Winston W. "Bud" Gardner, PE Retired, LEED® AP
Colonel, USMC, Retired
State Senator, Florida, Retired

July 20, 2020

The Honorable Muriel Bowser
Executive Office of the Mayor
District of Columbia
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

The Honorable Jeffrey S. DeWitt
Chief Financial Officer
District of Columbia
1350 Pennsylvania Avenue, NW, Suite 203
Washington, DC 20004

Dear Mayor Bowser, Chairman Mendelson and Mr. DeWitt:

As you consider new sources of revenue in these trying times, I thought perhaps, sharing my experience with similar issues in Florida in the late 1980s might be of some assistance.

Late 1986, after four months of lengthy discussions with the incoming Speaker of the Florida House of Representatives, I finally agreed to accept assignment as Chairman of the Committee on Finance and Taxation. The next ten months would be the most intense period of my entire twenty years in elected office. Florida was in a recession and revenue was short. The Florida tax initiative was to place a tax on services which included advertising services. That's the area I will concentrate on because that's what finally doomed our efforts on tax reform.

The advertising business is very complex, so I welcomed the opportunity to travel to New York to meet with the President of CBS Television, the President of CBS Radio and their chief legal counsel. Discussions with the two broadcast presidents were very enlightening. I had no idea of the amount of barter transactions that take place in advertising. Barter transactions were and are a major part of the national advertising industry. How would we impute a value for tax purposes? And there's prime time vs secondary markets, packaging through ad agencies, spot purchases of advertising time, partnership advertising, apportionment, etc.

After spending the morning with CBS, I moved on to a top ad agency; the N W Ayer Agency on Avenue of the Americas. Our meeting at N W Ayer was chaired by the Senior Vice

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President and Managing Director of Media Services for N W Ayer. Also attending the meeting was the Manager of Media Services for J C Penney, the Senior Vice President and Corporate Media Director, USA of DMB&B, the Staff Executive, American Association of Advertising Agencies, and someone from the Station Representatives Association. They made some good points and some bad points and they made some threats. They reinforced some of the points made at CBS about the secondary market area and how they would very likely be the first to feel the impact of reduced advertising. They pointed out the frequent cancellations of specific time slots due to preemption by presidential news conference, announcements, broadcast interruptions; etc. and how replacement ads must be redirected to other programs with different cost factors, etc.

There were other problems with advertising too, that affected broadcasters and publishers along Florida state boundaries. Often there might be competing stations or newspapers only a short distance from each other, both competing for the same audience, but located in different states. A 5% tax imposed in Florida would certainly shift advertising to the station in Alabama or Georgia. And it did. One example was Alabama Power & Light who advertised with a Pensacola television station. They shifted to a Mobile station following passage of the tax.

These are only a few of the issues I was able to learn about, but the message was clear. If we weren't very careful in how the tax measure was drafted, we would have severe unintended consequences.

Our membership didn't understand the complexities and didn't have the time to learn. Even though warned about potential ramifications, the tax was passed into law April 1987. And the "chickens came home to roost". National ad agencies began pulling business out of Florida. Long scheduled major meetings and conventions were cancelled resulting in major loss of revenue to the state and loss of jobs in the private sector. Revenue loss to the broadcast industry were staggering.

Another factor we didn't recognize early was when the Florida Department of Revenue developed revenue estimates, no sale for resale provision was included. The result was unacceptable double and triple taxation. To include sale for resale after the legislation was drafted would substantially reduce the potential revenue which was also unacceptable.

When the decision was finally made to repeal the tax, even repeal was difficult because of a lack of understanding among our membership. Finally, after multiple special sessions, we repealed the entire tax package and replaced it with a one cent increase in the sales tax.

Political ramifications were substantial. This is how the Services Tax leaders faired in their next election:

Governor Bob Martinez, **Defeated** for re-election

Senate President John Vogt, **Defeated** in his run for Insurance Commissioner

Speaker Jon Mills, **Defeated** in his run for Congress

Senate Rules Chairman and Dean of the Senate Dempsey Barron, **Defeated** for re-election to Florida Senate

House Rules Chairman Carl Carpenter, D**id not run** for re-election

Senate Finance and Taxation Chairman Tim Deratany, **Defeated** for re-election to Florida Senate

House Finance and Taxation Chairman Bud Gardner, **Won** Election to Florida Senate

Senate Appropriations Chairman Jim Scott, **Won** Re-election to Florida Senate

House Appropriations Chairman and Speaker Designate Sam Bell, **Defeated** for re-election to Florida House of Representatives

Based on my experience, it would be my recommendation to not rush into a complex tax initiative. You really need to have an understanding of potential unintended consequences. Professional staff does a competent job, but often they don't fully understand political nuance elected officials must face.

