

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1231 w/CS Local Government Half-cent Sales Tax

SPONSOR(S): Brandenburg

TIED BILLS:

IDEN./SIM. BILLS: Ident. SB 1126

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	<u>9 Y, 0 N</u>	<u>Grayson</u>	<u>Highsmith-Smith</u>
2) <u>Local Government & Veteran's Affairs</u>	<u>13 Y, 0 N w/CS</u>	<u>Grayson</u>	<u>Highsmith-Smith</u>
3) <u>Finance & Tax</u>	<u></u>	<u></u>	<u></u>
4) <u>Commerce & Local Affairs App. (Sub)</u>	<u></u>	<u></u>	<u></u>
5) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill w/ CS creates language in the Half-cent Sales Tax Program to allow the Department of Revenue to adjust distributions when errors are made in the calculation in the same manner as is currently authorized in the Municipal Revenue Sharing Program.

The bill w/ CS applies retroactively to October 1, 2000.

The bill w/ CS does not appear to impact the state budget. The impact to local government budgets will occur in the adjustment of revenue sharing resulting from error corrections.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1231b.lgv.doc

DATE: April 21, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

This bill w/ CS amends the language of the Half-cent Sales Tax Program to include the same provision that is currently in the Municipal Revenue Sharing Program, which in turn allows the Department of Revenue to adjust distributions when errors are made in the calculation.

The bill w/ CS applies retroactively to October 1, 2000.

Local Government Half-cent Sales Tax Program

Created in 1982, the Local Government Half-cent Sales Tax Program (Half-cent Sales Tax Program) generates the largest amount of revenue for local governments among the state-shared revenue sources currently authorized by the Legislature. [s. 212.20(6) and Part VI, ch. 218, F.S.] It distributes net sales tax revenue to counties and municipalities that meet strict eligibility requirements. Allocation formulas serve as the basis for this distribution to each county and its respective municipalities. The Half-cent Sales Tax Program's primary purpose is to provide relief from ad valorem and utility taxes in addition to providing counties and municipalities with revenues for local programs.

Municipal Revenue Sharing Program

Under the Municipal Revenue Sharing Program (MRS Program), s. 218.26, F.S., the Department of Revenue establishes a system to distribute all taxes to local governments collected and received into the revenue sharing trust fund. The Department computes apportionment factors once each fiscal year for use during the fiscal year.

Under the MRS Program, each participating county and municipal government shall receive a proportion of moneys earmarked for distribution within that county (distribution is possible due to the transfer of about 10 percent of net sales tax proceeds into the Local Government Half-cent Sales Tax Clearing Trust Fund).

The portion to be received by a participating local government is computed based on population estimates from the Office of Economic and Demographic Research (EDR) which are done annually and used in the calculation of all local government revenue sharing distributions.

Section 218.62, F.S., sets forth the distribution formula for the Half-cent sales tax proceeds. The proportion for each county is computed by dividing the sum of the unincorporated area population plus two-thirds of the incorporated area population. The proportion for municipalities is computed by dividing the population of that municipality by the sum of the total county population plus two-thirds of the incorporated area population.

Section 186.901, F.S., requires the EDR to annually compile population estimates of local governmental units as of April 1 of each year, utilizing accepted statistical practices. Population is computed as the number of residents, employing the same general guidelines used by the United States Bureau of the Census. These estimates are used in the calculation of all local government revenue-sharing distributions.

Town of South Palm Beach

The Sponsor reports that following the 2000 Census, an erroneous population figure for the Town of South Palm Beach was published. In 2002, a corrected figure was provided to the Department of Revenue, and the department stated that they would incorporate the revised figure in the current fiscal year for the MRS Program, pursuant to s. 218.26(3)(b), F.S. However, the department stated that a similar correction could not be made for the Half-cent Sales Tax Program, as the statutes do not authorize such adjustments.

When asked by the town council of the Town of South Palm Beach to address this issue, the Attorney General issued the following opinion:

Unlike the provisions of section 218.26, Florida Statutes, relating to the Revenue Sharing Trust Fund, which provide for the correction of errors during a fiscal year, there is no statutory authority to allow the adjustment of the apportionment factors for distributions under Part VI, Chapter 218, Florida Statutes, relating to the Local Government Half-cent Sales Tax Clearing Trust Fund, during a fiscal year.¹

Retroactive Application of Statutes

The general rule is that substantive statutes will not operate retrospectively absent clear legislative intent to the contrary, but a procedural or remedial statute is to operate retrospectively. Even when the Legislature does expressly state that a statute is to have retroactive application, the Florida Supreme Court has refused to apply statutes retroactively if the statute impairs vested rights, creates new obligations, or imposes new penalties.

Legislation which has been regarded as remedial in its nature includes statutes which abridge superfluities of former laws, remedying defects therein, whether the previous difficulties were statutory or were part of the common law. The term applies to a statute giving a party a remedy where he or she had none, or a different one, before. Another common use of the term "remedial statute" is to distinguish it from a statute conferring a substantive right. Thus, it may be said that a statute relating to procedure is remedial in nature in that it gives a remedy and tends to abridge some defect or superfluities of the common law.²

This bill is intended to allow for the correction of errors that result in erroneous distributions of the Half-cent Sales Tax proceeds. It appears that this bill is remedial in nature.

C. SECTION DIRECTORY:

Section 1. Creates s. 218.62(4), F.S., to provide that, effective 10/1/00, the apportionment factors shall remain in effect for the fiscal year, except in the case of error.

Section 2. Provides an effective date of upon becoming law; and applies retroactively to October 1, 2000.

¹ AGO 2002-36 (May 20, 2002)

² 48A Fla. Jur.2d Statutes § 11.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments below.

2. Expenditures:

See Fiscal Comments below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

As a result of a census error in 2001, the City of Lantana and the Town of Palm Beach received half-cent sales tax revenues that should have been sent to the Town of South Palm Beach. This bill is intended to correct the distribution of the Half-cent Sales Tax proceeds when errors are made in the calculations, retroactive to 2000. The Department of Revenue is not aware of any other local governments that will be impacted, retroactively, by this provision.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a city or county to expend funds or to take any action requiring the expenditure of funds.

Other than an adjustment to correct a calculation error, the bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

Other than an adjustment to correct a calculation error, this bill does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the Department of Revenue, in recognition of the amended language suggested in this bill and noting that s. 2 of the bill as filed relates only to the county apportionment factors, additional language that provides for correcting an error should be added to create s. 218.62(4), F.S. In addition, it would be necessary for the language to provide for corrections in subsequent fiscal years that allow for the netting of these adjustments against the current proportional moneys available.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

The Local Affairs Subcommittee, at its meeting on April 10, 2003, favorably recommended one amendment that retained the authority found in the bill as introduced and additionally created s. 218.62(4), F.S., to authorize the correction of errors to the apportionment factors for the Half-cent Sales Tax Program and to authorize those corrections to be accomplished during subsequent fiscal years conditioned upon the receipt of a corrected population certified pursuant to existing law.

The Committee on Local Government & Veterans' Affairs, at its meeting on April 21, 2003, adopted a Strike All amendment (Amendment No. 1) which accomplished the matters addressed above.