

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

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

**MEETING DATE:** Monday, March 18, 2013  
**TIME:** 1:00 —3:00 p.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	<b>SB 546</b> Ring (Identical H 705)	Targeted Economic Development; Expanding the purpose of the Institute for the Commercialization of Public Research to include the commercialization of products developed by an innovation business; authorizing the institute to create corporate subsidiaries; providing conditions under which the institute may develop or accrue certain interests in companies or products; specifying conditions under which the institute may deliver and charge for services; requiring that the institute create the Florida Technology Seed Capital Fund, etc.  CM     03/18/2013 Fav/CS ATD AP	Fav/CS Yeas 11 Nays 0
2	<b>SB 774</b> Thompson (Identical H 717)	Florida Civil Rights Act of 1992; Citing this act as the "Protect Our Women Act"; expanding the meaning of "sex" as the term relates to the Florida Civil Rights Act of 1992; specifying that a woman who is pregnant or who is affected by a medical condition related to pregnancy or childbirth must be treated the same for all employment-related purposes, including receipt of benefits, as an individual who has a medical condition unrelated to pregnancy or childbirth; extending the time for the Florida Commission on Human Relations to investigate complaints and determine reasonable cause, etc.  CM     03/18/2013 Fav/CS GO JU RC	Fav/CS Yeas 11 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Commerce and Tourism

Monday, March 18, 2013, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>SB 922</b> Bradley (Identical H 721, Compare CS/H 165, S 306)	Professional Sports Franchise Facilities; Authorizing an applicant previously certified as a facility for a new or retained professional sports franchise to receive an additional certification under certain circumstances, and to receive a monthly distribution of a specified amount of sales tax revenues, to improve the conditions of the facility to meet or exceed certain facility standards; defining the term "facility standards," etc.  CM 03/18/2013 Fav/CS AFT AP	Fav/CS Yeas 11 Nays 0
4	<b>SB 960</b> Bean (Compare CS/H 423)	Tax on Sales, Use, and Other Transactions; Providing an exemption from the tax for dyed diesel fuel used in certain vessels in a specified manner and for a specified purpose, etc.  CM 03/18/2013 Fav/CS AFT AP	Fav/CS Yeas 11 Nays 0
5	<b>SB 592</b> Galvano (Similar CS/H 405)	Garnishment; Revising "Notice to Defendant" provided by clerk of court in a garnishment proceeding; providing that a defendant in a garnishment proceeding may provide notice of a garnishment exemption to plaintiff or garnishee's attorney; requiring defendant to certify under oath and penalty of perjury that he or she provided notice of exemption claim and request for hearing to plaintiff, garnishee, or their respective attorneys, etc.  JU 03/06/2013 Favorable CM 03/18/2013 Fav/CS	Fav/CS Yeas 11 Nays 0
6	<b>CS/SB 658</b> Regulated Industries / Simpson (Compare CS/H 623)	Wine; Providing additional allowable capacity for individual containers of wine sold in this state, etc.  RI 03/07/2013 Fav/CS CM 03/18/2013 Fav/CS RC	Fav/CS 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](http://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 546

**INTRODUCER:** Commerce and Tourism Committee and Senator Ring

**SUBJECT:** Targeted Economic Development

**DATE:** March 19, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Hrdlicka	CM	<b>Fav/CS</b>
2.			ATD	
3.			AP	
4.				
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 546 makes several changes to the Institute for the Commercialization of Public Research (the institute). The bill allows the institute to assist in the commercialization of innovation businesses, as defined under current law. The bill allows the institute to provide services to private companies for a fee, provided such services do not interfere with the institute’s core mission.

The bill allows the institute to create a corporate subsidiary called the Florida Technology Seed Capital Fund (the fund). The fund may make seed-stage equity investments in businesses that meet certain qualifications. Proceeds resulting from the sale of any equity in a company must be reinvested by the fund.

The bill substantially amends s. 288.9625, F.S. The bill creates s. 288.96255, F.S.

**II. Present Situation:**

In 2007, the Legislature passed the Florida Capital Formation Act, in part to address the need to increase the availability of seed capital and early stage venture equity capital for emerging

Florida companies.<sup>1</sup> The act created two state venture capital efforts: the Florida Opportunity Fund and the Institute for the Commercialization of Public Research.

### **Florida Opportunity Fund<sup>2</sup>**

The Florida Opportunity Fund (FOF) was originally created in 2007 as a “fund of funds” program for the purpose of investing in seed and early stage venture capital funds managed by managers with demonstrated experience, expertise, and a successful history of investing venture capital funds, with a focus on venture capital opportunities in Florida. In order to receive an investment from the FOF, a venture capital fund must demonstrate a record of successful investment in Florida, be based in the state, or have an office staffed with a full-time, professional venture investment executive. Funds must have raised capital from other sources of at least twice the FOF’s investment. The Legislature provided an initial appropriation of \$29.5 million for FOF’s venture capital investment efforts.

The scope of the FOF’s purpose was expanded in 2009 to allow it to provide direct investments, including loans, in businesses and infrastructure projects that are Florida-based and operate in technology sectors that are strategic to Florida.<sup>3</sup> In order to receive a direct investment, a business or infrastructure project must have raised capital from other sources of at least twice the FOF’s investment.

Enterprise Florida, Inc. (EFI), operates as the FOF’s sponsor and as its sole shareholder or member. FOF’s board of directors is composed of five members, appointed by the EFI board of directors. Members of the FOF’s board of directors must have expertise in the areas of selection and supervision of early stage investment managers or in the fiduciary management of investment funds and other areas of expertise.

Florida First Partners manages the FOF’s, operating three investment programs including: the Fund-of-Funds Program; the Clean Energy Investment Program; and the Florida Venture Capital Program.<sup>4</sup> The Fund-of-Funds Program invests in seed and early-stage venture capital funds that target investments in Florida.<sup>5</sup> The Clean Energy Investment Program promotes the adoption of energy efficient or renewable energy products and technologies. The program is administered by the Florida Department of Agriculture and Consumer Services’ Office of Energy, and provides several project funding structures including project financing, asset-based lending, mezzanine financing, and equity investments. The program targets funding opportunities ranging from \$500,000 to \$5 million.<sup>6</sup> The Florida Venture Capital Program provides funding opportunities including equity investments and convertible debt instruments ranging from \$1 million to \$3 million. The program seeks to provide funding for emerging Florida companies with perceived

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<sup>1</sup> Chapter 2007-189, L.O.F., codified as ss. 288.9621-288.9625, F.S.

<sup>2</sup> Section 288.9624, F.S.

<sup>3</sup> Chapter 2009-51, L.O.F.

<sup>4</sup> Florida Opportunity Fund homepage, available at: <http://www.floridaopportunityfund.com/HomePage.asp>, (last visited on February 11, 2013).

<sup>5</sup> Fund of Funds Program website, available at: <http://www.floridaopportunityfund.com/About.asp>, (last visited on February 11, 2013).

<sup>6</sup> Clean Energy Program website, available at: <http://www.floridaopportunityfund.com/EnergyAbout.asp>, (last visited on February 11, 2013). Funding for this program was provided by the U.S. Department of Energy through the American Recovery and Reinvestment Act.

long-term growth potential. Investments are directed to businesses in Florida's targeted industries, including: aerospace and aviation; alternative and clean energy technology; financial and professional services; homeland security and defense; information technology; life sciences; and manufacturing.<sup>7</sup>

### **Institute for the Commercialization of Public Research<sup>8</sup>**

The Institute for the Commercialization of Public Research (the institute) was established as a non-profit corporation to assist in the commercialization efforts at Florida's universities by working collaboratively with the technology licensing and commercialization offices of Florida's public universities and private research institutions receiving public funds.<sup>9</sup>

The institute has primary locations at the University of Florida in Gainesville and Florida Atlantic University in Boca Raton. The institute is governed by a board of directors, who are responsible for the institute's funds, presenting the institute's annual report, and managing the institute's general affairs. The board of directors is composed of: the executive director of the Department of Economic Opportunity; the president of the university where the institute is located, or in the case where the institute is located at multiple universities, the presidents' agreed upon designee; and three directors appointed by the Governor.

The institute matches commercially-viable technologies with management talent and capital, and showcases technologies and companies originating from publicly-supported organizations across the state. The institute focuses on technologies and companies in Florida's target industries.<sup>10</sup>

Before the institute facilitates a company or organization's efforts to commercialize its products, it must be accepted by the institute through an application process. Publicly supported organizations may recommend that a company attempting to commercialize its research, technology, or patents be accepted by the institute. Upon acceptance by the institute, a company receives mentoring and other services, which includes developing marketing information on the company, using institute resources to attract capital investment into the company, and other resources that may encourage effective management, growth, capitalization technology protection, or marketing or business success.

In 2011 the institute received a \$10 million appropriation, which it used primarily to develop and implement the Seed Capital Accelerator Program.<sup>11</sup> The accelerator program offers repayable loans ranging from \$50,000-\$300,000 to qualified companies approved by the institute. Companies must provide a 1:1 match against the loan through private capital sources.<sup>12</sup>

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<sup>7</sup> Florida Venture Capital Program website, available at: <http://www.floridaopportunityfund.com/VentureAbout.asp>, (last visited on: February 11, 2013). Funding for this program is provided through the federal Small Business Jobs Act of 2010 and the State Small Business Credit Initiative.

<sup>8</sup> Section 288.9625, F.S.

<sup>9</sup> Florida Institute for the Commercialization of Public Research, *Annual Report 2011*, (June 30, 2011). (On file with the Senate Commerce and Tourism Committee).

<sup>10</sup> *Id.*

<sup>11</sup> Chapter 2011-76, L.O.F.

<sup>12</sup> Institute for the Commercialization of Public Research website, "Seed Capital Accelerator Program" page, available at: <http://www.florida-institute.com/index.cfm?fuseaction=funding.scap>, (last visited on February 12, 2013).

In addition to its charge of matching publicly-developed research with private commercialization efforts, the institute is also required to implement and administer the Research Commercialization Matching Grant Program.<sup>13</sup> The grant program is designed to provide matching funds for projects and businesses that have won or are applying for Phase I or Phase II federal Small Business Innovation Research Program grants and Small Business Technology Transfer Program grants through the U.S. Small Business Administration's Office of Technology.

The institute is prohibited from charging a fee for services provided.

The institute is required to submit an annual report on activities by November 1.

### III. Effect of Proposed Changes:

**Section 1** amends s. 288.9625, F.S. relating to the Institute for the Commercialization of Public Research (the institute). The bill expands the purpose of the institute to include the commercialization of products developed by innovation businesses as defined by s. 288.1089, F.S. Current law defines an innovation business as "a business expanding or locating in this state that is likely to serve as a catalyst for the growth of an existing or emerging technology cluster or will significantly impact the regional economy in which it is to expand or locate."<sup>14</sup> Innovation businesses may qualify for the Innovation Incentive Program.

The bill allows the institute to deliver and charge for services to private companies and affiliated organizations, so long as the services do not interfere with the institute's core mission. The bill prohibits the institute from using its capital to support private companies whose products were not developed by a publicly supported college, university, research institute, or other organization.

**Section 2** creates s. 288.96255, F.S., to allow the institute to create a corporate subsidiary to be named the Florida Technology Seed Capital Fund (the fund). The institute is directed to administer the fund. Administrative costs are to be determined by the fund's investor advisory board. The bill specifies that the fund's purposes are:

- Fostering greater private sector investment funding;
- Encouraging seed-stage investments in start-up companies; and
- Advising companies on restructuring existing management, operations, or production to attract business opportunities.

The bill allows the fund to make seed-stage equity investments in companies. Any proceeds resulting from the sale of the equity held by the fund in companies must be returned to the fund for reinvestment.

The bill requires the institute to establish an investor advisory board composed of venture capital professionals and early-stage investors to guide and advise the fund's management, and to make

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<sup>13</sup> Section 288.9552, F.S.

<sup>14</sup> Section 288.1089(2)(h), F.S.

funding recommendations. The institute is also directed to hire employees with expertise to manage the fund's activity.

Investment proposals are required to be evaluated based on investment industry best practices. The bill provides the requirements that the institute must consider prior to approving an investment by the fund. In order for a company to be approved for investment, it must:

- Have a strong intellectual property position, a capable management team, readily identifiable paths to market or commercialization, significant job growth potential, the ability to provide other sources of capital to leverage the state's investment, and the potential to attract additional funding;
- Be identified by a publicly funded research institution;
- Operate in a targeted industry as designated pursuant to s. 288.106(2), F.S.;
- Be identified and approved by a private-sector lead investor who has demonstrated due diligence in evaluating the company; and
- Be recommended by the investor advisory board and fund manager.

Once a company has been approved by the institute, an investment of between \$50,000 and \$300,000 can be made if the company provides a one-to-one private sector match. Additional seed investments require a two-to-one private sector match, and can reach a cumulative total of up to \$500,000 for a single company.

The services offered by the institute through the fund include:

- Providing companies with value-added support services, such as business plan development and preparation of investor presentations;
- Encouraging appropriate investment funds to become preapproved to match investment funds;
- Marketing the state as an attractive early-stage investment location; and
- Collaborating with state economic development organizations, national seed and angel funds associations, and other innovation associations to enhance the state's entrepreneurial ecosystem.

The bill requires the institute to evaluate the activities and results of the fund, and must take into account in the evaluation that seed investment horizons span from 3 to 7 years.

**Section 3** provides for 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:

To the extent that the bill will assist additional start-ups and early stage-companies, and facilitate technology development, the bill could have a positive impact on the private sector.

C. Government Sector Impact:

The bill has an indeterminate impact on the Institute for the Commercialization of Public Research.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

Section 288.9627, F.S., provides the institute an exemption from certain public records and public meetings requirements. It is unlikely a corporate subsidiary created by the institute would also fall under such an exemption.

When the institute's public records exemption was created, the institute was not permitted to create a corporate subsidiary. Therefore, application of the institute's exemption on a corporate subsidiary would likely be considered an attempt to expand the exemption.

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 03/18/2013:**

- Removes the requirement for the fund to consist of \$50 million.
- Removes the requirement that administrative fees may not exceed 5 percent of the total appropriation for the fund and instead states that administrative costs are to be determined by the investor advisory board.
- Specifies that a company operating in a targeted industry designated under s. 288.106(2), F.S., is a requirement for investment by the fund rather than a company operating in a targeted industry as designated by Enterprise Florida, Inc.

- Clarifies provisions relating to the initial investment and private-sector matching fund requirements.

B. Amendments:

None.

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

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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
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The Committee on Commerce and Tourism (Ring) recommended the following:

**Senate Amendment**

Delete lines 95 - 141  
and insert:  
as a corporate subsidiary. The purpose of the fund is to foster greater private-sector investment funding, to encourage seed-stage investments in start-up companies, and to advise companies on restructuring existing management, operations, or production to attract advantageous business opportunities. The proceeds of a sale of the equity held by the fund shall be returned to the fund for reinvestment.

(2) The institute shall administer the Florida Technology



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13 Capital Seed Fund. Administrative costs paid out of the fund  
14 shall be determined by the investor advisory board.

15 (3) The institute shall employ professionals who have both  
16 technical and business expertise to manage fund activity. The  
17 institute shall establish an investor advisory board comprised  
18 of venture capital professionals and early-stage investors from  
19 this and other states who shall advise and guide the fund  
20 management and make funding recommendations.

21 (4) The institute shall use a thorough and detailed process  
22 that is modeled after the best practices of the investment  
23 industry to evaluate a proposal. In order to approve a company  
24 for investment, the institute must consider whether:

25 (a) The company has a strong intellectual property  
26 position, a capable management team, readily identifiable paths  
27 to market or commercialization, significant job-growth  
28 potential, the ability to provide other sources of capital to  
29 leverage the state's investment, and the potential to attract  
30 additional funding;

31 (b) The company has been identified by a publicly funded  
32 research institution;

33 (c) The start-up company operates in a target industry  
34 designated pursuant to the procedure specified in s. 288.106(2);

35 (d) The company has been identified by an approved private-  
36 sector lead investor who has demonstrated due diligence typical  
37 of start-up investments in evaluating the potential of the  
38 company; and

39 (e) The advisory board and fund manager have reviewed and  
40 recommended that the proposal be approved.

41 (5) (a) Seed funds may be invested if the institute approves



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42 a company and the initial seed-stage investment. The initial  
43 seed-stage investment must be at least \$50,000, but may not be  
44 greater than \$300,000. The initial seed-stage investment  
45 requires a one-to-one private-sector match of the investment.

46 (b) Additional seed funds may be invested in a company if  
47 approved by the institute. The cumulative total of investment in  
48 a single company may not exceed \$500,000. Any additional  
49 investment amount requires a two-to-one private-sector match of  
50 investment.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Governmental Oversight and Accountability, *Chair*  
Appropriations Subcommittee on Finance and  
Tax, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Banking and Insurance  
Commerce and Tourism  
Judiciary  
Rules

**JOINT COMMITTEE:**  
Joint Legislative Auditing Committee

**SENATOR JEREMY RING**  
29th District

RECEIVED

FEB 12 2013

COMMERCE

February 12, 2013

Honorable Senator Nancy C. Detert  
416 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairwoman Detert,

I am writing to respectfully request your cooperation in placing Senate Bill 546, relating to Targeted Economic Development on the Commerce and Tourism agenda at your earliest convenience. I would greatly appreciate the opportunity to discuss the bill at greater length before your committee.

Thank you in advance for your assistance. As always, please do not hesitate to contact me with any questions or comments you may have.

Very Truly Yours,

A handwritten signature in cursive script that reads "Jeremy Ring".

Jeremy Ring  
Senator District 29

cc: Jennifer Hrdlicka

**REPLY TO:**

- 5790 Margate Boulevard, Margate, Florida 33063 (954) 917-1392 FAX: (954) 917-1394
- 405 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**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:** CS/SB 774

**INTRODUCER:** Commerce and Tourism Committee, Senator Thompson, and others

**SUBJECT:** Florida Civil Rights Act of 1992

**DATE:** March 19, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Hrdlicka	CM	<b>Fav/CS</b>
2.			GO	
3.			JU	
4.			RC	
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 774 amends ch. 760, F.S., also known as the Florida Civil Rights Act (FCRA). The bill creates a definition for “sex” to include a male, a female, or a female who is pregnant or is affected by any medical condition related to pregnancy. It further provides that a female who is pregnant or affected by a medical condition related to pregnancy is to be afforded the same treatment as any other employee with similar ability to work. This language is patterned after the federal Pregnancy Discrimination Act. Currently, state and federal courts are split on whether the Legislature intended to prohibit discrimination based on pregnancy.

The bill extends the number of days from 180 to 240 for the Florida Commission on Human Relations to investigate the allegations of a complaint and make a determination of whether reasonable cause exists to believe a violation of the FCRA has occurred.

This bill substantially amends ss. 760.02 and 760.11, F.S.

## II. Present Situation:

### Title VII Civil Rights Act of 1964<sup>1</sup>

Title VII of the Civil Rights Act of 1962 (Title VII) prohibits discrimination on the basis of race, color, religion, national origin, or sex. Title VII covers employers with 15 or more employees and outlines a number of unlawful employment practices. For example, Title VII makes it unlawful for employers to refuse to hire, discharge, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, based on race, color, religion, national origin, or sex.

### Pregnancy Discrimination Act<sup>2</sup>

In 1976, the United States Supreme Court ruled in *General Electric Co. v. Gilbert*<sup>3</sup> that Title VII did not include pregnancy under its prohibition against unlawful employment practices. The Pregnancy Discrimination Act (PDA), passed in 1978, amended Title VII to define the terms “because of sex” or “on the basis of sex,” to prohibit discrimination against a woman due to pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.<sup>4</sup> Under the PDA, an employer cannot discriminate against a woman on the basis of pregnancy in hiring, fringe benefits (such as health insurance), pregnancy and maternity leave, harassment, and any other term or condition of employment.<sup>5</sup>

### Florida Civil Rights Act of 1992

The Florida Civil Rights Act of 1992 (FCRA) was enacted to “secure for all individuals within the state freedom from discrimination because of race, color, religion, sex, national origin, age, handicap, or marital status...”<sup>6</sup> FCRA provides protection from discrimination in the areas of education, employment, housing, and public accommodations.

Similar to Title VII, the FCRA specifically provides a number of actions that, if undertaken by an employer, would be considered unlawful employment practices.<sup>7</sup> For example, it is unlawful to discharge or fail to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment based on an individual’s race, color, religion, sex, national origin, age, handicap, or marital status. Unlike Title VII, the FCRA has not been amended to specifically include a prohibition against pregnancy discrimination.

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<sup>1</sup> 42 U.S.C. 2000e. et. seq.

<sup>2</sup> Pub. L. No. 95-555, 95th Cong. (Oct. 31, 1978).

<sup>3</sup> 429 U.S. 125, 145 (1976).

<sup>4</sup> The PDA defines the terms “because of sex” or “on the basis of sex” to include pregnancy, childbirth, or related conditions and women who are affected by pregnancy, childbirth, or related conditions. It further states that these individuals must be treated the same for employment purposes, including the receipt of benefits, as any other person who is not so infected but has similar ability or inability to work.