I wish you the best of luck as you address the needs of your community. Thank you for your service.

Yours truly,

Bud Gardner

Winston W. "Bud" Gardner

Enclosures
cc (with enclosures):

The Honorable Kenyan R. McDuffie, Ward 5 Councilmember and Chair Pro Tempore
The Honorable Charles Allen, Ward 6 Councilmember
The Honorable Anita Bonds, At-Large Councilmember
The Honorable Mary M. Cheh, Ward 3 Councilmember
The Honorable Vincent C. Gray, Ward 7 Councilmember
The Honorable David Grosso, At-Large Councilmember
The Honorable Brianne K. Nadeau, Ward 1 Councilmember
The Honorable Brooke Pinto, Ward 2 Councilmember
The Honorable Brandon T. Todd, Ward 4 Councilmember
The Honorable Elissa Silverman, At-Large Councilmember
The Honorable Robert C. White, Jr., At-Large Councilmember
The Honorable Trayon White, Sr., Ward 8 Councilmember

The *Orlando Sentinel*, Sunday, April 26, 1987

Tax bill brings out best in Gardner

Even critics applaud willingness to listen, attention to detail

By Donna Blanton

SENTINEL TALLAHASSEE BUREAU

Legislature '87

THE LEADER

TALLAHASSEE – Bud Gardner closed his eyes and leaned back on the soft sofa in the House Speaker's office, dog tired.

It was late Wednesday afternoon, and negotiations between the House and Senate on the biggest tax increase in Florida history had just disintegrated. Gardner, Chairman of the House Finance and Tax Committee and author of the bill expanding the sales tax to dozens of services, still was marveling that he found himself in this position.

"If someone had told me back when I was a freshman that I'd be sitting around talking about this today I would've called him a bald-faced liar," Gardner said.

The 48-year-old Titusville Democrat, by all accounts a conservative and hater of taxes, initially told House Speaker Jon Mills he wouldn't serve as chairman of the powerful Finance and Tax Committee. Not this year, when virtually every sales tax exemption on the books was scheduled to expire.

A state lawmaker since 1978, Gardner had never served on that committee and had voted against a good number of tax increases. An engineer and Marine Corps colonel, he has no tax policy background.

Gardner wasn't even sure he liked the idea of eliminating most sales tax exemptions. But as it became clear that leaders of both chambers and the governor, whom Gardner calls "the sun and the stars and the moon", wanted the tax increase, Gardner decided it was inevitable.

And he decided he would do it his way.

"I decided I could either step back and let somebody else do it, or I could chair the committee and participate and try to get the bill to the point where it's acceptable to a large number of members and it doesn't hurt people back home," Gardner said. "Nobody else has taken the time that I have on this."

That is the understatement of the 3-week-old 1987 legislative session. Before the sales tax bill finally passed last Thursday, Gardner spent virtually every waking minute immersed in its 175 pages.

With the help of his staff, he wrote the versions of the tax bill passed by both the House and the Senate. The Senate's bill which passed first, was an early draft of what Gardner modified almost daily during the session's first two weeks.

Gardner went to New York to meet with the networks and with advertising agencies to try to find a way to tax advertising without pyramiding the tax and creating double- and triple-taxation. He met endlessly with construction industry executives for the same purpose. He heard out the lawyers, Realtors and railroad executives, all of whom wanted someone to understand their industry's particular problems.

Gardner

He's gotten into the nitty gritty on the bill more than anybody I've ever seen.

House staffer

When a prominent tax lawyer, hired by the House to analyze the bill, gave a four-hour briefing to the staff, Gardner was there. A non-lawyer, Gardner hardly said a word. But he stayed the whole time.

"He's got an engineer's kind of mind," said one House staffer who asked not to be identified. "He's extremely methodical. He's gotten into the nitty gritty of the bill more than anybody I've ever seen. He understands every little nuance of that bill."

Noting Gardner's lack of background in tax matters, the staffer said that proved to be an asset: "It's not the tax you have to understand. You have to understand a little bit about how every business in Florida works."

