

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 21, 1998 Revised: _____

Subject: Sales Tax (RAB)

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Keating</u>	<u>Smith</u>	<u>WM</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

CS/SB 1696 provides specific statutory authority for Department of Revenue rules or parts thereof that have been identified by the department as subject to repeal under s. 120.536, F.S. These rules all relate to the sales and use tax.

This bill substantially amends section 212.08 of the Florida Statutes:

II. Present Situation:

During the 1996 Legislative Session a comprehensive rewrite of the Florida Administrative Procedures Act was adopted as CS/SBs 2290 and 2288. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provision for periodic review of rules by agencies with rulemaking authority.

In the past, a number of court decisions held that a rule did not exceed the legislative grant of rulemaking authority if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

Section 120.536, F.S., effectively overturned this line of cases and imposed a much stricter standard for rulemaking authority. Under the new APA, existing rules and proposed rules must **implement, interpret, or make specific** the particular powers and duties granted by the enabling statute. It is important to note that the revised APA is not intended to eliminate administrative rules or even to discourage rulemaking, but to ensure that administrative rules are no broader than the enabling statute. A grant of rulemaking authority by the Legislature is necessary but not

enough by itself to allow an agency to adopt a rule. Likewise, agencies need more than a statement of general legislative intent for implementing a rule. Rules must be based on specific grants of powers and not address subjects on which the Legislature was silent.

In order to temporarily shield a rule or portion of a rule from challenge under the new provisions, agencies were to report rules which they believed did not meet the new criteria by October 1, 1997.

Section 120.536(2) also lays out the second step in the process, that of legislative review. The subsection provides:

The Legislature shall, at the 1998 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted. By January 1, 1999, each agency shall initiate proceedings pursuant to s. 120.54 to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist.

Thus, during the 1998 Legislative Session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions thereof which the agency deems necessary but which currently exceed the agencies' rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

According to the Joint Administrative Procedures Committee (JAPC), there are 3500-3600 grants of rulemaking authority contained in the Florida Statutes falling roughly into two categories: specific grants and general grants. Most of them are specific grants of authority, that is, the grant of authority is found coupled in a sentence with a specific power or duty of the agency. General grants of rulemaking authority authorize rulemaking in the context of the agency's mission or as it pertains to the stated purpose of the enabling legislation. Most agencies have a general grant of rulemaking authority and numerous specific grants of rulemaking authority. In most cases, it appears that existing rules exceed statutory authority because a "specific law to be implemented" is missing from the statute, not a legislative grant of rulemaking authority.

In response to the requirements of s. 120.536, F.S., the Department of Revenue identified 78 rules or portions of rules which they found exceeded their rulemaking authority and for which they recommended that the Legislature grant such authority. This bill addresses a number of these issues. The current situation and the effect of the changes proposed by this bill are detailed in the following section.

III. Effect of Proposed Changes:

Rule 12A-1.087(9) and (10): Sale of Certain Agricultural Items and Fire Prevention Equipment

Present Situation:

The rule includes fire prevention and suppression work as an exempt use of farm equipment purchased at the 3 percent rate. The rule states that if equipment purchased at the 3 percent rate is used for non-exempt purposes at any time during the first 6 months the exemption is disallowed. The Department of Revenue has identified parts of these rules as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, equipment used for fire prevention and suppression work will no longer qualify for the 3 percent sales tax rate and actual use after purchase would not be relevant to determination of qualification for the 3 percent rate.

Effect of Proposed Changes:

The bill amends s. 212.08(3), F.S., applying the 3 percent sales tax rate to the sale of self-propelled or power-drawn farm equipment used exclusively by a farmer on a farm for fire prevention and suppression work.

Rule 12A-1.019: Water to Which Carbonation or Minerals Have Been Added

Present Situation:

The rule specifies that water to which carbonation or minerals have been added is taxable and water that naturally contains minerals or carbonation is exempt from the sale tax. The Department of Revenue has identified this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, water to which carbonation or minerals have been added will remain taxable. Water that is held out to be mineral water or carbonated water at the time of sale even if the minerals or carbonation are natural, would also be taxable.

