



Government Accountability Committee

January 18, 2018
10:30 AM—12:30 PM
Morris Hall (17 HOB)

Meeting Packet

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Government Accountability Committee

Start Date and Time: Thursday, January 18, 2018 10:30 am
End Date and Time: Thursday, January 18, 2018 12:30 pm
Location: Morris Hall (17 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 55 Sale of Firearms by Oversight, Transparency & Administration Subcommittee, White
CS/HB 317 Local Tax Referenda by Local, Federal & Veterans Affairs Subcommittee, Ingoglia
HB 651 State Employment by Yarborough
HB 915 Vessel Safety Inspection Decals by Henry
HB 1015 Florida Keys Mosquito Control District, Monroe County by Raschein
HB 7029 OGSR/Human Trafficking Expunction by Oversight, Transparency & Administration Subcommittee, Edwards-Walpole
HB 7031 OGSR/Criminal Justice Commission by Oversight, Transparency & Administration Subcommittee, Burgess
HB 7035 Ratification of St. Johns River Water Management District Rules by Natural Resources & Public Lands Subcommittee, McClain

NOTICE FINALIZED on 01/16/2018 4:20PM by Larson.Lisa

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 55 Sale of Firearms

SPONSOR(S): Oversight, Transparency & Administration Subcommittee; White and others

TIED BILLS: IDEN./SIM. BILLS: CS/SB 152

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	10 Y, 0 N, As CS	Moore	Harrington
2) Judiciary Committee	19 Y, 0 N	Bruno	Poche
3) Government Accountability Committee		Moore <i>AM</i>	Williamson <i>RAW</i>

SUMMARY ANALYSIS

The Department of Law Enforcement (DLE) is responsible for regulating the sale and delivery of firearms by licensed firearm dealers to persons who are not licensed. Before a licensed importer, licensed manufacturer, or licensed dealer (licensee) can sell or deliver a firearm to another person who is not a licensee, Florida law requires the licensee to conduct a criminal history check of the potential buyer and collect a \$5 fee for processing the criminal history check. Currently, DLE requires the licensee to transmit the fees using a business or personal check, a money order, or a cashier's check.

The bill requires such procedures to allow the processing fees to be paid or transmitted by electronic means, including, but not limited to, debit cards, credit cards, or electronic funds transfers. The bill also authorizes a licensee to request DLE to conduct a criminal history check via electronic means other than a telephone call.

The bill may have an indeterminate negative fiscal impact on the state. See Fiscal Comments section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Department of Law Enforcement (DLE) is responsible for regulating the sale and delivery of firearms¹ by licensed firearm dealers to persons who are not licensed. Before a licensed importer, licensed manufacturer, or licensed dealer (licensee) can sell or deliver a firearm to another person who is not a licensee, Florida law requires the licensee to:

- Obtain a completed criminal history check form² from the potential buyer, which is provided by the licensee and must include the name, date of birth, gender, race, and social security number or other identification number of the potential buyer.
- Inspect proper identification that includes a photograph of the potential buyer.
- Collect a fee from the potential buyer for processing the criminal history check of the potential buyer.
- Request, via telephone call, DLE to conduct a check of the information as reported and reflected in the Florida Crime Information Center and National Crime Information Center systems.
- Receive a unique approval number for the inquiry from DLE and record such number and the date on the criminal history check form.³

The fee collected from a potential buyer for processing the criminal history check is established by DLE and may not exceed \$8 per transaction.⁴ Currently, the processing fee is \$5 per transaction.⁵ DLE is required to establish procedures for the fees to be transmitted by the licensee to DLE.⁶ Currently, the procedures established by DLE require a licensee to transmit the fees to DLE each month using a business or personal check, a money order, or a cashier's check.⁷

Effect of the Bill

The bill requires the procedures established by DLE for transmitting the criminal history check processing fees to DLE to allow such fees to be paid or transmitted by electronic means, including, but not limited to, debit cards, credit cards, or electronic funds transfers. The bill also authorizes a licensee to request DLE to conduct a criminal history check via electronic means other than a telephone call.

B. SECTION DIRECTORY:

Section 1. amends s. 790.065, F.S., relating to sale and delivery of firearms.

Section 2. provides an effective date of October 1, 2018.

¹ The term "firearm" means any weapon (including a starter gun) that will, is designed to, or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; any destructive device; or any machine gun. The term does not include an antique firearm unless the antique firearm is used in the commission of a crime. Section 790.001(6), F.S.

² The form is created by the United States Treasury Department's Bureau of Alcohol, Tobacco, and Firearms. Rule 11C-6.009, F.A.C. A copy of the form is available online at <https://www.atf.gov/file/61446/download>.

³ Section 790.065(1)(a), F.S.

⁴ Section 790.065(1)(a)2., F.S.

⁵ Rule 11C-6.009(4), F.A.C.

⁶ Section 790.065(1)(a)2., F.S.

⁷ Rule 11C-6.009(9), F.A.C.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to impact state government revenues.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to impact local government revenues.

2. Expenditures:

The bill does not appear to impact local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

According to DLE, the department will absorb the fiscal impact of the bill by reassigning current staff and reallocating existing resources. However, DLE stated these existing resources will not be available until the third quarter of 2018 and recommends moving the effective date of the bill to April 1, 2019.⁸

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DLE to establish procedures for licensees to pay criminal history check fees to the department through electronic means, including debit cards, credit cards, or electronic funds transfers. DLE has sufficient rule-making authority to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

⁸ Department of Law Enforcement, Agency Analysis of 2018 House Bill 55, p. 4 (Sept. 6, 2017) (on file with the Oversight, Transparency & Administration Subcommittee).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2017, the Oversight, Transparency & Administration Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment:

- Authorized a licensee to request DLE to conduct a criminal history check via electronic means other than a telephone call; and
- Changed the effective date of the bill from July 1, 2018, to October 1, 2018.

This analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Administration Subcommittee.

1 A bill to be entitled

2 An act relating to the sale of firearms; amending s.
3 790.065, F.S.; requiring Department of Law Enforcement
4 procedures to allow the payment or transmittal of
5 processing fees for criminal history checks of
6 potential firearms buyers by electronic means;
7 providing that criminal history check requests by
8 licensed importers, manufacturers, and dealers to the
9 department may be made by electronic means; providing
10 an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Paragraph (a) of subsection (1) of section
15 790.065, Florida Statutes, is amended to read:

16 790.065 Sale and delivery of firearms.—

17 (1)(a) A licensed importer, licensed manufacturer, or
18 licensed dealer may not sell or deliver from her or his
19 inventory at her or his licensed premises any firearm to another
20 person, other than a licensed importer, licensed manufacturer,
21 licensed dealer, or licensed collector, until she or he has:

22 1. Obtained a completed form from the potential buyer or
23 transferee, which form shall have been promulgated by the
24 Department of Law Enforcement and provided by the licensed
25 importer, licensed manufacturer, or licensed dealer, which shall

26 include the name, date of birth, gender, race, and social
 27 security number or other identification number of such potential
 28 buyer or transferee and has inspected proper identification
 29 including an identification containing a photograph of the
 30 potential buyer or transferee.

31 2. Collected a fee from the potential buyer for processing
 32 the criminal history check of the potential buyer. The fee shall
 33 be established by the Department of Law Enforcement and may not
 34 exceed \$8 per transaction. The Department of Law Enforcement may
 35 reduce, or suspend collection of, the fee to reflect payment
 36 received from the Federal Government applied to the cost of
 37 maintaining the criminal history check system established by
 38 this section as a means of facilitating or supplementing the
 39 National Instant Criminal Background Check System. The
 40 Department of Law Enforcement shall, by rule, establish
 41 procedures for the fees to be transmitted by the licensee to the
 42 Department of Law Enforcement. Such procedures must provide that
 43 fees may be paid or transmitted by electronic means, including,
 44 but not limited to, debit cards, credit cards, or electronic
 45 funds transfers. All such fees shall be deposited into the
 46 Department of Law Enforcement Operating Trust Fund, but shall be
 47 segregated from all other funds deposited into such trust fund
 48 and must be accounted for separately. Such segregated funds must
 49 not be used for any purpose other than the operation of the
 50 criminal history checks required by this section. The Department

51 of Law Enforcement, each year before ~~prior to~~ February 1, shall
 52 make a full accounting of all receipts and expenditures of such
 53 funds to the President of the Senate, the Speaker of the House
 54 of Representatives, the majority and minority leaders of each
 55 house of the Legislature, and the chairs of the appropriations
 56 committees of each house of the Legislature. In the event that
 57 the cumulative amount of funds collected exceeds the cumulative
 58 amount of expenditures by more than \$2.5 million, excess funds
 59 may be used for the purpose of purchasing soft body armor for
 60 law enforcement officers.

61 3. Requested, by means of a toll-free telephone call or
 62 other electronic means, the Department of Law Enforcement to
 63 conduct a check of the information as reported and reflected in
 64 the Florida Crime Information Center and National Crime
 65 Information Center systems as of the date of the request.

66 4. Received a unique approval number for that inquiry from
 67 the Department of Law Enforcement, and recorded the date and
 68 such number on the consent form.

69 Section 2. This act shall take effect October 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 317 Local Tax Referenda
SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee, Ingoglia
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 272

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	12 Y, 2 N, As CS	Darden	Miller
2) Ways & Means Committee	18 Y, 0 N	Dugan	Langston
3) Government Accountability Committee		Darden	Williamson

SUMMARY ANALYSIS

The Florida Constitution preempts all forms of taxation, except for ad valorem taxes on real estate and tangible personal property, to the state unless otherwise provided by general law. Section 212.055, F.S., provides counties with limited authority to levy discretionary sales surtaxes for specific purposes on transactions subject to state sales tax. With some exceptions, discretionary sales surtaxes generally are subject to approval by a majority of the qualified electors in a referendum.

Fifty-six counties and 19 school districts levy at least one local discretionary sales surtax. These surtaxes will generate an estimated \$2.3 billion in revenue during fiscal year 2017-18.

The bill requires any referendum to levy a discretionary sales surtax to be held during either a primary or a general election. Any such referendum held during a primary election must be approved by at least 60 percent of electors voting on the ballot question. A referendum held during a general election may be approved by only a majority of electors voting on the question.

The Revenue Estimating Conference determined the bill has no fiscal impact. See Fiscal Analysis Section.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Discretionary Sales Surtax

The Florida Constitution preempts all forms of taxation, except ad valorem taxes on real and tangible personal property, to the state unless otherwise provided by general law.¹ By statute, counties have limited authority to levy a discretionary sales surtax for specific purposes on transactions subject to state sales tax.² These purposes include:

- Operating a transportation system in a charter county;³
- Financing local government infrastructure projects;⁴
- Providing additional revenue for counties having less than 50,000 residents as of April 1, 1992;⁵
- Providing medical care for indigent persons;⁶
- Funding trauma centers;⁷
- Operating, maintaining, and administering a county public general hospital;⁸
- Constructing and renovating schools;⁹
- Providing emergency fire rescue services and facilities; and¹⁰
- Funding pension liability shortfalls.¹¹

The surtax is collected by the Department of Revenue (DOR) using the same procedures utilized for the administration, collection, and enforcement of the general state sales tax.¹² DOR places these funds into the Discretionary Sales Surtax Clearing Trust Fund. A separate account is established for each county imposing a discretionary surtax. The proceeds of the surtax are distributed to the county on a monthly basis, minus an administrative fee of 3 percent or administrative costs solely and directly attributable to the surtax, whichever is less. Each county is liable for administrative costs equal to its prorated share of discretionary sales surtax revenue to the amount collected statewide.¹³

New surtaxes and rate changes to existing surtaxes take effect on January 1, while the repeal of an existing surtax takes effect on December 31.¹⁴ The governing body of the county or the school district must notify DOR of the imposition, termination, or rate change of a discretionary sales surtax within 10 days of final adoption by ordinance or referendum, but no later than November 16. The notification must include the duration of the surtax, the surtax rate, a copy of the ordinance, and any additional information DOR requires by rule.¹⁵ If the county or school district fails to provide timely notice, the effective date of the change is delayed by one year.¹⁶ Counties and school districts are also required to

¹ Article VII, s. 1(a), Fla. Const.

