if it determines that the purchaser was not~~
89 ~~entitled to the exemption upon an affirmative showing by the~~
90 ~~taxpayer to the satisfaction of the department that such items~~
91 ~~are used in a new business in this state. Such purchases must be~~
92 ~~made before the date the business first begins its productive~~
93 ~~operations, and delivery of the purchased item must be made~~
94 ~~within 12 months after that date.~~

95 ~~2. Industrial machinery and equipment purchased for~~
96 ~~exclusive use by an expanding facility which is engaged in~~
97 ~~spaceport activities as defined by s. 212.02 or for use in~~
98 ~~expanding manufacturing facilities or plant units which~~
99 ~~manufacture, process, compound, or produce for sale items of~~



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100 ~~tangible personal property at fixed locations in this state are~~
101 ~~exempt from any amount of tax imposed by this chapter upon an~~
102 ~~affirmative showing by the taxpayer to the satisfaction of the~~
103 ~~department that such items are used to increase the productive~~
104 ~~output of such expanded facility or business by not less than 5~~
105 ~~percent.~~

106 ~~3.a. To receive an exemption provided by subparagraph 1. or~~
107 ~~subparagraph 2., a qualifying business entity shall apply to the~~
108 ~~department for a temporary tax exemption permit. The application~~
109 ~~shall state that a new business exemption or expanded business~~
110 ~~exemption is being sought. Upon a tentative affirmative~~
111 ~~determination by the department pursuant to subparagraph 1. or~~
112 ~~subparagraph 2., the department shall issue such permit.~~

113 ~~b. The applicant shall maintain all necessary books and~~
114 ~~records to support the exemption. Upon completion of purchases~~
115 ~~of qualified machinery and equipment pursuant to subparagraph 1.~~
116 ~~or subparagraph 2., the temporary tax permit shall be delivered~~
117 ~~to the department or returned to the department by certified or~~
118 ~~registered mail.~~

119 ~~c. If, in a subsequent audit conducted by the department,~~
120 ~~it is determined that the machinery and equipment purchased as~~
121 ~~exempt under subparagraph 1. or subparagraph 2. did not meet the~~
122 ~~criteria mandated by this paragraph or if commencement of~~
123 ~~production did not occur, the amount of taxes exempted at the~~
124 ~~time of purchase shall immediately be due and payable to the~~
125 ~~department by the business entity, together with the appropriate~~
126 ~~interest and penalty, computed from the date of purchase, in the~~
127 ~~manner prescribed by this chapter.~~

128 ~~d. If a qualifying business entity fails to apply for a~~



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129 ~~temporary exemption permit or if the tentative determination by~~
130 ~~the department required to obtain a temporary exemption permit~~
131 ~~is negative, a qualifying business entity shall receive the~~
132 ~~exemption provided in subparagraph 1. or subparagraph 2. through~~
133 ~~a refund of previously paid taxes. No refund may be made for~~
134 ~~such taxes unless the criteria mandated by subparagraph 1. or~~
135 ~~subparagraph 2. have been met and commencement of production has~~
136 ~~occurred.~~

137 ~~4. The department shall adopt rules governing applications~~
138 ~~for, issuance of, and the form of temporary tax exemption~~
139 ~~permits; provisions for recapture of taxes; and the manner and~~
140 ~~form of refund applications, and may establish guidelines as to~~
141 ~~the requisites for an affirmative showing of increased~~
142 ~~productive output, commencement of production, and qualification~~
143 ~~for exemption.~~

144 ~~2.5. The exemption does exemptions provided in~~
145 ~~subparagraphs 1. and 2. do not apply to machinery or equipment~~
146 ~~purchased or used by electric utility companies, communications~~
147 ~~companies, oil or gas exploration or production operations,~~
148 ~~publishing firms that do not export at least 50 percent of their~~
149 ~~finished product out of the state, any firm subject to~~
150 ~~regulation by the Division of Hotels and Restaurants of the~~
151 ~~Department of Business and Professional Regulation, or any firm~~
152 ~~that does not manufacture, process, compound, or produce for~~
153 ~~sale items of tangible personal property or that does not use~~
154 ~~such machinery and equipment in spaceport activities as required~~
155 ~~by this paragraph. The exemption does apply exemptions provided~~
156 ~~in subparagraphs 1. and 2. shall apply to machinery and~~
157 ~~equipment purchased for use in phosphate or other solid minerals~~



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158 severance, mining, or processing operations.

159 ~~3.6. For the purposes of the exemption, the term exemptions~~
160 ~~provided in subparagraphs 1. and 2., these terms have the~~
161 ~~following meanings:~~

162 a. "industrial machinery and equipment" means tangible
163 personal property or other property that has a depreciable life
164 of 3 years or more and ~~that~~ is used as an integral part in the
165 manufacturing, processing, compounding, or production of
166 tangible personal property for sale or is exclusively used in
167 spaceport activities. A building and its structural components
168 are not industrial machinery and equipment unless the building
169 or structural component is so closely related to the industrial
170 machinery and equipment that it houses or supports that the
171 building or structural component can be expected to be replaced
172 when the machinery and equipment are replaced. Heating and air-
173 conditioning systems are not industrial machinery and equipment
174 unless the sole justification for their installation is to meet
175 the requirements of the production process, even though the
176 system may provide incidental comfort to employees or serve, to
177 an insubstantial degree, nonproduction activities. The term
178 includes parts and accessories for industrial machinery and
179 equipment only to the extent that the exemption thereof is
180 ~~consistent with the provisions of this paragraph.~~

181 b. ~~"Productive output" means the number of units actually~~
182 ~~produced by a single plant, operation, or product line in a~~
183 ~~single continuous 12-month period, irrespective of sales.~~
184 ~~Increases in productive output shall be measured by the output~~
185 ~~for 12 continuous months selected by the expanding business~~
186 ~~after completion of the installation of such machinery or~~



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187 ~~equipment over the output for the 12 continuous months~~
188 ~~immediately preceding such installation. However, in no case may~~
189 ~~such time period begin later than 2 years after completion of~~
190 ~~the installation of the new machinery and equipment. The units~~
191 ~~used to measure productive output shall be physically comparable~~
192 ~~between the two periods, irrespective of sales.~~

193 (d) *Machinery and equipment used under federal procurement*
194 *contract.*—

195 1. Industrial machinery and equipment purchased by an
196 expanding business that ~~which~~ manufactures tangible personal
197 property pursuant to federal procurement regulations at fixed
198 locations in this state are exempt from the tax imposed in this
199 chapter upon an affirmative showing by the taxpayer to the
200 satisfaction of the department that such items are used to
201 increase the implicit productive output of the expanded business
202 by not less than 10 percent. The percentage of increase is
203 measured as deflated implicit productive output for the calendar
204 year during which the installation of the machinery or equipment
205 is completed or during which commencement of production
206 utilizing such items is begun divided by the implicit productive
207 output for the preceding calendar year. ~~In no case may~~ The
208 commencement of production may not begin later than 2 years
209 after completing ~~following completion of~~ installation of the
210 machinery or equipment.

211 2. The amount of the exemption allowed must ~~shall~~ equal the
212 taxes otherwise imposed by this chapter on qualifying industrial
213 machinery or equipment reduced by the percentage of gross
214 receipts from cost-reimbursement type contracts attributable to
215 the plant or operation to total gross receipts so attributable,



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216 accrued for the year of completion or commencement.

217 3. The exemption provided by this paragraph shall inure to
218 the taxpayer only through a refund of previously paid taxes.
219 Such refund shall be made within 30 days after ~~of~~ formal
220 approval by the department of the taxpayer's application, which
221 application may be made on an annual basis following
222 installation of the machinery or equipment.

223 4. For the purposes of this paragraph, the term:

224 a. "Cost-reimbursement type contracts" has the same meaning
225 as in 32 C.F.R. s. 3-405.

226 b. "Deflated implicit productive output" means the product
227 of implicit productive output times the quotient of the national
228 defense implicit price deflator for the preceding calendar year
229 divided by the deflator for the year of completion or
230 commencement.

231 c. "Eligible costs" means the total direct and indirect
232 costs, as defined in 32 C.F.R. ss. 15-202 and 15-203, excluding
233 general and administrative costs, selling expenses, and profit,
234 defined by the uniform cost-accounting standards adopted by the
235 Cost-Accounting Standards Board created pursuant to 50 U.S.C. s.
236 2168.

237 d. "Implicit productive output" means the annual eligible
238 costs attributable to all contracts or subcontracts subject to
239 federal procurement regulations of the single plant or operation
240 at which the machinery or equipment is used.

241 e. "Industrial machinery and equipment" means tangible
242 personal property or other property that has a depreciable life
243 of 3 years or more, that qualifies as an eligible cost under
244 federal procurement regulations, and that is used as an integral



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245 part of the process of production of tangible personal property.
246 A building and its structural components are not industrial
247 machinery and equipment unless the building or structural
248 component is so closely related to the industrial machinery and
249 equipment that it houses or supports that the building or
250 structural component can be expected to be replaced when the
251 machinery and equipment are replaced. Heating and air-
252 conditioning systems are not industrial machinery and equipment
253 unless the sole justification for their installation is to meet
254 the requirements of the production process, even though the
255 system may provide incidental comfort to employees or serve, to
256 an insubstantial degree, nonproduction activities. The term
257 includes parts and accessories only to the extent that the
258 exemption of such parts and accessories is consistent with the
259 provisions of this paragraph.

260 f. "National defense implicit price deflator" means the
261 national defense implicit price deflator for the gross national
262 product as determined by the Bureau of Economic Analysis of the
263 United States Department of Commerce.

264 5. The exclusions provided in subparagraph (b)2. ~~(b)5.~~
265 apply to this exemption. This exemption applies only to
266 machinery or equipment purchased pursuant to production
267 contracts with the United States Department of Defense and Armed
268 Forces, the National Aeronautics and Space Administration, and
269 other federal agencies for which the contracts are classified
270 for national security reasons. ~~In no event shall~~ The provisions
271 of this paragraph do not apply to an ~~any~~ expanding business
272 whose ~~the~~ increase in productive output is measurable ~~of which~~
273 ~~could be measured under the provisions of sub-subparagraph~~



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274 ~~(b)6.b. as physically comparable between the two periods. As~~
275 used in this subparagraph, the term "productive output" means
276 the number of units actually produced by a single plant,
277 operation, or product line in a single continuous 12-month
278 period, irrespective of sales. Increases in productive output
279 shall be measured by dividing the output for 12 continuous
280 months selected by the expanding business after completing the
281 installation of machinery or equipment by the output for the 12
282 continuous months immediately preceding such installation.
283 However, such time period may not commence 2 years after
284 completing the installation. The units used to measure
285 productive output must be physically comparable between the two
286 periods, irrespective of sales.

287 (h) *Business property used in an enterprise zone.—*

288 1. Business property purchased for use by businesses
289 located in an enterprise zone which is subsequently used in an
290 enterprise zone is shall be exempt from the tax imposed by this
291 chapter. This exemption inures to the business only through a
292 refund of previously paid taxes. A refund shall be authorized
293 upon an affirmative showing by the taxpayer, to the satisfaction
294 of the department, that the requirements of this paragraph have
295 been met.