Effect of Proposed Changes:

The bill amends s. 212.08(4)(a)1., F.S., providing that water when delivered to the purchaser through pipes or conduits or delivered for irrigation purposes is exempt from the sales tax. Also, the sale of drinking water in bottles, cans, or other containers, including water that contains minerals or carbonation in its natural state or water to which minerals have been added at a water treatment facility regulated by the Department of Environmental Protection, is exempt. The bill provides that the exemption does not apply to the sale of drinking water in bottles, cans, or other containers if carbonation, minerals, or flavorings, except those added at a water treatment facility, have been added.

Rules 12A-1.001(5)(a) and (b) and (15), 12A-1.048(7) and 12A-1.087(7): Fertilizers, Insecticides, Herbicides, and Fungicides on Crops and Groves, the Sale of Food Plants and Certain Agricultural Supplies.

Present Situation:

Rule 12A-1.001(5)(a) and (b), F.A.C., provides a sales tax exemption for disinfectants, fertilizers, insecticides, pesticides and fungicides used for application on crops and groves, purchases for home gardens and for dairy barns, poultry and livestock. The law only provides an exemption for such purchases for use on crops and groves. The Department of Revenue has identified part of this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, disinfectants, pesticides, and weed killers used in commercial nurseries and home vegetable gardens and used in dairy barns or poultry farms and used directly on livestock for the purpose of protecting livestock would become taxable.

Rule 12A-1.001(15), F.A.C., provides a sales tax exemption for flower seeds sold to commercial nurserymen. The Department of Revenue has identified this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, the purchase of flower seeds sold to commercial nurserymen will become taxable

Rule 12A-1.048(7), F.A.C., provides an exemption for seeds, cuttings, and plants used to produce food for human consumption. The Department of Revenue has identified this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, the sale of seeds, seedlings, cuttings and food plants would become taxable.

Rule 12A-1.087(7), F.A.C., extends the sales tax exemption for items in agricultural use to certain items not mentioned in law such as cellophane wrappers, glue for tin and glass (apiarists), mailing cases for honey, shipping cases, window cartons, and baling wire and twine used for baling hay. The Department of Revenue has identified part of this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, cellophane wrappers, glue for tin and glass (apiarists), mailing cases for honey, shipping cases, window cartons, and baling wire and twine used for baling hay will become taxable.

Effect of Proposed Changes:

The bill amends s. 212.08(5)(a), F.S., providing a sales tax exemption for disinfectants, pesticides, and weed killers used for application on crops or groves, including commercial nurseries and home vegetable gardens, used in dairy barns or poultry farms for the purpose of protecting poultry or livestock, or used directly on poultry or livestock. Also exempt are cellophane

wrappers, glue for tin and glass (apiarists), mailing cases for honey, shipping cases, window cartons, and baling wire and twine used for baling hay. The bill also provides an exemption for seeds, seedlings, cuttings, including flower seeds and plants used to produce food for human consumption.

Rule 12A-1.029(4): Paint Color Cards

Present Situation:

The rule exempts from the sales tax, paint color cards, direction sheets, instruction books purchased by a manufacturer, producer, wholesaler or retail merchant and supplied with the product at no separate charge. The Department of Revenue has identified this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, paint color cards, direction sheets, instruction books purchased by a manufacturer, producer, wholesaler or retail merchant and supplied with the product at no separate charge would become taxable to the manufacturer, producer, wholesaler or retailer.

Effect of Proposed Changes:

The bill amends s. 212.08(5), F.S., by adding paragraph (k), which provides a sales tax exemption for paint color cards and other color samples available at no charge.

Rule 12A-1.094 (3) and (4): Public Works Contracts

Present Situation:

Law provides that exempt sales to governments do not include sales of tangible personal property to contractors employed either directly or as agents of the government when such tangible personal property becomes part of public works owned by the government. The rule provides direction and conditions for determining when the property should be considered purchased by the government and when it should be considered purchased by the contractor and therefor taxable. The Department of Revenue has identified these rules as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, tangible personal property purchased by any contractor would be taxable no matter what the relationship to the government or conditions of the sale.

Effect of Proposed Changes:

The bill amends s. 212.08(6), F.S., providing that the sales tax exemption for sales made to governmental entities does not include sales of tangible personal property made to contractors

employed either directly or as agents of any such governmental entity when such property goes into or becomes a part of public works owned by such governmental entity.