² Section 212.054, F.S.; s. 212.055, F.S.

³ Section 212.055(1), F.S.

⁴ Section 212.055(2), F.S.

⁵ Section 212.055(3), F.S.; Note that the small county surtax may be levied by extraordinary vote of the county governing board if the proceeds are to be expended only for operating purposes.

⁶ Section 212.055(4)(a), F.S. (for counties with more than 800,000 residents); s. 212.055(7), F.S. (for counties with less than 800,000 residents).

⁷ Section 212.055(4)(b), F.S.

⁸ Section 212.055(5), F.S.

⁹ Section 212.055(6), F.S.

¹⁰ Section 212.055(8), F.S.

¹¹ Section 212.055(9), F.S.

¹² Section 212.054(4)(a), F.S.

¹³ Section 212.054(4)(b), F.S.

¹⁴ Section 212.054(5), F.S.

¹⁵ Section 212.054(7)(a), F.S.

¹⁶ Section 212.054(7)(a), F.S.

notify DOR if a referendum or consideration of an ordinance to impose, terminate, or change the rate of a surtax is to occur after October 1.¹⁷

The 56 counties and 19 school districts levying one or more discretionary sales surtaxes are projected to realize \$2.3 billion in revenue in fiscal year 2017-18.¹⁸ If all counties and school districts levied discretionary sales surtaxes at the maximum possible rate, they would be projected to raise \$11.68 billion in revenue in fiscal year 2016-17.¹⁹

Most local discretionary sales surtaxes may only be approved by referendum, while some may be approved by an extraordinary vote of the county commission.²⁰ If voter approval is required, a majority of electors voting must approve the referendum.²¹ Except for the emergency fire rescue services and facilities surtax, the date of the referendum is at the discretion of the county commission.²²

Referendum Process

The Florida Election Code states the general requirements for a referendum.²³ The question presented to voters must contain a ballot summary with clear and unambiguous language, such that a “yes” or “no” vote on the measure indicates approval or rejection, respectively.²⁴ The ballot summary should explain the chief purpose of the measure and may not exceed 75 words.²⁵ The ballot summary and title must be included in the resolution or ordinance calling for the referendum.²⁶ For some discretionary sales surtaxes, the form of the ballot question is specified by statute.²⁷

Five types of elections exist under the Florida Election Code: primary elections, special primary elections, special elections, general elections, and presidential preference primary elections.²⁸ A “general election” is defined as an election held on the first Tuesday after the first Monday in November in even-numbered years to fill national, state, county, and district offices, and for voting on constitutional amendments.²⁹ A “primary election” is defined as an election held preceding the general election for the purpose of nominating a party nominee to be voted for in the general election to fill a national, state, county, or district office.³⁰ Historically, voter turnout during general elections is higher than during primary elections.³¹

¹⁷ Section 212.054(7)(b), F.S. The deadline for this notification is October 1.

¹⁸ *2017 Florida Tax Handbook*, Office of Economic and Demographic Research, p. 220; DOR Discretionary Sales Surtax Information for Calendar Year 2017, available at: http://floridarevenue.com/Forms_library/current/dr15dssyear2017.pdf (last viewed Oct. 23, 2017).

¹⁹ *2016 Local Government Financial Information Handbook*, Office of Economic and Demographic Research, p. 150.

²⁰ See generally s. 212.055, F.S.; but see s. 212.055(3), F.S. (small county surtax may be approved by extraordinary vote of the county commission as long as surtax revenues are not used for servicing bond indebtedness), s. 212.055(4), F.S. (indigent care and trauma center surtax may be approved by extraordinary vote of the county commission), and s. 212.055(5), F.S. (county public hospital surtax may be approved by extraordinary vote of the county commission).

²¹ Section 212.055, F.S.

²² E.g. s. 212.055(1)(c), F.S. (referendum for charter county and regional transportation system to be held at a time “set at the discretion of the governing body”); but see s. 212.055(8)(b), F.S. (referendum for emergency fire rescue services and facilities surtax must be placed on the ballot of a “regularly scheduled election”).

²³ Section 101.161, F.S.

²⁴ Section 101.161(1), F.S.

²⁵ *Id.*

²⁶ *Id.*

²⁷ See s. 212.055(4)(b)1., F.S. (ballot question for discretionary sales surtax for trauma centers).

²⁸ Section 97.021(12), F.S.

²⁹ Article VI, s. 5(a), Fla. Const. (also codified as s. 97.021(16), F.S.)

³⁰ Section s. 97.021(29), F.S.

³¹ Department of State, Division of Elections, Data and Statistics, Election Data, Voter Turnout, available at: <http://dos.myflorida.com/elections/data-statistics/elections-data/voter-turnout/> (last viewed Nov. 13, 2017).

Proposed Changes

The bill provides that any referendum to adopt or amend a discretionary sales surtax must be approved during either a primary or general election. If the referendum is held at a primary election, at least 60 percent of the electors voting must approve of the measure. A referendum on a discretionary sales surtax held during a general election must be approved by a majority of the electors voting. The bill defines the terms "primary election" and "general election" to have the same meaning as defined in s. 97.021, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 212.055, F.S., establishing thresholds for local government discretionary sales surtax referenda.

Section 2: Provides an effective date of July 1, 2018.

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:

On December 1, 2017, the Revenue Estimating Conference determined the bill has no revenue impact. The bill does not directly impact current baseline revenue forecasts because they are based on current law and current administration and do not contain assumptions regarding future discretionary sales surtax enactments. However, future revenue impacts from proposed adoptions of or amendments to discretionary sales surtaxes that could pass under current statutory authority may not occur because of the existence of the changes proposed by the bill.

2. Expenditures:

By requiring any discretionary sales surtax referendum to occur on the day of the general or primary election, this bill reduces local government expenditures to the extent local governments would otherwise expend funds to call a special election for approval of a discretionary sales surtax.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Subsection 18(b) of article VII of the Florida Constitution provides that the Legislature, except upon approval by a two-thirds vote, may not enact a general law if the anticipated effect of doing so would be to reduce the authority that counties or municipalities have to raise revenues in the aggregate.

It is unclear whether increasing the required percentage for voter approval to adopt a discretionary sales surtax resulting from this bill represents a reduction in revenue raising authority as contemplated by subsection 18(b). If the purpose of subsection 18(b) is to determine whether the amount of potential revenue available to counties and municipalities was reduced, then this bill does not reduce that potential and the requirement for a two-thirds vote is not applicable. However, if the purpose of subsection 18(b) is to look at the methods for adopting a discretionary sales surtax, then the provisions of this bill requiring a supermajority vote to approve a discretionary sales surtax, which currently may be adopted by a majority vote, may be considered a mandate requiring a two-thirds vote of the Legislature, even though a surtax may continue to be approved by simple majority vote, if approved at a general election.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 8, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removed a provision requiring the governing body of a municipality to approve any ad valorem tax increase by at least 60 percent of the members voting. The amendment also required discretionary sales surtax referenda to be held during either a primary or general election. The amendment required approval by at least 60 percent of the electors voting if the referendum is held during a primary election.

This analysis is drafted to the committee substitute as passed by the Local, Federal & Veterans Affairs Subcommittee.

1 A bill to be entitled
 2 An act relating to local tax referenda; amending s.
 3 212.055, F.S.; requiring local government
 4 discretionary sales surtax referenda to be held on
 5 specified dates; requiring such referenda to be
 6 approved by a specified percentage of voters for
 7 passage; providing an effective date.

8
 9 Be It Enacted by the Legislature of the State of Florida:

10
 11 Section 1. Paragraphs (a) and (c) of subsection (1),
 12 paragraph (a) of subsection (2), paragraph (a) of subsection
 13 (3), subsections (4) and (5), paragraph (a) of subsection (6),
 14 paragraph (a) of subsection (7), paragraph (b) of subsection
 15 (8), and paragraph (a) of subsection (9) of section 212.055,
 16 Florida Statutes, are amended, and subsection (10) is added to
 17 that section, to read:

18 212.055 Discretionary sales surtaxes; legislative intent;
 19 authorization and use of proceeds.—It is the legislative intent
 20 that any authorization for imposition of a discretionary sales
 21 surtax shall be published in the Florida Statutes as a
 22 subsection of this section, irrespective of the duration of the
 23 levy. Each enactment shall specify the types of counties
 24 authorized to levy; the rate or rates which may be imposed; the
 25 maximum length of time the surtax may be imposed, if any; the

26 procedure which must be followed to secure voter approval, if
 27 required; the purpose for which the proceeds may be expended;
 28 and such other requirements as the Legislature may provide.
 29 Taxable transactions and administrative procedures shall be as
 30 provided in s. 212.054.

31 (1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM
 32 SURTAX.—

33 (a) Each charter county that has adopted a charter, each
 34 county the government of which is consolidated with that of one
 35 or more municipalities, and each county that is within or under
 36 an interlocal agreement with a regional transportation or
 37 transit authority created under chapter 343 or chapter 349 may
 38 levy a discretionary sales surtax, ~~subject to approval by a~~
 39 ~~majority vote of the electorate of the county or by a charter~~
 40 ~~amendment approved by a majority vote of the electorate of the~~
 41 ~~county.~~

42 (c) The proposal to adopt a discretionary sales surtax as
 43 provided in this subsection and to create a trust fund within
 44 the county accounts shall be placed on the ballot in accordance
 45 with law and must be approved in a referendum as set forth in
 46 subsection (10) at a time to be set at the discretion of the
 47 governing body.

48 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

49 (a)1. The governing authority in each county may levy a
 50 discretionary sales surtax of 0.5 percent or 1 percent. The levy

51 of the surtax shall be pursuant to an ordinance enacted by a
 52 majority of the members of the county governing authority and
 53 approved by ~~a majority of~~ the electors of the county, as set
 54 forth in subsection (10), voting in a referendum on the surtax.
 55 If the governing bodies of the municipalities representing a
 56 majority of the county's population adopt uniform resolutions
 57 establishing the rate of the surtax and calling for a referendum
 58 on the surtax, the levy of the surtax shall be placed on the
 59 ballot and shall take effect if approved by ~~a majority of~~ the
 60 electors of the county, as set forth in subsection (10), voting
 61 in the referendum on the surtax.

62 2. If the surtax was levied pursuant to a referendum held
 63 before July 1, 1993, the surtax may not be levied beyond the
 64 time established in the ordinance, or, if the ordinance did not
 65 limit the period of the levy, the surtax may not be levied for
 66 more than 15 years. The levy of such surtax may be extended only
 67 by approval of ~~a majority of~~ the electors of the county, as set
 68 forth in subsection (10), voting in a referendum on the surtax.

69 (3) SMALL COUNTY SURTAX.—

70 (a) The governing authority in each county that has a
 71 population of 50,000 or less on April 1, 1992, may levy a
 72 discretionary sales surtax of 0.5 percent or 1 percent. The levy
 73 of the surtax shall be pursuant to an ordinance enacted by an
 74 extraordinary vote of the members of the county governing
 75 authority if the surtax revenues are expended for operating

76 purposes. If the surtax revenues are expended for the purpose of
 77 servicing bond indebtedness, the surtax shall be approved by a
 78 ~~majority of~~ the electors of the county, as set forth in
 79 subsection (10), voting in a referendum on the surtax.

80 (4) INDIGENT CARE AND TRAUMA CENTER SURTAX.—

81 (a)1. The governing body in each county the government of
 82 which is not consolidated with that of one or more
 83 municipalities, which has a population of at least 800,000
 84 residents and is not authorized to levy a surtax under
 85 subsection (5), may levy, pursuant to an ordinance either
 86 approved by an extraordinary vote of the governing body or
 87 conditioned to take effect only upon approval by ~~a majority vote~~
 88 ~~of~~ the electors of the county, as set forth in subsection (10),
 89 voting in a referendum, a discretionary sales surtax at a rate
 90 that may not exceed 0.5 percent.

91 2. If the ordinance is conditioned on a referendum, a
 92 statement that includes a brief and general description of the
 93 purposes to be funded by the surtax and that conforms to the
 94 requirements of s. 101.161 shall be placed on the ballot by the
 95 governing body of the county. The following questions shall be
 96 placed on the ballot:

97
 98 FOR THE. . . .CENTS TAX
 99 AGAINST THE. . . .CENTS TAX

100

101 3. The ordinance adopted by the governing body providing
 102 for the imposition of the surtax shall set forth a plan for
 103 providing health care services to qualified residents, as
 104 defined in subparagraph 4. Such plan and subsequent amendments
 105 to it shall fund a broad range of health care services for both
 106 indigent persons and the medically poor, including, but not
 107 limited to, primary care and preventive care as well as hospital
 108 care. The plan must also address the services to be provided by
 109 the Level I trauma center. It shall emphasize a continuity of
 110 care in the most cost-effective setting, taking into
 111 consideration both a high quality of care and geographic access.
 112 Where consistent with these objectives, it shall include,
 113 without limitation, services rendered by physicians, clinics,
 114 community hospitals, mental health centers, and alternative
 115 delivery sites, as well as at least one regional referral
 116 hospital where appropriate. It shall provide that agreements
 117 negotiated between the county and providers, including hospitals
 118 with a Level I trauma center, will include reimbursement
 119 methodologies that take into account the cost of services
 120 rendered to eligible patients, recognize hospitals that render a
 121 disproportionate share of indigent care, provide other
 122 incentives to promote the delivery of charity care, promote the
 123 advancement of technology in medical services, recognize the
 124 level of responsiveness to medical needs in trauma cases, and
 125 require cost containment, including, but not limited to, case

126 management. It must also provide that any hospitals that are
 127 owned and operated by government entities on May 21, 1991, must,
 128 as a condition of receiving funds under this subsection, afford
 129 public access equal to that provided under s. 286.011 as to
 130 meetings of the governing board, the subject of which is
 131 budgeting resources for the rendition of charity care as that
 132 term is defined in the Florida Hospital Uniform Reporting System
 133 (FHURS) manual referenced in s. 408.07. The plan shall also
 134 include innovative health care programs that provide cost-
 135 effective alternatives to traditional methods of service
 136 delivery and funding.

137 4. For the purpose of this paragraph, the term "qualified
 138 resident" means residents of the authorizing county who are:

139 a. Qualified as indigent persons as certified by the
 140 authorizing county;

141 b. Certified by the authorizing county as meeting the
 142 definition of the medically poor, defined as persons having
 143 insufficient income, resources, and assets to provide the needed
 144 medical care without using resources required to meet basic
 145 needs for shelter, food, clothing, and personal expenses; or not
 146 being eligible for any other state or federal program, or having
 147 medical needs that are not covered by any such program; or
 148 having insufficient third-party insurance coverage. In all
 149 cases, the authorizing county is intended to serve as the payor
 150 of last resort; or

151 c. Participating in innovative, cost-effective programs
 152 approved by the authorizing county.

153 5. Moneys collected pursuant to this paragraph remain the
 154 property of the state and shall be distributed by the Department
 155 of Revenue on a regular and periodic basis to the clerk of the
 156 circuit court as ex officio custodian of the funds of the
 157 authorizing county. The clerk of the circuit court shall:

158 a. Maintain the moneys in an indigent health care trust
 159 fund;

160 b. Invest any funds held on deposit in the trust fund
 161 pursuant to general law;

162 c. Disburse the funds, including any interest earned, to
 163 any provider of health care services, as provided in
 164 subparagraphs 3. and 4., upon directive from the authorizing
 165 county. However, if a county has a population of at least
 166 800,000 residents and has levied the surtax authorized in this
 167 paragraph, notwithstanding any directive from the authorizing
 168 county, on October 1 of each calendar year, the clerk of the
 169 court shall issue a check in the amount of \$6.5 million to a
 170 hospital in its jurisdiction that has a Level I trauma center or
 171 shall issue a check in the amount of \$3.5 million to a hospital
 172 in its jurisdiction that has a Level I trauma center if that
 173 county enacts and implements a hospital lien law in accordance
 174 with chapter 98-499, Laws of Florida. The issuance of the checks
 175 on October 1 of each year is provided in recognition of the

176 Level I trauma center status and shall be in addition to the
 177 base contract amount received during fiscal year 1999-2000 and
 178 any additional amount negotiated to the base contract. If the
 179 hospital receiving funds for its Level I trauma center status
 180 requests such funds to be used to generate federal matching
 181 funds under Medicaid, the clerk of the court shall instead issue
 182 a check to the Agency for Health Care Administration to
 183 accomplish that purpose to the extent that it is allowed through
 184 the General Appropriations Act; and

185 d. Prepare on a biennial basis an audit of the trust fund
 186 specified in sub-subparagraph a. Commencing February 1, 2004,
 187 such audit shall be delivered to the governing body and to the
 188 chair of the legislative delegation of each authorizing county.

189 6. Notwithstanding any other provision of this section, a
 190 county shall not levy local option sales surtaxes authorized in
 191 this paragraph and subsections (2) and (3) in excess of a
 192 combined rate of 1 percent.

193 (b) Notwithstanding any other provision of this section,
 194 the governing body in each county the government of which is not
 195 consolidated with that of one or more municipalities and which
 196 has a population of less than 800,000 residents, may levy, by
 197 ordinance subject to approval by ~~a majority of~~ the electors of
 198 the county, as set forth in subsection (10), voting in a
 199 referendum, a discretionary sales surtax at a rate that may not
 200 exceed 0.25 percent for the sole purpose of funding trauma

201 services provided by a trauma center licensed pursuant to
 202 chapter 395.

203 1. A statement that includes a brief and general
 204 description of the purposes to be funded by the surtax and that
 205 conforms to the requirements of s. 101.161 shall be placed on
 206 the ballot by the governing body of the county. The following
 207 shall be placed on the ballot:

208

209 FOR THE. . . .CENTS TAX
 210 AGAINST THE. . . .CENTS TAX

211

212 2. The ordinance adopted by the governing body of the
 213 county providing for the imposition of the surtax shall set
 214 forth a plan for providing trauma services to trauma victims
 215 presenting in the trauma service area in which such county is
 216 located.

217 3. Moneys collected pursuant to this paragraph remain the
 218 property of the state and shall be distributed by the Department
 219 of Revenue on a regular and periodic basis to the clerk of the
 220 circuit court as ex officio custodian of the funds of the
 221 authorizing county. The clerk of the circuit court shall:

- 222 a. Maintain the moneys in a trauma services trust fund.
- 223 b. Invest any funds held on deposit in the trust fund
- 224 pursuant to general law.
- 225 c. Disburse the funds, including any interest earned on

226 such funds, to the trauma center in its trauma service area, as
 227 provided in the plan set forth pursuant to subparagraph 2., upon
 228 directive from the authorizing county. If the trauma center
 229 receiving funds requests such funds be used to generate federal
 230 matching funds under Medicaid, the custodian of the funds shall
 231 instead issue a check to the Agency for Health Care
 232 Administration to accomplish that purpose to the extent that the
 233 agency is allowed through the General Appropriations Act.

234 d. Prepare on a biennial basis an audit of the trauma
 235 services trust fund specified in sub-subparagraph a., to be
 236 delivered to the authorizing county.

237 4. A discretionary sales surtax imposed pursuant to this
 238 paragraph shall expire 4 years after the effective date of the
 239 surtax, ~~unless reenacted by ordinance subject to approval by a~~
 240 ~~majority of the electors of the county, as set forth in~~
 241 subsection (10), voting in a subsequent referendum.

242 5. Notwithstanding any other provision of this section, a
 243 county shall not levy local option sales surtaxes authorized in
 244 this paragraph and subsections (2) and (3) in excess of a
 245 combined rate of 1 percent.

246 (5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined
 247 in s. 125.011(1) may levy the surtax authorized in this
 248 subsection pursuant to an ordinance either approved by
 249 extraordinary vote of the county commission or conditioned to
 250 take effect only upon approval by ~~a majority vote of the~~

251 electors of the county, as set forth in subsection (10), voting
 252 in a referendum. In a county as defined in s. 125.011(1), for
 253 the purposes of this subsection, "county public general
 254 hospital" means a general hospital as defined in s. 395.002
 255 which is owned, operated, maintained, or governed by the county
 256 or its agency, authority, or public health trust.

257 (a) The rate shall be 0.5 percent.

258 (b) If the ordinance is conditioned on a referendum, the
 259 proposal to adopt the county public hospital surtax shall be
 260 placed on the ballot in accordance with subsection (10) ~~law at a~~
 261 ~~time to be set at the discretion of the governing body~~. The
 262 referendum question on the ballot shall include a brief general
 263 description of the health care services to be funded by the
 264 surtax.

265 (c) Proceeds from the surtax shall be:

266 1. Deposited by the county in a special fund, set aside
 267 from other county funds, to be used only for the operation,
 268 maintenance, and administration of the county public general
 269 hospital; and

270 2. Remitted promptly by the county to the agency,
 271 authority, or public health trust created by law which
 272 administers or operates the county public general hospital.

273 (d) Except as provided in subparagraphs 1. and 2., the
 274 county must continue to contribute each year an amount equal to
 275 at least 80 percent of that percentage of the total county

276 budget appropriated for the operation, administration, and
 277 maintenance of the county public general hospital from the
 278 county's general revenues in the fiscal year of the county
 279 ending September 30, 1991:

280 1. Twenty-five percent of such amount must be remitted to
 281 a governing board, agency, or authority that is wholly
 282 independent from the public health trust, agency, or authority
 283 responsible for the county public general hospital, to be used
 284 solely for the purpose of funding the plan for indigent health
 285 care services provided for in paragraph (e);

286 2. However, in the first year of the plan, a total of \$10
 287 million shall be remitted to such governing board, agency, or
 288 authority, to be used solely for the purpose of funding the plan
 289 for indigent health care services provided for in paragraph (e),
 290 and in the second year of the plan, a total of \$15 million shall
 291 be so remitted and used.

292 (e) A governing board, agency, or authority shall be
 293 chartered by the county commission upon this act becoming law.
 294 The governing board, agency, or authority shall adopt and
 295 implement a health care plan for indigent health care services.
 296 The governing board, agency, or authority shall consist of no
 297 more than seven and no fewer than five members appointed by the
 298 county commission. The members of the governing board, agency,
 299 or authority shall be at least 18 years of age and residents of
 300 the county. No member may be employed by or affiliated with a

301 health care provider or the public health trust, agency, or
 302 authority responsible for the county public general hospital.
 303 The following community organizations shall each appoint a
 304 representative to a nominating committee: the South Florida
 305 Hospital and Healthcare Association, the Miami-Dade County
 306 Public Health Trust, the Dade County Medical Association, the
 307 Miami-Dade County Homeless Trust, and the Mayor of Miami-Dade
 308 County. This committee shall nominate between 10 and 14 county
 309 citizens for the governing board, agency, or authority. The
 310 slate shall be presented to the county commission and the county
 311 commission shall confirm the top five to seven nominees,
 312 depending on the size of the governing board. Until such time as
 313 the governing board, agency, or authority is created, the funds
 314 provided for in subparagraph (d)2. shall be placed in a
 315 restricted account set aside from other county funds and not
 316 disbursed by the county for any other purpose.

317 1. The plan shall divide the county into a minimum of four
 318 and maximum of six service areas, with no more than one
 319 participant hospital per service area. The county public general
 320 hospital shall be designated as the provider for one of the
 321 service areas. Services shall be provided through participants'
 322 primary acute care facilities.

323 2. The plan and subsequent amendments to it shall fund a
 324 defined range of health care services for both indigent persons
 325 and the medically poor, including primary care, preventive care,

326 hospital emergency room care, and hospital care necessary to
 327 stabilize the patient. For the purposes of this section,
 328 "stabilization" means stabilization as defined in s.
 329 397.311(45). Where consistent with these objectives, the plan
 330 may include services rendered by physicians, clinics, community
 331 hospitals, and alternative delivery sites, as well as at least
 332 one regional referral hospital per service area. The plan shall
 333 provide that agreements negotiated between the governing board,
 334 agency, or authority and providers shall recognize hospitals
 335 that render a disproportionate share of indigent care, provide
 336 other incentives to promote the delivery of charity care to draw
 337 down federal funds where appropriate, and require cost
 338 containment, including, but not limited to, case management.
 339 From the funds specified in subparagraphs (d)1. and 2. for
 340 indigent health care services, service providers shall receive
 341 reimbursement at a Medicaid rate to be determined by the
 342 governing board, agency, or authority created pursuant to this
 343 paragraph for the initial emergency room visit, and a per-member
 344 per-month fee or capitation for those members enrolled in their
 345 service area, as compensation for the services rendered
 346 following the initial emergency visit. Except for provisions of
 347 emergency services, upon determination of eligibility,
 348 enrollment shall be deemed to have occurred at the time services
 349 were rendered. The provisions for specific reimbursement of
 350 emergency services shall be repealed on July 1, 2001, unless

351 otherwise reenacted by the Legislature. The capitation amount or
 352 rate shall be determined before program implementation by an
 353 independent actuarial consultant. In no event shall such
 354 reimbursement rates exceed the Medicaid rate. The plan must also
 355 provide that any hospitals owned and operated by government
 356 entities on or after the effective date of this act must, as a
 357 condition of receiving funds under this subsection, afford
 358 public access equal to that provided under s. 286.011 as to any
 359 meeting of the governing board, agency, or authority the subject
 360 of which is budgeting resources for the retention of charity
 361 care, as that term is defined in the rules of the Agency for
 362 Health Care Administration. The plan shall also include
 363 innovative health care programs that provide cost-effective
 364 alternatives to traditional methods of service and delivery
 365 funding.

366 3. The plan's benefits shall be made available to all
 367 county residents currently eligible to receive health care
 368 services as indigents or medically poor as defined in paragraph
 369 (4) (d).

370 4. Eligible residents who participate in the health care
 371 plan shall receive coverage for a period of 12 months or the
 372 period extending from the time of enrollment to the end of the
 373 current fiscal year, per enrollment period, whichever is less.

374 5. At the end of each fiscal year, the governing board,
 375 agency, or authority shall prepare an audit that reviews the

376 budget of the plan, delivery of services, and quality of
 377 services, and makes recommendations to increase the plan's
 378 efficiency. The audit shall take into account participant
 379 hospital satisfaction with the plan and assess the amount of
 380 poststabilization patient transfers requested, and accepted or
 381 denied, by the county public general hospital.

382 (f) Notwithstanding any other provision of this section, a
 383 county may not levy local option sales surtaxes authorized in
 384 this subsection and subsections (2) and (3) in excess of a
 385 combined rate of 1 percent.

386 (6) SCHOOL CAPITAL OUTLAY SURTAX.—

387 (a) The school board in each county may levy, pursuant to
 388 a resolution conditioned to take effect only upon approval by a
 389 ~~majority vote of~~ the electors of the county, as set forth in
 390 subsection (10), voting in a referendum, a discretionary sales
 391 surtax at a rate that may not exceed 0.5 percent.

392 (7) VOTER-APPROVED INDIGENT CARE SURTAX.—

393 (a)1. The governing body in each county that has a
 394 population of fewer than 800,000 residents may levy an indigent
 395 care surtax pursuant to an ordinance conditioned to take effect
 396 only upon approval by ~~a majority vote of~~ the electors of the
 397 county, as set forth in subsection (10), voting in a referendum.
 398 The surtax may be levied at a rate not to exceed 0.5 percent,
 399 except that if a publicly supported medical school is located in
 400 the county, the rate shall not exceed 1 percent.

401 2. Notwithstanding subparagraph 1., the governing body of
 402 any county that has a population of fewer than 50,000 residents
 403 may levy an indigent care surtax pursuant to an ordinance
 404 conditioned to take effect only upon approval by ~~a majority vote~~
 405 ~~of~~ the electors of the county, as set forth in subsection (10),
 406 voting in a referendum. The surtax may be levied at a rate not
 407 to exceed 1 percent.

408 (8) EMERGENCY FIRE RESCUE SERVICES AND FACILITIES SURTAX.—

409 (b) Upon the adoption of the ordinance, the levy of the
 410 surtax must be placed on the ballot by the governing authority
 411 of the county enacting the ordinance. The ordinance will take
 412 effect if approved by ~~a majority of~~ the electors of the county,
 413 as set forth in subsection (10), voting in a referendum held for
 414 such purpose. The referendum shall be placed on the ballot of a
 415 regularly scheduled election. The ballot for the referendum must
 416 conform to the requirements of s. 101.161.

417 (9) PENSION LIABILITY SURTAX.—

418 (a) The governing body of a county may levy a pension
 419 liability surtax to fund an underfunded defined benefit
 420 retirement plan or system, pursuant to an ordinance conditioned
 421 to take effect upon approval by ~~a majority vote of~~ the electors
 422 of the county, as set forth in subsection (10), voting in a
 423 referendum, at a rate that may not exceed 0.5 percent. The
 424 county may not impose a pension liability surtax unless the
 425 underfunded defined benefit retirement plan or system is below

426 80 percent of actuarial funding at the time the ordinance or
 427 referendum is passed. The most recent actuarial report submitted
 428 to the Department of Management Services pursuant to s. 112.63
 429 must be used to establish the level of actuarial funding for
 430 purposes of determining eligibility to impose the surtax. The
 431 governing body of a county may only impose the surtax if:

432 1. An employee, including a police officer or firefighter,
 433 who enters employment on or after the date when the local
 434 government certifies that the defined benefit retirement plan or
 435 system formerly available to such an employee has been closed
 436 may not enroll in a defined benefit retirement plan or system
 437 that will receive surtax proceeds.

438 2. The local government and the collective bargaining
 439 representative for the members of the underfunded defined
 440 benefit retirement plan or system or, if there is no
 441 representative, a majority of the members of the plan or system,
 442 mutually consent to requiring each member to make an employee
 443 retirement contribution of at least 10 percent of each member's
 444 salary for each pay period beginning with the first pay period
 445 after the plan or system is closed.

446 3. The pension board of trustees for the underfunded
 447 defined benefit retirement plan or system, if such board exists,
 448 is prohibited from participating in the collective bargaining
 449 process and engaging in the determination of pension benefits.

450 4. The county currently levies a local government

451 infrastructure surtax pursuant to subsection (2) which is
 452 scheduled to terminate and is not subject to renewal.

453 5. The pension liability surtax does not take effect until
 454 the local government infrastructure surtax described in
 455 subparagraph 4. is terminated.

456 (10) DATES FOR REFERENDA.—A referendum to adopt or amend a
 457 local government discretionary sales surtax under this section
 458 shall be held:

459 (a) At a primary election, as defined in s. 97.021, and
 460 requires the approval of 60 percent of the qualified electors
 461 voting on the ballot question for passage; or

462 (b) At a general election, as defined in s. 97.021, and
 463 requires the approval of a majority of the qualified electors
 464 voting on the ballot question for passage.

465 Section 2. This act shall take effect July 1, 2018.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

1 Committee/Subcommittee hearing bill: Government Accountability
 2 Committee
 3 Representative Ingoglia offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (c) of subsection (1), paragraph (b)
 8 of subsection (5), and paragraph (b) of subsection (8) of
 9 section 212.055, Florida Statutes, are amended, and subsection
 10 (10) is added to that section, to read:

11 212.055 Discretionary sales surtaxes; legislative intent;
 12 authorization and use of proceeds.—It is the legislative intent
 13 that any authorization for imposition of a discretionary sales
 14 surtax shall be published in the Florida Statutes as a
 15 subsection of this section, irrespective of the duration of the
 16 levy. Each enactment shall specify the types of counties



Amendment No. 1

17 authorized to levy; the rate or rates which may be imposed; the
18 maximum length of time the surtax may be imposed, if any; the
19 procedure which must be followed to secure voter approval, if
20 required; the purpose for which the proceeds may be expended;
21 and such other requirements as the Legislature may provide.
22 Taxable transactions and administrative procedures shall be as
23 provided in s. 212.054.

24 (1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM
25 SURTAX.—

26 (c) The proposal to adopt a discretionary sales surtax as
27 provided in this subsection and to create a trust fund within
28 the county accounts shall be placed on the ballot in accordance
29 with law and must be approved in a referendum held at a general
30 election as set forth in subsection (10) at a time to be set at
31 the discretion of the governing body.

32 (5) COUNTY PUBLIC HOSPITAL SURTAX.—Any county as defined
33 in s. 125.011(1) may levy the surtax authorized in this
34 subsection pursuant to an ordinance either approved by
35 extraordinary vote of the county commission or conditioned to
36 take effect only upon approval by a majority vote of the
37 electors of the county voting in a referendum. In a county as
38 defined in s. 125.011(1), for the purposes of this subsection,
39 "county public general hospital" means a general hospital as
40 defined in s. 395.002 which is owned, operated, maintained, or



Amendment No. 1

41 governed by the county or its agency, authority, or public
42 health trust.

43 (b) If the ordinance is conditioned on a referendum, the
44 proposal to adopt the county public hospital surtax shall be
45 placed on the ballot in accordance with subsection (10) ~~law at a~~
46 ~~time to be set at the discretion of the governing body.~~ The
47 referendum question on the ballot shall include a brief general
48 description of the health care services to be funded by the
49 surtax.

50 (8) EMERGENCY FIRE RESCUE SERVICES AND FACILITIES SURTAX.-

51 (b) Upon the adoption of the ordinance, the levy of the
52 surtax must be placed on the ballot by the governing authority
53 of the county enacting the ordinance. The ordinance will take
54 effect if approved by a majority of the electors of the county
55 voting in a referendum held for such purpose. The referendum
56 shall be placed on the ballot of a general ~~regularly scheduled~~
57 election. The ballot for the referendum must conform to the
58 requirements of s. 101.161.

59 (10) DATES FOR REFERENDA.-A referendum to adopt or amend a
60 local government discretionary sales surtax under this section
61 shall be held at a general election as defined in s. 97.021.

62 Section 2. This act shall take effect upon becoming a law.
63
64

65 **T I T L E A M E N D M E N T**



Amendment No. 1

66 Remove everything before the enacting clause and insert:
67 An act relating to local tax referenda; amending s. 212.055,
68 F.S.; providing that a referendum to adopt or amend a local
69 discretionary sales surtax must be held at a general election;
70 providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 651 State Employment
SPONSOR(S): Yarborough
TIED BILLS: IDEN./SIM. BILLS: SB 950

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Administration Subcommittee	13 Y, 0 N	Hoffman	Harrington
2) Government Accountability Committee		Hoffman <i>MH</i>	Williamson <i>Raw</i>

SUMMARY ANALYSIS

Current law establishes the Florida State Employees' Charitable Campaign ("FSECC"), which is an annual charitable fundraising drive administered by the Department of Management Services. It is the only authorized charitable fundraising drive directed toward state employees within work areas during work hours, and for which the state will provide a payroll deduction. State officer and employee participation is voluntary. A state officer or employee choosing to donate during an FSECC fundraising drive must specifically designate a participating organization as the recipient of the officer's or employee's contribution. Participation in the FSECC is limited to nonprofit charitable organizations that meet certain criteria.

On December 7, 2016, the secretary of DMS notified state agencies that the campaign was being suspended because more than 63 percent of every dollar pledged would have gone to cover the fiscal agent fee instead of to the designated charities. To date, the campaign remains suspended.

The bill eliminates the FSECC and provides that no organization, entity, or person may intentionally solicit a state employee through any means for fundraising or business purposes within work areas during work hours. However, it does not prohibit state-approved communications by entities that the state has contracted to provide employee benefits or services, non-coercive voluntary communications between state employees in workplace areas, and activities at authorized public events occurring in non-work areas of state owned or leased facilities.

The bill may have a positive fiscal impact on the state and does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Florida State Employees' Charitable Campaign ("FSECC") is an annual charitable fundraising drive administered by the Department of Management Services ("DMS").¹ It is the only authorized charitable fundraising drive directed toward state employees within work areas during work hours, except for those conducted by state universities.² During an FSECC fundraising drive, a state officer or employee may contribute to various participating charitable organizations, and must specifically designate a participating organization as the recipient of the contribution.³ Participation must be voluntary.⁴ Employees can contribute through payroll deduction.⁵

Participation in the FSECC is limited to nonprofit charitable organizations that have as their principal mission public health and welfare, education, environmental restoration and conservation, civil and human rights, or the relief of human suffering and poverty.⁶ Organizations ineligible to participate in the FSECC include, in part, organizations: whose fundraising and administrative expenses exceed 25 percent, unless extraordinary circumstances can be demonstrated; whose activities contain an element that is more than incidentally political in nature or whose activities are primarily political, religious, professional, or fraternal in nature; or that have not received tax-exempt status under s. 501(c)(3) of the Internal Revenue Code.⁷

DMS must procure a fiscal agent or agents to receive, account for, and distribute charitable contributions among participating charitable organizations.⁸ A FSECC steering committee is established to assist in oversight, development, and administration of the FSECC.⁹

On December 7, 2016, the secretary of DMS notified state agencies that the campaign was being suspended because more than 63 percent of every dollar pledged would have gone to cover the fiscal agent fee instead of to the designated charities.¹⁰ To date, the campaign remains suspended.

Effect of the Bill

The bill eliminates the FSECC. The bill also prohibits an organization, entity, or person from intentionally soliciting a state employee through any means for fundraising or business purposes within work areas during work hours. However, it does not prohibit state-approved communications by entities that the state has contracted to provide employee benefits or services, non-coercive voluntary communications between state employees in workplace areas, and activities at authorized public events occurring in non-work areas of state owned or leased facilities.

¹ Section 110.181(1)(a), F.S.

² *Id.*; Section 110.181(5), F.S.

³ Section 110.181(1)(b), F.S.

⁴ *Id.*

⁵ Section 110.181(1)(a), F.S.

⁶ Section 110.181(1)(c), F.S.

⁷ Section 110.181(1)(e), F.S.

⁸ Section 110.181(2)(a), F.S.

⁹ Section 110.181(4), F.S. The FSECC steering committee has seven members appointed by the administration commission, and two members appointed by the secretary of DMS from among applicants submitted from other agencies or departments. The committee members serve staggered terms and meet at the call of the secretary. Members serve without compensation, but are entitled to receive reimbursement for travel and per diem expenses.

¹⁰ Florida Department of Management Services, Agency Analysis of 2018 House Bill 651, p. 3 (Dec. 20, 2017).

B. SECTION DIRECTORY:

Section 1. Repeals s. 110.181, F.S., relating to the FSECC.

Section 2. Creates s. 110.182, F.S., prohibiting solicitation of state employees.

Section 3. Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could impact those charities that might benefit from the FSECC; however, the campaign has been inactive since December 2016.

D. FISCAL COMMENTS:

The bill may have a positive fiscal impact on DMS because the department would no longer be required to procure the services of a fiscal agent or agents to receive, account for, and distribute charitable contributions among participating charitable organizations for the FSECC.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to state employment; repealing s. 110.181, F.S., relating to Florida State Employees' Charitable Campaign; creating s. 110.182, F.S.; prohibiting an organization, entity, or person from intentionally soliciting state employees for fundraising or business purposes within specified areas during specified times; providing exceptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 110.181, Florida Statutes, is repealed.

Section 2. Section 110.182, Florida Statutes, is created to read:

110.182 Solicitation of state employees prohibited.—An organization, entity, or person may not intentionally solicit a state employee through any means for fundraising or business purposes within work areas during work hours. This section does not prohibit:

(1) State-approved communications by entities with whom the state has contracted to provide employee benefits or services.

(2) Noncoercive voluntary communications between state employees in workplace areas.

26 (3) Activities at authorized public events occurring in
27 non-work areas of state owned or leased facilities.

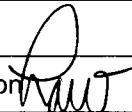

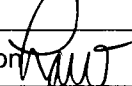
28 Section 3. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 915 Vessel Safety Inspection Decals

SPONSOR(S): Henry

TIED BILLS: IDEN./SIM. **BILLS:** SB 1132

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Natural Resources & Public Lands Subcommittee	12 Y, 0 N	Moore	Shugar 
2) Government Accountability Committee		Moore 	Williamson 

SUMMARY ANALYSIS

The owner and operator of every vessel on Florida waters must carry, store, maintain, and use safety equipment in accordance with the United States Coast Guard (USCG) safety equipment requirements, unless exempted by the Florida Fish and Wildlife Conservation Commission (FWC). Additionally, all vessels must be equipped with serviceable lights and shapes required under navigation rules.

All vessels are required to have onboard a wearable USCG-approved personal flotation device (PFD) for each person, which is the appropriate size for the intended wearer, in serviceable condition, and within easy access. The number of PFDs required increase with the increasing length of the vessel. Other safety equipment requirements that vary depending on the length of the vessel include the number of USGC-approved fire extinguishers and visual distress signals. All vessels are also required to carry an efficient sound-producing device.

An operator of a vessel, who has demonstrated compliance with safety equipment and use requirements during a safety inspection initiated by a law enforcement officer, must be issued a safety inspection decal signifying the vessel has met such requirements at the time and location of the inspection. Thereafter, a law enforcement officer may not stop a vessel that properly displays a valid safety inspection decal for the sole purpose of inspecting the vessel for compliance with safety equipment and use requirements, unless there is reasonable suspicion that a violation of such has occurred or is occurring. Current law does not provide for expiration of the safety inspection decal or grant FWC rulemaking authority to designate the timeframe for expiration of and design for the safety inspection decal.

The bill allows FWC to designate by rule the timeframe for expiration of, and the specific design for, the safety inspection decal. The bill also provides that the safety inspection decal may not be valid for more than five years.

The bill may have a minimal negative fiscal impact on FWC because of an increased workload associated with the rulemaking requirements of the bill and the creation of decals; however, FWC has indicated it is able to absorb the impact within existing resources. The bill does not appear to have a fiscal impact on local governments or the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The owner and operator of every vessel on Florida waters must carry, store, maintain, and use safety equipment in accordance with the United States Coast Guard (USCG) safety equipment requirements, unless exempted by the Florida Fish and Wildlife Conservation Commission (FWC).¹ Additionally, all vessels must be equipped with serviceable lights and shapes required under navigation rules.²

Safety Equipment

All vessels are required to have onboard a wearable USCG-approved personal flotation device (PFD) for each person, which is the appropriate size for the intended wearer, in serviceable condition, and within easy access.³ The number of PFDs required increases with the increasing length of the vessel. For example, a vessel that is 16 feet in length or longer must have at least one USCG-approved Type IV PFD in addition to the total number of PFDs required. In addition, a child under the age of six must wear a USCG-approved Type I, II or III PFD when onboard a vessel under 26 feet in length when underway.⁴ Other safety equipment requirements that vary depending on the length of the vessel include the number of USGC-approved fire extinguishers⁵ and visual distress signals.⁶ All vessels are also required to carry an efficient sound-producing device (e.g., bell, horn, whistle).⁷

Safety Inspection Decal

An operator of a vessel, who has demonstrated compliance with safety equipment and use requirements during a safety inspection initiated by a law enforcement officer, must be issued a safety inspection decal signifying the vessel has met such requirements at the time and location of the inspection.⁸ Thereafter, a law enforcement officer may not stop a vessel that properly displays a valid safety inspection decal for the sole purpose of inspecting the vessel for compliance with safety equipment and use requirements, unless there is reasonable suspicion that a violation of such has occurred or is occurring.⁹ Current law does not provide for expiration of the safety inspection decal or grant FWC rulemaking authority to designate the timeframe for expiration of and design for the safety inspection decal.

Effect of Proposed Changes

The bill allows FWC to designate by rule the timeframe for expiration of, and the specific design for, the safety inspection decal. The bill provides that the safety inspection decal may not be valid for more than five years.

¹ Section 327.50(1)(a), F.S.

² Section 327.50(2), F.S.; 33 C.F.R. § 83.20.

³ 33 C.F.R. § 175.15.

⁴ 33 C.F.R. § 175.15; USCG. *Life Jackets*, [http://www.uscgboating.org/regulations/state-boating-laws-details.php?id=25&title=\[4.9\]Life%20Jackets](http://www.uscgboating.org/regulations/state-boating-laws-details.php?id=25&title=[4.9]Life%20Jackets) (last visited Jan. 8, 2018); s. 327.50(1)(b), F.S., defines the term “underway” to mean at all times except when a vessel is anchored, moored, made fast to the shore, or aground.

⁵ 46 C.F.R. § 169.567.

⁶ 33 C.F.R. § 175.110.

⁷ 33 C.F.R. § 83.33.

⁸ Section 327.70 (2)(a), F.S.

⁹ Section 327.70 (2)(b), F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 327.70, F.S., relating to enforcement of chapters 327 and 328, F.S.

Section 2. Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a minimal negative fiscal impact on FWC because of an increased workload associated with the rulemaking requirements and the creation of decals; however, FWC has indicated it is able to absorb the impact within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill allows FWC to designate by rule the timeframe for expiration of, and the specific design for, the safety inspection decal, which may not be valid for more than five years.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to vessel safety inspection decals;
 3 amending s. 327.70, F.S.; providing rulemaking
 4 authority to the Fish and Wildlife Conservation
 5 Commission regarding expiration and design of safety
 6 inspection decals; specifying standards for such
 7 rulemaking; providing a maximum period of validity;
 8 providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Paragraph (a) of subsection (2) of section
 13 327.70, Florida Statutes, is amended to read:

14 327.70 Enforcement of this chapter and chapter 328.—
 15 (2)(a)1. Upon demonstrated compliance with the safety
 16 equipment carriage and use requirements of this chapter during a
 17 safety inspection initiated by a law enforcement officer, the
 18 operator of a vessel shall be issued a safety inspection decal
 19 signifying that the vessel is deemed to have met the safety
 20 equipment carriage and use requirements of this chapter at the
 21 time and location of such inspection. The commission may
 22 designate by rule the timeframe for expiration of, and the
 23 specific design for, the safety inspection decal. However, a
 24 decal may not be valid for more than 5 years and, at minimum,
 25 must meet the standards specified in s. 327.70(2)(a).

26 2. The safety inspection decal, if displayed, must be
27 located within 6 inches of the inspected vessel's properly
28 displayed vessel registration decal. For nonmotorized vessels
29 that are not required to be registered, the safety inspection
30 decal, if displayed, must be located above the waterline on the
31 forward half of the port side of the vessel.

32 Section 2. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1015 Florida Keys Mosquito Control District, Monroe County
SPONSOR(S): Raschein
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	12 Y, 0 N	Rivera	Miller
2) Government Accountability Committee		Rivera	Williamson

SUMMARY ANALYSIS

The Florida Keys Mosquito Control District (District) is an independent special district, created in 1949 and tasked with controlling and eliminating mosquitoes and other arthropods of public health importance in Monroe County. The District is governed by a board of commissioners, composed of five members elected in a general election to serve terms of four years. Members are not subject to term limits.

The bill imposes a limit on the number of terms and total number of years a member may serve on the District's board of commissioners. Future board members would be limited to serving three 4-year terms for a total of 12 years for their lifetime. Members appointed to a vacant seat who serve more than one-half of the remaining term of the vacancy would have the entire 4-year term counted toward the 12-year maximum limit.

The bill is not retrospective and board members who served prior to October 4, 2018, would not have their prior service counted toward the term limits. Similarly, board members in office as of October 4, 2018, would not have their current terms counted toward the imposed term limits.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Special Districts

The Legislature adopted ch. 189, F.S., to provide uniform statutes for the definition, creation, and operation of special districts.¹ A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.² A special district may be created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.³ A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter.⁴ Each special district existing prior to the enactment of ch. 189, F.S., was required to submit a draft codified charter to the Legislature incorporating all of the special acts pertaining to its operation into a single act.⁵

A "dependent special district" is a district for which the membership of its governing body is identical to the governing body of a single county or municipality, all members of its governing body are appointed by the governing body of a single county or municipality, members of the district's governing body are removable at will by the governing body of a single county or municipality, or the district's budget is subject to the approval of the governing body of a single county or municipality.⁶ An "independent special district" is any district that is not a dependent special district or includes more than one county unless the district lies wholly within a single municipality.⁷

A special district is required to have a governing body.⁸ The members of the governing body serve terms of no more than 4 years.⁹ Chapter 189, F.S., is silent as to restrictions on the number of terms or total number of years a member may serve on the board of a district.

Mosquito Control Districts

A "mosquito control district" is a special district established by law for the express purpose of controlling certain insects within its boundaries.¹⁰ Any municipality or county, in whole or part, regardless of whether the area encompasses an incorporated territory or two or more counties, may be incorporated into a single mosquito control district.¹¹ On or after July 1, 1980, mosquito control districts may only be created by counties.¹²

¹ Section 189.011(1), F.S.

² Section 189.012(6), F.S.

³ *Id.*

⁴ *See ss.* 189.02(4)-(5) and 189.031(3), F.S.

⁵ Section 189.019(1), F.S.

⁶ Section 189.012(2), F.S.

⁷ Section 189.012(3), F.S.

⁸ *See ss.* 189.02(4)-(5) and 189.031(3), F.S.

⁹ Section 189.041(3)(b), F.S. The section provides two instances when the term may be less than the full four years, after the first election or the first landowners' meeting following a referendum carried out as prescribed earlier in the statute.

¹⁰ Section 388.011(5), F.S.

¹¹ Section 388.021(1), F.S.

¹² Section 388.021(2), F.S.

Mosquito control districts are governed by a board of commissioners composed of three or five members elected in a general election.¹³ Members serve terms of four years.¹⁴ Current law does not limit the number of terms or total number of years members may serve.

Florida Keys Mosquito Control District

The Florida Keys Mosquito Control District (District) is a special district, created in 1949 and currently operating under a charter codified in 2002, tasked to control and eliminate mosquitoes and other arthropods of public health importance in Monroe County.¹⁵ The District has the authority to use all the privileges and powers of a mosquito control district under ch. 388, F.S.¹⁶ It is an independent special district as it does not meet any of the criteria to be a dependent special district.¹⁷

The District is governed by a board of commissioners composed of five members elected in a general election.¹⁸ Members generally serve terms of four years¹⁹ and are not subject to term limits under the charter.

Effect of Proposed Changes

The bill imposes a limit on the number of terms and total number of years a member may serve on the District's board of commissioners. Board members serving on or after October 4, 2018, are limited to serving three 4-year terms, consecutive or not, for a total of 12 years. Members appointed to serve more than one-half of the remaining term of a vacated seat would have the entire 4-year term counted toward the 12-year lifetime maximum limit.

The bill is not retroactive, as such, board members who served prior to October 4, 2018, will not have their prior service count toward the term limits. Similarly, board members in office as of October 4, 2018, will not have their current terms count toward the imposed term limits. The October 4th date is one month prior to the next possible election for board members and ensures members elected in the November 6, 2018, general elections will be the first members subject to the new lifetime term limits.²⁰

B. SECTION DIRECTORY:

Section 1. Amends ch. 2002-346, Laws of Fla., as amended, providing term limits for board members.

Section 2. Provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

¹³ Section 388.101(1)-(2), F.S.

¹⁴ Section 388.101(1), F.S.

¹⁵ See generally ch. 26042, Laws of Fla. (1949), as amended, ch. 2002-346, Laws of Fla., as amended, and s.189.019, F.S. The Florida Keys Mosquito Control District was created in 1949 by special act and subsequent amendments were codified into a single charter in 2002 as required pursuant to ch. 189, F.S.

¹⁶ Chapter 2002-346, s.5, Laws of Fla.

¹⁷ See ch. 2002-346, Laws of Fla., and s. 189.012(2), F.S.

¹⁸ Chapter 2002-346, ss.2 and 3(3), Laws of Fla. Members must be residents and registered electors of the area from which they are elected and each member represents a district corresponding to one of the five county commission districts of Monroe County.

¹⁹ Chapter 2002-346, s.3(3), Laws of Fla. Members serve for four years or until a successor is duly elected and qualified.

²⁰ Email from Rep. Rashcein's office, RE: HB 1015 – Term Limits for Mosquito District Commissioners, dated Jan. 5, 2018. (on file with the Local, Federal & Veterans Affairs Subcommittee).

IF YES, WHEN? October 25, 017

WHERE? *The Key West Citizen*, Monroe County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to the Florida Keys Mosquito Control
 3 District, Monroe County; amending ch. 2002-346, Laws
 4 of Florida, as amended; providing term limits for
 5 board members; providing an effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:

8
 9 Section 1. Subsection (4) is added to section 3 of section
 10 3 of chapter 2002-346, Laws of Florida, as amended by chapters
 11 2003-387 and 2003-388, Laws of Florida, to read:


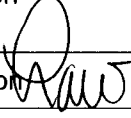
12 Section 3. Board of commissioners; election; terms of
 13 office; qualification.-

14 (4) Members of the board shall serve no more than three 4-
 15 year terms of office for a total of 12 years. An appointed
 16 member who serves more than one-half of the term of the seat
 17 vacated will be considered to have served the entire 4-year term
 18 for purposes of the maximum 12 years. These term limits will not
 19 have retroactive effect and computation of time for term limits
 20 of current members will commence at the conclusion of their
 21 present terms of office. In addition, members who served on the
 22 board before October 4, 2018, will not have their prior service
 23 counted for purposes of term limits.

24 Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7029 PCB OTA 18-04 OGSR/Human Trafficking Expunction
SPONSOR(S): Oversight, Transparency & Administration Subcommittee, Edwards-Walpole
TIED BILLS: **IDEN./SIM. BILLS:** SB 7000

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee	13 Y, 0 N	Harrington	Harrington
1) Government Accountability Committee		Harrington 	Williamson 

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

“Human trafficking” is defined as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person. Human trafficking is a form of modern-day slavery in which young children, teenagers, and adults are subjected to force, fraud, or coercion for sexual exploitation or forced labor.

Florida law allows a victim of human trafficking to petition a court for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking. The offense must be related to the human trafficking scheme of which the person was a victim or must have been at the direction of an operator of the scheme. The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order. Any criminal history record that is ordered expunged must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained.

Current law provides that a criminal history record related to human trafficking that is ordered expunged but that is retained by FDLE is confidential and exempt from public record requirements. Such records must be made available to criminal justice agencies for their respective criminal justice purposes; to any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm for use in the course of such agency’s official duties; and upon order of a court of competent jurisdiction.

The bill reenacts the public record exemption, which will repeal on October 2, 2018, if this bill does not become law.

The bill does not appear to have a fiscal impact on the state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Human Trafficking

Human trafficking is a form of modern-day slavery affecting young children, teenagers, and adults, who are subjected to force, fraud, or coercion for sexual exploitation or forced labor.⁶ Many victims of human trafficking are forced to work in prostitution or the sexual entertainment industry. Trafficking also occurs in forms of labor exploitation, such as domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work.⁷ In 2004, the Legislature criminalized human trafficking and the unlawful procurement of human labor or services.⁸ Florida law defines the term "human trafficking" to include transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.⁹ Under current law, any person who knowingly engages in human trafficking commits a first-degree felony.¹⁰

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I of the State Constitution.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Section 787.06(1)(a), F.S.

⁷ *Id.*

⁸ Chapter 2004-391, L.O.F.; codified as s. 787.06, F.S.

⁹ Section 787.06(2)(d), F.S.

¹⁰ Section 787.06(3), F.S.

Expunction of Human Trafficking Records

In 2013, the Legislature created a process to allow a victim of human trafficking to petition a court for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking. The offense must be related to the human trafficking scheme of which the person was a victim or must have been at the direction of an operator of the scheme.¹¹ The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order. Any criminal history record that is ordered expunged must be physically destroyed or obliterated by any criminal justice agency having custody of such record, except that any criminal history record in the custody of the Florida Department of Law Enforcement (FDLE) must be retained.¹²

Public Record Exemption under Review

In 2013, the Legislature created a public record exemption for a criminal history record that is ordered expunged but that is retained by FDLE. Such record is confidential and exempt¹³ from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.¹⁴ The record must be made available to criminal justice agencies for their respective criminal justice purposes; to any governmental agency that is authorized by state or federal law to determine eligibility to purchase or possess a firearm or to carry a concealed firearm for use in the course of such agency's official duties; and upon order of a court of competent jurisdiction.¹⁵

The 2013 public necessity statement for the exemption provided that:

The Legislature finds that it is a public necessity that a criminal history record ordered expunged under s. 943.0583, Florida Statutes, that is retained by the Department of Law Enforcement be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Persons who are victims of human trafficking and who have been convicted of crimes committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal convictions remain on record and accessible to potential employers and others. It is necessary that these records be made confidential in order for human trafficking victims to have the chance to rebuild their lives and reenter society.¹⁶

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2018, unless reenacted by the Legislature.¹⁷

During the 2017 interim, subcommittee staff consulted with staff from FDLE, the Florida Court Clerks and Comptrollers, and the Florida Prosecuting Attorney's Association as part of its review under the Open Government Sunset Review Act. According to FDLE, a total of 33 orders for expunction have

¹¹ Chapter 2013-99, L.O.F.; codified as s. 943.0583, F.S.

¹² Section 943.045(16), F.S.

¹³ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

¹⁴ Section 943.0583(10), F.S.

¹⁵ *Id.*

¹⁶ Section 2, ch. 2013-99, L.O.F.

¹⁷ Section 943.0583(10)(b), F.S.

been processed since 2014. Specifically, there was one order processed in 2014, there were 12 processed in 2015, and six in 2016, and there have been 14 thus far in 2017.¹⁸

Effect of the Bill

The bill removes the scheduled repeal date of the public record exemption, thereby reenacting the public record exemption for a criminal history record of a victim of human trafficking that a court has ordered expunged but that has been retained by FDLE.

B. SECTION DIRECTORY:

Section 1 amends s. 943.0583, F.S., to reenact the public record exemption for certain expunged criminal history records retained by FDLE.

Section 2 provides an effective date of October 1, 2018.

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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

¹⁸ Email from Ronald E. Draa, Director of External Affairs, FDLE, to Senate Criminal Justice Committee staff on October 19, 2017 (on file with the Oversight, Transparency & Administration Subcommittee).

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 943.0583, F.S., which
 4 provides an exemption from public record requirements
 5 for certain criminal history records ordered expunged
 6 that are retained by the Department of Law
 7 Enforcement; removing the scheduled repeal of the
 8 exemption; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsection (10) of section 943.0583, Florida
 13 Statutes, is amended to read:

14 943.0583 Human trafficking victim expunction.—

15 (10)(a) A criminal history record ordered expunged under
 16 this section that is retained by the department is confidential
 17 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 18 Constitution, except that the record shall be made available:

19 1. To criminal justice agencies for their respective
 20 criminal justice purposes. ~~and~~

21 2. To any governmental agency that is authorized by state
 22 or federal law to determine eligibility to purchase or possess a
 23 firearm or to carry a concealed firearm for use in the course of
 24 such agency's official duties. ~~Otherwise, such record shall not~~
 25 ~~be disclosed to any person or entity except~~

26 3. Upon order of a court of competent jurisdiction.

27 (b) A criminal justice agency may retain a notation
28 indicating compliance with an order to expunge.

29 ~~(b) This subsection is subject to the Open Government~~
30 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
31 ~~repealed on October 2, 2018, unless reviewed and saved from~~
32 ~~repeal through reenactment by the Legislature.~~

33 Section 2. This act shall take effect October 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7031 PCB OTA 18-03 OGSR/Criminal Justice Commission
SPONSOR(S): Oversight, Transparency & Administration Subcommittee, Burgess, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** SB 7002

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Oversight, Transparency & Administration Subcommittee	12 Y, 0 N	Toliver	Harrington
1) Government Accountability Committee		Toliver <i>2T</i>	Williamson <i>AW</i>

SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2nd of the fifth year after enactment.

Currently a municipality or county may create an advisory commission to examine local criminal justice issues. Such a commission, termed a duly constituted criminal justice commission (commission), may have a need to discuss active criminal intelligence or investigative information to develop strategies and offer recommendations regarding the criminal justice activities of its locality. As a governmental entity, each commission meeting is subject to the public meetings requirements of the sunshine law.

Current law provides an exemption from public meetings requirements for those portions of a commission meeting during which active criminal intelligence or investigative information is discussed and that information is being considered by, or which may foreseeably come before, the commission. However, at each commission meeting during which active criminal intelligence or investigative information is being considered, the commission members must publicly disclose it has been discussed.

The bill reenacts the public meeting exemption, which will repeal on October 2, 2018, if this bill does not become law.

The bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Open Government Sunset Review Act

The Open Government Sunset Review Act (Act)¹ sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.²

The Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.³

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded (essentially creating a new exemption), then a public necessity statement and a two-thirds vote for passage are required.⁴ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created⁵ then a public necessity statement and a two-thirds vote for passage are not required.

Duly Constituted Criminal Justice Commission

Currently a county or municipality may create a duly constituted criminal justice commission (commission) to examine local criminal justice issues.⁶ The commission, which serves as an advisory body, must be created by county or municipal ordinance and be composed of individuals from the private and public sectors.⁷ Meetings of the commission are subject to s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution. As such, the meetings must be reasonably noticed and open to the public, unless otherwise made exempt.

Public Meeting Exemption under Review

In 2013, the Legislature created a public meeting exemption for portions of a commission meeting during which commission members discuss active criminal intelligence information⁸ or active criminal

¹ Section 119.15, F.S.

² Section 119.15(3), F.S.

³ Section 119.15(6)(b), F.S.

⁴ Section 24(c), Art. I, FLA. CONST.

⁵ An example of an exception to a public record exemption would be allowing another agency access to confidential and exempt records.

⁶ Section 286.01141, F.S.

⁷ *Id.*

⁸ Section 119.011(3)(a), F.S., defines the term "criminal intelligence information" to mean information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Criminal intelligence information is considered "active" so long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities. Section 119.011(3)(d), F.S.

investigative information⁹ that is being considered by, or which may foreseeably come before, the commission.¹⁰ However, at any public meeting during which such information is discussed, the members of the commission are required to publicly disclose the fact that the matter has been discussed.¹¹

The 2013 public necessity statement for the exemption provides that:

If the meetings at which exempt information is discussed were open to the public, the purpose of the exemption from public records requirements found in chapter 119, Florida Statutes, would be defeated. The members of a criminal justice commission must be able to hear and discuss exempt information freely in order to make sound recommendations regarding strategies and activities that are best suited to protect the welfare of the people of this state. The ability to conduct meetings at which members can freely discuss and fully understand the details of active criminal intelligence information and active criminal investigative information is critical to the ability of a criminal justice commission to operate effectively.¹²

Pursuant to the Open Government Sunset Review Act, the public meeting exemption will repeal on October 2, 2018, unless reenacted by the Legislature.

Open Government Sunset Review

During the 2017 interim, subcommittee staff sent a questionnaire to each county and city as part of its review under the Open Government Sunset Review Act. In all, 20 questionnaire responses were received.¹³ Only two respondents, Miami-Dade County and Palm Beach County, indicated they have a “duly constituted criminal justice commission” as defined in s. 286.01141(1)(a), F.S.

The Dade-Miami Criminal Justice Council “was created in 1978 and was codified via ordinance in February 2014.”¹⁴ According to the questionnaire response, “[t]he general purpose of [the council] is to encourage and facilitate the coordination and cooperation among various agencies and municipalities within Miami-Dade County with crime prevention/intervention strategies, criminal and juvenile justice activities and other activities related to criminal justice.”¹⁵

The Palm Beach County Criminal Justice Commission was created in 1988 pursuant to an ordinance adopted in 1988.¹⁶ The commission prioritizes its projects at its annual meeting and its discussions “center around the progress on these priorities which in the past few years have been [the

⁹ Section 119.011(3)(b), F.S., defines the term “criminal investigative information” to mean information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance. Criminal investigative information is considered to be “active” so long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future. Section 119.011(3)(d), F.S.

¹⁰ Section 286.01141(2), F.S.

¹¹ *Id.*

¹² Chapter 2013-196, L.O.F.

¹³ Questionnaire and responses are on file with the House Oversight, Transparency & Administration Subcommittee.

¹⁴ Miami-Dade County Response to the OGSR Questionnaire, pg. 2, on file with the House Oversight, Transparency & Administration Subcommittee; *see also* Miami Dade County Ord. No. 14-17, ss. 1-8, adopted February 4, 2014. For purposes of classification, these provisions were included as Miami-Dade County Code of Ordinances, ch. 2, art. CXLIX, ss. 2-2166—2-2173. *See* https://library.municode.com/fl/miami_-_dade_county/codes/code_of_ordinances?nodeId=PTIIIICOR_CH2AD_ARTCXLIxDAAMCRJUCO_S2-2166CRPU (last visited on November 7, 2017).

¹⁵ Miami-Dade County Response to OGSR Questionnaire, pg. 3, on file with the House Oversight, Transparency & Administration Subcommittee.

¹⁶ Palm Beach County Ord. No. 88-16, adopted Aug. 16, 1988, effective Aug. 29, 1988, amended the Palm Beach County Code of Ordinances by adding provisions designated as Palm Beach Code of Ordinances, ch. 2, art. V, div. 5, ss. 2-216—2-221. *See* <http://discover.pbcgov.org/criminaljustice/PDF/CJC%20Ordinance.pdf> (last visited on November 7, 2017).

commission's] ... reentry program, community engagement, behavioral health issues in the system, body worn camera deployment amongst our local law enforcement agencies, the implementation of a validated risk assessment instrument for pretrial detention decision-making, our jail population and efforts to reduce it, law enforcement information sharing systems, and the Batterers' Intervention Program."¹⁷

The Dade-Miami Criminal Justice Council and the Palm Beach County Criminal Justice Commission have not closed any portion of their meetings to discuss active criminal intelligence information or active criminal investigative information. Because the Dade-Miami Criminal Justice Council has not used the exemption, Miami-Dade County did not render an opinion on whether the exemption should be reenacted. In contrast, Palm Beach County recommended reenactment of the exemption: "While the [Criminal Justice Commission] has never needed to use the exemption, there are always new issues to address. The [Criminal Justice Commission] is committed to data-driven policy-making and may require the exemption for future meetings."¹⁸

Effect of the Bill

The bill removes the repeal date thereby reenacting the public meetings exemption for portions of a meeting of a duly constituted criminal justice commission at which members of the commission discuss active criminal intelligence information or active criminal investigative information that is currently being considered by, or which may foreseeably come before, the commission.

B. SECTION DIRECTORY:

Section 1 amends s. 286.01141, F.S., to save from repeal the public meetings exemption for portions of a meeting of a duly constituted criminal justice commission.

Section 2 provides an effective date of October 1, 2018.

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:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

¹⁷ Palm Beach County Response to the OGSR Questionnaire, pg. 5, on file with the House Oversight, Transparency & Administration Subcommittee.

¹⁸ *Id.*

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor 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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 286.01141, F.S., which
4 provides an exemption from public meeting requirements
5 for certain portions of meetings by a duly constituted
6 criminal justice commission; removing the scheduled
7 repeal of the exemption; providing an effective date.

8
9 Be It Enacted by the Legislature of the State of Florida:

10
11 Section 1. Subsection (3) of section 286.01141, Florida
12 Statutes, is amended to read:

13 286.01141 Criminal justice commissions; public meetings
14 exemption.—

15 ~~(3) This section is subject to the Open Government Sunset~~
16 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
17 ~~on October 2, 2018, unless reviewed and saved from repeal~~
18 ~~through reenactment by the Legislature.~~

19 Section 2. This act shall take effect October 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7035 PCB NRPL 18-01 Ratification of St. Johns River Water Management District Rules
SPONSOR(S): Natural Resources & Public Lands Subcommittee, McClain
TIED BILLS: **IDEN./SIM. BILLS:** SB 670

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Natural Resources & Public Lands Subcommittee	12 Y, 0 N	Moore	Shugar
1) Government Accountability Committee		Moore <i>af</i>	Williamson <i>Raw</i>

SUMMARY ANALYSIS

Silver Springs is an Outstanding Florida Spring (OFS). OFSs are required to have a minimum flow and water level (MFL) adopted by rule. If the OFS is below or projected to fall below the MFL within 20 years, then a recovery or prevention strategy must be adopted concurrently with the MFL.

In June 2017, the St. Johns River Water Management District (SJRWMD) adopted by rule the MFL for Silver Springs. Currently, the MFL is being met; however, by 2025, the projected water use demands of the area cannot be met under the established frequent low flow for the OFS. Accordingly, the SJRWMD concurrently moved to adopt proposed rule 40C-2.101, F.A.C, establishing a prevention strategy for the OFS, which includes the development of additional water supplies and other regulatory action to prevent the existing flow or water level from falling below the established MFL. The prevention strategy includes two water supply development projects, the Lower Floridan Aquifer (LFA) Conversion Project and the Wetland Recharge Park Project. The SJRWMD estimates the LFA Conversion Project will cost between \$23.82 million and \$44.97 million. The SJRWMD is required to pay at least 25 percent of the total project cost of the project. Water users will incur the remaining costs.

Due to the estimated regulatory costs, the SJRWMD was required to prepare a statement of estimated regulatory costs (SERC) for proposed rule 40C-2.101, F.A.C. A SERC must be prepared if a proposed rule will have an adverse impact on small business or is likely to directly or indirectly increase regulatory costs in excess of \$200,000 aggregated within one year after implementation. If the SERC shows that the adverse impact or regulatory costs of the proposed rule exceeds \$1 million in the aggregate within five years after implementation, then the proposed rule must be submitted to the Legislature for ratification.

The SJRWMD's SERC for proposed rule 40C-2.101, F.A.C, associated with the Silver Springs MFL prevention strategy indicates that the proposed rule will exceed \$1 million aggregated within five years after implementation. Accordingly, the proposed rule was submitted to the Legislature for ratification.

The bill ratifies the SJRWMD's proposed consumptive use rule related to the prevention strategy for Silver Springs, which will be incorporated into the SJRWMD's "Applicant's Handbook, Consumptive Uses of Water" (Handbook). The Handbook is a publication adopted by rule pursuant to rule 40C-2.101, F.A.C. The bill states that it serves no other purpose and will not be codified in the Florida Statutes. The bill specifies that after becoming law, its enactment and effective dates will be noted in the F.A.C., the Florida Administrative Register, or both, as appropriate.

The rule being ratified by the bill will have a negative fiscal impact on the SJRWMD, and on local governments and the private sector who provide water supply from the Silver Springs area and who are required to implement the prevention strategy.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Consumptive Use Permits

Before using water of the state,¹ a person must apply for and obtain a consumptive use permit (CUP) from the applicable water management district (WMD) or the Department of Environmental Protection (DEP). The WMD or DEP may impose reasonable conditions necessary to assure that such use is consistent with the overall objectives of the WMD or DEP and is not harmful to the water resources of the area.² To obtain a CUP, an applicant must establish that the proposed use of water is a reasonable-beneficial use,³ will not interfere with any presently existing legal use of water, and is consistent with the public interest.⁴

Silver Springs

Silver Springs is an Outstanding Florida Spring⁵ (OFS) located in Marion County, Florida. OFSs are required to have a minimum flow⁶ and water level⁷ (MFL) adopted by rule by July 1, 2017.⁸ A recovery or prevention strategy must be adopted concurrently with the MFL if the OFS is below, or is projected to fall below, the MFL within 20 years.⁹

In June 2017, the St. Johns River Water Management District (SJRWMD) adopted rule 40C-8.031(7), F.A.C., which provided the MFL for Silver Springs.¹⁰ Currently, the MFL is being met; however, by 2025 the projected water use demands of the area cannot be met under the established frequent low flow for the OFS.¹¹ Accordingly, the SJRWMD concurrently moved to adopt proposed rule 40C-2.101, F.A.C., which provides a prevention strategy for the OFS. The proposed rule includes the development of additional water supplies and other regulatory action to prevent the existing flow or water level from falling below the established MFL.¹²

¹ Section 373.019(22), F.S., defines “water” or “waters of the state” to mean any and all water on or beneath the surface of the ground or in the atmosphere, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the jurisdiction of the state.

² Section 373.219(1), F.S.; An individual solely using water for domestic consumption is exempt from CUP requirements.

³ Section 373.019(16), F.S., defines “reasonable-beneficial use” to mean the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest.

⁴ Section 373.223(1), F.S.

⁵ Section 373.802(4), F.S., provides that an “Outstanding Florida Spring” includes all historic first magnitude springs, including their associated spring runs, as determined by DEP using the most recent Florida Geological Survey springs bulletin, and the following additional springs, including their associated spring runs: De Leon Springs; Peacock Springs; Poe Springs; Rock Springs; Wekiwa Springs; and Gemini Springs. It does not include submarine springs or river rises.

⁶ The minimum flow is the limit at which further water withdrawals would be significantly harmful to the water resources or ecology of the area; s. 373.042(1)(a), F.S.

⁷ The minimum level is the level of groundwater in an aquifer or the level of a surface waterbody at which further withdrawals will significantly harm the water resources of the area; s. 373.042(1)(b), F.S.

⁸ Section 373.042(2)(a), F.S.

⁹ Section 373.805(1), F.S.

¹⁰ The rule has since been amended and the current reference to the Silver Springs MFL is found in subsection (10).

¹¹ SJRWMD. *SERC*, https://www.sjrwmd.com/static/permitting/ruledevelopment/SERC_for_40C-2.101_Silver_Springs_Strategy_Rules.pdf (last visited Jan. 16, 2018).

¹² Section 373.0421(2), F.S.; SJRWMD, *Prevention Strategy for the Implementation of Silver Springs Minimum Flows and Levels* (April 2017), https://www.sjrwmd.com/static/mfls/ssmfl/Silver_Prevention_Strategy_Draft.pdf (last visited Jan. 8, 2018).

Prevention Strategy

A prevention strategy must include the development of additional water supplies and regulatory actions to prevent the existing flow or water level from falling below the established MFL. A prevention strategy must include a phased-in approach or a timetable, which allows for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including implementation of conservation and other efficiency measures to offset reductions in permitted water withdrawals.¹³

For an OFS, a prevention strategy must also include:

- A list of all specific projects identified for implementation;
- A priority listing of each project;
- The estimated cost and completion date of each project;
- The source and amount of financial assistance to be made available by the WMD¹⁴ for each project, which may not be less than 25 percent of the total project cost unless a specific funding source(s) is identified which will provide more than 75 percent of the total project cost;
- An estimate of each project's benefit to the OFS; and
- An implementation plan designed with a target to achieve the adopted MFL no more than 20 years after the adoption of a prevention strategy.¹⁵

The SJRWMD's prevention strategy includes two water supply development projects, the Lower Floridan Aquifer (LFA) Conversion Project and the Wetland Recharge Park Project, which will reduce potential impacts to Silver Springs. The LFA Conversion Project will convert existing Upper Floridan Aquifer (UFA) wells, which extend a few hundred feet below ground, to LFA wells, which extend more than 1,000 feet below ground. The SJRWMD estimates the LFA Conversion Project will cost between \$23.82 million and \$44.97 million. The SJRWMD estimates that its 25 percent portion of the project will be approximately \$1.8 million to \$9.06 million. Water users would incur the remaining costs, which are approximately \$5.42 million to \$27.17 million. The SJRWMD estimates that its 25 percent portion of the total cost for all prevention strategy projects will be approximately \$14 million.¹⁶ Due to the estimated regulatory costs, the SJRWMD was required to prepare a statement of estimated regulatory costs (SERC) for proposed rule 40C-2.101, F.A.C.

Rulemaking Authority, Statement of Estimated Regulatory Costs, and Legislative Ratification

A rule is an agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency.¹⁷ The Legislature grants an agency rulemaking authority through statute and authorizes an agency to adopt, develop, establish, or otherwise create a rule.¹⁸ To adopt a rule, an agency must have a general grant of authority to implement a specific law through rulemaking.¹⁹ The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.²⁰

¹³ Section 373.0421(2), F.S.

¹⁴ The Northwest Florida WMD and the Suwannee River WMD are not required to meet this financial assistance requirement; s. 373.805(4)(d), F.S.

¹⁵ Section 373.805(4)(a)-(f), F.S.

¹⁶ SJRWMD. *SERC*, https://www.sjrwmd.com/static/permitting/ruledevelopment/SERC_for_40C-2.101_Silver_Springs_Strategy_Rules.pdf (last visited Jan. 16, 2018).

¹⁷ Section 120.52(16), F.S.

¹⁸ Sections 120.52(17) and 120.536(1), F.S.

¹⁹ Section 120.536(1), F.S.

²⁰ *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

The formal rulemaking process begins by an agency giving notice of the proposed rule.²¹ The notice is published by the Department of State in the Florida Administrative Register²² and must include an explanation of the purpose and effect of the rule, the specific legal authority for the rule, the full text of the rule, a summary of the agency's SERC, if one is prepared, whether legislative ratification is required, and how a party may request a public hearing on the proposed rule.²³

The SERC must include an economic analysis projecting a proposed rule's adverse effect on specified aspects of the state's economy or increase in regulatory costs.²⁴ If the proposed rule will have an adverse impact on small business²⁵ or is likely to increase directly or indirectly regulatory costs in excess of \$200,000 aggregated within one year after implementation, an agency must prepare a SERC.²⁶ If the SERC shows that the adverse impact or regulatory costs of the proposed rule exceeds \$1 million in the aggregate within five years after implementation, then the proposed rule must be submitted to the Legislature for ratification and may not take effect until it is ratified by the Legislature.²⁷

The SJRWMD's SERC for proposed rule 40C-2.101, F.A.C, indicates the rule will exceed \$1 million aggregated within five years after implementation. Accordingly, the proposed rule was submitted to the Legislature for ratification.

Effect of Proposed Changes

The bill ratifies the SJRWMD's proposed consumptive use rule, proposed rule 40C-2.101, F.A.C, related to the prevention strategy for Silver Springs, which will be incorporated into the SJRWMD's "Applicant's Handbook, Consumptive Uses of Water" (Handbook). The Handbook is a publication adopted by rule pursuant to rule 40C-2.101, Florida Administrative Code.

The bill states that it serves no other purpose and will not be codified in the Florida Statutes. The bill specifies that after becoming law, its enactment and effective dates will be noted in the F.A.C., the Florida Administrative Register, or both, as appropriate. The bill specifies that it does not alter rulemaking authority delegated by prior law, constitute legislative preemption of or exception to any provision of law governing adoption or enforcement of the rule cited, and is intended to preserve the status of any cited rule as a rule under ch. 120, F.S. The bill also specifies that it does not cure any rulemaking defect or preempt any challenge based on a lack of authority or a violation of the legal requirements governing the adoption of any rule cited.

B. SECTION DIRECTORY:

Section 1. Ratifies a rule of the St. Johns River Water Management District.

Section 2. Provides an effective date of becoming a law.

²¹ Section 120.54(3)(a), F.S.

²² Section 120.55, F.S.

²³ Section 120.54(3)(a), F.S.

²⁴ Section 120.541(2), F.S.

²⁵ Section 288.703(6), F.S., defines "small business" to mean an independently owned and operated business that employs 200 or fewer permanent full-time employees and that, together with its affiliates, has a net worth of not more than \$5 million or any firm based in this state that has a Small Business Administration 8(a) certification. As applicable to sole proprietorships, the \$5 million net worth requirement includes both personal and business investments.

²⁶ Sections 120.54(3)(b) and 120.541(1)(b), F.S.

²⁷ Sections 120.541(2)(a) and (3), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

According to the SERC, implementation of the rule being ratified will have a negative fiscal impact on the SJRWMD. The SJRWMD's 25 percent share of the estimated cost of the LFA Conversion Project is approximately \$1.8 million to \$9.06 million. The SJRWMD estimates that its 25 percent portion of the total cost for all prevention strategy projects will be approximately \$14 million.²⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

According to the SERC, implementation of the rule being ratified by the bill will have a negative fiscal impact on local governments who provide water supply from the Silver Springs area that will be required to implement the prevention strategy. Additionally, the SJRWMD determined that it was not suitable to exempt small counties²⁹ or cities³⁰ from the rule.³¹

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill itself does not have a direct fiscal impact on the private sector; however, the substantive policy of the rule being ratified is expected to have an economic impact on the private sector. According to the SERC, the rule being ratified by the bill will have a negative fiscal impact on the private sector due to implementation of the prevention strategy. The SJRWMD determined that it was not suitable to exempt small businesses, which comprise approximately 84 percent of the permitted water users in the Silver Springs area, from the rule.³²

Applicants who request an increase in permitted water use from the UFA beyond their 2024 water demand will incur new costs when applying for a new CUP, CUP modification, or CUP renewal. For instance, 75 percent of the estimated cost of the LFA Conversion Project, approximately \$5.42 million to \$27.17 million, will result in a cost on water users. Water users who pump groundwater from the LFA would pay 100 percent of the increased operating costs. Increased operating costs represents the difference to pump water from the UFA (approximately \$19,100 per year) versus the slightly greater cost to pump water from the LFA (approximately \$22,900 per year), and the difference to treat fresh water from the UFA (approximately \$560,000 per year) versus the greater costs to treat brackish water from the LFA (approximately \$4,117,000 per year).³³

²⁸ SJRWMD. *SERC*, https://www.sjrwmd.com/static/permitting/ruledevelopment/SERC_for_40C-2.101_Silver_Springs_Strategy_Rules.pdf (last visited Jan. 16, 2018).

²⁹ Section 120.52(19), F.S., defines a "small county" to mean any county that has an unincarcerated population of 75,000 or less according to the most recent decennial census.

³⁰ Section 120.52(18), F.S., defines a "small city" to mean any municipality that has an unincarcerated population of 10,000 or less according to the most recent decennial census.

³¹ SJRWMD. *SERC*, https://www.sjrwmd.com/static/permitting/ruledevelopment/SERC_for_40C-2.101_Silver_Springs_Strategy_Rules.pdf (last visited Jan. 16, 2018).

³² *Id.*

³³ *Id.*

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds; reduce the authority that counties or municipalities have to raise revenue in the aggregate; or 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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

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A bill to be entitled
 An act relating to ratification of St. Johns River
 Water Management District rules; ratifying a specified
 rule relating to implementation of the water
 management district's prevention strategy to address
 the Silver Springs minimum flows and water levels, for
 the sole and exclusive purpose of satisfying any
 condition on effectiveness pursuant to s. 120.541(3),
 F.S., which requires ratification of any rule meeting
 any specified thresholds for likely adverse impact or
 increase in regulatory costs; providing an effective
 date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. (1) The following rule is ratified for the
 sole and exclusive purpose of satisfying any condition on the
 effectiveness imposed under s. 120.541(3), Florida Statutes:
 Rule 40C-2.101, Florida Administrative Code, titled
 "Publications Incorporated by Reference" as filed for adoption
 with the Department of State pursuant to the certification
 package dated August 1, 2017.

(2) This act serves no other purpose and shall not be
 codified in the Florida Statutes. After this act becomes law,
 its enactment and effective dates shall be noted in the Florida

26 Administrative Code, the Florida Administrative Register, or
27 both, as appropriate. This act does not alter rulemaking
28 authority delegated by prior law, does not constitute
29 legislative preemption of or exception to any provision of law
30 governing adoption or enforcement of the rule cited, and is
31 intended to preserve the status of any cited rule as a rule
32 under chapter 120, Florida Statutes. This act does not cure any
33 rulemaking defect or preempt any challenge based on a lack of
34 authority or a violation of the legal requirements governing the
35 adoption of any rule cited.

36 Section 2. This act shall take effect upon becoming a law.