<sup>5</sup> For more information, see U.S. Equal Employment Opportunity Commission, *Facts about Pregnancy Discrimination*, <http://www.eeoc.gov/facts/fs-preg.html> (last visited March 13, 2013).

<sup>6</sup> Section 760.01, F.S.

<sup>7</sup> Section 760.10, F.S. Note that this section does not apply to a religious corporation, association, educational institution, or society which conditions employment opportunities to members of that religious corporation, association, educational institution, or society.

## Pregnancy Discrimination in Florida

Although Title VII expressly includes pregnancy status as a component of sex discrimination, the FCRA does not. The fact that the FCRA is patterned after Title VII but failed to include this provision has caused division among both federal and state courts as to whether the Florida Legislature intended to provide protection on the basis of pregnancy status. Since the Supreme Court has not yet considered the issue, the ability to bring a claim based on pregnancy discrimination varies among the jurisdictions.

The earliest case to address the issue of pregnancy discrimination under the FCRA was *O'Laughlin v. Pinchback*.<sup>8</sup> In this case, the plaintiff alleged that she was terminated from her position as a correctional officer based on pregnancy. The First District Court of Appeals held that the Florida Human Rights Act was preempted by Title VII, as amended, as it stood as “an obstacle to the accomplishment and execution of the full purposes and objectives of Congress by not recognizing that discrimination against pregnant employees is sex based discrimination.”<sup>9</sup> By preempting the Florida statute, the court did not reach the question of whether the Florida law prohibits pregnancy discrimination. However, the court did note that Florida law had not been amended to include a prohibition against pregnancy-based discrimination.

The court in *Carsillo v. City of Lake Worth*<sup>10</sup> found that since the FCRA is patterned after Title VII, which considers pregnancy discrimination to be sex discrimination, the FCRA also bars such discrimination. The court recognized that the Florida statute had never been amended, but concluded that since Congress’ original intent was to prohibit this type of discrimination, it was unnecessary for Florida to amend its statute to import the intent of the law after which it was patterned.

The court in *Delva v. Continental Group, Inc.*<sup>11</sup> held that FCRA does not prohibit pregnancy discrimination based on the *O'Laughlin* court’s analysis that the FCRA had not been amended to include pregnancy status. The issue before the court was narrowly defined to whether the FCRA prohibited discrimination in employment on the basis of pregnancy; therefore, it did not address the preemption holding in *O'Laughlin*. The court certified the conflict with the *Carsillo* case to the Florida Supreme Court.<sup>12</sup>

Federal courts interpreting the FCRA have similarly wrestled with whether pregnancy status is covered by its provisions.<sup>13</sup> Like the state courts, the federal courts finding that the FCRA does provide a cause of action based on pregnancy discrimination did so because the FCRA is

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<sup>8</sup> 579 So.2d 788 (Fla. 1st DCA 1991). This case was brought under the Florida Human Rights Act of 1977, which was the predecessor to the Florida Civil Rights Act of 1992, and was also patterned after Title VII.

<sup>9</sup> *Id.* at 792.

<sup>10</sup> 995 So.2d 1118 (Fla. 4th DCA 2008), *rev. denied*, 20 So.3d 848 (Fla. 2009).

<sup>11</sup> 96 So.3d 956 (Fla. 3d DCA 2012), *reh'g denied*.

<sup>12</sup> The case was filed with the Florida Supreme Court on October 16, 2012 and assigned case number SC12-2315.

<sup>13</sup> Federal courts finding that the FCRA does not include a prohibition against pregnancy discrimination include: *Frazier v. T-Mobile USA, Inc.*, 495 F.Supp.2d 1185, (M.D. Fla. 2003), *Boone v. Total Renal Laboratories, Inc.*, 565 F.Supp.2d 1323 (M.D. Fla. 2008), and *DuChateau v. Camp Dresser & McKee, Inc.*, 822 F.Supp.2d 1325 (S.D. Fla. 2011). Federal courts finding that FCRA does provide protection against pregnancy discrimination include *Jolley v. Phillips Educ. Grp. of Cent. Fla., Inc.*, 1996 WL 529202 (M.D. Fla. 1996), *Terry v. Real Talent, Inc.*, 2009 WL 3494476 (M.D. Fla. 2009), and *Constable v. Agilysys, Inc.*, 2011 WL 2446605 (M.D. Fla. 2011).

patterned after Title VII, which bars pregnancy discrimination. The courts finding that the FCRA does not prohibit pregnancy discrimination primarily did so because the Legislature has not amended the FCRA to specifically protect pregnancy status.

### **Florida Commission on Human Relations**

The Florida Commission on Human Relations (commission) is an administrative body that is charged with carrying out the purposes of the FCRA. The commission is comprised of 12 members who are appointed by the Governor, subject to Senate confirmation.<sup>14</sup> The commission is administratively housed within the Department of Management Services (department); however, the commission is not subject to the control, supervision, or direction of the department.<sup>15</sup> The commission is statutorily authorized to receive, initiate, investigate, hold hearings on, and act upon complaints alleging any discriminatory practice under the FCRA.<sup>16</sup>

### **Employment Complaint Process**

Any person who feels that they have been unlawfully discriminated against, in violation of the FCRA, may file a verified complaint with the commission within 365 day of the alleged violation.<sup>17</sup> The commission will, by registered mail, send a copy of the complaint to the person alleged to have committed the discriminatory practice, within 5 days of the complaint being filed. The person alleged to have committed the discriminatory practice may file a verified answer to the complaint within 25 days of the date the complaint was filed with the commission. If there is another state agency or other unit of government that has subject matter jurisdiction and has legal authority to investigate the complaint, the commission may refer the complaint to such agency for an investigation.<sup>18</sup>

For complaints that are not referred to another agency, as provided above, the commission has 180 days from the date the complaint was filed to complete an investigation to determine whether reasonable cause exists to believe that a discriminatory practice has occurred in violation of the FCRA.<sup>19</sup> If the commission determines that reasonable cause exists, the complainant may either bring a civil action against the person named in the complaint or request an administrative hearing under ch. 120, F.S.<sup>20</sup>

A civil action must be filed no later than 1 year after the commission issues the reasonable cause determination.<sup>21</sup> Available remedies include an order prohibiting the discriminatory practice and affirmative relief, such as back pay. A judge may also award compensatory damages for the aggrieved person's mental anguish, loss of dignity, and any other intangible injury, as well as punitive damages. Punitive damages are capped at \$100,000. The court may award reasonable attorney's fees to the prevailing party.

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<sup>14</sup> Section 760.03, F.S.

<sup>15</sup> Section 760.04, F.S.

<sup>16</sup> Section 760.06, F.S.

<sup>17</sup> Section 760.11(1), F.S. In lieu of filing a complaint with the commission, a complainant may file a complaint with the Equal Employment Opportunity Commission.

<sup>18</sup> Section 760.11(2), F.S.

<sup>19</sup> Section 760.11(3), F.S.

<sup>20</sup> Section 760.11(4), F.S.

<sup>21</sup> Section 760.11(5), F.S.

An administrative hearing under ch. 120, F.S., must be requested within 35 days after the commission issues its reasonable cause determination.<sup>22</sup> A commissioner may hear the case or the commission can request the case be heard by an administrative law judge (ALJ). If the commissioner finds that a violation of the FCRA has occurred, he or she will issue a proposed order prohibiting the practice and providing affirmative relief, such as back pay. The prevailing party may also be entitled to reasonable attorney's fees. If an ALJ finds that a violation of the FCRA has occurred, he or she will issue a recommended order prohibiting the practice and providing affirmative relief. The commission must issue a final order adopting, rejecting, or modifying the recommended order within 90 days of the issuance of the recommended or proposed order.

If during its initial investigation, the commission determines that no reasonable cause exists to believe that a violation of the FCRA has occurred, the commission will dismiss the complaint.<sup>23</sup> The complainant has 35 days in which to request an administrative hearing before an ALJ. If the ALJ finds that a violation of the FCRA has occurred, he or she will issue a recommended order prohibiting the practice and providing affirmative relief. The ALJ may also award attorney's fees to the prevailing party. The commission must issue a final order adopting, rejecting, or modifying the recommended order within 90 days of the issuance of the recommended order. If the final order issued by the commission determines that a violation of the FCRA occurred, a party has 1 year from the date of the final order to initiate a civil action or accept the relief offered by the commission. However, an aggrieved person cannot file both a private action and accept the relief offered by the commission.

If the commission fails to make a determination as to whether reasonable cause exists within 180 days of the date the complaint was filed, a complainant may either bring a civil action against the person named in the complaint or request an administrative hearing under ch. 120, F.S.<sup>24</sup>

According to the commission, budget and staff reductions, along with an increase in the number of cases filed, have made it difficult for investigators to complete cases within the 180 days allotted by statute.<sup>25</sup> The commission is projected to receive more than 1,700 cases in the current fiscal year up from the 1,221 cases filed in FY 2010. The average caseload of investigators is expected to increase proportionally from 71.5 in FY 2010 to a projected average of 85 in FY 2012.

### III. Effect of Proposed Changes:

**Section 1** provides that the act may be cited as the "Protect Our Women Act."

**Section 2** amends s. 760.02, F.S., to create a definition of "sex," which means the biological state of being male, female, or a female who is pregnant or affected by a medical condition related to pregnancy or childbirth. For all employment-related purposes, a pregnant female or

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<sup>22</sup> Section 760.11(6), F.S.

<sup>23</sup> Section 760.11(7), F.S.

<sup>24</sup> Section 760.11(8), F.S.

<sup>25</sup> Florida Commission on Human Relations, *Senate Bill 774 Staff Analysis* (Feb. 21, 2013) (on file with the Senate Commerce and Tourism Committee).

female affected by a pregnancy-related medical condition must be treated the same as an individual not so affected who has similar ability or inability to work. This will clarify legislative intent on whether pregnancy discrimination is prohibited under the FCRA.

**Section 3** amends s. 760.11, F.S., to provide that the commission shall have 240 days after the filing of a complaint to complete an investigation into whether there exists reasonable cause to believe that a discriminatory practice has occurred. If the commission fails to conciliate or determine whether there is reasonable cause on any complaint within the 240 days, a complainant may proceed with either a civil action or request an administrative hearing.

**Section 4** 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:

CS/SB 774 will clear up court conflicts and reduce the need to litigate whether pregnancy status is protected under the FCRA.

Individuals bringing cases before the commission or an ALJ alleging discriminatory conduct may be awarded compensatory and punitive damages. Previously, these cases could only be brought in a civil court.

##### C. Government Sector Impact:

According to the commission, this bill will not impact their workload and would not create any administrative costs.<sup>26</sup>

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<sup>26</sup> Commission, *SB 774 Staff Analysis*.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Individuals may be bring claims for pregnancy discrimination under Title VII in federal courts.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

**CS by Commerce and Tourism on March 18, 2013:**

The CS removes provisions that allow the commission or an administrative law judge to include an award for punitive and compensatory damages in its recommended order.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
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The Committee on Commerce and Tourism (Thompson) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 60 - 136  
and insert:

(6) Any administrative hearing brought pursuant to paragraph (4)(b) shall be conducted under ss. 120.569 and 120.57. The commission may hear the case provided that the final order is issued by members of the commission who did not conduct the hearing or the commission may request that it be heard by an administrative law judge pursuant to s. 120.569(2)(a). If the commission elects to hear the case, it may be heard by a commissioner. If the commissioner, after the hearing, finds that



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13 a violation of the Florida Civil Rights Act of 1992 has  
14 occurred, the commissioner shall issue an appropriate proposed  
15 order in accordance with chapter 120 prohibiting the  
16 discriminatory practice and providing affirmative relief from  
17 the effects of the practice, including back pay. If the  
18 administrative law judge, after the hearing, finds that a  
19 violation of the Florida Civil Rights Act of 1992 has occurred,  
20 the administrative law judge shall issue an appropriate  
21 recommended order in accordance with chapter 120 prohibiting the  
22 discriminatory practice and providing affirmative relief from  
23 the effects of the practice, including back pay. Within 90 days  
24 after ~~of~~ the date the recommended or proposed order is rendered,  
25 the commission shall issue a final order by adopting, rejecting,  
26 or modifying the recommended order as provided under ss. 120.569  
27 and 120.57. The 90-day period may be extended with the consent  
28 of all the parties. An administrative hearing pursuant to  
29 paragraph (4) (b) may ~~must~~ be requested no later than 35 days  
30 after the date of determination of reasonable cause by the  
31 commission. In any action or proceeding under this subsection,  
32 the commission, in its discretion, may allow the prevailing  
33 party a reasonable attorney ~~attorney's~~ fee as part of the costs.  
34 Attorney ~~It is the intent of the Legislature that this provision~~  
35 ~~for attorney's fees~~ must be calculated ~~interpreted~~ in a manner  
36 consistent with federal case law involving a Title VII action.

37 (7) If the commission determines that there is not  
38 reasonable cause to believe that a violation of the Florida  
39 Civil Rights Act of 1992 has occurred, the commission shall  
40 dismiss the complaint. The aggrieved person may request an  
41 administrative hearing under ss. 120.569 and 120.57, but any



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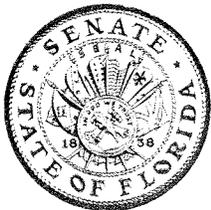
42 such request must be made within 35 days after ~~of~~ the date of  
43 determination of reasonable cause and any such hearing shall be  
44 heard by an administrative law judge and not by the commission  
45 or a commissioner. If the aggrieved person does not request an  
46 administrative hearing within the 35 days, the claim will be  
47 barred. If the administrative law judge finds that a violation  
48 of the Florida Civil Rights Act of 1992 has occurred, he or she  
49 shall issue an appropriate recommended order to the commission  
50 prohibiting the discriminatory practice and recommending  
51 affirmative relief from the effects of the practice, including  
52 back pay. Within 90 days after ~~of~~ the date the recommended order  
53 is rendered, the commission shall issue a final order by  
54 adopting, rejecting, or modifying the recommended order as  
55 provided under ss. 120.569 and 120.57. The 90-day period may be  
56 extended with the consent of all the parties. In any action or  
57 proceeding under this subsection, the commission, in its  
58 discretion, may allow the prevailing party a reasonable attorney  
59 ~~attorney's~~ fee as part of the costs. Attorney ~~It is the intent~~  
60 ~~of the Legislature that this provision for attorney's fees must~~  
61 be calculated ~~interpreted~~ in a manner consistent with federal  
62 case law involving a Title VII action. In the event the final  
63 order issued by the commission determines that a violation of  
64 the Florida Civil Rights Act of 1992 has occurred, the aggrieved  
65 person may bring, within 1 year after ~~of~~ the date of the final  
66 order, a civil action under subsection (5) as if there has been  
67 a reasonable cause determination or accept the affirmative  
68 relief offered by the commission, but not both.

69 ===== T I T L E A M E N D M E N T =====

70 And the title is amended as follows:



71           Delete lines 18 - 21  
72   and insert:  
73           providing that attorney fees be calculated



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on General Government, *Vice Chair*  
Community Affairs, *Vice Chair*  
Appropriations Subcommittee on Transportation, Tourism, and Economic Development  
Children, Families, and Elder Affairs  
Commerce and Tourism  
Transportation

### JOINT COMMITTEE:

Joint Administrative Procedures Committee

**SENATOR GERALDINE F. THOMPSON**

12th District

February 18, 2013

The Honorable Nancy Detert  
416 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Dear Chair Detert,

I respectfully request *SB 774—Florida Civil Rights Act of 1992* be placed on the agenda of the Committee on Commerce and Tourism as soon as possible.

Over the years, most federal and state courts have held that Florida's Civil Rights Act does not protect pregnant women against discrimination by an employer. Most recently, such a ruling was made by the 3<sup>rd</sup> District Court of Appeals which noted Florida's failure to amend its human rights law to prohibit pregnancy-based discrimination.

This bill would give pregnant women victimized by discrimination in the workplace protection under the Florida Civil Rights Act..

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Geraldine F. Thompson".

Senator Geraldine Thompson, District 12  
GT:dr

cc: Jennifer Hrdlicka

### REPLY TO:

- 511 W. South Street, Suite 204, Orlando, Florida 32805
- 224 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**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:** CS/SB 922

**INTRODUCER:** Commerce and Tourism Committee, Senator Bradley, and others

**SUBJECT:** Professional Sports Franchise Facilities

**DATE:** March 18, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Hrdlicka	CM	Fav/CS
2.			AFT	
3.			AP	
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 922 allows for an applicant certified as a new or retained professional sports franchise to receive an additional certification by the Department of Economic Opportunity, provided it meets certain requirements. The additional certification would allow the applicant to receive an additional sales tax distribution payment of approximately \$2 million per year for 30 years.

This bill substantially amends ss. 288.1162 and 212.20, 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 local governments, non-profits, or for-profit entities 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.

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 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,<sup>1</sup> for an annual payment totaling \$2,000,004. The Department of Revenue disburses the payments.

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; 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; refinancing the bonds; or reimbursing associated costs for such activities.

The Auditor General may conduct audits to verify the state funds distributed to local governments for the program are properly expended. If it is found that funds are spent improperly, the Auditor General must notify DOR, who may pursue recovery of state funds.

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:<sup>2</sup>

Facility name	Certified entity	Franchise	First Payment	Final Payment	Total payments as of 01/08/13
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<sup>1</sup> Section 212.20(6)(d)6.b., F.S.

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

Sun Life Stadium	Dolphins Stadium/ South Florida Stadium	Florida (Miami) Marlins <sup>3</sup>	06/94	06/2023	\$39,166,745
Everbank Field	City of Jacksonville	Jacksonville Jaguars	06/94	05/2024	\$37,333,408
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

**III. Effect of Proposed Changes:**

**Section 1** amends s. 288.1162, F.S., relating to professional sports franchises. The bill allows an applicant that has been previously certified as a new or retained professional sports franchise facility to receive an additional certification in order to make improvements to the professional sports franchise facility that allow it to meet or exceed league facility standards. “League standards” are defined by the bill to mean “the stadium equipment standards in place throughout the league as certified in writing by the league’s commissioner.” The applicant may only receive the additional certification if:

- The planned facility improvements cost at least \$80 million;
- The professional sports franchise has been in existence for at least 15 years;
- The lease between the applicant and the professional sports franchise has at least 15 years remaining on the agreement’s term; and
- The applicant has an independent analysis, verified by DEO, demonstrating the amount of sales tax revenues generated by the operation and use of the facility will equal or exceed \$4 million annually.

The bill does not limit the number of applicants that may receive an additional certification, provided the applicant meets the abovementioned criteria.

**Section 2** amends s. 212.20, F.S., to authorize the Department of Revenue to distribute an additional monthly payment of \$166,667 to an applicant that receives an additional certification as a new or retained professional sports franchise.

**Section 3** provides an effective date of upon becoming law.

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

**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 evaluated the bill on March 16, 2013 and adopted the following cash fiscal impact estimate:<sup>4</sup>

	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
<b>General Revenue</b>	(2.0)	(2.0)	(4.0)	(4.0)	(6.0)
<b>State Trust</b>	0.0	0.0	0.0	0.0	0.0
<b>Total State Impact</b>	(2.0)	(2.0)	(4.0)	(4.0)	(6.0)

	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
<b>Total Local Impact</b>	0.0	0.0	0.0	0.0	0.0

	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
<b>Total Impact</b>	(2.0)	(2.0)	(4.0)	(4.0)	(6.0)

The bill allows for an additional distribution from sales tax revenue for an applicant receiving an additional certification of approximately \$2 million per year. This will create a recurring loss to general revenue of \$2 million per year for up to 30 years, for a total loss of \$60 million per entity receiving the additional certification.

<sup>4</sup> Revenue Estimating Conference, *Estimate for HB 721/SB 922*, (March 16, 2013), available at: <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2013/pdf/page171.pdf>, (last visited on March 19, 2013).

Provided an entity meets all eligibility requirements for an additional certification, it may receive the additional certification and distribution payment. Should all eight of the entities currently certified as new or retained professional sports franchises meet the requirements for additional certification, it could potentially result in a loss of approximately \$16 million per year. The Revenue Estimating Conference adopted a recurring fiscal impact estimate of negative \$16 million for each year.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill is not expected to 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.)

**CS by Commerce and Tourism on 03/18/2013:**

- Clarifies that DEO is responsible for screening and certifying applicants for the additional certification.
- Permits audits of funds received for the additional certification by the Auditor General.
- Clarifies the eligible uses for which an applicant receiving an additional certification may use additional state funds.
- Clarifies that an applicant receiving an additional certification is eligible to receive an additional sales tax distribution payment of \$166,667 per month for up to 30 years.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
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The Committee on Commerce and Tourism (Bean) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Subsections (1) and (5) are amended and subsection (9) is added to section 288.1162, Florida Statutes, to read:

288.1162 Professional sports franchises; duties.—

(1) The department shall serve as the state agency for screening applicants for state funding under s. 212.20 and for certifying an applicant as a facility for a new or retained professional sports franchise or under subsection (9).



