

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 187 Tax on Sales, Use, and Other Transactions

SPONSOR(S): Rouson and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 366

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	<u>Finance & Tax Council</u>	<u></u>	<u>Aldridge</u>	<u>Langston</u>
2)	<u>Criminal & Civil Justice Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
3)	<u>Criminal & Civil Justice Policy Council</u>	<u></u>	<u></u>	<u></u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Generally, under current law, the retail sale of tangible personal property is subject to six percent sales tax, plus any local option sales taxes that may apply in a given county.

The bill creates a new 25 percent surcharge, separate and apart from the state sales tax and local option sales taxes, on the sale of the following items, regardless of whether such items are sold for legal purposes or in violation of the law:

- Metal, wooden, acrylic, glass, stone, plastic, or ceramic smoking pipes, with or without screens, permanent screens, or punctured metal bowls
- Water pipes
- Carburetion tubes and devices
- Chamber pipes
- Carburetor pipes
- Electric pipes
- Air-driven pipes
- Chillums
- Bongs
- Ice pipes or chillers

The Revenue Estimating Conference has not estimated the revenue impact of the bill.

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

Taxes

Generally, the retail sale of tangible personal property is subject to a six percent state sales tax¹, plus any discretionary sales surtaxes imposed by the county in which the sale occurred². These taxes apply to the retail sale of smoking pipes and devices.

Drug Paraphernalia

Federal Law

Federal law defines "drug paraphernalia" as any "equipment, product, or material of any kind which is primarily intended or designed for use in . . . injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful . . . [Drug paraphernalia] includes items primarily intended or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, [etc.] into the body."³

The statute lists items that constitute drug paraphernalia, including items listed in the bill, and more.⁴ The same section makes it illegal for any person to sell or offer for sale drug paraphernalia.⁵ It does not apply to any person authorized by local, state, or federal law to manufacture, possess, or distribute such items.⁶ It also does not apply to any item that is imported, exported, transported, or sold through the mail or by any other means, and traditionally intended for use with tobacco products, including any pipe, paper, or accessory.⁷

¹ See s. 212.05(1), F.S.

² See s. 212.054, F.S.

³ 21 U.S.C. § 863(d) (2002).

⁴ See id.

⁵ 21 U.S.C. § 863(a) (2002).

⁶ 21 U.S.C. § 863(f) (2002).

⁷ See id.

Florida Law

In Florida, the definition of “drug paraphernalia” also provides an example list of items that constitute drug paraphernalia.⁸ Florida law also similarly includes an element of intent whereby a court, jury, or other authority, must consider specific factors identified in statute when determining in a criminal case whether an object constitutes drug paraphernalia. Such factors include proximity of the object in time and space to a controlled substance, the existence of residue of controlled substances on the object, and expert testimony concerning its use.⁹

In Florida, it is a first-degree misdemeanor to use or possess drug paraphernalia to produce a controlled substance or introduce a controlled substance into the body¹⁰, or to advertise objects in a publication when it is known or reasonable to know that the purpose is to promote the sale of such objects for use as drug paraphernalia.¹¹

It is a third-degree felony to deliver, manufacture with intent to deliver, or possess with intent to deliver drug paraphernalia when it is known or reasonable to know that it will be used to produce a controlled substance or introduce a controlled substance into the body.¹² It is also a third-degree felony to use, possess with the intent to use, or manufacture with the intent to use drug paraphernalia when it is known or reasonable to know that it will be used to transport a controlled substance or contraband as defined in s. 932.701(2)(a)1, F.S.¹³

It is a second-degree felony to deliver drug paraphernalia to a minor when it is known or reasonable to know that it will be used to produce or introduce into the body a controlled substance.¹⁴

The Florida Department of Corrections provides substance abuse treatment services to prison inmates and individuals subject to supervision and correctional programs who struggle with drug addiction.¹⁵ These services are funded by recurring general appropriation funds and grant money through the Florida Department of Law Enforcement.

PROPOSED CHANGES

The bill creates a new, and separate, 25 percent surcharge on the sale of the following items, regardless of whether such items are sold for legal purposes or in violation of the law:

- Metal, wooden, acrylic, glass, stone, plastic, or ceramic smoking pipes, with or without screens, permanent screens, or punctured metal bowls
- Water pipes
- Carburetion tubes and devices
- Chamber pipes
- Carburetor pipes
- Electric pipes
- Air-driven pipes
- Chillums
- Bongs
- Ice pipes or chillers

⁸ See s. 893.145, F.S.

⁹ See s. 893.146, F.S.

¹⁰ See s. 893.147(1), F.S.

¹¹ See s. 893.147(5), F.S.

¹² See s. 893.147(2), F.S.

¹³ See s. 893.147(4), F.S.

¹⁴ See s. 893.147 (3), F.S.

¹⁵ FLA. DEP’T OF CORR., SUBSTANCE ABUSE REPORT (2009) (as accessed at <http://www.dc.state.fl.us/pub/subabuse/inmates/07-08/index.html>).

The bill provides that collections of this surtax, less administrative costs, shall be distributed on a monthly basis to the Department of Corrections.

The bill provides that administrative costs for the Department of Revenue may not exceed three percent of the collections of the surtax and must be used to pay the administrative costs incurred in the collection, administration, enforcement, and distribution of the surtax.

B. SECTION DIRECTORY:

Section 1: Creates s. 212.05995, F.S., imposing a surcharge on the sale of certain smoking pipes and devices.

Section 2: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has not estimated the revenue impact of the bill. However, the bill is expected to have a positive state revenue impact.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not estimated the revenue impact of the bill.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES