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 Fiscal Policy

BILL: CS/CS/SB 118

INTRODUCER: Fiscal Policy Committee (Recommended by Appropriations Subcommittee on Education); Finance and Tax Committee; and Senators Hays and Gaetz

SUBJECT: Voluntary Contributions for Public Education Facilities

DATE: April 21, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Babin	Diez-Arguelles	FT	**Fav/CS**
2.	Sikes	Elwell	AED	**Recommend: Fav/CS**
3.	Hrdlicka	Hrdlicka	FP	**Fav/CS**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 118 sets up a process for businesses to solicit and collect voluntary contributions for the construction and maintenance of public education facilities. Participating businesses are required to remit the contributions to the Department of Revenue (DOR) for deposit into the Public Education Capital Outlay and Debt Service (PECO) Trust Fund.

The bill authorizes the Department of Revenue to audit voluntary contribution remittances by a participating business if the department is auditing the business for taxes. The participating business is given 90 days to correct any deficiencies prior to the imposition of penalty and interest.

The bill authorizes participating businesses to retain 2.5 percent of the first $1,200 in voluntary contributions remitted on each return to the DOR, up to a maximum of $30, as compensation for maintaining records, filing returns, and properly accounting for and remitting contributions.

The Revenue Estimating Conference estimates that the bill will increase PECO Trust Fund receipts by an indeterminate amount. For Fiscal Year 2015-2016, the bill appropriates $59,421 in recurring funds and $136,065 in nonrecurring funds from the General Revenue Fund to the DOR.

II. Present Situation:

Voluntary Contributions for Public Education Facilities

Currently, the state does not provide a mechanism for a business to collect and remit voluntary contributions for public education facilities.

Tax Audits, Interest, and Collection Allowances for Dealers

The Department of Revenue (DOR) is charged with auditing tax dealers and conducting other enforcement activities related to the taxes that it administers.[1]

When a taxpayer fails to remit taxes due, the deficiency is typically subject to interest and penalty.[2] Interest varies by tax, but a common interest rate is the prime rate plus 4 percent, which is required to be periodically calculated by the executive director of the DOR under s. 213.235, F.S. The penalty is often 10 percent per month, up to a maximum of 50 percent.[3] Deficiencies remaining after 90 days can also be subject to a 10 percent administrative collection processing fee under s. 213.24, F.S.

To compensate dealers for the burden of complying with collection and remittance duties, dealers are permitted to retain a portion of certain taxes that they collect. For instance, s. 212.12(1)(a)1., F.S., authorizes sales tax dealers to retain 2.5 percent of the first $1,200 of tax due.

III. Effect of Proposed Changes:

Section 1 creates s. 215.165, F.S., authorizing a business to solicit and collect voluntary contributions from its customers for the construction and maintenance of public education facilities. In order to participate, a business must register as a participating business with the DOR. To register, the business is required to provide certain identifying information, including the business name, physical and mailing addresses, telephone number, e-mail address, and federal employer identification number. Registration for the voluntary contributions program is separate from registration for tax purposes.

Once registered, a participating business may solicit voluntary contributions by any means, including point of sale solicitation and through monthly invoices or billing statements.

A participating business that collects voluntary contributions must file a return and remit the contributions to the DOR by the 20th day of the following calendar month. If the 20th day is a Saturday, Sunday, or legal holiday, the return and contributions are due on the next business day. Returns must include the business's identifying information, as well as the amount of voluntary contributions collected, the amount being remitted, and any applicable adjustments. If no contributions are collected, no return is required. Returns may be filed and contributions may be

[1] Section 20.21(2)(c) and (d), F.S.
[2] *See e.g.* s. 212.12, F.S. (imposing interest and various penalties related to sales tax deficiencies).
[3] Section 212.12, F.S.

paid by mail or electronically. If a participating business makes an error in a remittance, it may correct the error on a future filing.

If the DOR receives a return from a business that has not registered as a participating business, the DOR must register the business as a participating business with the information included with the return.

The funds become state funds at the time of collection and not receipts of a participating business. The DOR must deposit the contributions into the PECO Trust Fund.