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13 (5) An applicant certified as a facility for a new or  
14 retained professional sports franchise or under subsection (9)  
15 may use funds provided under s. 212.20 only for the public  
16 purpose of paying for the acquisition, construction,  
17 reconstruction, or renovation of a facility for a new or  
18 retained professional sports franchise to pay or pledge for the  
19 payment of debt service on, or to fund debt service reserve  
20 funds, arbitrage rebate obligations, or other amounts payable  
21 with respect to, bonds issued for the acquisition, construction,  
22 reconstruction, or renovation of such facility or for the  
23 reimbursement of such costs or the refinancing of bonds issued  
24 for such purposes.

25 (9) (a) Notwithstanding subsections (4), (6), and (8), an  
26 applicant previously certified under this section as a facility  
27 for a new or retained professional sports franchise is eligible  
28 for an additional certification for the public purpose of making  
29 improvements to the facility in order to meet or exceed the  
30 league's facility standards, if:

31 1. The cost of the planned improvements to the facility is  
32 at least \$80 million.

33 2. The professional sports franchise has been in existence  
34 for at least 15 years.

35 3. The signed agreement for use of the facility described  
36 in paragraph (4) (b) has at least 15 years remaining on the  
37 agreement's term.

38 4. The applicant has an independent analysis or study,  
39 verified by the department, which demonstrates that the amount  
40 of the revenues generated by the taxes imposed under chapter 212  
41 with respect to the use and operation of the professional sports



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42 franchise facility will equal or exceed \$4 million annually.

43 (b) As used in this subsection, the term "facility  
44 standards" means the stadium equipment standards in place  
45 throughout the league as certified in writing by the league's  
46 commissioner.

47 (c) The department shall notify the Department of Revenue  
48 of any facility certified under this subsection.

49 Section 2. Paragraph (d) of subsection (6) of section  
50 212.20, Florida Statutes, is amended to read:

51 212.20 Funds collected, disposition; additional powers of  
52 department; operational expense; refund of taxes adjudicated  
53 unconstitutionally collected.—

54 (6) Distribution of all proceeds under this chapter and s.  
55 202.18(1)(b) and (2)(b) shall be as follows:

56 (d) The proceeds of all other taxes and fees imposed  
57 pursuant to this chapter or remitted pursuant to s. 202.18(1)(b)  
58 and (2)(b) shall be distributed as follows:

59 1. In any fiscal year, the greater of \$500 million, minus  
60 an amount equal to 4.6 percent of the proceeds of the taxes  
61 collected pursuant to chapter 201, or 5.2 percent of all other  
62 taxes and fees imposed pursuant to this chapter or remitted  
63 pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in  
64 monthly installments into the General Revenue Fund.

65 2. After the distribution under subparagraph 1., 8.814  
66 percent of the amount remitted by a sales tax dealer located  
67 within a participating county pursuant to s. 218.61 shall be  
68 transferred into the Local Government Half-cent Sales Tax  
69 Clearing Trust Fund. Beginning July 1, 2003, the amount to be  
70 transferred shall be reduced by 0.1 percent, and the department



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71 shall distribute this amount to the Public Employees Relations  
72 Commission Trust Fund less \$5,000 each month, which shall be  
73 added to the amount calculated in subparagraph 3. and  
74 distributed accordingly.

75 3. After the distribution under subparagraphs 1. and 2.,  
76 0.095 percent shall be transferred to the Local Government Half-  
77 cent Sales Tax Clearing Trust Fund and distributed pursuant to  
78 s. 218.65.

79 4. After the distributions under subparagraphs 1., 2., and  
80 3., 2.0440 percent of the available proceeds shall be  
81 transferred monthly to the Revenue Sharing Trust Fund for  
82 Counties pursuant to s. 218.215.

83 5. After the distributions under subparagraphs 1., 2., and  
84 3., 1.3409 percent of the available proceeds shall be  
85 transferred monthly to the Revenue Sharing Trust Fund for  
86 Municipalities pursuant to s. 218.215. If the total revenue to  
87 be distributed pursuant to this subparagraph is at least as  
88 great as the amount due from the Revenue Sharing Trust Fund for  
89 Municipalities and the former Municipal Financial Assistance  
90 Trust Fund in state fiscal year 1999-2000, no municipality shall  
91 receive less than the amount due from the Revenue Sharing Trust  
92 Fund for Municipalities and the former Municipal Financial  
93 Assistance Trust Fund in state fiscal year 1999-2000. If the  
94 total proceeds to be distributed are less than the amount  
95 received in combination from the Revenue Sharing Trust Fund for  
96 Municipalities and the former Municipal Financial Assistance  
97 Trust Fund in state fiscal year 1999-2000, each municipality  
98 shall receive an amount proportionate to the amount it was due  
99 in state fiscal year 1999-2000.



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100           6. Of the remaining proceeds:

101           a. In each fiscal year, the sum of \$29,915,500 shall be  
102 divided into as many equal parts as there are counties in the  
103 state, and one part shall be distributed to each county. The  
104 distribution among the several counties must begin each fiscal  
105 year on or before January 5th and continue monthly for a total  
106 of 4 months. If a local or special law required that any moneys  
107 accruing to a county in fiscal year 1999-2000 under the then-  
108 existing provisions of s. 550.135 be paid directly to the  
109 district school board, special district, or a municipal  
110 government, such payment must continue until the local or  
111 special law is amended or repealed. The state covenants with  
112 holders of bonds or other instruments of indebtedness issued by  
113 local governments, special districts, or district school boards  
114 before July 1, 2000, that it is not the intent of this  
115 subparagraph to adversely affect the rights of those holders or  
116 relieve local governments, special districts, or district school  
117 boards of the duty to meet their obligations as a result of  
118 previous pledges or assignments or trusts entered into which  
119 obligated funds received from the distribution to county  
120 governments under then-existing s. 550.135. This distribution  
121 specifically is in lieu of funds distributed under s. 550.135  
122 before July 1, 2000.

123           b. The department shall distribute \$166,667 monthly  
124 pursuant to s. 288.1162 to each applicant certified as a  
125 facility for a new or retained professional sports franchise  
126 pursuant to s. 288.1162, and \$166,667 monthly to each applicant  
127 that receives an additional certification pursuant to s.  
128 288.1162(9). Up to \$41,667 shall be distributed monthly by the



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129 department to each certified applicant as defined in s.  
130 288.11621 for a facility for a spring training franchise.  
131 However, not more than \$416,670 may be distributed monthly in  
132 the aggregate to all certified applicants for facilities for  
133 spring training franchises. Distributions begin 60 days after  
134 such certification and continue for not more than 30 years,  
135 except as otherwise provided in s. 288.11621. A certified  
136 applicant identified in this sub-subparagraph may not receive  
137 more in distributions than expended by the applicant for the  
138 public purposes provided for in s. 288.1162(5) or s.  
139 288.11621(3).

140 c. Beginning 30 days after notice by the Department of  
141 Economic Opportunity to the Department of Revenue that an  
142 applicant has been certified as the professional golf hall of  
143 fame pursuant to s. 288.1168 and is open to the public, \$166,667  
144 shall be distributed monthly, for up to 300 months, to the  
145 applicant.

146 d. Beginning 30 days after notice by the Department of  
147 Economic Opportunity to the Department of Revenue that the  
148 applicant has been certified as the International Game Fish  
149 Association World Center facility pursuant to s. 288.1169, and  
150 the facility is open to the public, \$83,333 shall be distributed  
151 monthly, for up to 168 months, to the applicant. This  
152 distribution is subject to reduction pursuant to s. 288.1169. A  
153 lump sum payment of \$999,996 shall be made, after certification  
154 and before July 1, 2000.

155 7. All other proceeds must remain in the General Revenue  
156 Fund.

157 Section 3. This act shall take effect upon becoming law.



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

And the title is amended as follows:

    Delete everything before the enacting clause  
and insert:

        A bill to be entitled  
  
An act relating to professional sports franchise  
facilities; amending ss. 288.1162 and 212.20, F.S.;  
authorizing an applicant previously certified as a  
facility for a new or retained professional sports  
franchise to receive an additional certification under  
certain circumstances, and to receive an additional  
monthly distribution of a specified amount of sales  
tax revenues, to improve the conditions of the  
facility to meet or exceed certain facility standards;  
defining the term "facility standards"; providing an  
effective date.



The Florida Senate

## Committee Agenda Request

**To:** Senator Nancy Detert, Chair  
Committee on Commerce and Tourism

**Subject:** Committee Agenda Request

**Date:** February 21, 2013

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I respectfully request that **Senate Bill # 922**, relating to Professional Sports Franchise Facilities, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "Rob Bradley".

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Senator Rob Bradley  
Florida Senate, District 7

**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 960

**INTRODUCER:** Commerce and Tourism Committee and Senator Bean

**SUBJECT:** Tax on Sales, Use, & Other Transactions

**DATE:** March 19, 2013      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	Fav/CS
2.			AFT	
3.			AP	
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 960 provides a sales tax exemption for dyed diesel fuel used exclusively by commercial fishing and aquaculture vessels.

This bill amends ss. 212.05, 212.0501, and 212.08, F.S.

**II. Present Situation:**

Currently, under chs. 206 and 212, F.S., there are a number of taxes levied on diesel fuel in Florida.<sup>1</sup> Dyed diesel fuel, however, is exempt from the taxes in ch. 206, F.S.<sup>2</sup> Dyed diesel can only be purchased and used for specific purposes that do not involve commercial use on public highways, such as, on a farm for farm processing, in school buses, and in commercial fishing

<sup>1</sup> See ss. 206.87, 212.05(1)(k), 212.0501, F.S. One purpose of these taxes is to provide revenue to defray the cost of constructing and maintaining public highways in Florida. See s. 206.85, F.S.

<sup>2</sup> Section 206.874(1) and (3), F.S.

vessels.<sup>3</sup> Because it is exempt from the taxes in ch. 206, F.S., dyed diesel is less expensive than non-dyed diesel fuel. Consequently, dyed diesel allows the Department of Revenue (DOR) to ensure vehicles and equipment are using the dyed diesel fuel only for exempt purposes.

Although dyed diesel fuel is exempt from the taxes in ch. 206, F.S., it is generally not exempt from the sales tax in ch. 212, F.S.<sup>4</sup> Under s. 212.05, F.S., a 6 percent sales tax is levied on the sale price of each gallon of diesel fuel not taxed under ch. 206, F.S., used in a vessel.<sup>5</sup> Because dyed diesel fuel used in commercial fishing vessels is exempt from taxes under ch. 206, F.S., it is subject to the 6 percent sales tax in s. 212.05, F.S.