296 2. To receive a refund, the business must file ~~under oath~~
297 with the governing body or enterprise zone development agency
298 having jurisdiction over the enterprise zone where the business
299 is located, as applicable, an application, under oath, which
300 includes:

301 a. The name and address of the business claiming the
302 refund.



303 b. The identifying number assigned pursuant to s. 290.0065
304 to the enterprise zone in which the business is located.

305 c. A specific description of the property for which a
306 refund is sought, including its serial number or other permanent
307 identification number.

308 d. The location of the property.

309 e. The sales invoice or other proof of purchase of the
310 property, showing the amount of sales tax paid, the date of
311 purchase, and the name and address of the sales tax dealer from
312 whom the property was purchased.

313 f. Whether the business is a small business as defined in
314 ~~by~~ s. 288.703.

315 g. If applicable, the name and address of each permanent
316 employee of the business, including, for each employee who is a
317 resident of an enterprise zone, the identifying number assigned
318 pursuant to s. 290.0065 to the enterprise zone in which the
319 employee resides.

320 3. Within 10 working days after receipt of an application,
321 the governing body or enterprise zone development agency shall
322 review the application to determine if it contains all the
323 information required pursuant to subparagraph 2. and meets the
324 criteria set out in this paragraph. The governing body or agency
325 shall certify all applications that contain the information
326 required pursuant to subparagraph 2. and meet the criteria set
327 out in this paragraph as eligible to receive a refund. If
328 applicable, the governing body or agency shall also certify if
329 20 percent of the employees of the business are residents of an
330 enterprise zone, excluding temporary and part-time employees.
331 The certification must ~~shall~~ be in writing, and a copy of the



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332 certification ~~shall be~~ transmitted to the executive director of
333 the Department of Revenue. The business is ~~shall be~~ responsible
334 for forwarding a certified application to the department within
335 the time specified in subparagraph 4.

336 4. An application for a refund pursuant to this paragraph
337 must be submitted to the department within 6 months after the
338 tax is due on the business property that is purchased.

339 5. The amount refunded on purchases of business property
340 under this paragraph shall be the lesser of 97 percent of the
341 sales tax paid on such business property or \$5,000, or, if up to
342 ~~no less than~~ 20 percent of the employees of the business are
343 residents of an enterprise zone, excluding temporary and part-
344 time employees, the amount ~~refunded on purchases of business~~
345 ~~property under this paragraph~~ shall be the lesser of 97 percent
346 of the sales tax paid on such business property or \$10,000. A
347 refund must ~~approved pursuant to this paragraph shall~~ be made
348 within 30 days after formal approval by the department of the
349 application for the refund. A refund may not be granted ~~under~~
350 ~~this paragraph~~ unless the amount to be refunded exceeds \$100 in
351 sales tax paid on purchases made within a 60-day time period.

352 6. The department shall adopt rules governing the manner
353 and form of refund applications and may establish guidelines as
354 to the requisites for an affirmative showing of qualification
355 for exemption under this paragraph.

356 7. If the department determines that the business property
357 is used outside an enterprise zone within 3 years after ~~from~~ the
358 date of purchase, the amount of taxes refunded to the business
359 purchasing such business property is ~~shall~~ immediately ~~be~~ due
360 and payable to the department by the business, together with the



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361 appropriate interest and penalty, computed from the date of
362 purchase, in the manner provided by this chapter.

363 Notwithstanding this subparagraph, business property used
364 exclusively in:

- 365 a. Licensed commercial fishing vessels,
- 366 b. Fishing guide boats, or
- 367 c. Ecotourism guide boats

368
369 that leave and return to a fixed location within an area
370 designated under s. 379.2353, Florida Statutes 2010, are
371 eligible for the exemption ~~provided under this paragraph~~ if all
372 requirements of this paragraph are met. Such vessels and boats
373 must be owned by a business that is eligible to receive the
374 exemption ~~provided under this paragraph~~. This exemption does not
375 apply to the purchase of a vessel or boat.

376 8. The department shall deduct an amount equal to 10
377 percent of each refund granted under this paragraph from the
378 amount transferred into the Local Government Half-cent Sales Tax
379 Clearing Trust Fund pursuant to s. 212.20 for the county area in
380 which the business property is located and ~~shall~~ transfer that
381 amount to the General Revenue Fund.

382 9. For the purposes of this exemption, the term "business
383 property" means new or used property defined as "recovery
384 property" in s. 168(c) of the Internal Revenue Code of 1954, as
385 amended, except:

- 386 a. Property classified as 3-year property under s.
387 168(c) (2) (A) of the Internal Revenue Code of 1954, as amended;
- 388 b. Industrial machinery and equipment as defined in
389 subparagraph (b)3. ~~sub-subparagraph (b)6.a.~~ and eligible for



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390 exemption under paragraph (b);

391 c. Building materials as defined in sub-subparagraph
392 (g)8.a.; and

393 d. Business property having a sales price of under \$5,000
394 per unit.

395 10. This paragraph expires on the date specified in s.
396 290.016 for the expiration of the Florida Enterprise Zone Act.

397 Section 7. (1) The Department of Revenue shall develop a
398 tracking system, in consultation with the Revenue Estimating
399 Conference, to determine the amount of sales taxes remitted by
400 out-of-state dealers who would otherwise not be required to
401 collect and remit sales taxes in the absence of the amendments
402 made to s. 212.0596, Florida Statutes, in section 1 of this act.
403 By February 1 of each year, the Department of Revenue shall
404 submit a report to the Governor, the President of the Senate,
405 and the Speaker of the House of Representatives which sets forth
406 the amount of sales taxes collected and remitted by such dealers
407 in the previous calendar year and the methodology used to
408 determine the amount.

409 (2) By March 1 of each year, the Revenue Estimating
410 Conference shall use the information provided by the Department
411 of Revenue pursuant to subsection (1) to determine the amount of
412 sales taxes remitted in the previous calendar year by such out-
413 of-state dealers who would otherwise not be required to collect
414 and remit sales taxes and estimate the amount that may be
415 expected in the following fiscal year.

416 (3) The Legislature shall use the information provided by
417 the Department of Revenue and the Revenue Estimating Conference
418 to develop legislation designed to return the amount of those



419 sales taxes collected to the taxpayers of this state. The
420 Legislature shall reduce taxes in an amount not less than the
421 amount determined by the Revenue Estimating Conference. Such
422 reduction shall take into account reductions already provided in
423 this act in sections 3, 4, 5, and 6 of this act. If the amount
424 collected is determined to be of a recurring nature and
425 sufficient to lower tax rates, the Legislature may provide other
426 permanent tax relief as it deems appropriate.

427 Section 8. Except as otherwise expressly provided in this
428 act and except for this section, which shall take effect upon
429 this act becoming a law, this act shall take effect July 1,
430 2013.

431
432 ===== T I T L E A M E N D M E N T =====

433 And the title is amended as follows:

434 Delete line 22
435 and insert:

436 "dealer"; amending s. 202.12, F.S.; reducing the tax
437 rate applied to the sale of communications services;
438 reducing the tax rate applied to retail sales of
439 direct-to-home satellite services; amending s.
440 202.12001, F.S.; conforming rates to the reduction of
441 the communications services tax; amending s. 203.001,
442 F.S.; conforming rates to the reduction of the
443 communications services tax; amending s. 212.08, F.S.;
444 revising the sales tax exemption from the sales tax
445 for certain business purchases of industrial machinery
446 and equipment and spaceport activities; deleting
447 certain limitations on, and procedural requirements



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448 relating to, the exemption; conforming cross-
449 references; requiring that the Department of Revenue
450 develop a tracking system, in consultation with the
451 Revenue Estimating Conference, to determine the amount
452 of sales tax remitted by out-of-state dealers who
453 would otherwise not be required to collect and remit
454 sales taxes but for the amendments made by the act;
455 requiring that the department submit a report to the
456 Governor and Legislature by a specified date each
457 year; requiring that the Revenue Estimating Conference
458 use such report to determine the amount of sales taxes
459 remitted in the previous calendar year by such out-of-
460 state dealers and estimate the amount that may be
461 expected in the following fiscal year; requiring that
462 the Legislature use the information to reduce tax
463 rates for other taxes as deemed appropriate; providing
464 an effective date.
465



THE VOICE OF FLORIDA RETAILING

Florida Retail Federation: FRF will encourage the Florida Legislature to clarify its position on the collection of the sales/use tax and pass additional legislation to enable the Department of Revenue to enhance its roles in collecting sales/use taxes that are currently filed and owing to the State of Florida.



ASSOCIATED INDUSTRIES OF FLORIDA
1120 GULF BLVD., SUITE 200
TALLAHASSEE, FL 32301

Associated Industries: AIF supports efforts to enforce the fair collection of state sales taxes. Common-sense updates can and should be made to Florida's tax system to level the playing field for all retailers selling goods in Florida.



For a more competitive Florida, the Florida Chamber of Commerce supports leveling the playing field for small businesses and Main Street through e-fairness. Florida needs a fair and equitable taxation system that discourages government from determining winners and losers through unfair tax policy.

Florida's business associations support modernizing our sales tax system. Together they are fighting to remove the competitive disadvantage under which local retailers currently operate; opposing the creation of new taxes on e-commerce, but favoring equal application of the law. They represent main street and online retailers doing business across Florida

Contact: Melissa Joiner
227 S. Adams St.
Tallahassee, FL 32301
T: 850 222-4082
mymainstreetfla.com

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/5/13
Meeting Date

Topic Sales Tax

Bill Number 316

Name Brewster Bevis

Amendment Barcode Subst. Amend 444784
(if applicable)

Job Title Senior VP

Address 516 W. Adams

Phone 54-2913

Street

Tallahassee FL 32301

City

State

Zip

E-mail bbevis

Speaking: For Against Information

Representing Associated Industries

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/5/13

Meeting Date

Topic Sales Tax

Bill Number SB 316
(if applicable)

Name Trey Price

Amendment Barcode ~~862170~~
444784
(if applicable)

Job Title Public Policy Rep.

Address 200 S. Monroe St

Phone (850) 224-1400

Street

Tallahassee

FL 32301

E-mail Trey@floridarealtors.org

City

State

Zip

Speaking: For Against Information

Representing Florida Realtors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/5/13
Meeting Date

Topic Sales Tax

Bill Number SB 316
(if applicable)

Name Brewster Bevis

Amendment Barcode _____
(if applicable)

Job Title Senior VP

Address 516 N. Adams St
Street

Phone 850-571-2913

Tallahassee FL 32301
City State Zip

E-mail bbevis@aif.com

Speaking: For Against Information

Representing Associated Industries

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-5-13

Meeting Date

Topic E - FAIRNESS

Bill Number SB 316
(if applicable)

Name DAVID HART

Amendment Barcode _____
(if applicable)

Job Title EXEC VP

Address 136 S ~~MONROE~~ BROWNUGH ST
Street

Phone 950.521-1288

TALLAHASSEE FL 32309
City State Zip

E-mail dhart@flchamber.com

Speaking: For Against Information

Representing FL CHAMBER

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/5/13

Meeting Date

Topic Tax on Sales, Use, and other transactions Bill Number 316
(if applicable)

Name Laura Cantwell Amendment Barcode _____
(if applicable)

Job Title _____

Address 200 W College Ave, Suite 304 Phone 577-5163

Tallahassee FL 32301 E-mail lcantwell@aarp.org
City State Zip

Speaking: For Against Information

Representing AARP

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/5/13

Meeting Date

Topic E-Fairness

Bill Number 316
(if applicable)

Name ANDREW E. GIBBS

Amendment Barcode _____
(if applicable)

Job Title Principal + V.P. Client Development

Address 100 S. Eola Dr.