The DOR may adopt rules establishing forms and procedures for remitting voluntary contributions. New forms may be created or the required information may be included on existing returns.

The bill provides that the DOR may only audit voluntary contributions or undertake enforcement proceedings if the DOR is already auditing the participating business for another area of tax, and for purposes of audit, the only the tax-related provisions that apply to the participating business are the DOR's authority to audit, the DOR's authority to make assessments, and the duty to maintain records provisions of chs. 212 and 213, F.S.

The bill provides that if the DOR finds a deficiency in a participating business's remittance of voluntary contributions, the participating business has 90 days to pay the deficiency, after which the deficiency accrues interest as imposed under s. 213.235, F.S., as well as the penalty imposed under s. 212.12, F.S. However, the administrative collection processing fee imposed by s. 213.24, F.S., does not apply.

The bill authorizes participating businesses to retain 2.5 percent of the first $1,200 in the voluntary contributions remitted on each return to the DOR, up to a maximum of $30 per return, as compensation for maintaining books and records, filing returns, and properly accounting for and remitting voluntary contributions.

Section 2 amends s. 1013.65, F.S., to include voluntary contributions remitted under s. 216.165, F.S., as a source of revenue for the PECO Trust Fund.

Section 3 authorizes the DOR to adopt emergency rules to implement the act.

Section 4 appropriates $59,421 in recurring funds and $136,065 in nonrecurring funds from the General Revenue Fund to the DOR for Fiscal Year 2015-2016 to implement the bill.

Section 5 provides an effective date of January 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties and municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue or reduce the percentage of a state tax shared with counties and municipalities.

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 that the bill will increase PECO Trust Fund receipts by an indeterminate amount.

B. Private Sector Impact:

Participation is voluntary. Businesses that participate will be required to file returns and remit collections to the DOR.

C. Government Sector Impact:

The bill appropriates $59,421 in recurring funds and $136,065 in nonrecurring funds from the General Revenue Fund to the DOR for Fiscal Year 2015-2016. The bill is effective on January 1, 2016.

The DOR reported that for Fiscal Year 2015-2016 it would need $53,940 in nonrecurring funds to implement changes to the SUNTAX system; $55,000 in nonrecurring funds for public announcements for the program; and, related to return and revenue processing, $27,125 in nonrecurring funds to contract with a vendor to develop a new website for the program for filing and paying electronically and $29,711 in recurring funds to pay processing and transaction costs (the annual recurring cost is $59,421).[4]

VI. Technical Deficiencies:

None.

[4] DOR, *2015 Legislative Bill Analysis: CS/SB 118* (April 16, 2015).

VII. Related Issues:

The DOR may adopt rules establishing forms and procedures for remitting voluntary contributions.

VIII. Statutes Affected:

This bill creates section 215.165 of the Florida Statutes.

This bill substantially amends section 1013.65 of the Florida Statutes.

IX. 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 Fiscal Policy on April 20, 2015:
As recommended by the Appropriations Subcommittee on Education, the committee substitute:

- Authorizes the Department of Revenue (DOR) to conduct audits of voluntary contributions if the DOR is already auditing the participating business.
- Imposes penalty and interest on deficiencies found by the DOR if unpaid after 90 days.
- Authorizes participating businesses to retain a collection allowance of 2.5 percent of voluntary contributions remitted to the DOR.

The CS also:

- Clarifies that voluntary contributions become state funds at the moment of collection by a participating business and are not receipts of that business.
- Restricts the administrative fee for a participating business retain to 2.5 percent *of the first $1,200* in voluntary contributions remitted on *each return* to the DOR, up to a maximum of $30 per return.
- Provides an appropriation to the DOR to implement the bill.

CS by Finance and Tax on March 16, 2015:
The CS adds the following administrative provisions:

- A participating business will receive a certificate of registration specific to participation in the voluntary contributions program.
- A participating business need not file a return for a period when no contributions were collected.
- A participating business may correct an error with a prior remittance by adjusting a future return.
- If the DOR receives a return from an unregistered business, the DOR must register the business using the information on the return.

In addition, the DOR's rulemaking authority is made discretionary and the effective date of the bill is changed to January 1, 2016.

B. Amendments:

None.

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