Section 212.08, F.S., provides a partial exemption from the 6 percent sales tax for dyed diesel fuel used by vessels to transport persons or property in interstate or foreign commerce, including commercial fishing vessels.<sup>6</sup> This partial exemption is calculated based on the ratio of intrastate mileage to interstate or foreign mileage traveled by vessels that were used in interstate or foreign commerce and that had at least some Florida mileage during the previous fiscal year.<sup>7</sup> This ratio, known as the mileage apportionment factor, is generally determined at the close of the carrier's fiscal year.<sup>8</sup>

Dyed diesel fuel used exclusively in intrastate commerce does not qualify for the prorated exemption.<sup>9</sup> Consequently, dyed diesel fuel used for inshore commercial fishing or fishing that occurs within the territorial waters of Florida is not exempt from the 6 percent sales tax.<sup>10</sup>

### III. Effect of Proposed Changes:

**Sections 1, 2, and 3** amend ss. 212.05, 212.0501, and 212.08, F.S., to provide a sales tax exemption for dyed diesel fuel that is placed in the storage tanks of vessels used exclusively for commercial fishing and aquaculture purposes. "Commercial fishing and aquacultural purposes" is defined as "fuel used by boats, vessels, or equipment used exclusively for the taking of fish, crayfish, oysters, shrimp, or sponges from salt or fresh waters under the jurisdiction of the state for resale to the public." The definition specifically excludes fuel used for sport or pleasure fishing.<sup>11</sup>

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<sup>3</sup> Section 206.874(3), F.S. Similarly, motor fuel used for aquacultural and commercial fishing purposes are exempt from the local option tax, state comprehensive enhanced transportation system tax, municipal fuel tax, and fuel sales taxes paid under s. 206.41, F.S. Section 206.41(4)(c), F.S.

<sup>4</sup> Section 212.0501(3), F.S., exempts diesel fuel used "on account of residential purposes; or in any tractor, vehicle, or other equipment used exclusively on a farm or for processing farm products on the farm, no part of which diesel fuel is used in any licensed motor vehicle on the public highways of this state; or the purchase or storage of diesel fuel held for resale."

<sup>5</sup> Section 212.05(1)(k), F.S.

<sup>6</sup> See Rule 12A-1.0641, F.A.C. "Commercial fishing vessels" are defined by DOR as "vessels designed, constructed, and used exclusively for the taking of fish, crayfish, oysters, shrimp, and sponges from the salt and fresh waters for sale. Vessels used for sports or pleasure fishing, such as pleasure fishing boats, charter boats, or party boats, are not commercial fishing vessels."

<sup>7</sup> Section 212.08(4)(a)2., F.S.; Rule 12A-1.0641, F.A.C.

<sup>8</sup> *Supra* note 7. The calculation for the first year's ratio is based on an estimated ratio of anticipated miles in the state to the anticipated total miles for that year, and either an additional tax will be paid or a refund may be applied for based on the actual ratio of miles in the state to total miles for the year. Section 212.08(4)(a)2., F.S.

<sup>9</sup> *Supra* note 7.

<sup>10</sup> See Rule 12A-1.0641, F.A.C.

<sup>11</sup> Section 206.41(4)(c)3., F.S.

Any fuel not used exclusively for commercial fishing or aquaculture purposes is subject to the 6 percent sales tax levied under s. 212.05(1)(k), F.S.

Section 4 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 estimates CS/SB 960 bill will result in the following impact to the State Transportation Trust Fund:<sup>12</sup>

	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>	<b>FY 2017-18</b>
<b>General Revenue</b>	0	0	0	0	0
<b>State Trust<sup>13</sup></b>	(1.8)	(1.8)	(1.8)	(2.0)	(2.1)
<b>Local/Other</b>	0	0	0	0	0
<b>Total Impact</b>	(1.8)	(1.8)	(1.8)	(2.0)	(2.1)

B. Private Sector Impact:

Commercial fishermen and aquaculture producers who operate in state waters may benefit from the reduced tax assessment on dyed diesel fuel used to operate their commercial vessels.

<sup>12</sup> Office of Economic and Demographic Research, The Florida Legislature, Revenue Estimating Conference, *Analysis of HB 423 Amendment: Sales and Use Tax (Off-Highway Fuel)* (Feb. 21, 2013) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2013/pdf/page78-79.pdf> (last visited March 18, 2013).

<sup>13</sup> State Transportation Trust Fund.

C. Government Sector Impact:

According to DOR, the bill will have an insignificant operational impact on the agency.<sup>14</sup>

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 March 18, 2013:**

The committee substitute:

- Extends the sales tax exemption on dyed diesel fuel to vessels used for commercial fishing and aquaculture purposes, which includes commercial shrimping.
- Removes the requirement that the purchaser provide the seller with a written statement, signed by the purchaser, verifying that the fuel is to be used by the vessel exclusively for the taking of shrimp from salt and fresh waters for sale.

B. Amendments:

None.

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

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<sup>14</sup> Department of Revenue, *Agency Bill Analysis: CS/HB 423* (March 6, 2013) (on file with the Senate Commerce and Tourism Committee).



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
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The Committee on Commerce and Tourism (Bean) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause and insert:

Section 1. Paragraph (k) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who



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13 stores for use or consumption in this state any item or article  
14 of tangible personal property as defined herein and who leases  
15 or rents such property within the state.

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

19 (k) At the rate of 6 percent of the sales price of each  
20 gallon of diesel fuel not taxed under chapter 206 purchased for  
21 use in a vessel, except dyed diesel fuel that is exempt pursuant  
22 to s. 212.08(4)(a)4.

23 Section 2. Subsection (4) of section 212.0501, Florida  
24 Statutes, is amended to read:

25 212.0501 Tax on diesel fuel for business purposes;  
26 purchase, storage, and use.—

27 (4) Except as otherwise provided in s. 212.05(1)(k), a  
28 licensed sales tax dealer may elect to collect such tax pursuant  
29 to this chapter on all sales to each person who purchases diesel  
30 fuel, except dyed diesel fuel used for commercial fishing and  
31 aquacultural purposes listed in s. 206.41(4)(c)3., for  
32 consumption, use, or storage by a trade or business. When the  
33 licensed sales tax dealer has not elected to collect such tax on  
34 all such sales, the purchaser or ultimate consumer shall be  
35 liable for the payment of tax directly to the state.

36 Section 3. Paragraph (a) of subsection (4) of section  
37 212.08, Florida Statutes, is amended to read:

38 212.08 Sales, rental, use, consumption, distribution, and  
39 storage tax; specified exemptions.—The sale at retail, the  
40 rental, the use, the consumption, the distribution, and the  
41 storage to be used or consumed in this state of the following



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42 are hereby specifically exempt from the tax imposed by this  
43 chapter.

44 (4) EXEMPTIONS; ITEMS BEARING OTHER EXCISE TAXES, ETC.—

45 (a) Also exempt are:

46 1. Water delivered to the purchaser through pipes or  
47 conduits or delivered for irrigation purposes. The sale of  
48 drinking water in bottles, cans, or other containers, including  
49 water that contains minerals or carbonation in its natural state  
50 or water to which minerals have been added at a water treatment  
51 facility regulated by the Department of Environmental Protection  
52 or the Department of Health, is exempt. This exemption does not  
53 apply to the sale of drinking water in bottles, cans, or other  
54 containers if carbonation or flavorings, except those added at a  
55 water treatment facility, have been added. Water that has been  
56 enhanced by the addition of minerals and that does not contain  
57 any added carbonation or flavorings is also exempt.

58 2. All fuels used by a public or private utility, including  
59 any municipal corporation or rural electric cooperative  
60 association, in the generation of electric power or energy for  
61 sale. Fuel other than motor fuel and diesel fuel is taxable as  
62 provided in this chapter with the exception of fuel expressly  
63 exempt herein. Motor fuels and diesel fuels are taxable as  
64 provided in chapter 206, with the exception of those motor fuels  
65 and diesel fuels used by railroad locomotives or vessels to  
66 transport persons or property in interstate or foreign commerce,  
67 which are taxable under this chapter only to the extent provided  
68 herein. The basis of the tax shall be the ratio of intrastate  
69 mileage to interstate or foreign mileage traveled by the  
70 carrier's railroad locomotives or vessels that were used in



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71 interstate or foreign commerce and that had at least some  
72 Florida mileage during the previous fiscal year of the carrier,  
73 such ratio to be determined at the close of the fiscal year of  
74 the carrier. However, during the fiscal year in which the  
75 carrier begins its initial operations in this state, the  
76 carrier's mileage apportionment factor may be determined on the  
77 basis of an estimated ratio of anticipated miles in this state  
78 to anticipated total miles for that year, and subsequently,  
79 additional tax shall be paid on the motor fuel and diesel fuels,  
80 or a refund may be applied for, on the basis of the actual ratio  
81 of the carrier's railroad locomotives' or vessels' miles in this  
82 state to its total miles for that year. This ratio shall be  
83 applied each month to the total Florida purchases made in this  
84 state of motor and diesel fuels to establish that portion of the  
85 total used and consumed in intrastate movement and subject to  
86 tax under this chapter. The basis for imposition of any  
87 discretionary surtax shall be set forth in s. 212.054. Fuels  
88 used exclusively in intrastate commerce do not qualify for the  
89 proration of tax.

90 3. The transmission or wheeling of electricity.

91 4. Dyed diesel fuel placed into the storage tank of a  
92 vessel used exclusively for the commercial fishing and  
93 aquacultural purposes listed in s. 206.41(4)(c)3.

94 Section 4. This act shall take effect July 1, 2013.

95  
96  
97 ===== T I T L E A M E N D M E N T =====

98 And the title is amended as follows:

99 Delete everything before the enacting clause



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100 and insert:

101                   A bill to be entitled  
102           An act relating to the tax on sales, use, and other  
103           transactions; amending s. 212.05, F.S.; providing an  
104           exception to sales tax for dyed diesel fuel used in  
105           vessels for commercial fishing and aquacultural  
106           purposes; amending s. 212.0501, F.S.; providing an  
107           exception from sales tax collected by a licensed sales  
108           tax dealer for dyed diesel fuel used in vessels for  
109           commercial fishing and aquacultural purposes; amending  
110           s. 212.08, F.S.; providing a sales tax exemption for  
111           dyed diesel fuel used in vessels for commercial  
112           fishing and aquacultural purposes; providing an  
113           effective date.