Phone 321-278-7105

Otlando FL 32801
City State Zip

E-mail agibbs@terrason.com

Speaking: For Against Information

Representing Capital Plaza, INC.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/5/13
Meeting Date

Topic E-FAIRNESS Bill Number SB 316
(if applicable)

Name RANDY MILLER Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE V.P. FLA RETAIL FEDERATION

Address 227 S. ADAMS ST Phone 222-4082
Street

TALLAHASSEE, FL 32312 E-mail _____
City State Zip

Speaking: For Against Information

Representing FLORIDA RETAIL FEDERATION

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting. S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 306

INTRODUCER: Senator Braynon

SUBJECT: Professional Sports Facilities

DATE: February 4, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Hrdlicka	CM	Favorable
2.			AFT	
3.			AP	
4.			RC	
5.				
6.				

I. Summary:

SB 306 creates the new category of “professional sports franchise renovation facility” under s. 288.1162, F.S. A facility that meets certain requirements and is certified by the Department of Economic Opportunity is eligible for a sales tax distribution payment of \$3 million per year.

The bill allows a county that levies the charter county convention development tax under s. 212.0305(4)(b), F.S., to levy the additional professional sports franchise facility tourist development tax under s. 125.0104(3)(n), F.S. The bill also expands the allowable uses of the additional professional sports franchise facility tourist development tax.

The bill substantially amends ss. 125.0104, 212.20, 218.64, 288.1162, and 288.11621, F.S.

II. Present Situation:

Professional Sports in Florida

Florida currently has 9 major professional sports teams. The oldest major professional sports team in the state is the Miami Dolphins football franchise of the National Football League (NFL). The Dolphins franchise began in 1966 as an expansion team as part of the now-defunct American Football League. The newest major professional sports team in the state is the Tampa Bay Rays baseball franchise of the Major League Baseball (MLB) league. The Rays franchise began in 1998. Below is a summary table of information on major professional sports franchises in Florida:

Franchise	Sport	League	Year Founded	Facility	Facility Opened	County
Miami Dolphins	Football	NFL	1966	Sun Life Stadium	1987	Miami-Dade
Tampa Bay Buccaneers	Football	NFL	1976	Raymond James Stadium	1998	Hillsborough
Miami Heat	Basketball	NBA	1988	American Airlines Arena	1999	Miami-Dade
Orlando Magic	Basketball	NBA	1989	Amway Center	2010	Orange
Tampa Bay Lightning	Hockey	NHL	1992	Tampa Bay Times Forum	1996	Hillsborough
Florida Panthers	Hockey	NHL	1993	BB&T Center	1998	Broward
Miami Marlins	Baseball	MLB	1993	Marlins Park	2012	Miami-Dade
Jacksonville Jaguars	Football	NFL	1995	EverBank Field	1995	Duval
Tampa Bay Rays	Baseball	MLB	1998	Tropicana Field	1990, occupied by Rays since 1998	Pinellas

In addition to the nine major professional sports teams, Florida is also home to 33 Minor League franchises in various sports and three Arena Football League teams. MLB’s Spring Training Grapefruit League is also based in Florida, with 15 teams claiming the state as their second home for preseason training and exhibition games.

State Incentives for Professional Sports Teams

Section 288.1162, F.S., provides the procedure by which professional sports franchises in Florida may be certified to receive state funding for the purpose of paying for the acquisition, construction, reconstruction, or renovation of a facility for a new or retained professional sports franchise. Local governments, non-profit, and for-profit entities may apply to the program.

The Department of Economic Opportunity (DEO) is responsible for screening and certifying applicants for state funding. Applicants qualifying as new professional sports franchises must be a professional sports franchise that was not based in Florida prior to April 1, 1987. Applicants qualifying as retained professional sports franchises must have had a league-authorized location in the state on or before December 31, 1976, and be continuously located at the location. The number of certified professional sports franchises, both new and retained, is limited to eight total franchises.

For both new and retained franchises, DEO must confirm and verify that:

- A local government is responsible for the construction, management, or operation of the professional sports franchise facility, or holds title to the property where the facility is located;

- The applicant has a verified copy of a signed agreement with a new professional sports franchise for at least 10 years, or for 20 years in the case of a retained franchise;
- The applicant has a verified copy of the approval by the governing body of the NFL, MLB, NHL, or NBA authorizing the location of a new franchise in the state after April 1, 1987, for new professional sports franchises, or verified evidence of a league-authorized location in the state on or before December 31, 1976, for a retained professional sports franchise;
- The applicant has projections demonstrating a paid annual attendance of over 300,000 annually;
- The applicant has an independent analysis demonstrating that the amount of sales taxes generated by the use or operation of the franchise’s facility will generate \$2 million annually;
- The city or county where the franchise’s facility is located in if it is in an unincorporated area, has certified by resolution after a public hearing that the applicant franchise serves a public purpose; and
- The applicant has demonstrated that it has provided or is capable of providing financial or other commitments of more than one-half of the costs incurred or related to the improvement or development of the franchise’s facility.

Any applicant who meets the abovementioned criteria as verified by DEO is eligible to receive monthly payments from the state of \$166,667 for not more than 30 years,¹ for an annual payment totaling \$2,000,004. The Department of Revenue disburses the payments.

Further, payments may only be used for the public purposes of paying for the acquisition, construction, reconstruction, or renovation of a facility for a new or retained professional sports franchise; reimbursing associated costs for such activities; paying or pledging payments of debt service on bonds issued for such activities; funding debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to bonds issued for such activities; or refinancing the bonds. The state may only pursue recovery of funds if the Auditor General finds that the distributions were not expended as required by statute.

No facility may be certified more than once, and no sports franchise can be the basis for more than one certification unless the previous certification was withdrawn by the facility or invalidated by DEO before any funds were disbursed under s. 212.20(6)(d), F.S.

As of January 8, 2013, there were eight certified new or retained professional sports franchise facilities in Florida. The facilities and the payment distribution for each are listed below:²

Facility name	Certified entity	Franchise	First Payment	Final Payment	Total payments to date
Sun Life Stadium	Dolphins Stadium/ South Florida Stadium	Florida (Miami) Marlins ³	06/94	06/2023	\$39,166,745
Everbank Field	City of Jacksonville	Jacksonville Jaguars	06/94	05/2024	\$37,333,408

¹ Section 212.20(6)(d)6.b., F.S.

² DEO, *Professional Sports Franchises*, (January 8, 2013), (on file with the Commerce and Tourism Committee).

³ The Marlins franchise relocated from Sun Life Stadium to Marlins Park for the 2012 baseball season.

Tropicana Field	City of St. Petersburg	Tampa Bay Rays	06/95	06/2025	\$35,166,737
Tampa Bay Times Forum	Tampa Sports Authority	Tampa Bay Lightning	09/95	08/2025	\$34,833,403
BB&T Center	Broward County	Florida Panthers	08/96	07/2026	\$33,000,066
Raymond James Stadium	Hillsborough County	Tampa Bay Buccaneers	01/97	12/2026	\$32,166,731
American Airlines Arena	BPL, LTD	Miami Heat	03/98	03/2028	\$29,666,726
Amway Center	City of Orlando	Orlando Magic	02/08	01/2038	\$10,000,020

Miami Dolphins

Recent press articles have indicated that the Miami Dolphins franchise is pursuing a major renovation of Sun Life Stadium, with a projected total cost of approximately \$375-\$400 million.⁴ Dolphins owner Stephen Ross has offered to pay at least \$200 million of the total estimated costs. The Dolphins are reportedly seeking financial assistance from Miami-Dade County in the form of an increased tax on mainland hotel visits from 6 to 7 percent, and a \$3 million per year sales tax rebate from the state.⁵ On January 23, 2013, the Miami-Dade County Commission adopted a resolution urging the Legislature to enact legislation enabling Miami-Dade County to levy an additional penny professional sports bed tax. The resolution also urged the state to grant a sales tax rebate from the sale of goods and services at Sun Life Stadium in order to fund a portion of the costs associated with stadium renovations.⁶ The Dolphins and team owner Ross may be eligible to receive NFL loan financing from the league's "G4" loan pool of up to \$200 million, however the league portion may not exceed the amount spent by the team. Any potential league funding is conditional upon some public funding or contribution.⁷

Tourist Development Tax

Section 125.0104, F.S., authorizes the levy of five separate local option taxes on rental charges subject to the transient rentals tax under s. 212.03, F.S., to be used in various ways to promote tourism within the county. The authorized uses of each local option tax vary according to the particular levy.⁸

⁴ Craig Davis, *Dolphins pledge to pay half of stadium renovation project*, South Florida Sun-Sentinel, (January 14, 2013), available at: http://articles.sun-sentinel.com/2013-01-14/sports/fl-sun-life-stadium-improvements-0115-20130114_1_dolphins-ceo-mike-dee-sun-life-stadium-steve-ross, (last visited on January 28, 2013).

⁵ Douglas Hanks, *Miami Dolphins bill would bring state money to aging stadium*, The Miami Herald, (January 16, 2013), available at: <http://www.miamiherald.com/2013/01/16/3184349/dolphins-bill-would-bring-state.html>, (last visited on January 28, 2013).

⁶ Miami-Dade County, Florida, *Legislative File 130093: Urging Sun Life Stadium Legislation*, (1/23/2013), available at: <http://www.miamidade.gov/govaction/matter.asp?matter=130093&file=true&yearFolder=Y2013>, (last visited on January 28, 2013).

⁷ Douglas Hanks, *NFL may help Miami Dolphins owner Stephen Ross pay for renovations to Sun Life Stadium*, The Miami Herald, (January 23, 2013), available at: <http://www.miamiherald.com/2013/01/23/3195536/nfl-could-help-ross-pay-for-stadium.html>, (last visited on January 31, 2013).

⁸ Florida Revenue Estimating Conference, "2012 Florida Tax Handbook."

- The tourist development tax may be levied at the rate of 1 or 2 percent.⁹ Currently, 62 counties levy this tax at 2 percent; all 67 counties are eligible to levy this tax.¹⁰ Revenue from this tax may be bonded to finance certain facilities and projects, including financing revenue bonds. This tax may only be levied after the ordinance is approved by a majority of voters in a referendum.
- An additional tourist development tax of 1 percent may be levied.¹¹ Currently 45 counties levy this tax and only 57 counties are currently eligible to levy this tax. Revenue from this tax may be bonded to finance certain facilities and projects, but may not be used for certain debt service or refinancing unless approved by an extraordinary vote of the governing board. This tax may only be levied after the ordinance is approved by a majority of voters in a referendum.
- A professional sports franchise facility tax may be levied up to an additional 1 percent.¹² Currently 36 counties levy this additional tax and all 67 counties are eligible to levy this tax. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities of professional sports franchises, and convention centers, and to promote and advertise tourism.
- A high tourism impact tax may be levied at an additional 1 percent.¹³ Five counties are eligible to levy this tax (Broward, Monroe, Orange, Osceola, and Walton). Of these five counties, Monroe, Orange, and Osceola levy this additional tax. Revenue from this tax may be bonded to finance certain facilities and projects, including financing revenue bonds.
- An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.¹⁴ Out of 65 counties that levy a professional sports facility tax, 20 levy an additional professional sports franchise facility tax. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities of professional sports franchises, and to promote and advertise tourism. Miami-Dade and Volusia counties may not levy the additional 1 percent professional sports franchise facility tax.^{15 16}

“Local option tourist taxes are significant revenue sources to Florida’s county governments and represent important funding mechanisms for a variety of tourism-related expenditures such as beach and shoreline maintenance, construction of convention centers and professional sports franchise facilities, and tourism promotion.”¹⁷ Generally, the revenues from these levies may be used for capital construction, maintenance, and promotion of tourist-related facilities, tourism

⁹ Section 125.0104(3)(c), F.S.

¹⁰ Information related to the number of counties levying the taxes is from the Office of Economic and Demographic Research, “2013 Local Option Tourist/Food and Beverage/Tax Rates in Florida’s Counties,” <http://edr.state.fl.us/Content/local-government/data/county-municipal/2013LOTTrates.pdf> (last visited January 24, 2013).

¹¹ Section 125.0104(3)(d), F.S.

¹² Section 125.0104(3)(l), F.S.

¹³ Section 125.0104(3)(m), F.S.

¹⁴ Section 125.0104(3)(n), F.S.

¹⁵ Section 212.0305(4)(b), F.S.

¹⁶ Section 125.0104(3)(b), F.S.

¹⁷ Florida Legislative Committee on Intergovernmental Relations, Issue Brief: Utilization of Local Option Tourist Taxes by Florida Counties in Fiscal Year 2009-10 (December 2009), available at <http://edr.state.fl.us/Content/local-government/reports/localopttourist09.pdf> (last visited on January 24, 2013).

promotion, and beach and shoreline maintenance. Tourist-related facilities include convention centers, sports stadiums and arenas, coliseums, auditoriums, aquariums, and museums that are publically owned and operated within the area that the tax is levied. Tax revenues may also be used to promote zoos.

The local taxes on rental charges are required to be remitted to the Department of Revenue, unless a county has adopted an ordinance providing for local collection and administration of the tax.¹⁸

In counties that have plans for tourist development that include the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum that is publicly owned and operated or owned and operated by a not-for-profit organization, the ordinance levying the tourist development tax automatically expires upon the later of two circumstances:

- The retirement of all bonds issued by the county for financing the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum that is publicly owned and operated or owned and operated by a not-for-profit organization; or
- The expiration of any agreement by the county for the operation or maintenance, or both, of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, or museum.

Convention Development Taxes

Section 212.0305, F.S., authorizes Duval, Miami-Dade and Volusia counties to levy a convention development tax on transient rental transactions. Three of the five available levies are applicable to only separate taxing districts within Volusia County. The levies may be authorized by adoption of an ordinance by the county's governing body. Revenues may generally be used for capital construction of convention centers and other tourist-related facilities as well as tourism promotion.¹⁹

Only Duval County meets the requirements to levy the 2 percent convention development tax on the total charged consideration for transient rentals under s. 212.0305(4)(a), F.S., which applies to counties operating under a government consolidated with one or more municipalities in the county. Proceeds from the tax may be used for the following purposes:

- To promote and advertise tourism (only for municipalities of more than 10,000 population);
- To extend, enlarge, and improve existing publicly owned convention centers in the county;
- To construct a multipurpose convention/coliseum/exhibition center or the maximum components thereof as funds permit in the county; and/or
- To acquire, construct, extend, enlarge, remodel, repair, improve, or maintain one or more convention centers, stadiums, exhibition halls, arenas, coliseums, or auditoriums.

¹⁸ Also known as "self-administering."

¹⁹ Office of Economic and Demographic Research, *2012 Local Government Financial Information Handbook*, (October 2012), available at: <http://edr.state.fl.us/Content/local-government/reports/lgfih12.pdf>, (last visited on January 28, 2013).

Miami-Dade County is the only county meeting the requirements of s. 212.0305(4)(b), F.S., authorizing a charter county as defined in s.125.011(1), F.S., to levy the charter county convention development tax. The tax is a 3 percent tax on the total consideration charged for transient rental transactions. The county must notify each municipality of projects to be developed, and each municipality must designate an authority with the power to approve the concept, location, and design of the facilities or improvements to be developed. The governing board of any municipality within Miami-Dade County that levies the Municipal Resort Tax²⁰ may adopt a resolution prohibiting the imposition of the convention development tax within the municipality's jurisdiction. Should a municipality adopt such a resolution, no convention development taxes collected by the county may be expended within the municipality. Proceeds from the tax may only be used in the following manner:

- Two-thirds of the proceeds shall be used to extend, enlarge, and improve the largest existing publicly owned convention center in the county;
- One-third of the proceeds shall be used to construct a new multipurpose convention/coliseum/exhibition center/stadium or the maximum components thereof, as funds permit in the most populous municipality in the county;
- After completion of any project on the largest existing publicly owned convention center in the county, tax revenues and accrued interest may be used to acquire, construct, extend, enlarge, remodel, repair, improve, plan for, operate, manage, or maintain one or more convention centers, stadiums, exhibition halls, arenas, coliseums, auditoriums, or golf courses, and may be used to acquire and construct an intercity light rail system;²¹ and
- After the completion of any convention project in the most populous municipality in the county, tax revenues and accrued interest may be used to operate the authority designated by the municipality with the powers to approve the concept, location, and design of the convention facilities, or for maintenance on one or more convention facilities, golf courses, related buildings or parking facilities within the most populous municipality in the county.

Volusia County is the only county authorized to levy three separate special district convention development taxes. The county levies the special district convention development tax, the special convention development tax, and the subcounty convention district tax, as authorized by ss. 212.0305(4)(c)-(e) and 212.03055, F.S., on the total consideration charged for transient rentals. The combined effect of the three separate taxing districts is a countywide tax of 3 percent.²² For each levy the county may designate or appoint an authority to administer or disburse the tax proceeds. Proceeds from the tax, including any accrued interest is to be used in the following manner:

- To promote and advertise tourism; and
- To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus.

²⁰ Chapter 67-930, L.O.F.

²¹ The light rail system must be used to transport persons to and from the largest publicly owned convention center to hotels north of the convention center, and to and from the downtown area of the most populous municipality within the county as determined by the county.

²² *Supra* note 13 at pages 125 and 240.

The local taxes on transient rental charges are required to be remitted to the Department of Revenue, unless a county has adopted an ordinance providing for local collection and administration of the tax.

III. Effect of Proposed Changes:

Section 1 amends s. 125.0104, F.S., to allow counties to use the proceeds of the additional 1 percent professional sports franchise facility tourist development tax for the purposes of paying debt service on bonds issued to finance the renovation of a professional sports franchise facility. The bill provides that funds generated by the tax may also be used to pay planning and design costs incurred prior to bond issuance, and to pay for operation and maintenance costs of the facility. This is an expansion of the eligible uses of the already-existing additional professional sports franchise facility tourist development tax. In order to be eligible for the expanded uses, a facility must:

- Have a total renovation cost of over \$250 million, including permitting, architectural, and engineering fees, of which a majority must be paid for by the ownership of the professional sports franchise or by other private sources, exclusive of in-kind contributions; and
- Be publicly owned, or be located on land that is publicly owned and be publicly operated or operated by the professional sports franchise or another lessee with expertise or financial capability to operate the facility.

This section also allows charter counties that levy the charter county convention development tax (Miami-Dade County) to levy the additional 1 percent professional sports franchise facility tourist development tax. Current law prohibits Miami-Dade County from levying the additional tax.

Section 2 amends s. 212.20, F.S., to authorize the Department of Revenue to distribute \$250,000 per month to any certified “professional sports franchise renovation facility.” This is a new designation not present in current law. Distributions may only continue for up to 30 years, as under current law.

Section 3 amends s. 218.64, F.S., to correct a cross-reference to s. 288.1162, F.S.

Section 4 amends s. 288.1162, F.S., relating to professional sports franchises. The bill creates a new classification under this section, allowing for a facility to receive certification as a “professional sports franchise renovation facility.” DEO may only certify one facility as a “professional sports franchise renovation facility.” A “professional sports franchise renovation facility” may also be previously certified as a new or retained professional sports franchise by DEO. In order to be certified, a facility must:

- Be a continuously league-authorized location for a pro sports franchise for 20 years or more;
- Have a county, municipality, or other public entity that is responsible for the construction, management, or operation of the facility, or hold the title to the property on which the facility is located;
- Have a verified copy of a lease agreement with a pro sports franchise to use the facility for at least the next 20 years;

- Provide an independent analysis demonstrating sales taxes generated by the facility will equal or exceed \$3 million annually;
- Have the county or municipality in which the facility is located certify a resolution after a public hearing that the application for certification serves a public purpose; and
- Demonstrate that the renovation costs will exceed \$250 million, including permitting, architectural, and engineering fees, and that a majority of the costs will be paid for by the ownership group of the franchise or other private sources.

The certified “professional sports franchise renovation facility” is required to use any funds provided by the Department of Revenue under s. 212.20, F.S., to pay for the public purpose of renovating the facility only to pay or pledge for the debt service on, or to fund debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to bonds issued for the renovation of the facility, or for reimbursement of the costs or the refinancing of bonds issued for that purpose.

Section 5 amends s. 288.11621, F.S., to correct a cross-reference to s. 288.1162, F.S.

Section 6 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill has not been evaluated by the Revenue Estimating Conference.

The bill creates a new distribution from sales tax revenue for a certified “professional sports franchise renovation facility” of approximately \$3 million per year. This will create a recurring loss to general revenue of \$3 million for up to 30 years.

Additionally, the bill allows a county that currently levies the charter county convention development tax (Miami-Dade County) to also levy an additional 1 percent professional sports franchise facility tourist development tax. The amount of revenue such a levy would generate is indeterminate.

B. Private Sector Impact:

The bill would allow for the increase of taxes imposed on transient rentals on individuals staying at such establishments in the county by 1 percent.

C. Government Sector Impact:

The bill is not expected to significantly increase resource demands on the Department of Economic Opportunity or the Department of Revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Regulated Industries, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Health Policy

SENATOR OSCAR BRAYNON II

Democratic Whip
36th District

January 22, 2013

Senator Nancy Detert, Chair
Commerce and Tourism,
416 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

RECEIVED

JAN 23 2013

COMMERCE

Dear Chair Detert:

This letter is to request that **Senate Bill # 306**, relating to ***Professional Sports Facilities*** be placed on the agenda of the next scheduled meeting of the committee.

SB 306 Providing that tourist development tax revenues may also be used to pay the debt service on bonds that finance the renovation of a professional sports facility that is publicly owned, or that is on land publicly owned, which is publicly operated or operated by the owner of a professional sports franchise or other lessee; requiring private contributions to the professional sports facility as a condition for the use of tourist development taxes; authorizing the use of certain tax revenues to pay for operation and maintenance costs of the renovated facility; prohibiting the Department of Economic Opportunity from certifying more than one professional sports franchise renovation facility, etc.

Thank you for consideration of this request.

Sincerely,

Senator Braynon
District 36

cc. *Jennifer Hrdlicka, Staff Director, Committee Commerce and Tourism*
Patty Blackburn, Committee Administrative Assistant, Room 310K

REPLY TO:

- 606 NW 183rd Street, Miami Gardens, Florida 33169 (305) 654-7150 FAX: (305) 654-7152
- 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/5/13
Meeting Date

Topic Pro Sports Facilities Bill Number 306
(if applicable)

Name Mike Dee Amendment Barcode _____
(if applicable)

Job Title CEO / Sun Life Stadium / Miami Dolphins

Address 347 Don Shula Dr. Phone 305-943-8000
Street

Miami Gardens FL 33056 E-mail kcostello@dolphins.com
City State Zip

Speaking: For Against Information

Representing Sun Life Stadium

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)



Meeting Date _____

Topic Local Economic Security Act Bill Number S.B. 306
(if applicable)

Name RODNEY BARRETO Amendment Barcode _____
(if applicable)

Job Title CHAIRMAN SOUTH FLORIDA SUPER BOWL COMMITTEE

Address 235 CATALONIA AVE- Phone 305-444-4648
Street

Coral Gables FL 33134 E-mail _____
City State Zip

Speaking: For Against Information

Representing _____

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/5/13

Meeting Date

Topic _____

Bill Number \$B306
(if applicable)

Name Oliver Gilbert

Amendment Barcode _____
(if applicable)

Job Title Mayor of Miami Gardens

Address 1515 NW 167 St
Street

Phone _____

Miami Gardens FL 33056
City State Zip

E-mail _____

Speaking: For Against Information

Representing MAYOR City of Miami Gardens

Appearing at request of Chair: Yes No

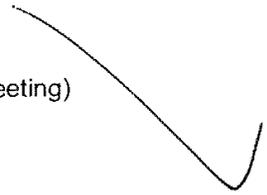
Lobbyist registered with Legislature: Yes No

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APPEARANCE RECORD

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Meeting Date _____

Topic Professional Sports Facility

Bill Number 306 (if applicable)

Name Chris Desai

Amendment Barcode _____ (if applicable)

Job Title Senior Vice-president

Address 3785 NW 82nd Ave

Phone _____

Street

Miami FL 33166

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Baywood Hotels

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

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2/5/13

Meeting Date

Topic Pro Sports Facilities

Bill Number 306 (if applicable)

Name John Kirchoff

Amendment Barcode (if applicable)

Job Title Principal / Deli Lane Restaurants

Address 7290 Sw 59 Ave

Phone 305 665-0606

Street

Miami FL 33143

City

State

Zip

E-mail

Speaking: [X] For [] Against [] Information

Representing Deli Lane Restaurants

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/1/13

Meeting Date

Topic SB 306 / Pro Sports Facilities

Bill Number 306
(if applicable)

Name Alex Tonnarelli

Amendment Barcode _____
(if applicable)

Job Title GM / Loews Hotels

Address 1601 Collins Ave

Phone 305-604-3909

Street

Miami Beach FL 33139

City

State

Zip

E-mail MrIbero@loewshotels.com

Speaking: For Against Information

Representing Loews Hotel

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/5/13

Meeting Date

Topic Pro Sports Facilities

Bill Number 306
(if applicable)

Name Bill Diggs

Amendment Barcode _____
(if applicable)

Job Title Chairman - Miami-Dade Chamber

Address 11380 NW 27th Ave
Street

Phone _____

Miami FL 33136
City State Zip

E-mail bdiggs@m-dcc.org

Speaking: For Against Information

Representing Miami-Dade Chamber

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/5/13
Meeting Date

Topic _____ Bill Number SB 306
(if applicable)

Name Shira Kastan Amendment Barcode _____
(if applicable)

Job Title Asst. Vice President of Gov't Affairs

Address 1320 S. Dixie Hwy #325 Phone 305 284 2618

Street
Coral Gables State FL Zip 33146 E-mail skastan@miami.edu

Speaking: For Against Information

Representing University of Miami

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-5-13

Meeting Date

Topic Professional Sports Facilities

Bill Number 306
(if applicable)

Name JEFF BARTEL

Amendment Barcode _____
(if applicable)

Job Title ① MEMBER, ORANGE BOWL CMTE
② GMCC CHAIR, SPORTS CMTE

Address 1172 S DIXIE HWY, STE 554

Phone 305.310.9000

Street

CORAL GABLES FL 33146

City

State

Zip

E-mail JBARTEL@BELLSOUTH.NET

Speaking: For Against Information

Representing ORANGE BOWL COMMITTEE (AND) CHAMBER OF COMMERCE
GREATER MIAMI

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-5-13

Meeting Date

Topic PROFESSIONAL SPORTS FACILITIES Bill Number 306 (if applicable)

Name Ronald L Book Amendment Barcode (if applicable)

Job Title Lobbyist

Address 18551 NE 29 Ave #1010 Phone 305 935 1866

Street Aventura FL 33186 E-mail Ron@RLBOOKPA.com City State Zip

Speaking: [X] For [] Against [] Information

Representing Sun Life Stadium

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 336

INTRODUCER: Commerce and Tourism Committee and Senator Latvala

SUBJECT: Tourist Development Tax

DATE: February 5, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	Fav/CS
2.			CA	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 366 permits counties to use the tax revenues from the tourist development tax for purposes related to aquariums that are owned and operated by not-for-profit organizations, including the acquisition, construction, maintenance, or promotion of such aquariums.

This bill amends s. 125.0104, F.S.

II. Present Situation:

Tourist Development Tax

Section 125.0104, F.S., authorizes the levy of five separate local option taxes on rental charges subject to the transient rentals tax under s. 212.03, F.S., to be used in various ways to promote tourism within the county. The authorized uses of each local option tax vary according to the particular levy.¹

¹ Florida Revenue Estimating Conference, "2012 Florida Tax Handbook."

- The tourist development tax may be levied at the rate of 1 or 2 percent.² Currently, 62 counties levy this tax at 2 percent; all 67 counties are eligible to levy this tax.³ Revenue from this tax may be bonded to finance certain facilities and projects, including financing revenue bonds. This tax may only be levied after the ordinance is approved by a majority of voters in a referendum.
- An additional tourist development tax of 1 percent may be levied.⁴ Currently 45 counties levy this tax and only 57 counties are currently eligible to levy this tax. Revenue from this tax may be bonded to finance certain facilities and projects, but may not be used for certain debt service or refinancing unless approved by an extraordinary vote of the governing board. This tax may only be levied after the ordinance is approved by a majority of voters in a referendum.
- A professional sports franchise facility tax may be levied up to an additional 1 percent.⁵ Currently 36 counties levy this additional tax and all 67 counties are eligible to levy this tax. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities of professional sports franchises, and convention centers and to promote and advertise tourism.
- A high tourism impact tax may be levied at an additional 1 percent.⁶ Five counties are eligible to levy this tax (Broward, Monroe, Orange, Osceola, and Walton). Of these five counties, Monroe, Orange, and Osceola levy this additional tax. Revenue from this tax may be bonded to finance certain facilities and projects, including financing revenue bonds.
- An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.⁷ Out of 65 counties that levy a professional sports facility tax, 20 levy an additional professional sports franchise facility tax. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities and spring training facilities of professional sports franchises and to promote and advertise tourism.

“Local option tourist taxes are significant revenue sources to Florida’s county governments and represent important funding mechanisms for a variety of tourism-related expenditures such as beach and shoreline maintenance, construction of convention centers and professional sports franchise facilities, and tourism promotion.”⁸ Generally, the revenues from these levies may be used for capital construction, maintenance, and promotion of tourist-related facilities, tourism promotion, and beach and shoreline maintenance. Tourist-related facilities include convention centers, sports stadiums and arenas, coliseums, auditoriums, aquariums, and museums that are

² Section 125.0104(3)(c), F.S.

³ Information related to the number of counties levying the taxes is from the Office of Economic and Demographic Research, “2013 Local Option Tourist/Food and Beverage/Tax Rates in Florida’s Counties,” <http://edr.state.fl.us/Content/local-government/data/county-municipal/2013LOTTates.pdf> (last visited 1/24/2013).

⁴ Section 125.0104(3)(d), F.S.

⁵ Section 125.0104(3)(l), F.S.

⁶ Section 125.0104(3)(m), F.S.

⁷ Section 125.0104(3)(n), F.S.

⁸ Florida Legislative Committee on Intergovernmental Relations, Issue Brief: Utilization of Local Option Tourist Taxes by Florida Counties in Fiscal Year 2009-10 (December 2009), available at <http://edr.state.fl.us/Content/local-government/reports/localopttourist09.pdf> (last visited 1/24/2013).

publically owned and operated within the area that the tax is levied. Tax revenues may also be used to promote zoos.

The local taxes on rental charges are required to be remitted to the Department of Revenue, unless a county has adopted an ordinance providing for local collection and administration of the tax.⁹

In counties that have plans for tourist development that include the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, or aquarium, or a museum that is publicly owned and operated or owned and operated by a not-for-profit organization, the ordinance levying the tourist development tax automatically expires upon the later of two circumstances:

- The retirement of all bonds issued by the county for financing the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, or aquarium, or a museum that is publicly owned and operated or owned and operated by a not-for-profit organization; or
- The expiration of any agreement by the county for the operation or maintenance, or both, of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, or museum.

Florida Aquariums

Visit Florida's website lists over 25 attractions in the category of "aquarium," including the Key West Aquarium, the Miami Seaquarium, the Mote Marine Laboratory and Aquarium in Sarasota, the Florida Aquarium in Tampa, and the Gulfarium Marine Adventure Park in Fort Walton Beach. Some of these aquariums, such as the Florida Aquarium, are owned and operated by not-for-profit organizations.

III. Effect of Proposed Changes:

Section 1 amends s. 125.0104, F.S., related to tourist development taxes.

Use of Tourist Development Taxes

The bill permits counties to use the tax revenues from the tourist development tax for purposes related to aquariums owned and operated by not-for-profit organizations, including the acquisition, construction, maintenance, or promotion of such aquariums. This authorization does not apply to the tax levied for sports franchise facilities.

⁹ Also known as "self-administering."

Automatic Expiration of Ordinances Levying Tourist Development Taxes

The bill clarifies when a county's tourist development tax automatically expires. Under the bill, a county's tourist development tax would automatically expire after the later of:

- The expiration of any agreement for the operation or maintenance, or both, of a publicly owned and operated facility (current law); and
- The retirement of all bonds issued by the county for financing the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, auditoriums, or aquariums, or museums that are publicly owned and operated or owned and operated by a not-for-profit organization.

Section 2 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

CS by Commerce and Tourism on February 5, 2013:

The committee substitute clarifies when a county's tourist development tax automatically expires. Under the original bill as filed, if a county had bonds for financing aquariums or museums that were owned and operated by not-for-profit organizations when the bonds for the other facilities expired, the tourist development tax would have expired despite the existence of those bonds.

- B. **Amendments:**

None.