Rule 12A-15.013: Partial Exemption for Vessels, Railroads, and Motor Vehicles used in Interstate Commerce

Present Situation:

The rule provides that the discretionary sales surtax on vessels, railroads and motor vehicles in interstate commerce is prorated by intra county mileage over total mileage. The Department of Revenue has identified this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, proration of discretionary sales surtax would not be allowed.

Effect of Proposed Changes:

The bill amends s. 212.08(9), F.S., providing that the proration formula for railroads and motor vehicles is to be determined based on Florida mileage over total mileage. The ratio is to be applied each month to total Florida purchases which are delivered or sold in a county imposing the surtax.

Rule 12A-1.007(10)(c): Flyable Aircraft Partial Sales Tax Exemption

Present Situation:

The rule allows aircraft to be brought back into the state for repairs in the first 6 months after purchase without incurring a tax liability as long as the aircraft is removed from the state within 20 days of completion of repairs. The Department of Revenue has identified part of this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, aircraft brought back into the state for repairs within 6 months from the date of sale would become subject to sales tax on the purchase price of the aircraft.

Effect of Proposed Changes:

The bill amends s. 212.08(11)(d), F.S., providing that the owner of an aircraft which is entitled to the flyable aircraft exemption may permit the aircraft to be returned to Florida for repairs within 6 months after the date of sale, so long as the aircraft is removed from Florida within 20 days after the completion of the repairs and such removal can be proven by invoices for fuel, tie-down, or hangar charges issued by out-of-state vendors or suppliers.

The bill will take effect July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution requires a two-thirds vote of the membership of each house of the Legislature to enact general laws if the anticipated effect is to reduce revenue raising authority of counties or municipalities, as such authority existed on February 1, 1989. Since the revenue raising authority addressed in this bill results from rules to be repealed in 1999, the bill does not affect local revenue raising authority as it existed in 1989 and therefore does not qualify as a mandate under section 18.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill provides statutory authority for a number of the rules identified by the Department of Revenue as exceeding their rulemaking authority permitted by s. 120.536, F.S. If these rules are allowed to be repealed, as current law requires, there would be a significant increase in sales tax revenue beginning in the 1999-00 fiscal year. This bill provides statutory authority for these rules and would have the effect of eliminating any revenue increases caused by the rule repeal process. The following table shows estimates of the fiscal impact of providing statutory authorization for these rules. While these estimates show a revenue decrease, passage of the bill will not affect the budget process. The revenue estimates being used for the appropriations bill have not recognized any revenue impact from these issues.

Issue/Fund	General Revenue		Trust		Local		Total	
	1st Year \$	Recurring \$	1st Year \$	Recurring \$	1st Year \$	Recurring \$	1st Year \$	Recurring \$
Sales Tax Exemptions								
1. Fertilizers, insecticides, etc.	0.0	(3.4)	0.0	(*)	0.0	(0.5)	0.0	(3.9)
2. Field & garden seeds	0.0	(0.4)	0.0	(*)	0.0	(*)	0.0	(0.4)
3. Flyable aircraft	0.0	(*)	0.0	(*)	0.0	(*)	0.0	(*)
4. Water; carbonation or minerals added	0.0	(**)	0.0	(**)	0.0	(**)	0.0	(**)
5. Paint color cards	0.0	(0.3)	0.0	(*)	0.0	(*)	0.0	(0.3)
6. Sale of food plants	0.0	(0.3)	0.0	(*)	0.0	(*)	0.0	(0.3)
7. Agr. items & fire prev. equip.	0.0	(0.2)	0.0	(*)	0.0	(*)	0.0	(0.2)
8. Public works contracts	<u>0.0</u>	<u>(4.1)</u>	<u>0.0</u>	<u>(*)</u>	<u>0.0</u>	<u>(0.7)</u>	<u>0.0</u>	<u>(4.8)</u>
TOTAL	0.0	(8.7)	0.0	(**)	0.0	(1.2)	0.0	(9.9)

* Insignificant
** Indeterminate

B. Private Sector Impact:

This bill would counteract the effect of the rule repeal process for those issues addressed, resulting in lower taxes and reduced administrative burdens than would have occurred in many industries had the rules been repealed. Industries with revenue impacts include agriculture, public works contractors and purchasers of paint color cards supplied to customers at no separate charge. Public work contractors should experience reduced administrative burdens.

C. Government Sector Impact:

The Department of Revenue should experience reduced sales tax administrative burdens in relation to public works contractors.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