The Florida Senate

## Committee Agenda Request

**To:** Senator Nancy Detert, Chair  
Committee on Commerce and Tourism

**Subject:** Committee Agenda Request

**Date:** February 26, 2013

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I respectfully request that **Senate Bill # 960**, relating to Tax on Sales, Use, and other Transactions, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in blue ink that reads "Aaron Bean".

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Senator Aaron Bean  
Florida Senate, District 4

**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 592

INTRODUCER: Commerce and Tourism Committee and Senator Galvano

SUBJECT: Garnishment

DATE: March 19, 2013                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	<b>Favorable</b>
2.	Siples	Hrdlicka	CM	<b>Fav/CS</b>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
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 592 amends s. 77.041, F.S., to extend the time that a creditor has to object to a debtor's claim of exemption from a writ of garnishment. Existing law authorizes a creditor to file an objection with the court within 3 business days after the debtor hand-delivers the exemption claim to the creditor or 8 business days if the debtor mails the exemption claim. The bill extends these periods to 8 business days after hand-delivery and 14 business days after mailing of an exemption claim.

The bill also modifies the statutory form used for claiming an exemption from garnishment under s. 77.041(1), F.S. The form will include a requirement for certification under oath and penalty of perjury that the debtor delivered the form on the date stated and that the statements made in the claim of exemption are true to the best of the debtor's knowledge and belief. The bill allows a debtor to deliver a form claiming an exemption from garnishment and requesting a hearing to attorneys for the creditor and garnishees. Existing law provides for the forms to be delivered only to the creditor and garnishees.

The bill substantially amends s. 77.041, F.S., and repeals s. 222.12, F.S., which provides procedures for claims of exemptions for garnishment.

## II. Present Situation:

Garnishment is a “judicial proceeding in which a creditor (or potential creditor) asks the court to order a third party who is indebted to or is bailee<sup>1</sup> for the debtor to turn over to the creditor any of the debtor’s property (such as wages or bank accounts) held by that third party.”<sup>2</sup>

Garnishment is a statutory remedy prescribed by chs. 77 and 222, F.S. In general, a creditor (plaintiff) initiates a garnishment action as a means of either prejudgment seizure<sup>3</sup> or post-judgment collection.<sup>4</sup> A creditor may obtain a continuing writ of garnishment against the debtor’s salary or wages to periodically pay a portion of the debtor’s (defendant’s) wages until judgment is satisfied or until otherwise provided by the court order.<sup>5</sup> Certain property of a debtor is exempt from creditor claims, with conditions. Such exemptions include, but are not limited to:

- Homestead real property;<sup>6</sup>
- Personal property up to the value of \$1,000<sup>7</sup> or \$4,000;<sup>8</sup>
- Head of family disposable earnings less than or equal to \$750 per week;<sup>9</sup>
- Firefighters’ pensions;<sup>10</sup>
- Medical savings account;<sup>11</sup>
- Motor vehicles up to the value of \$1,000;<sup>12</sup>
- Retirement or pension benefits;<sup>13</sup> and
- Veterans’ benefits.<sup>14</sup>

When a writ of garnishment is ordered, a copy of the writ, the motion for the writ, and if the debtor is an individual, a notice explaining that certain assets may be exempt, are sent to the debtor in the action.<sup>15</sup> The notice, prescribed in s. 77.041(1), F.S., lists common exemptions to garnishment that the debtor may elect, and also contains a request for a hearing and a signature line for the debtor. Although s. 222.12, F.S., requires a claim of exemption to be filed under oath, the statutory form prescribed under s. 77.041(1), F.S., contains language that would not effectuate a sworn statement.

<sup>1</sup> A bailee is a person who receives personal property from another, and has possession of but not title to the property. BLACK’S LAW DICTIONARY (9th ed. 2009).

<sup>2</sup> BLACK’S LAW DICTIONARY (9th ed. 2009).

<sup>3</sup> Section 77.031, F.S. A prejudgment writ of garnishment is a civil remedy available to a party to secure the anticipated money judgment the party ultimately expects to recover. *Garel and Jacobs, P.A. v. Wick*, 683 So.2d 184, 186 (Fla. 3d DCA 1996).

<sup>4</sup> Section 77.03, F.S.

<sup>5</sup> Section 77.0305, F.S.

<sup>6</sup> FLA. CONST. art. X, s. 4.

<sup>7</sup> *Id.*

<sup>8</sup> Section 222.25(4), F.S.

<sup>9</sup> Section 222.11, F.S. Disposable earnings are the part of the earnings of a head of family remaining after the deduction from those earnings of any amounts to required by law to be withheld.

<sup>10</sup> Section 175.241, F.S.

<sup>11</sup> Section 222.22(2), F.S.

<sup>12</sup> Section 222.25(1), F.S.

<sup>13</sup> Section 222.21, F.S.

<sup>14</sup> Section 744.626, F.S.

<sup>15</sup> Section 77.041, F.S.

The debtor must file any claim for exemption and request for hearing with the clerk of court within 20 days after receipt of the notice. If the debtor fails to timely claim an exemption, the creditor may obtain a default judgment and is entitled to the garnished property.<sup>16</sup> If a claim of exemption is timely filed by the debtor, the creditor has 3 business days to file an objection to the exemption if the form is hand delivered and 8 business days if the form is mailed.<sup>17</sup> If the creditor fails to timely respond to the claim of exemption, the clerk must automatically dissolve the writ of garnishment.<sup>18</sup> However, if the debtor files a claim of exemption, and the creditor timely files an objection, a hearing will be held as soon as practicable to determine the validity of the exemptions claimed.<sup>19</sup>

Section 222.12, F.S., requires a person who claims an exemption as the head of a family to make such allegation in an affidavit for discharge of the garnishment before the officer who issued the writ of garnishment or a notary public. After notice of the affidavit is made to the party or his or her attorney who sued for the writ of garnishment, that creditor's objection to the claim must be filed within 2 business days and will be tried before the court having jurisdiction. If no objection to the claim is filed, the writ of garnishment will be discharged.

Although the procedure for claims of exemptions for garnishment appear to be in conflict, courts have interpreted the procedure for the claims of exemptions for garnishment in s. 77.041(3), F.S., to supplement rather than replace s. 222.12, F.S.<sup>20</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 77.041, F.S., to extend the time that a creditor has to object to a debtor's claim of exemption from a writ of garnishment. Existing law authorizes a creditor to file an objection with the court within 3 business days after the debtor hand-delivers the exemption claim to creditor. The period is 8 business days if the debtor mails the exemption claim. The bill extends these periods to 8 business days after hand-delivery and 14 business days after mailing of an exemption claim.

The bill also modifies the statutory form used for claiming an exemption from garnishment under s. 77.041(1), F.S. A debtor is required to certify under oath and penalty of perjury that the debtor delivered the form on the date stated and that the statements made in the claim of exemption are true to the best of the debtor's knowledge and belief.

The bill allows a debtor to deliver the form to attorneys for the creditor and any garnishee. Current law provides for the forms to be delivered only to the creditor and garnishees.

**Section 2** repeals s. 222.12, F.S., which requires a person who claims that garnished earnings are exempt because that person is the head of a family to make this allegation in an affidavit for discharge of the garnishment before the officer who issued the writ of garnishment or a notary

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<sup>16</sup> Section 77.081, F.S.

<sup>17</sup> Section 77.041(3), F.S. But see s. 222.12, F.S., which predates the enactment of s. 77.041, F.S., and provides that the creditor's objection must be filed within 2 business days.

<sup>18</sup> Id.

<sup>19</sup> Id.

<sup>20</sup> *Cadle Co. v. Pegasus Ranch, Inc.*, 920 So.2d 1276, 1279 (Fla. 4th DCA 2006).

public. Under s. 222.12, F.S., after notice of the affidavit is made to the party or his or her attorney who sued for the writ of garnishment, that creditor's objection to the claim must be filed within 2 business days.

**Section 3** 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:

According to the Office of the State Court Administrator's 2013 Judicial Impact Statement, CS/SB 592 may dissuade debtors having no valid claim of exemption from requesting hearings in garnishment cases. Therefore, the bill may reduce expenditures related to these hearings.<sup>21</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>21</sup> Office of State Courts Administrator, *2013 Judicial Impact Statement* (March 1, 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.)

**CS by Commerce and Tourism on March 18, 2013:**

The committee substitute does the following:

- Provides technical changes that clarify that notice may be provided to the plaintiff's attorney or the garnishee's attorney.
- Provides technical changes indicating that the claim of exemption must be sworn, conforming to other provisions in the bill.
- Closes parenthetical statement.

- B. **Amendments:**

None.

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

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113630

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
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The Committee on Commerce and Tourism (Bean) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 54 - 142  
and insert:

OR THE PLAINTIFF'S ATTORNEY AND THE GARNISHEE OR THE GARNISHEE'S ATTORNEY AT THE ADDRESSES LISTED ON THE WRIT OF GARNISHMENT. NOTE THAT THE FORM REQUIRES YOU TO COMPLETE A CERTIFICATION THAT YOU MAILED OR HAND DELIVERED COPIES TO THE PLAINTIFF OR THE PLAINTIFF'S ATTORNEY AND THE GARNISHEE OR THE GARNISHEE'S ATTORNEY.





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- 42 I claim exemptions from garnishment under the following  
43 categories as checked:
- .... 1. Head of family wages. (Check either ~~You must check~~ a. or  
44 b. below, if applicable.)
    - .... a. I provide more than one-half of the support for a child  
45 or other dependent and have net earnings of \$750 or less  
per week.
    - .... b. I provide more than one-half of the support for a child  
46 or other dependent, have net earnings of more than \$750 per  
week, but have not agreed in writing to have my wages  
garnished.
  - .... 2. Social Security benefits.
  - 47 .... 3. Supplemental Security Income benefits.
  - 48 .... 4. Public assistance (welfare).
  - 49 .... 5. Workers' Compensation.
  - 50 .... 6. Reemployment assistance or unemployment compensation.
  - 51 .... 7. Veterans' benefits.
  - 52 .... 8. Retirement or profit-sharing benefits or pension money.
  - 53 .... 9. Life insurance benefits or cash surrender value of a



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life insurance policy or proceeds of annuity contract.

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.... 10. Disability income benefits.

.... 11. Prepaid College Trust Fund or Medical Savings Account.

.... 12. Other exemptions as provided by law.

.....(explain)

I request a hearing to decide the validity of my claim. Notice of the hearing should be given to me at:

Address: .....  
Telephone number:.....

I CERTIFY UNDER OATH AND PENALTY OF PERJURY that a copy of this CLAIM OF EXEMPTION AND REQUEST FOR HEARING has been furnished by (circle one) United States mail or hand delivery on ...(insert date)..., to: ...(insert names and addresses of Plaintiff or Plaintiff's attorney and of Garnishee or Garnishee's attorney to whom this document was furnished)....