When a Senator asked at a conference committee meeting if a House staffer could explain some technical aspect of the bill, Gardner said he would do it. He understood the bill better than his staff of economists and tax lawyers, he said. Later, they acknowledged that he was right.

For his efforts, Gardner has drawn praise from Democrats, Republicans, the governor and lobbyists in nearly every industry. Even those who didn't get what they wanted from Gardner say he has done an admirable job.

He has drawn criticism from many of his constituents, as well as the newspapers in Brevard County. He's worried about his political future.

"It's a very unpopular issue at home," Gardner said.

Republicans, used to being more or less ignored in the House, found a sympathetic ear when they talked to Gardner about their concerns with the tax. Pressured by their newly elected Republican governor to back the measure, the GOP members wanted to make sure they could vote for the bill without betraying their conservative constituents.

"He had the same conscience pangs that I did," said Rep. Tom Drage, R-Winter Park. "The governor's been more concerned with raising more money than with what the details of the bill would be. But Bud has taken it upon himself to be responsible about the legislation."

Another Republican, Orlando Rep. Rich Crotty, said Gardner gave the Republicans "going home" issues by agreeing to exempt the commissions of real estate agents when they were selling property that qualifies for a homestead exemption and by removing travel agents' services from the tax bill.

Gardner is still tinkering with the tax bill, even though it has been signed into law by Martinez. He's deeply unhappy about an agreement made in conference committee that allows services to be taxed when they're sold from one business to another. For example, a lawyer who hires an expert witness for his client must pay a sales tax on the expert's services. The client will pay the sales tax again when he gets the final bill from his lawyer.

Gardner believes that constitutes double taxation. He managed to get the conferees to agree to exempt engineering and architectural services from the business resales provision, though those services will be taxed if they're purchased as an individual.

After that agreement was reached, Gardner began to have second thoughts. Because he owns a small engineering firm, he said the appearance was created that he passed an exemption that would benefit him personally. Consequently, Gardner says he'll either persuade the Senate to exempt all business resales from the tax or he will see that engineering and architectural resales are included.

There's been much speculation that Gardner's time in the limelight has created tension among the House leadership. Appropriations Chairman Sam Bell, D-Ormond Beach, and Gardner competed intensely for the job chairing the budget committee, and Bell won. Since then as Gardner crafted the tax passage, Bell has been uncharacteristically quiet.

Many thought he may be sulking about Gardner's success.

Bell put most of such talk to rest Thursday with a rousing, emotional speech on the House floor about his Central Florida colleague.

"At times the person and the moment come together," Bell said of Gardner. "And there are times when greatness was achieved because the right person was at the right place at the right time."

FLORIDA TODAY

BUSINESS

SECTION E

SPACE COAST STOCKS

6/7/87

Media suffer from ad tax boycott

'It'll cost us millions'

By Daniel Bergan II
FLORIDA TODAY

Newspaper, radio and television executives in Brevard County and around the state say they'll lose millions of dollars collectively in ad revenue when the state's new 5 percent services sales tax takes effect July 1.

Television stations, the target of an advertising boycott, will be hit hardest, executives say, especially in border cities like Jacksonville, where one station is predicting third-quarter losses of up to $500,000.

"We probably could be talking about well over a half-million (dollars)," said Ray Davis, vice president and general manager of WNFT in Jacksonville. "Over the long haul, it'll cost us millions."

The major advertisers boycotting Florida because of the tax are RJR Nabisco Inc., Kellogg Co., Kraft Inc. and General Foods Corp. Other companies that have announced they will reduce or withdraw advertising because of the tax are Procter & Gamble Co., Frigidaire, Campbell Soup Co. And the list is growing, television stations say.

Executives with two of the three Orlando television stations that serve Brevard say they've already lost advertisers.

WESH Channel 2 already has lost from 10 to 12 advertisers because of the tax, including Procter & Gamble, said Nolan Quam, the station's president and general manager.