799746

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2013	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete lines 60 - 73
and insert:

(7) AUTOMATIC EXPIRATION ON RETIREMENT OF BONDS. ~~Anything in this section to the contrary~~ Notwithstanding any other provision of this section, if the plan for tourist development approved by the governing board of the county, as amended ~~from time to time~~ pursuant to paragraph (4) (d), includes the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, or



799746

13 auditorium, or museum or aquarium, ~~or museum~~ that is publicly
14 owned and operated or owned and operated by a not-for-profit
15 organization, the county ordinance levying and imposing the tax
16 ~~shall~~ automatically expires ~~expire~~ upon the later of:

17 (a) The retirement of all bonds issued by the county for
18 financing the acquisition, construction, extension, enlargement,
19 remodeling, repair, or improvement of a publicly owned and
20 operated convention center, sports stadium, sports arena,
21 coliseum, or auditorium, or museum or aquarium that is publicly
22 owned and operated or owned and operated by a not-for-profit
23 organization ~~the same~~; or

24
25 ===== T I T L E A M E N D M E N T =====

26 And the title is amended as follows:

27 Delete line 5

28 and insert:

29 certain aquariums; clarifying that the tax
30 automatically expires upon the retirement of all bonds
31 issued by the county for financing certain facilities;
32 providing an effective



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Budget - Subcommittee on General Government
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Community Affairs
Environmental Preservation and Conservation
Rules
Judiciary
Appropriations
Select Committee on Gaming

SENATOR JACK LATVALA

20th District

January 23, 2013

The Honorable Senator Nancy Detert, Chair
Senate Committee on Commerce and Tourism
310 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Detert:

I respectfully request consideration of Senate Bill 336 regarding the Tourist Development Tax at your earliest convenience. This bill has been filed in order to clarify that publicly-owned and operated aquariums are eligible receive a portion of the funds generated from the tourist development tax in the same manner as other facilities, such as museums, convention centers, and sports arenas.

You may recall that last year, the Legislature passed a bill I sponsored that was aimed at this very same goal, but the legal opinion of Pinellas County's chief assistant attorney is that a grammatical error rendered the bill ineffective. His recommendations as to what language would clarify their eligibility been filed this year as Senate Bill 336.

I would greatly appreciate the opportunity to present this legislation to the Commerce and Tourism as soon as possible. If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jack Latvala".

Jack Latvala
State Senator
District 20

cc: Jennifer Hrdlicka, Staff Director; Patty Blackburn, Administrative Assistant

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

Don Gaetz
President of the Senate

Garrett Richter
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Budget - Subcommittee on General Government
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Community Affairs
Environmental Preservation and Conservation
Rules
Judiciary
Appropriations
Select Committee on Gaming

SENATOR JACK LATVALA

20th District

February 4, 2013

The Honorable Senator Nancy Detert, Chair
Senate Committee on Commerce and Tourism
310 Knott Building
Tallahassee, FL 32399-1100

Dear Chair Detert:

This letter is to request permission for Jennifer Wilson, my Legislative Assistant, to present SB 336 on my behalf tomorrow during the meeting of the Senate Committee on Commerce and Tourism. My attendance is otherwise required at the meeting of the Senate Committee on Ethics and Elections, over which I must preside.

Thank you for your consideration.

Sincerely,

Jack Latvala
State Senator
District 20

cc: Jennifer Hrdlicka, Staff Director; Patty Blackburn, Administrative Assistant

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
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Don Gaetz
President of the Senate

Garrett Richter
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 406

INTRODUCER: Senator Gardiner

SUBJECT: Economic Development

DATE: February 4, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Hrdlicka	CM	Favorable
2.			ATD	
3.			AP	
4.				
5.				
6.				

I. Summary:

SB 406 streamlines the evaluation and reporting requirements for Florida’s economic development programs.

SB 406 primarily does the following:

- Streamlines the process by which all incentive program applicants are evaluated by requiring all applicants be evaluated for their “economic benefits.”
- Creates a rotating, 3-year review schedule for all incentives and programs to be evaluated by the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA).
- Consolidates reports and reporting dates for various required economic development program reports by the Department of Economic Opportunity (DEO), Enterprise Florida, Inc. (EFI), the Office of Film and Entertainment, and Space Florida.

This bill substantially amends the following sections of the Florida Statutes: 20.60, 220.194, 288.005, 288.012, 288.061, 288.0656, 288.106, 288.1081, 288.1082, 288.1088, 288.1089, 288.1253, 288.1254, 288.1258, 288.714, 288.7771, 288.903, 288.906, 288.907, 288.92, 288.95155, 290.0056, 290.014, 331.3051, 331.310, and 446.50.

This bill repeals ss. 288.095(3)(c) and 288.904(6), F.S.

This bill creates general law not contained in a designated section of the Florida Statutes.

II. Present Situation:

Economic Development Incentives Application and Review

Under Florida's current economic development framework, Enterprise Florida, Inc. (EFI), serves as the state's economic development organization, operating under a contract with the Department of Economic Opportunity (DEO).¹ EFI is a public-private partnership that serves as the state's primary contact for businesses interested in pursuing relocation, expansion, or retention possibilities. EFI works with businesses to match business needs with state and local resources, including developing an economic development incentive proposal for the prospective business in order to "sell the State as a place to do business."²

After EFI has worked with businesses and offered an incentives proposal, incentives applications are sent to DEO, who in turn evaluates incentive applications based on statutorily-defined requirements. DEO makes the final determination of incentive eligibility, executes incentives contracts, and is responsible for contract monitoring and compliance.³

EFI performs a prospective impact analysis on each potential project. Presently, the qualified target industry tax refund program,⁴ quick action closing fund,⁵ qualified defense contractor and space flight business tax refund program,⁶ and the brownfield redevelopment bonus refund program⁷ have statutory provisions that require any application for the incentive be evaluated prospectively for "economic benefits." EFI currently performs a similar prospective impact analysis for the high-impact sector performance grants⁸ and the capital investment tax credit program,⁹ but there is no statutory requirement for such an evaluation.¹⁰

Section 288.005(1), F.S., defines the term "economic benefits" to mean "the direct, indirect, and induced gains in state revenues as a percentage of the state's investment. The state's investment includes state grants, tax exemptions, tax refunds, tax credits, and other state incentives." Direct economic effects are those resulting directly from the economic event, in this case the state's expenditure on the incentive to the applicant business. Indirect effects are the secondary effects of the economic event on suppliers, services, labor, and taxes. Induced effects are one step further and measure the effects on the economy as a result of spending from indirect effects as the money spent continues to cycle through the economy.¹¹

¹ Section 288.901, F.S.

² Enterprise Florida, Inc., *2012 Annual Incentives Report*, (2012), available at:

http://www.floridajobs.org/about%20aw/open_government/2012_IncentivesReport.pdf, (last visited on January 17, 2013).

³ Section 288.061, F.S.

⁴ Section 288.106, F.S.

⁵ Section 288.1088, F.S.

⁶ Section 288.1045, F.S.

⁷ Section 288.107, F.S.

⁸ Section 288.108, F.S.

⁹ Section 220.191, F.S.

¹⁰ Office of Economic and Demographic Research, *Tax Refund Program for Qualified Target Industry Businesses: A review of the methodology and model used in determining the state's return on investment*, (9/1/2010), available at: <http://edr.state.fl.us/Content/special-research-projects/economic/ROI.pdf>, (last visited on January 29, 2013).

¹¹ Adapted from "What is IMPLAN?" by MIG. Available at:

http://implan.com/v4/index.php?option=com_content&view=article&id=282:what-is-implan&catid=152:implan-appliance-&Itemid=2, (last visited on January 4, 2013).

According to the Office of Economic and Demographic Research (EDR), EFI prospectively evaluates applications for each of the incentives and programs mentioned above using RIMS II multipliers,¹² a model developed by the U.S. Department of Commerce's Bureau of Economic Analysis. EDR is required to evaluate the model used by EFI for the prospective impact analysis of all qualified target industry refund projects, and to report such findings every 3 years.¹³ The model evaluated by EDR and used by EFI for the qualified target industry tax refund program is also used across the programs previously mentioned except for the Innovation Incentive Program.¹⁴

In 2010, EDR produced its first report on the model used by EFI to evaluate qualified target industry refund projects. In their report, EDR concluded that the model being utilized by EFI was not fully in compliance with statutory requirements that EFI's model evaluate "return on investment" (ROI), defined as the gain in state revenues as a percentage of the state's investment. EDR determined that the model, which EFI terms a "payback ratio," needed changes to move incrementally closer to a true ROI. EFI and EDR worked to redefine certain variables for the impact analysis in the interim period. In the report, EDR noted that recommendations and changes on the model used by EFI "should be viewed as interim measures, pending completion of the new ROI model that will be ultimately required."¹⁵ The next report is due September 1, 2013.

The Innovation Incentive Program is not required by law to be evaluated for "economic benefits," but any potential project is required to have a break-even "return on investment" within a 20-year period, except for certain exceptions.¹⁶ Return on investment as it relates to the Innovation Incentive Program is not defined under current law. EFI evaluates the Innovation Incentive Program using the REMI model.¹⁷ EFI's modeling evaluation of the Innovation Incentive Program is not currently evaluated by EDR.¹⁸

Incentive and Program Reporting

In addition to conducting an up-front impact analysis of each potential economic development project, EFI is also required to produce an Annual Incentives Report¹⁹ that requires, among other things, an analysis of the economic benefits that actually occurred based on actual private

¹² For more information on RIMS II multipliers and their application, see U.S. Department of Commerce, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II)*, (March, 1997), available at: <http://www.bea.gov/scb/pdf/regional/perinc/meth/rims2.pdf>, (last visited on January 4, 2013).

¹³ Section 288.106(4)(c)2., F.S.

¹⁴ *Supra* note 10 at page 20.

¹⁵ *Supra* note 10 at pages 3 and 4.

¹⁶ Section 288.1089, F.S., requires any potential business qualifying for the Innovation Incentive Program be a high-value research and development, innovation business, or an alternative and renewable energy project. Research and development and alternative and renewable energy projects are required to meet the break-even 20-year return on investment requirement, but applicants qualifying as "innovation business projects" are not required to demonstrate the return on investment requirements.

¹⁷ The REMI model is a proprietary model developed by Regional Economic Models, Inc. The model evaluates linkages in an economy and how economic impacts can impact the larger regional economy. For more information see "The REMI Model," available at: <http://www.remi.com/the-remi-model>, (last visited on January 7, 2013).

¹⁸ *Supra* note 10.

¹⁹ Section 288.907, F.S.

investment, jobs created, and wages paid over the previous 3 years. The Annual Incentives Report compares the projected impacts of each incentive program over the previous 3 years to the confirmed, realized results. The Division of Strategic Business Development within DEO is required to assist EFI in the preparation of the Annual Incentives Report.²⁰

The Annual Incentives Report also requires certain information such as the amount of awards given, jobs created, amount of capital investment, and wages paid. This information is organized by incentive program and by project. The Annual Incentives Report also requires information on incentive projects that occurred over the previous fiscal year, including the number of incentive applications received, recommendations from EFI to DEO, the number of final decisions issued by DEO for approval or denial, and the projects which incentive agreements were executed.

Other required information in the Annual Incentives Report includes:

- A description of federal or local incentives received, organized by project.
- The number of withdrawn or terminated projects that did not receive incentives due to not fulfilling the terms of their incentives agreement.
- An analysis of the economic benefits of incentives made to projects locating in state enterprise zones, rural communities, brownfield areas, or distressed urban communities.
- Identification of target industry businesses and high-impact businesses.
- Trends relating to business interest in and usage of the state's incentives programs, including the number of minority-owned and woman-owned businesses receiving incentives.
- Identification of incentive programs not utilized.

Section 288.095(3)(c), F.S., requires information similar to the Annual Incentives Report to be reported by DEO related to programs funded through the Economic Development Incentives Account in the Economic Development Trust Fund.

Section 288.906, F.S., requires EFI to produce an annual report, separate from the Annual Incentives Report. The annual report includes broad organizational information including:

- A description of EFI's operations and accomplishments, including its divisions and the interactions with local and private economic development organizations.
- An evaluation of progress toward achieving organizational goals and specific performance outcomes.
- Methods for implementing and funding EFI's operations.
- An assessment of direct job creation benefits for welfare transition program participants or other programs designed to assist the long-term unemployed in finding work.
- The results of a customer satisfaction survey of businesses served.
- Annual compliance and financial audit information.

The EFI annual report is also required to include an analysis of the return on the public's investment in EFI. Section 288.904, F.S., requires EFI to consult with EDR to hire an economic analysis firm to develop the model to report on the public's return on investment (ROI) in EFI. EDR is directed to review the model and to offer feedback before its implementation. EFI has

²⁰ Section 288.907(2), F.S.

hired Ernst & Young to perform the ROI analysis of EFI.²¹ Ernst & Young estimated EFI's 2011 return on investment to be 2.66:1, or an estimation that for every dollar invested in EFI and the incentive programs it markets to businesses, the state will receive \$2.66 in state and local taxes.

DEO also produces an annual report, which is required to include information on the state's business climate and economic development, as well as an identification of problems and recommendations.²²

Florida presently has multiple reporting requirements for its various economic development programs. These reports are required separately from the information required by the EFI annual report, the Annual Incentives Report, and the DEO annual report. Reporting due dates and reporting periods are not uniform, and are due at various dates throughout the year. Several reporting due dates for Florida's economic development incentives and programs are as follows:

Date	Report
January 1	<ul style="list-style-type: none"> • DEO Annual Report (s. 20.60, F.S.) • Displaced Homemaker plan and report (s. 446.50, F.S.)
February 1	<ul style="list-style-type: none"> • Annual reports on enterprise zones (s. 290.014, F.S.)
August 31	<ul style="list-style-type: none"> • Black Business Loan Program Annual Report (s. 288.714, F.S.)
September 1	<ul style="list-style-type: none"> • Rural Economic Development Initiative (s. 288.0656, F.S.) • Space Florida annual performance report (s. 331.3051, F.S.)
October 1	<ul style="list-style-type: none"> • State of Florida International Offices (s. 288.012, F.S.) • Entertainment Financial Incentive Annual Report (s. 288.1254, F.S.)
October 15	<ul style="list-style-type: none"> • Reports on each division of EFI (s. 288.92, F.S.)
November 30	<ul style="list-style-type: none"> • Florida Space Business Incentive Act annual report, beginning in 2014 (s. 220.194, F.S.) • Space Florida annual operations report (s. 331.310, F.S.)

²¹ Enterprise Florida, *2011 Annual Report*, (2011), available at: http://www.eflorida.com/IntelligenceCenter/download/AU/AR_2011.pdf, (last visited on January 7, 2013).

²² Section 20.60(10), F.S.

<p>December 1</p>	<ul style="list-style-type: none"> • Report on information on the causes of business’s failure to complete its qualified target industry tax refund program agreement (s. 288.106, F.S.) • Report detailing the relationship between tax exemptions and film industry growth (s. 288.1258, F.S.) • Enterprise Zone Development Agency report to DEO (s. 290.0056, F.S.) • EFI Annual Report, due <i>before</i> this date (s. 288.906)
<p>December 30</p>	<ul style="list-style-type: none"> • EFI Annual Incentives Report (s. 288.907, F.S.) • Annual report on the Economic Development Trust Fund (s. 288.095) • Florida Export Finance Corporation, report due as part of DEO report on the Economic Development Trust Fund (s. 288.7771, F.S.) • Office of Film and Entertainment annual travel and expenses report (s. 288.1253, F.S.) • Florida Small Business Technology Growth Program report on the financial status of the program (s. 288.95155, F.S.)
<p>December 31</p>	<ul style="list-style-type: none"> • Economic Gardening Technical Assistance Pilot Program (s. 288.1082)
<p>Miscellaneous or multiple dates</p>	<ul style="list-style-type: none"> • Quick Action Closing Fund, reported within 6 months of validation of contract performance. (s. 288.1088, F.S.) • Innovation Incentive Fund, reported within 90 days of the conclusion or termination of an award (s. 288.1089, F.S.) • Economic Gardening Business Loan Pilot Program, reports are due June 30th and December 31st (s. 288.1081, F.S.)

The Legislature also requires periodic review and analysis of several economic development programs by the Office of Program Policy Analysis and Government Accountability (OPPAGA). Economic development program reports by OPPAGA typically focus on areas such as program administration and whether the program is meeting its statutory goals and direction. A sample of recent OPPAGA reports evaluating economic development programs includes:

- Economic Development Technical Assistance Program (GrowFL);²³
- Research Commercialization Matching Grant Program;²⁴ and
- Enterprise Zone Program.²⁵

Section 20.601, F.S., requires OPPAGA to review DEO and EFI by July 1, 2016, detailing several aspects of the operations, performance, and effectiveness of both.

Information on local economic development incentives is collected by EDR. EDR is required to collect information relating to each county or municipality that granted local economic development incentives in excess of \$25,000 during a fiscal year.²⁶ Counties and municipalities may complete their reporting requirements by completing a survey either online or by hard copy and returning it to EDR, who compiles the information into a single report.²⁷

III. Effect of Proposed Changes:

SB 406 primarily does the following:

- Streamlines the process by which all incentive program applicants are evaluated by requiring all applicants be evaluated for their “economic benefits.”
- Creates a rotating, 3-year review schedule for all incentives and programs to be evaluated by the Office of Economic and Demographic Research (EDR) and the Office of Program Policy Analysis and Government Accountability (OPPAGA).
- Consolidates reports and reporting dates for various required economic development program reports by the Department of Economic Opportunity (DEO), Enterprise Florida, Inc. (EFI), the Office of Film and Entertainment, and Space Florida.

²³ OPPAGA, *Report No. 12-14: GrowFL Participants that Received Multiple Services and Met Eligibility Requirements Experienced Higher Growth*, (December 2012), available at:

<http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1214rpt.pdf>, (last visited on January 16, 2013).

²⁴ OPPAGA, *Report No. 11-20: Research Commercialization Matching Grant Program Underway, Additional Performance Data Needed*, (November 2011), available at: <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1120rpt.pdf>, (last visited on January 16, 2013).

²⁵ OPPAGA, *Report No. 11-01: Few Businesses Take Advantage of Enterprise Zone Benefits; The Legislature Could Consider Several Options to Modify the Program*, (January, 2011), available at:

<http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1101rpt.pdf>, (last visited on January 16, 2013).

²⁶ Section 125.045, F.S., requires counties to report economic development incentives of \$25,000 or more that were granted in the fiscal year. Section 166.021, F.S., requires municipalities with revenues and expenditures over \$250,000 to report economic development incentives of \$25,000 or more granted in the fiscal year.

²⁷ More information on the report and survey can be accessed by visiting <http://edr.state.fl.us/Content/local-government/economic-development-incentives/index.cfm>, (last visited on January 16, 2013).

Evaluation of Incentive Program Applicants

This bill requires that DEO evaluate all incentives applications for “economic benefits” using a model that will be developed and reviewed by EDR. DEO and EDR are permitted to develop an amended definition of “economic benefits” from the one defined by s. 288.005, F.S., for the up-front evaluation. EDR is required to report on the methodology and model by September 1, 2013, and every third year thereafter to the President of the Senate and the Speaker of the House of Representatives. **(Section 6, amends s. 288.061, F.S.)**

Similar language requiring an up-front analysis of “economic benefits” for an application for a qualified target industry tax refund (QTI) application is removed. Applications for a QTI incentive are required by the bill to be evaluated to determine if an applicant has previously received economic development incentives in other states, and the outcome of any such previous agreements. The bill also requires QTI applications to be evaluated for the expected effect on the unemployed and underemployed in the county where a project will be located. Current law states that applications are evaluated for their effect on the unemployment *rate* in the county where a project will be located. The requirement that a QTI application be evaluated for the expected long-term commitment to economic growth and employment in Florida is removed by the bill. **(Section 9, amends s. 288.106, F.S.)**

The bill changes requirements that a project qualifying for the Innovation Incentive Program as a research and development program or as an alternative and renewable energy project demonstrate a break-even “return on investment” over a 20-year period, and instead requires the projects to demonstrate a *cumulative* break-even “economic benefit” over a 20-year period. The term “return on investment” as it related to the Innovation Incentive Program is not defined under current law. This change creates consistent terminology and ensures applicants for the Innovation Incentive Program will be evaluated similarly to other incentive programs. **(Section 13, amends s. 288.1089, F.S.)**

Evaluation of Incentive Programs

The bill creates the Economic Development Programs Evaluation (evaluation). **(Section 1)** EDR and OPPAGA are required to jointly present the Evaluation to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees. The offices are required to evaluate the state’s economic development programs according to a rotating schedule every 3 years. Programs are grouped together based on general program type. The evaluation schedule is as follows:

YEAR 1 (January 1, 2014) and every 3rd year	
Program	Florida Statute(s)
Quick Action Closing Fund	s. 288.1088
Brownfield Redevelopment Bonus Tax Refund	s. 288.107
High Impact Sector Performance Grants	s. 288.108
Capital Investment Tax Credit	s. 220.191
Qualified Target Industry Tax Refund	s. 288.106
Innovation Incentive Program	s. 288.1089

Enterprise Zone Programs	ss. 220.181-182, 212.0805, 212.096, 212.0815
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YEAR 2 (January 1, 2015) and every 3rd year	
Program	Florida Statute(s)
Entertainment Industry Financial Incentive Program	s. 288.1254
Entertainment Industry Sales Tax Exemption Program	s. 288.1258
The Florida Commission on Tourism/Visit Florida	ss. 288.122-124
Florida Sports Foundation	ss. 288.1162-1171

YEAR 3 (January 1, 2016) and every 3rd year	
Program	Florida Statute(s)
Qualified Defense Contractor and Space Flight Business Tax Refund Program	s. 288.1045
Semiconductor, Defense, or Space Technology Sales Tax Exemption	s. 212.08(5)(j)
Military Base Protection	s. 288.980
Manufacturing & Spaceport Investment Incentive Program	s. 288.1083
Quick Response Training	s. 288.047
Incumbent Worker Training	s. 445.003
International Trade & Business Development	s. 288.826

EDR and OPPAGA are required to coordinate and submit a work plan for the evaluation to the President of the Senate and the Speaker of the House of Representatives by July 1, 2013.

The bill requires EDR to use specialized modeling techniques to evaluate the economic development programs listed above. EDR is required to evaluate each program for “economic benefits,” as well as jobs created, the increase or decrease in personal income, and the impact on state GDP of each program using data from the previous 3 years. The data used to evaluate any tax credits, tax refunds, sales tax exemptions, cash grants, and similar programs is specified as being data from projects that are either fully complete, partially complete with future fund disbursement possible pending performance measures, or partially completed with no future fund disbursement possible as a result of a business’s inability to meet performance measures. EDR is required to provide an explanation of the model used in its analysis, and the model’s key assumptions. EDR is permitted to use another model so long as it explains why another model was appropriate.

OPPAGA is required to evaluate each program for effectiveness and value to Florida taxpayers, and to provide recommendations to the Legislature based on its evaluation of each program. OPPAGA’s analysis is required to include information from interviews, reviews of relevant reports, or other data.

The bill gives EDR and OPPAGA access to all data necessary to complete the Economic Development Programs Evaluation, including confidential data. The offices may coordinate in data collection and analysis.

The bill updates requirements for the Annual Incentives Report currently produced by EFI. **(Section 22, amends s. 288.907, F.S.)** The bill requires the report to be a joint report by DEO and EFI. The agencies no longer report on the “economic benefit” of each project or program in the Annual Incentives Report. The evaluation of “economic benefits” will now be conducted as part of the Economic Development Programs Evaluation, conducted jointly by EDR and OPPAGA. See above.

“Jobs” is defined to ensure that all jobs data is reported and evaluated in the same manner across programs. The term means only full-time equivalent positions, and excludes any temporary construction jobs involved with the construction of facilities for a project. **(Section 4, amends s. 288.005, F.S.)**

The bill repeals a required OPPAGA report on the Innovation Incentive Program. **(Section 13, amends s. 288.1089, F.S.)** This report is duplicative as a result of the evaluation of the Innovation Incentive Program required as part of the Economic Development Programs Evaluation created in Section 1 of the bill.

A duplicative analysis of EFI’s return on the public’s investment is repealed. **(Section 20, amends s. 288.904, F.S.)** Current law requires the analysis to be included as part of the EFI Annual Report. Current s. 20.601(3), F.S. requires a similar analysis to be conducted by OPPAGA in 2016.

Agency Reporting Consolidation

The bill consolidates several independent program reports and reporting dates.

DEO Annual Report

The bill makes several changes to the DEO annual report. **(Section 2, amends s. 20.60, F.S.)** The report’s due date is changed from January 1st to November 1st. DEO is directed to include supplements to its annual report on several programs. As a result, the independent due dates for each of the reports are removed. The programs to be included in the DEO annual report are:

- Displaced Homemaker program **(Section 29, amends s. 446.50, F.S.)**.
- Enterprise Zone program **(Sections 25 and 26)**.
 - Changes the due date of each enterprise zone development agency’s report to DEO from December 1st to October 1st. **(Section 25, amends s. 290.0056, F.S.)**
 - Changes the due date of the Department of Revenue’s report on the usage and revenue impacts, by county, of state incentives relating to enterprise zones from February 1st to October 1st. **(Section 26, amends s. 290.014, F.S.)**
- Economic Gardening Business Loan Pilot Program **(Section 10, amends s. 288.1081, F.S.)**.
- Economic Gardening Technical Assistance Pilot Program **(Section 11, amends s. 288.1082, F.S.)**.
- Black business loan program **(Section 17, amends s. 299.714, F.S.)**.

- Rural Economic Development Initiative (**Section 7, amends s. 2880656, F.S.**).

EFI Annual Report

The bill requires EFI to include as a supplement in its annual report information on: (**Section 21, amends s. 288.906, F.S.**)

- State of Florida International Offices (**Section 5, amends s. 288.012, F.S.**).
- Florida Export Finance Corporation annual report (**Section 18, amends s. 288.7771, F.S.**).

Additionally, under current law EFI division reports are due independently on October 1st, for inclusion in the EFI annual report. The bill repeals this independent due date. (**Section 23, amends s. 288.92, F.S.**).

Annual Incentives Report

The bill revises the duties of EFI to require the Annual Incentives Report to be a joint report by EFI and DEO. (**Section 19, amends s. 288.903, F.S.**) The report is currently produced by EFI alone using data supplied by DEO. The report would still be due annually December 30th.

Information on the Economic Development Trust Fund is required to be included in the Annual Incentives Report. The information is currently required under s. 288.095(3)(c), F.S. The bill repeals this paragraph (**Section 8**) and incorporates the information into the Annual Incentives Report. (**Section 22, amends s. 288.907, F.S.**) The information includes:

- The types of projects supported;
- Tax refunds or other payments made out of the Economic Development Incentives Account for each project supported;
- A separate analysis of the impact of tax refunds on Enterprise Zones, rural communities, brownfield areas, and distressed urban communities; and
- The name and tax refund amounts for each business receiving a QTI or qualified defense space contractor and space flight business tax refund.

Several other stand-alone program reports are incorporated as supplements to the Annual Incentives Report. As a result, the independent due dates for the reports are removed. The reports required to be included as supplements to the Annual Incentives Report include:

- Florida Space Business Incentives Act annual report (**Section 3, amends s. 220.194, F.S.**), beginning in 2014.
- Information on the causes of a business's failure to complete its QTI incentive agreement (**Section 9, amends s. 288.106, F.S.**). The term *failure* is also changed to *inability* by the bill.
- Information relating to Innovation Incentive Program recipients, including the evaluation as to whether the recipients were catalysts for additional economic development (**Section 13, amends s. 288.1089, F.S.**).
- Florida Small Business Technology Growth Program annual report (**Section 24, amends s. 288.95155, F.S.**).

Validation of contractor performance for all incentive programs is currently required as part of the Annual Incentives Report. The bill adds a cross-reference to s. 288.061(3), F.S., clarifying

that validation of contractor performance is to be included in the Annual Incentives Report. **(Section 22, amends s. 288.907)**

The bill clarifies that DEO rather than EFI is responsible for validating contractor performance for the Quick Action Closing Fund incentives and that such information is to be included in the Annual Incentive Report. Current law requires the contractor performance validation to be reported within 6 months of completion. This requirement is deleted by the bill. **(Section 12, amends s. 288.1088, F.S.)**

Validation of contractor performance for the Innovation Incentive Program recipients is required to be included in the Annual Incentives Report. The current law requirement that a report on contractor performance be submitted within 90 days of an agreement's conclusion is repealed. **(Section 13, amends s. 288.1089, F.S.)**

Office of Film and Entertainment Annual Report

The bill changes the due date of the Office of Film and Entertainment's (OFE) Annual Report on the entertainment industry financial incentive program from October 1st to November 1st. **(Section 15, amends s. 288.1254, F.S.)** The OFE Annual Report is also required to include the OFE expenditures report **(Section 14, amends s. 288.1253, F.S.)** and the report detailing the relationship between tax exemptions and incentives to industry. **(Section 16, amends s. 288.1258, F.S.)**

Space Florida Annual Report

The bill changes the due date for the Space Florida annual performance report from September 1st to November 30th **(Section 27, amends s. 331.3051, F.S.)**, and requires the Space Florida annual operations report to be included in the performance report. **(Section 28, amends s. 331.310, F.S.)**

The bill's effective date is upon becoming law. **(Section 30)**

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill is expected to impact the resource demands of the Office of Economic and Demographic Research and the Office of Program Policy Analysis and Government Accountability.

The bill is not expected to impact the resource demands of the Department of Economic Opportunity, Enterprise Florida, Inc., the Office of Film and Entertainment, or Space Florida, and may improve efficiency by streamlining reporting requirements, deleting duplicative reports, and consolidating reporting due dates.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

B. Amendments:

None.

CourtSmart Tag Report

Room: EL 110

Caption: Senate Commerce and Tourism

Case:

Judge:

Type:

Started: 2/5/2013 9:02:04 AM

Ends: 2/5/2013 10:39:50 AM

Length: 01:37:47

9:02:07 AM Start of Meeting
9:02:26 AM Roll Call
9:03:03 AM SB 186- Den. Diaz de la Portilla
9:06:09 AM Eduardo Palmer- International Law Selection-Florida Bar
9:07:12 AM Roll Call
9:08:25 AM SB 336- Sen. Latvala
9:09:44 AM Amendment 799746
9:10:28 AM Roll Call
9:11:29 AM SB 62- Sen. Hays
9:12:56 AM Roll Call
9:13:21 AM SB 98- Sen. Richter
9:14:45 AM Roll Call
9:15:23 AM SB 316- Sen. Detert
9:18:58 AM Amendment 862170- Sen. Detert
9:19:50 AM Substitute Amendment 405190- Sen. Detert
9:21:38 AM Sen. Ringer Question
9:23:19 AM Sen. Ringer Question
9:23:26 AM Sen. Hays Question
9:24:11 AM Sen. Hays Question
9:24:50 AM Sen. Stargel Question
9:25:52 AM Sen. Stargel Question
9:26:36 AM Sen. Margolis Question
9:27:15 AM Trey Price- Florida Realtors
9:29:09 AM Sen. Bean Question
9:32:49 AM Randy Miller- Florida Retail Federation
9:35:18 AM Arnold Gibbs- Capitol Plaza Inc.
9:37:22 AM David Hart- FL Chamber
9:37:48 AM Brewster Bevis- Associated Industries of Florida
9:38:54 AM Sen. Hukill Comment
9:39:42 AM Sen. Detert Close
9:40:45 AM Roll Call
9:41:36 AM SB 406- Sen. Gardiner
9:44:30 AM Roll Call
9:45:03 AM SB 306- Sen. Braynon
9:49:39 AM Sen. Hays Question
9:50:32 AM Sen. Detert Question
9:52:01 AM Sen. Margolis Comment
9:52:50 AM Sen. Ringer Question
9:53:28 AM Sen. Ringer Question
9:53:58 AM Sen. Abruzzo Question
9:54:21 AM Sen. Bean Question
9:54:27 AM Sen. Hays Question
9:55:17 AM Sen. Hays Question
9:56:18 AM Sen. Thompson Question
9:58:26 AM Sen. Stargel Question
9:59:49 AM Sen. Abruzzo Question
10:00:16 AM Sen. Simpson Question
10:00:59 AM Sen. Detert Question
10:02:26 AM Mike Dee- CEO-Sun Life Stadium
10:09:58 AM Rodney Barreto- Chairman-South Florida Super Bowl Committee
10:12:54 AM Oliver Gilbert- Mayor of Miami Gardens
10:14:47 AM Chris Desoi- Senior VP- Baywood Hotels

10:15:29 AM John Kirchoff- Delilane Restaurants
10:16:34 AM Alex Tonnarelli- Loews Hotels
10:17:25 AM Bills Diggs- Chairman Miami-Dade Chamber
10:19:38 AM Shira Kastan- Asst. VP of Government Affairs- Univ. of Miami
10:20:43 AM Jeff Bartel- Orange Bowl Committee & Greater Miami Chamber of Commerce
10:22:26 AM Ronald Book- Sunlife Stadium
10:28:49 AM Sen. Richter Comment
10:29:16 AM Sen. Ring Comment
10:29:57 AM Sen. Abruzzo Comment
10:31:14 AM Sen. Stargel Comment
10:33:08 AM Sen. Bean Comment
10:33:37 AM Sen. Margolis Comment
10:34:28 AM Sen. Thompson Comment
10:36:12 AM Sen. Detert Comment
10:37:59 AM Sen. Braynon Close
10:38:26 AM Roll Call
10:39:34 AM Closing Statement