**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 Finance and Tax

BILL: SB 334

INTRODUCER: Senator Stewart

SUBJECT: Tourist Development Tax

DATE: February 17, 2020 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Paglialonga | Ryon | CA | **Favorable** |
| 2. | Gross | Diez-Arguelles | FT | **Favorable** |
| 3. | | | AP | |

## I. Summary:

SB 334 authorizes counties imposing a tourist development tax to use the tax revenues to promote or incentivize film or television production in the state. The bill requires all productions using tourist development tax revenues to include either a "Created in Florida" or "Filmed in Florida" statement within the production credits.

This bill takes effect July 1, 2020.

## II. Present Situation:

**Tourist Development Taxes**

Under Florida law, a county may impose local option tourist development taxes on the short-term[1] rental or lease of accommodations.[2] The tourist development taxes consist of the following levies:

- 1 or 2 Percent Tax:[3] The county's governing board may levy this tax, upon approval of a referendum by the county electorate,[4] at a rate of 1 or 2 percent on the total amount charged for taxable transient rental transactions.[5]
- Additional 1 Percent Tax:[6] In addition to the 1 or 2 percent tax, a 1 percent tax may be levied by an extraordinary vote[7] of a county's governing board, or upon approval of a referendum

[1] Section 125.0104(3)(a), F.S. provides that the tax applies to rentals or leases of 6 months or less.
[2] Section 125.0104, F.S.
[3] Section 125.0104(3)(c), F.S.
[4] Section 125.0104(6), F.S.
[5] *See* s. 212.03, F.S.
[6] Section 125.0104(3)(d), F.S.
[7] "Extraordinary vote" is not defined by law, but by its plain definition would appear to mean something greater than an ordinary vote by simple majority. *See* Op. Att'y Gen. Fla. 2010-05.

by the county electorate, on the total amount charged for taxable transient rental transactions. To be eligible to levy the tax, a county must have levied the 1 or 2 percent tax for at least 3 years.

- High Tourism Impact Tax:[8] By an extraordinary vote of the governing board of the county, a county with a high tourism impact may levy an additional 1 percent tax on the total amount charged for taxable transient rental transactions.[9]
- Professional Sports Franchise Facility Tax:[10] In addition to any other tourist development taxes, a 1 percent tax on the total amount charged for transient rental transactions may be levied, by a majority vote of the governing board, to pay debt service on bonds issued to finance professional sports franchise facilities, retained spring training franchise facilities, and convention centers. These funds may also be used to promote tourism in the state.
- Additional Professional Sports Franchise Facility Tax:[11] A county that levies the professional sports franchise facility tax may levy an additional 1 percent tax to be used for the same purposes. This tax must be approved by a majority plus one vote of the membership of the board of county commissioners.

Depending on a county's eligibility, the maximum tax rate that may be levied varies from 3 to 6 percent. The table below displays the five local option tourist development taxes available to counties, the number of counties eligible to levy a specific tourist development tax, and the number of counties currently levying such tax.[12]

| **2020 TDT Rates & Number of Counties** | **Original Tax (1% or 2%)** | **Additional Tax (1%)** | **Professional Sports Franchise Facility Tax (up to 1%)** | **High Tourism Impact Tax (1%)** | **Additional Professional Sports Franchise Facility Tax (up to 1%)** |
|---|---|---|---|---|---|
| Eligible to Levy: | 67 | 59 | 67 | 9 | 65 |
| Levying: | 63 | 54 | 45 | 7 | 30 |

A county may elect to levy and impose the 1 or 2 percent tax or the additional 1 percent tax within a subcounty special district. If the tax is levied in a subcounty special district, the additional taxes must be levied only in that district and the county must assist the Department of Revenue (DOR) in identifying the rental units subject to tax.[13]

Tourist development taxes may be administered by the Department of Revenue or by a county that has adopted an ordinance providing for the local collection and administration of the tax.[14]

[8] Section 125.0104(3)(m), F.S.
[9] A county may be designated as having a "high tourism impact" by the Department of Revenue as provided by s. 125.0104(3)(m)2., F.S. The tax is currently levied by Broward, Monroe, Orange, Osceola, Palm Beach, and Pinellas counties. Additionally, Hillsborough, Lee, and Walton counties are eligible to levy it.
[10] Section 125.0104(3)(l), F.S.
[11] Section 125.0104(3)(n), F.S.
[12] Office of Economic and Demographic Research, *2020 Local Option Tourist/Food and Beverage/Tax Rates in Florida's Counties*, *available at* http://edr.state.fl.us/Content/local-government/data/county-municipal/2020LOTTrates.pdf, (published Dec. 19, 2019) (last visited Feb. 12, 2020).
[13] *See* s. 125.0104(3)(b) and (d), F.S.
[14] Section 125.0104(10), F.S.

***Tourist Development Council***

The governing board of each county that levies tourist development taxes must form a tourist development council. Section 125.0104(4)(e), F.S., provides the authority and requirements for county tourist development councils and their memberships. Requirements include:

- The council must be called "(name of county) Tourist Development Council;"
- The council must be composed of nine members appointed by the governing board of the county;
- A member of the county governing board must serve as a member of the council;
- Two members of the council must be elected municipal officials;
- Six members of the council must be involved in the tourism industry, of whom no less than three and no more than four must be owners or operators of motels, hotels, recreational vehicles parks, or other tourist accommodations in the county;
- All members of the council must be electors of the county;
- The governing board of the county may elect a chair for the council or allow the council to elect its chair;
- The chair must be appointed or elected annually and may be reappointed or elected;
- Members of the council must serve staggered four year terms;
- The council must meet at least once each quarter;
- The council must recommend to the governing board of the county, special projects and uses for tourist development tax revenue;
- The council must continuously review expenditures of revenues from the tourist development taxes; and
- The council must report unauthorized/questionable expenditures from the tourist development tax revenues to the county governing board and the DOR for review.

***Authorized Uses of Tax Revenue***

Tourist development tax revenues may be used for capital construction of tourist-related facilities, tourism promotion, and beach or shoreline maintenance. More specifically, the revenues derived from tourist development taxes are authorized to be used to:[15]

- Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more:
  - Publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums; or
  - Aquariums and museums that are publicly owned and operated, or owned and operated by a non-profit organization that is open to the public;
- Promote zoological parks that are publicly owned and operated or owned and operated by a non-profit organization that is open to the public;
- Promote and advertise tourism in the state;
- Fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies;
- Finance beach park facilities or beach improvement, maintenance, nourishment, restoration, and erosion control; or

[15] Section 125.0104(5)(a), F.S.

- Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities within the boundaries of the county or subcounty special taxing district, if the public facilities are needed to increase tourist-related business activities in the county or subcounty special district and are recommended by the county tourist development council, and only if the following five conditions are satisfied:
  - $10 million in tourist development tax revenue was received the year before expenditure;
  - The county governing board approves the use for the proposed public facilities by a vote of at least two-thirds of its membership;
  - No more than 70 percent of the cost of the proposed public facilities will be paid for with tourist development tax revenues;
  - At least 40 percent of all tourist development tax revenues collected in the county are spent to promote and advertise tourism; and
  - An independent professional analysis, performed at the expense of the county tourist development council, demonstrates the positive impact of the infrastructure project on tourist-related businesses in the county.

A county that has a population of less than 750,000 may, in addition to the aforementioned uses, expend tax revenues, to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more zoological parks, fishing piers or nature centers which are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public.[16]

***Tourist Development Plan***

As a requirement for levying tourist development taxes, a county's tourist development council[17] must prepare a plan for tourism development and present it before the governing board of the county. The plan must include (1) the anticipated revenue derived from the tax for the first 24 months of implementation, (2) the tax district where the tax will be imposed, and (3) a list, in order of priority, of the proposed uses of the tax revenue.[18]

After the tourist development plan has been enacted by ordinance, the plan may not be substantially amended except by an ordinance enacted by an affirmative vote of a majority plus one additional member of the governing board.[19]

An example of a tourist development plan can be seen in the ordinances of Pinellas County.[20] Pinellas County's plan provides five categories of proposed uses:[21]

- Category A: Promoting and advertising tourism in the state, nationally and internationally, and funding other marketing events and promotional operations.

[16] Section 125.0104(5)(b), F.S.
[17] Also referred to as a "tourism" development council.
[18] Section 125.0104(4)(c), F.S.
[19] *See* s. 125.0104(4), F.S. The provisions found in s. 125.0104(4)(a)-(d), F.S., do not apply to the high tourism impact tax, the professional sports franchise facility tax, or the additional professional sports franchise facility tax.
[20] Pinellas County Code of Ordinances, ch. 118, Art. III, Sec. 118-32 Use of revenues; tourist development plan, *available at* https://library.municode.com/fl/pinellas_county/codes/code_of_ordinances?nodeId=PTIIPICOCO_CH118TA_ARTIIITODETA_S118-34TODECO (last visited Jan. 19, 2020).
[21] *Id.*

- Category B: Funding the St. Petersburg/Clearwater Convention and Visitors Bureau; funding budget reserves as authorized by law; and funding other bureaus.
- Category C: Funding beach improvement, maintenance, renourishment, restoration, and erosion control.
- Category D: Funding annually as matching funds (applicants must have at least $1.00 for every $1.00 of Category D tourist tax funding) to publicly owned and operated or owned and operated by not-for-profit organizations, facilities open to the public.
- Category E: Funding for debt service payments for bonds issued to finance the construction, reconstruction, or renovation of professional sports franchise facilities, retained spring training facilities, and convention centers located in Pinellas County.

Pinellas County's plan allocates 60 percent of yearly tax revenues to category A, B, and C uses, and 40 percent to category D and E uses.[22] Notwithstanding the above allocations, the plan also states that tax revenues must be allocated to debt service on bonds for the City of Dunedin retained spring training facility, the Dali Museum, and the City of Clearwater spring training facility.[23]

***Tourist Development Tax Revenues Fiscal Year 2018***

According to the DOR, total tourist development tax receipts by all counties for Fiscal Year 2017-2018 (most recent year data is available) amounted to just under a billion dollars ($954, 937,590).[24] This represents a 12.1 percent increase from Fiscal Year 2016-2017.[25] The table below displays the top five counties with the highest tourist development tax receipts in Fiscal Year 2017-2018.[26]

| 1. Orange | 2. Broward | 3. Pinellas | 4. Osceola | 5. Palm Beach |
|---|---|---|---|---|
| $272,306,000 | $79,597,603 | $58,485,782 | $57,233,940 | $53,487,001 |

**Florida's Entertainment Industry Financial Incentive Program (2010 – 2016)**

In 2010, Florida created the Entertainment Industry Financial Incentive Program to encourage film productions to use Florida "as a site for filming, for the digital production of films, and to develop and sustain the workforce and infrastructure for film, digital media, and entertainment production."[27] The program was administered by the Florida Office of Film and Entertainment and lasted from July 1, 2010 until its repeal on June 30, 2016. During this period, Florida awarded $296 million in tax credits and exemptions to productions and companies that met the certification criteria.[28]

[22] *Id.*
[23] *Id.*
[24] Office of Economic & Demographic Research, *Local Option Tax Receipts (Data Source: Department of Revenue)*, Tax Receipts by Tax by County: SFY 1987-2018, *available at* http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm (last visited Jan. 17, 2020).
[25] *Id.*
[26] *Id.*
[27] Section 288.1254(2), F.S.
[28] Office of Economic & Demographic Research, *Return on Investment for the Entertainment Industry Incentive Programs* (Jan. 2015), *available at* http://edr.state.fl.us/Content/returnoninvestment/EntertainmentIndustryIncentivePrograms.pdf (last visited Jan. 19, 2020).

## III. Effect of Proposed Changes:

**Section 1** amends s. 125.0104(5), F.S., to authorize a county's use of tourist development tax revenues to promote or incentivize film or television production in Florida. The bill specifies that the term "production" is to have the same meaning as provided in s. 288.1254(1), F.S.[29] Productions receiving county tax revenues must include "Created in Florida" or "Filmed in Florida" in the production credits.

**Section 2** provides the bill takes effect July 1, 2020.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

Not applicable.

### B. Public Records/Open Meetings Issues:

None.

### C. Trust Funds Restrictions:

None.

### D. State Tax or Fee Increases:

None.

### E. Other Constitutional Issues:

None identified.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

None.

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[29] "Production means a theatrical or direct-to-video motion picture; a made-for-television motion picture; visual effects or digital animation sequences produced in conjunction with a motion picture; a commercial; a music video; an industrial or educational film; an infomercial; a documentary film; a television pilot program; a presentation for a television pilot program; a television series, including, but not limited to, a drama, a reality show, a comedy, a soap opera, a telenovela, a game show, an awards show, or a miniseries production; or a digital media project by the entertainment industry. One season of a television series is considered one production. The term does not include a weather or market program; a sporting event or a sporting event broadcast; a gala; a production that solicits funds; a home shopping program; a political program; a political documentary; political advertising; a gambling-related project or production; a concert production; a local, regional, or Internet-distributed-only news show or current-events show; a sports news or sports recap show; a pornographic production; or any production deemed obscene under chapter 847. A production may be produced on or by film, tape, or otherwise by means of a motion picture camera; electronic camera or device; tape device; computer; any combination of the foregoing; or any other means, method, or device." Section 288.1254(1)(g), F.S.

B. Private Sector Impact:

Visitors to Florida and Floridians may incur increased taxes if additional counties decide to levy a tourist development tax in response to the film production use. Private sector film and television industries would have access to tax revenue as capital for productions. Private sector businesses may also benefit depending on the efficacy of film to induce tourism.

C. Government Sector Impact:

The bill may cause counties to incur nominal costs in updating tourist development plan ordinances to include film and television expenditures.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

The bill references s. 288.1254(1), F.S., which defines "production" to also include digital media projects.[30] This definition may incorporate more than just "film or television productions."

## VIII. Statutes Affected:

This bill substantially amends section 125.0104 of the Florida Statutes.

## IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.



[30] "Digital media project" means a production of interactive entertainment that is produced for distribution in commercial or educational markets. The term includes a video game or production intended for Internet or wireless distribution, an interactive website, digital animation, and visual effects, including, but not limited to, three-dimensional movie productions and movie conversions. The term does not include a production that contains content that is obscene as defined in s. 847.001. *See* Section 288.1254(1)(b), F.S.