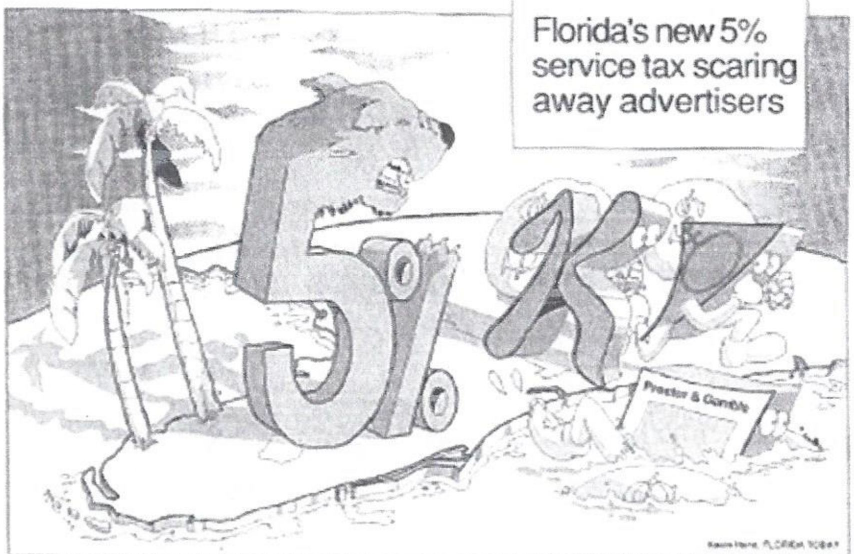
"As we near July 1 and there is no retraction (of the tax), we'll see the floodgates open," he predicted. "I'm deeply concerned."

WESH and other members of the Tallahassee-based Florida Association of Broadcasters are lobbying for the tax's repeal, but concede that isn't likely.

At WCPX Channel 6, "a couple dozen" advertisers have pulled their business in the past few weeks to protest the tax, said Mike Schweitzer, vice president and general manager. They include Pet Milk, Procter & Gamble, Nabisco, Zayre and Kellogg, Schweitzer said.

A number of other companies have subtracted the 5 percent tax from their ad spending, even though the tax hasn't gone into

Florida's new 5% service tax scaring away advertisers



Kevin Hand, FLORIDA TODAY

$100,000 in ad revenue by September, Schweitzer said.

"What we told the governor would happen is exactly what's happening. Advertisers will not increase their spending. This will turn out to be nothing more than a gross income tax on the media," he said.

WAYK Channel 56, the family-owned independent station in Melbourne, doesn't carry any national advertising, so it hasn't been affected by the boycott, said Debbie Varocha, the station's assistant manager.

Radio and newspaper advertising also will be subject to the new tax. Employees of area newspapers and radio stations say that while they will escape the boycott, they will probably lose ad revenue as a result. Advertisers will subtract the 5 percent tax from their advertising budgets, most say.

"The immediate reaction is we'll lose up to 5 percent in retail (advertising)," said Mort Goldstrom, an advertising spokesman for The Miami Herald.

New sales tax won't keep firms away, official claims

While media executives say Florida's new services sales tax will rob them of valuable advertising revenue, the tax won't keep manufacturing companies from coming to Brevard County, according to the county's chief economic development official.

Large companies such as manufacturers can expect to pay thousands of dollars more in taxes when the new 5 percent tax becomes effective July 1.

Still, Brevard's assets outweigh the disadvantage of an additional tax, said John McCauley, executive director of the Brevard Economic Development Council.

"My gut feeling is that after the newness wears off, after six months, it will not be a major factor in the (attractiveness) of Brevard," McCauley said.

When included with the county's "total package" of location, available services and quality of life, the tax will be a minor factor, he said.

Of those firms that have been considering Brevard as a possible site to set up shop, all have inquired about the levy but none appear to have been scared off, he said.

— Daniel Bergan II

advertisers will say 'We've got no ... subtract the 5 percent from their

AM and WSSP-FM in Cocoa will be forced to absorb the cost of the tax, said Bob Clarke, the stations' vice president and general manager.

The media will be liable for the new tax whether or not advertisers decide to pay it, and some have already told the station they won't pay, he said.

The station has left several jobs that opened recently unfilled to make up for the added costs, Clarke said.

"I don't think there's any question the station will lose revenue," said Roy Knoth, president and general manager of WWBC-AM and WMEE-FM in Cocoa.

It's too early to tell just how much money the station could lose, he said. "I think most of us are still in shock, including the advertisers."

Knoth and other media executives blamed Gov. Bob Martinez for levying what they say is a hidden tax on the state's media.

"It's an insidious tax ... Florida does not need that kind of Mafia-style taxation," he said

Business D

Surviving the advertising exodus

Broadcasters, publishers feel the tax pinch

By Denise L. Smith

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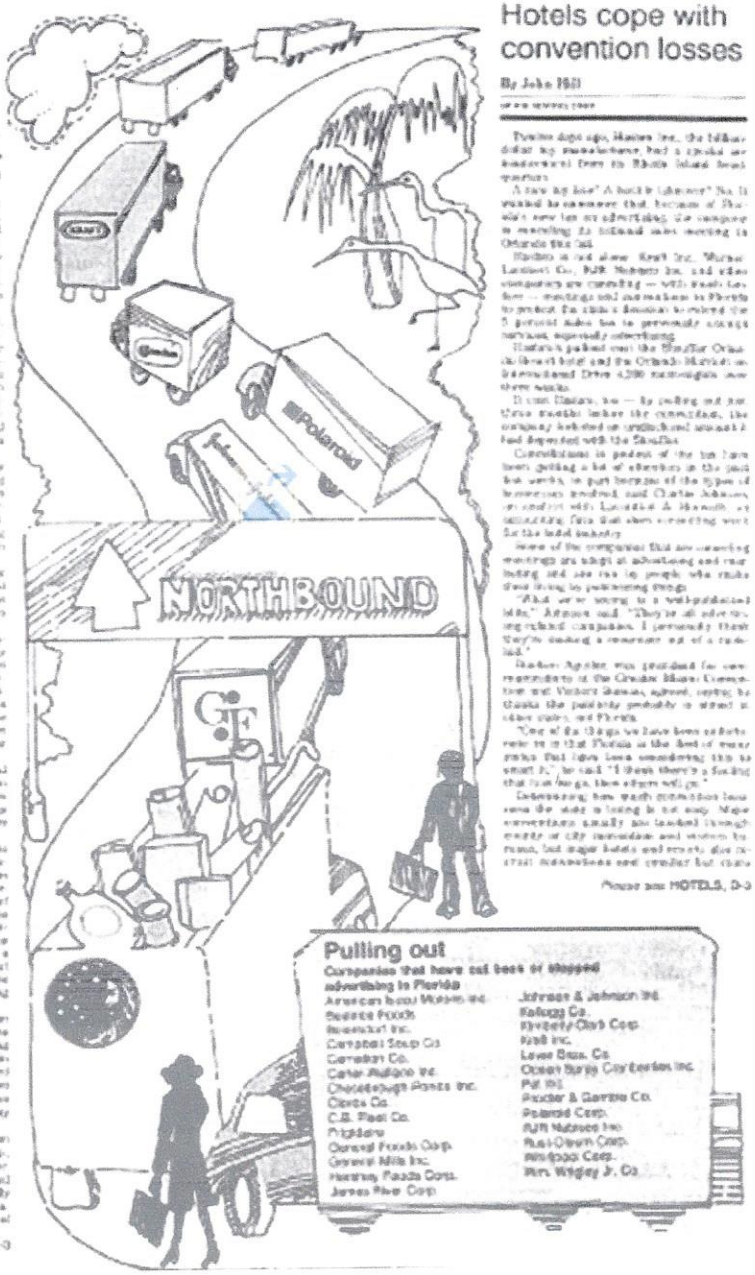

Hotels cope with convention losses

By John Hill

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Please see HOTELS, D-3

ORLANDO SENTINEL

CONVENTIONS

CANCELED CHECK-INS

Effect unknown as conventions pull out over services tax

By John Hill

OF THE SENTINEL STAFF

Meetings and conventions canceled in protest of the state's new 5 percent tax on services are beginning to pile up. Still, convention officials throughout the state are not sure how painful the loss in business will be.

According to Fred Corrigan, spokesman for the Orlando/Orange County Convention & Visitors Bureau Inc., about a dozen organizations have canceled plans to conduct meetings or conventions in Orlando, as a protest against the tax — especially the tax on advertising.

He said another, less definable loss will come from those groups that, though they have not scheduled conventions in Florida, have announced that they won't even consider the state unless the tax is repealed.

held a lot also," said Reuben Aguilar, vice president for communications for the Miami Convention and Visitors Bureau.

Aguilar said the only groups that are pulling their conventions out of Florida are organizations and associations associated with broadcasting and advertising. He said other organizations not affected by the tax are not following suit.

He also cautioned against exaggerating the loss of conventions more than two or three years away. Often groups will book space in several cities four or five years in advance, Aguilar said, and then sign final commitments with the city they choose a year or two before the convention.

Smaller operators are noticing the short-term effects, however. Steve Bufford, sales manager at the Boca Raton Hotel & Club in Boca Raton, said seven organizations have canceled conventions planned for his resort because of the advertising tax. He estimated that loss at between $2 million

FLORIDA TODAY, July 1, 1987 Editorial

"All the News That's Fit to Print"

The New York Times

NATIONAL EDITION

Florida Sets a Bad Precedent

Washington talks endlessly about balancing the budget. Tallahassee and most other state capitals have no choice. By law, they must cover current expenses each year. Florida's solution to a looming $520 million deficit is a sweeping new sales tax on services that has other state treasurers envious and taxpayers furious coast to coast. The revenue problem is real; the solution ill-conceived.

ceptions. For instance, criminal defendants' legal fees are taxed only if there is a conviction, and stock brokers' fees are largely exempt.

Inherently, a use tax on services is no better or worse than a sales tax on goods. Florida officials point out that the state's economic expansion is mostly in service industries, and they argue that these should share the tax burden. The fact that the

FLORIDA TODAY, Friday, October 16, 1987

Gardner traces 'terrifying' tax that ran amuck

By Vincent Wilmore

TALLAHASSEE—A weary Rep. Winston "Bud" Gardner took four months to say yes after House Speaker Jon Mills asked him to head the Finance and Tax Committee in July 1986. But never did the Titusville Democrat imagine traced how efforts to tame a "terrifying," but highly promising, sales tax on services went awry.

It was the morning after the infamous April 23 pizza and beer gathering that sealed a final deal on the services tax, and Gardner was furious.

As Finance and Tax chairman, he had labored months to craft a fair bill, and now—just hours before final votes in both houses of the Legislature—he saw serious flaws in the end product.

To fix them would cost millions of dollars—a prospect, Gardner said Thursday, that was unpalatable to legislative leaders and Gov. Bob Martinez. They were more concerned with funding the state budget than good tax policy, he said.

"I was really mad," Gardner recalled. "I told the Speaker that what we had agreed to was wrong and that I couldn't go along with it. I was very close to resigning from the committee chairmanship."

Only assurances form Lt. Gov. Bobby Brantley, Mills and Senate President John Vogt that the problems would be addressed by the end of the session kept Gardner in the fold, he said.

But the biggest problem Gardner saw—multiple taxation that occurs when businesses hire professionals to complete a project—was never corrected. On Aug. 19, Gardner filed a bill fixing that and other glitches, hoping it would be considered in a session on medical malpractice.

But Martinez three days later called a special session on the tax, forever changing the landscape and tenor of the debate.

The services tax debate has complicated Gardner's life more than anyone else's, keeping him at the Capitol Gardner said he still believes in the concept of a services tax. He argues the services tax hits businesses more than average people.

Martinez and legislative leaders toed that line in April when they joined forces to pass the tax. Then, on Aug. 22, the governor that his primary project would turn into an unwieldy beast blocking the exit to a political lair from which lawmakers can't seem to escape. Thursday, one day after a 3 1/2 week special session ended in disarray, Gardner surprised lawmakers by calling for the special session to set the referendum. When lawmakers balked at that idea, the governor Sept. 18 demanded repeal of the tax. Gardner was offended by Martinez's actions because the governor's office had an unprecedented role in drafting the original tax bill, but didn't consult lawmakers before calling the special session.

Martinez's aides attended House workshops, Martinez advisor J.M. "Mac" Stipanovich and reviewed amendments before they reached the House floor and both Stipanovich and Brantley attended the pizza and beer meeting at a lobbyist's townhouse, Gardner said.

"I don't know of another issue that has been developed since I've been here that had that much participation from (the governor's office)," Gardner said.

The governor's office played a key role in blocking Gardner from fixing glitches in the bill during the regular session, he said. Because of the loss of revenue with each new exemption, Gardner said he found himself in the position of trading off solving one problem for keeping another in.

His hand depleted when it came time to deal with the multiple taxation problem.

Gardner lost out on the $90 million change.

"(Martinez) said he could not afford that kind of a revenue impact against this bill," Gardner said. "The comment was he didn't mind raising taxes this time but he didn't want to have to do it again."

As a partner in a small engineering design firm, Gardner said he has an acute understanding of the economic impact of the multiple taxation.

A bill the governor vetoed on Tuesday corrected some of those problems—problems Gardner said Martinez helped create. The vetoed measure—which Gardner said was the only compromise that could clear both houses—would have given voters a choice between a revised services tax and an increase in the general sales tax.