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 Community Affairs

BILL:	SB 2008
INTRODUCER:	Senator Diaz
SUBJECT:	Tourist and Convention Development Taxes
DATE:	March 25, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	**Pre-meeting**
2.			FT	
3.			AP	

I. Summary:

The Local Option Tourist Development Act authorizes counties to levy five separate taxes on transient rental transactions (tourist development taxes or TDTs). Depending on a county's eligibility to levy such taxes, the maximum tax rate varies from 3 percent to 6 percent. Current law authorizes counties to levy and spend local option TDTs as a mechanism for funding various tourism-related uses. Current law only requires a referendum for one of these taxes. The other four can be imposed through local ordinances enacted by governing bodies.

Certain counties or sub-parts of counties are authorized to levy convention development taxes (CDTs) on transient rental transactions. Depending on a jurisdiction's ability to levy such taxes, the maximum tax rate varies from a minimum of 1 percent to a maximum of 3 percent. CDTs are adopted by local ordinances.

The bill authorizes all TDT or CDT revenue to be used to finance flood mitigation projects or improvements.

The bill requires the imposition or increase of all TDTs and CDTs to be approved by referendum.

The bill makes each of the five TDTs stand-alone, independent propositions for renewal by removing the condition precedents related to the levy of the additional 1 percent tax and the additional sports facility tax. Specifically, the bill eliminates the requirement that a county must impose the original TDT for at least three years before imposing the additional 1 percent tax. Also, the bill eliminates the requirement that a county must impose the initial professional sports franchise facility tax before imposing the additional professional sports franchise facility tax.

The Revenue Estimating Conference has not reviewed the bill for potential revenue impacts.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Tourist Development Taxes

Florida law permits counties to impose local option taxes on short-term[1] rentals or leases of accommodations.[2] The taxes are generally referred to as "tourist[3] development taxes" but consist of several separate tax levies. The taxes include:

- 1 or 2 Percent Tax:[4] The county's governing board may levy this tax at a rate of 1 or 2 percent on the total amount charged for transient rental transactions.
- Additional 1 Percent Tax:[5] This tax may be levied by an extraordinary vote[6] of a county's governing board or by referendum approval, in addition to the 1 or 2 percent tax on the total amount charged for 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:[7] By an extraordinary vote of the county's governing board, a county with high tourism impact may levy an additional 1 percent tax on the total amount charged for transient rental transactions.[8]
- Professional Sports Franchise Facility Tax:[9] 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:[10] 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 varies from 3 to 6 percent. The table below displays the five local option tourist development taxes available to counties, the number

[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] "Tourist" means a person who participates in trade or recreation activities outside the county of his or her permanent residence or who rents or leases transient accommodations as described in paragraph (3)(a). Section 125.103(b)2., F.S.
[4] Section 125.0104(3)(c), F.S.
[5] Section 125.0104(3)(d), F.S.
[6] "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.
[7] Section 125.0104(3)(m), F.S.
[8] 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.
[9] Section 125.0104(3)(l), F.S.
[10] Section 125.0104(3)(n), F.S.

of counties eligible to levy a specific tourist development tax, and the number of counties currently levying such tax.[11]

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

These local option taxes may be administered by the Department of Revenue (DOR) or by one or more local government units. These taxes may be levied 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.[12]

TDT Adoption Process

Each county that levies the original 1 or 2 percent tax must have a tourist development council.[13] A tourist development council is a group of residents from the county appointed by the county governing board.[14] The tourist development council, among other duties, makes recommendations to the county governing board for the effective operation of the particular projects or uses of the TDT revenue.[15]

Before the original 1 or 2 percent TDT authorization, the levy must be approved by a countywide referendum.[16] Additional TDT levies must be authorized by a vote of the county's governing board or by a countywide referendum's voter approval.[17] Each county proposing to levy the original 1 or 2 percent tax must then adopt an ordinance for the levy and imposition of the tax,[18] including a plan for tourist development prepared by the tourist development council.[19] The plan for tourist development must include the anticipated net tax revenue to be derived by the county for the two years following the tax levy and a list of the tax's proposed uses, and the approximate cost for each project or use.[20] The plan for tourist development may not be substantially amended except by an ordinance enacted by a majority's affirmative vote plus one additional governing board member.[21]

[11] 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 Mar. 25, 2021).
[12] *See* s. 125.0104(3)(b) and (d), F.S.
[13] Section 125.0104(4)(e), F.S.
[14] *Id*.
[15] *Id*.
[16] Section 125.0104(6), F.S.
[17] Section 125.0104(3)(d), F.S.
[18] Section 125.0104(4)(a), F.S.
[19] Section 125.0104(4), F.S.
[20] *See* s. 125.0104(4), F.S.
[21] *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.

Authorized Uses of TDT Revenue

Tourist development tax revenues may be used to construct tourism-related facilities, tourism promotion, and beach or shoreline maintenance. More specifically, the revenues derived from tourist development taxes are authorized to be used to: [22]

- 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
- 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 county tourist development council's expense, demonstrates the positive impact of the infrastructure project on tourist-related businesses in the county.

The use of TDT revenue for any purpose not authorized in the statute is expressly prohibited.[23]

Convention Development Taxes

The Convention Development Tax Act[24] authorizes certain counties or sub-parts of counties to levy convention development taxes on transient rental transactions. Depending on a jurisdiction's ability to levy such taxes, the maximum tax rate varies from a minimum of one percent to a maximum of three percent:

- The consolidated county convention tax may be levied at two percent.[25]

[22] Section 125.0104(5)(a), F.S.
[23] Section 125.0104(5)(e), F.S.
[24] Section 212.0305, F.S.
[25] Section 212.0305(4)(a), F.S.

- The charter county convention tax may be levied at three percent.[26]
- The special district, special, and subcounty convention tax may be levied up to three percent.[27]

Duval County (as a county consolidated with a municipality), Miami-Dade County (as a charter county), and parts of Volusia County currently levy the maximum convention development tax allowable in their respective jurisdictions.[28]

CDT Adoption Process

CDT levies must be authorized under an ordinance enacted by the county's governing body.[29] A certified copy of the ordinance imposing the levy must be furnished by the county to DOR within 10 days after approval of such ordinance.[30] The effective date of imposition of the levy can be the first day of any month at least 60 days after enacting the ordinance. Revenues must be deposited in a convention development trust fund established by the county before receiving any CDT funds.[31]

The charter county development tax has an exception for municipalities in which a municipal tourist tax is levied. A resolution prohibiting the imposition of the charter county convention development levy within such a municipality has been adopted.[32] The county imposes the convention development levy in all other county areas except municipalities with a municipal tourist tax and has adopted a resolution. No CDT funds may be used in a municipality that has adopted such a resolution. In Miami-Dade County, three jurisdictions have a municipal tourist tax and have adopted a resolution under this provision. Those jurisdictions are Bal Harbour, Miami Beach, and Surfside.[33]

Authorized Uses of CDT Revenue

Generally, the revenues raised by CDT levies may be used for capital construction of convention centers and other tourist-related facilities and tourism promotion; however, the authorized uses vary by levy.

III. Effect of Proposed Changes:

Section 1 amends s. 125.0104, F.S., to revise the requirements for the adoption, imposition, and use of TDT.

[26] Section 212.0305(4)(b), F.S.
[27] Section 212.0305(4)(c),(d), and (e), F.S.
[28] Office of Economic & Demographic Research (EDR), Local Option Tourist / Food & Beverage Tax Rates, available at http://edr.state.fl.us/Content/local-government/data/county-municipal/ (last visited Mar. 25, 2021).
[29] Section 212.0305(4)(b)1., F.S.
[30] Section 212.0305(4)(b)6., F.S.
[31] Section 212.0305(4)(b)7., F.S.
[32] Section 212.0305(4)(b)3., F.S.
[33] Office of Economic & Demographic Research (EDR), Local Option Tourist / Food & Beverage Tax Rates, available at http://edr.state.fl.us/Content/local-government/data/county-municipal/ (last visited Mar. 25, 2021).

The bill prohibits the additional 1% TDT levy from being used for debt service or refinancing existing facilities unless approved in a referendum election by a majority of the electors voting in such election in the county subcounty special taxing district.

The bill authorizes all TDT revenue to be used to finance flood mitigation projects or improvements.

The bill requires all existing, new, or increased TDTs to be approved by referendum. Any existing TDTs must be renewed on or before July 1, 2026, in a referendum. However, the bill exempts the proceeds of any taxes initially levied before July 1, 2021, which have been pledged to secure and liquidate revenue bonds or revenue refunding bonds from this expiration until the retirement of those bonds. The bill provides that the authority to levy and impose TDT expires 5 years after the date the authority was approved in an election. The authority may be renewed for subsequent 5-year periods if each 5-year renewal is approved in a referendum.

The bill makes each of the five TDTs stand-alone, independent propositions for renewal by removing the condition precedents related to the additional 1 percent tax and the additional sports facility tax. Specifically, the bill eliminates the requirement that a county must impose the original TDT for at least three years before imposing the additional 1 percent tax. Also, the bill eliminates the requirement that a county must impose the initial professional sports franchise facility tax before imposing the additional professional sports franchise facility tax.

Section 2 amends s. 212.0305, F.S., to revise the requirements for the adoption, imposition, and use of CDT. The bill authorizes all CDT revenue to be used to finance flood mitigation projects or improvements. The bill requires all existing, new, or increased CDTs to be approved by referendum. Any existing CDTs must be renewed on or before July 1, 2026, in a referendum. However, the bill exempts the proceeds of any taxes initially levied before July 1, 2021, which have been pledged to secure and liquidate revenue bonds or revenue refunding bonds from this expiration until the retirement of those bonds.

The bill provides that the authority to levy and impose CDT expires 5 years after the date the authority was approved in an election. The authority may be renewed for subsequent 5-year periods if each 5-year renewal is approved in a referendum.

The bill requires the governing board of a county levying a CDT to place a question on the ballot at a regular or special election held within the county, substantially as follows:

> ....FOR the Convention Development Tax.
> ....AGAINST the Convention Development Tax.

If a majority of the electors voting on the question approve the levy, the ordinance will take effect at a specified time.

Section 3 provides an effective date of July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(b) of the Florida Constitution states "[e]xcept upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989."

The bill may implicate this constitutional restriction by reducing the authority of counties to raise revenues through imposing TDTs via ordinance.

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:

The Revenue Estimating Conference has not estimated the revenue impacts of the bill on local governments.

B. Private Sector Impact:

The bill may positively impact the private sector from local investment in flood mitigation projects and improvements, both from the direct investment and the resulting resilience to flooding damage.

C. Government Sector Impact:

The bill may have a net negative fiscal impact on current TDT and CDT revenues if the electors of a political subdivision disapprove of the tax levy in a referendum.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections125.0104 and 212.0305 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.