I FURTHER CERTIFY UNDER OATH AND PENALTY OF PERJURY that the statements made in this request are true to the best of my knowledge and belief.

.....



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78 Defendant's signature  
79 Date.....

81 STATE OF FLORIDA

82 COUNTY OF

84 Sworn and subscribed to before me this ..... day of ... (month  
85 and year)..., by ... (name of person making statement)...

86 Notary Public/Deputy Clerk

87 Personally Known .....OR Produced Identification....

88 Type of Identification Produced.....

90 (3) Upon the filing by a defendant of a sworn claim of  
91 exemption and request for hearing, a hearing will be held as  
92 soon as is practicable to determine the validity of the claimed  
93 exemptions. If the plaintiff or the plaintiff's attorney does  
94 not file a sworn written statement that answers ~~contests~~ the  
95 defendant's claim of exemption within 8 ~~3~~ business days after  
96 hand delivering the claim and request or, alternatively, 14 ~~8~~  
97 business days~~7~~ if the claim and request were served by mail, no  
98 hearing is required and the clerk must automatically dissolve  
99 the writ and notify the parties of the dissolution by mail.

101 ===== T I T L E A M E N D M E N T =====

102 And the title is amended as follows:

103 Delete lines 6 - 12

104 and insert:

105 notice of a garnishment exemption and request for  
106 hearing to the plaintiff's or the garnishee's



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107 attorney; extending the time allowed for the plaintiff  
108 or the plaintiff's attorney to respond to the  
109 defendant's claim of exemption and request for  
110 hearing; providing response procedures of the clerk of  
111 court and the plaintiff's attorney when the  
112 plaintiff's attorney is served with a notice of  
113 garnishment exemption and request for hearing;  
114 requiring the defendant to certify under oath and  
115 penalty of perjury that he or she provided notice of  
116 the garnishment exemption claim and request for  
117 hearing to the plaintiff, the garnishee, or their  
118 respective attorneys in order to obtain a hearing;



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on Education, *Chair*  
Agriculture  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Education  
Gaming  
Health Policy  
Regulated Industries  
Rules

### SENATOR BILL GALVANO

26th District

March 6, 2013

Senator Nancy Detert  
416 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Madam Chair Detert:

I respectfully request that SB 592, Garnishment, be scheduled for a hearing in the Committee on Commerce and Tourism at your earliest convenience. SB 592, was received favorable in the Committee on Judiciary.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in blue ink that reads "Bill".

Bill Galvano

cc: Jennifer Hrdlicka  
Patty Blackburn

#### REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations Subcommittee on Education, *Chair*  
Agriculture  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Education  
Gaming  
Health Policy  
Regulated Industries  
Rules

### SENATOR BILL GALVANO

26th District

March 15, 2013

Senator Nancy Detert  
416 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Madam Chair Detert:

Please accept this email as notification that my Legislative Aide, Kathy Galea will be presenting SB 592, Garnishment, scheduled for a hearing in the Committee on Commerce and Tourism on March 18, 2013.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in blue ink that reads "Bill".

Bill Galvano

cc: Jennifer Hrdlicka  
Patty Blackburn

#### REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**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: CS/CS/SB 658

INTRODUCER: Commerce and Tourism Committee, Regulated Industries Committee, Senator Simpson and others

SUBJECT: Wine

DATE: March 19, 2013      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Malcolm</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____
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/CS/SB 658 permits the sale of wine in reusable containers of 5.16 gallons. Current law prohibits the sale of wine in individual containers holding more than 1 gallon. The additional allowable container size would allow retail vendors to use wine kegs to dispense glasses of wine through a tap instead of through individual bottles of wine. The bill also provides that wine sold for off-premises consumption must be in the original, unopened container, unless otherwise permitted by law.

This bill amends s. 564.05, F.S.

**II. Present Situation:**

In Florida, the manufacture, distribution, and sale of wine, beer, and liquor is regulated by the Beverage Law.<sup>1</sup> The Division of Alcoholic Beverage and Tobacco (division) within the

<sup>1</sup> The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.; see s. 561.01(6), F.S..

Department of Business and Professional Regulation is authorized to administer and enforce the Beverage Law.<sup>2</sup>

### **Three-Tier System**

In many states, including Florida, the regulation of alcoholic beverages has traditionally been through what is termed the “three-tier” system.<sup>3</sup> The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated.<sup>4</sup> Each license classification has clearly delineated functions: retailers buy their products from distributors who in turn buy their products from manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. The system is rooted in the perceived evils of the “tied house” in which a retail vendor, such as a bar, is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.<sup>5</sup>

In Florida, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail. Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.<sup>6</sup>

There are some exceptions to this regulatory system. Exceptions include allowing brew pubs to manufacture malt beverages and sell them to consumers,<sup>7</sup> allowing individuals to bring small quantities of alcohol back from out-of-state trips,<sup>8</sup> and allowing in-state wineries to manufacture and sell directly to consumers.<sup>9</sup>

### **Limitation on the Size of Individual Wine Containers**

Section 564.05, F.S., prohibits the sale of wine in individual containers holding more than 1 gallon of wine. However, distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size. Any person who violates the prohibition in s. 564.05, F.S., commits a second degree misdemeanor.<sup>10</sup>

### **Wine Kegs**

Wine kegs are stainless steel barrels that contain the equivalent of 26 bottles, which is equal to approximately 5.2 gallons. They are filled with wine and an inert gas to prevent the spoilage of the wine. Wine kegs are also reusable.<sup>11</sup> Some states, including California, Georgia, Texas, and

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<sup>2</sup> Section 561.02, F.S.

<sup>3</sup> Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board* (June 2004), available at [http://www.lanepowell.com/wp-content/uploads/2009/04/pricee\\_001.pdf](http://www.lanepowell.com/wp-content/uploads/2009/04/pricee_001.pdf) (Last visited March 12, 2013); see s. 561.14, F.S.

<sup>4</sup> See s. 561.14, F.S.

<sup>5</sup> Price, *supra* note 3.

<sup>6</sup> Section 561.14(3), F.S. Vendors may also buy from vendors in a pool buying group if the initial purchase was by a single purchase by a pool buying agent.

<sup>7</sup> See s. 561.221(2), F.S.

<sup>8</sup> See s. 562.16, F.S.

<sup>9</sup> See s. 561.221(1), F.S.

<sup>10</sup> Section 775.082, F.S., provides that the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides that the penalty for a misdemeanor of the second degree is a fine not to exceed \$500.

<sup>11</sup> Worobiec, MaryAnn, “Tapped In: Wine in Kegs,” *Wine Spectator* (Oct. 21, 2011), available at <http://www.winespectator.com/webfeature/show/id/45801> (last visited on February 28, 2013). According to proponents of the bill, 36 states permit the sale of wine kegs.

New York, permit retail vendors to sell wine from wine kegs. In Florida, retail vendors may not sell wine from wine kegs because of the 1 gallon limit on the sale of wine in s. 564.05, F.S.

### III. Effect of Proposed Changes:

**Section 1** amends s. 564.05, F.S., to permit the sale of wine in reusable containers of 5.16 gallons. The bill also provides that wine sold for off-premises consumption must be in the original, unopened container, unless otherwise permitted by law (such as, when wine is purchased at a restaurant with a meal and the bottle of remaining wine is taken home).

**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:

None.

B. Private Sector Impact:

Wine kegs may be more economical for restaurants to use in the sale of wine-by-the-glass. When a bottle of wine is opened, the contents are exposed to oxygen and the process of oxidation begins, which may spoil the wine. A vendor may risk losing money when the vendor opens a bottle for sale by-the-glass and then is unable to sell all of the wine in the bottle. Additionally, the transportation costs for wine kegs may be cheaper because they weigh less than the equivalent bottles. Wine kegs are also reusable.

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/CS by Commerce and Tourism Committee on March 18, 2013:**

The committee substitute amends s. 564.05, F.S., to permit the sale of wine in reusable containers of 5.16 gallons. It also provides that wine sold for off-premises consumption must be in the original, unopened container, unless otherwise permitted by law.

**CS by Regulated Industries Committee on March 7, 2013:**

The committee substitute amends s. 564.05, F.S., to permit the sale of wine in reusable containers of 5.16 gallons. The CS does not amend this section to increase the size of individual containers of wine that may be sold from one gallon to six gallons.

- B. **Amendments:**

None.



707288

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2013	.	
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The Committee on Commerce and Tourism (Simpson) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 564.05, Florida Statutes, is amended to  
read:

564.05 Limitation of size of individual wine containers;  
penalty.—It is unlawful for any person to sell within this state  
any wine in individual containers holding more than 1 gallon of  
such wine unless such wine is in reusable containers holding  
5.16 gallons. However, ~~Provided,~~ that qualified distributors and  
manufacturers may sell to other qualified distributors or



707288

13 manufacturers such wine in any size containers. Except as  
14 provided in s. 564.09, all wine sold or offered for sale by  
15 licensed vendors to be consumed off the premises shall be in the  
16 unopened original container. Any person convicted of a violation  
17 of this section commits ~~shall be guilty of~~ a misdemeanor of the  
18 second degree, punishable as provided in s. 775.082 or s.  
19 775.083.

20 Section 2. This act shall take effect July 1, 2013.

21  
22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete everything before the enacting clause  
25 and insert:

26 A bill to be entitled  
27 An act relating to wine; amending s. 564.05, F.S.;  
28 providing an exception to the maximum allowable  
29 capacity for individual containers of wine sold in  
30 this state; providing that, except as provided in s.  
31 564.09, F.S., all wine containers sold or offered for  
32 sale at retail for consumption off the premises shall  
33 be in the original container; providing an effective  
34 date.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR WILTON SIMPSON**

18th District

**COMMITTEES:**

Community Affairs, *Chair*  
Appropriations Subcommittee on General Government  
Appropriations Subcommittee on Transportation, Tourism, and Economic Development  
Commerce and Tourism  
Communications, Energy, and Public Utilities  
Environmental Preservation and Conservation

**JOINT COMMITTEE:**

Joint Legislative Auditing Committee

March 7, 2013

Senator Nancy Detert, Chairwoman  
Senate Committee on Commerce and Tourism  
310 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Senator Detert,

Please place Senate Bill 658, relating to wine canisters, on the next Commerce and Tourism Committee meeting agenda. The bill passed its first committee unanimously.

Please contact my office with any questions.

A handwritten signature in black ink, appearing to be "W. Simpson".

Senator Wilton Simpson, 18<sup>th</sup> District

REPLY TO:

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore