



ECONOMIC AFFAIRS COMMITTEE

MEETING PACKET

**Friday, March 21, 2014
9:00 AM – 11:00 AM
Reed Hall (102 HOB)**

**Will Weatherford
Speaker**

**Jimmy Patronis
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Economic Affairs Committee

Start Date and Time: Friday, March 21, 2014 09:00 am
End Date and Time: Friday, March 21, 2014 11:00 am
Location: Reed Hall (102 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 17 Motorist Safety by Transportation & Highway Safety Subcommittee, Slosberg
CS/CS/HB 19 Pub. Rec./Yellow Dot Critical Motorist Medical Information Program by Government Operations Subcommittee, Transportation & Highway Safety Subcommittee, Slosberg
CS/HB 155 Defense Contracting by Economic Development & Tourism Subcommittee, Smith
HB 189 Growth Management by Boyd
HB 231 Admissions Tax by Brodeur
CS/HB 469 Move Over Act by Transportation & Highway Safety Subcommittee, Raschein
CS/CS/HB 599 Pub. Rec./Automated License Plate Recognition Systems by Government Operations Subcommittee, Transportation & Highway Safety Subcommittee, Hutson
CS/HB 731 POW-MIA Chair of Honor Memorial by Government Operations Appropriations Subcommittee, Hood
HB 809 Manatee County by Boyd
HB 919 Bay County Tourist Development Council, Bay County by Patronis

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Thursday, March 20, 2014.

By request of the Chair, all Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Thursday, March 20, 2014.

NOTICE FINALIZED on 03/19/2014 14:57 by Manning.Karen

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 17 Motorist Safety

SPONSOR(S): Transportation & Highway Safety Subcommittee; Slosberg and others

TIED BILLS: HB 19 IDEN./SIM. **BILLS:** SB 262

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	14 Y, 0 N, As CS	Thompson	Miller
2) Local & Federal Affairs Committee	16 Y, 0 N	Dougherty	Rojas
3) Economic Affairs Committee		Thompson <i>JAT</i>	Creamer <i>JU</i>

SUMMARY ANALYSIS

CS/HB17 authorizes, but does not require, the governing board of a county to create a "yellow dot critical motorist medical information program" for the purpose of assisting emergency medical responders and program participants in the event of a motor vehicle accident or a medical emergency involving a participant's vehicle. Participants in the program receive a yellow dot decal to place on their vehicle's rear window, which alerts emergency services personnel to look for a corresponding yellow dot folder in the glove box. The yellow dot folder includes the participant's emergency contact and medical information.

Under the bill, a person's participation in the program is voluntary and free. A county, or group of counties, may solicit sponsorships to cover expenditures, including the cost of the yellow dot decals and folders. The bill also authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) and the Department of Transportation (DOT) to provide education and training to encourage emergency medical responders to participate in the program. DHSMV and DOT may also take reasonable measures to publicize the program.

The bill limits the liability of emergency medical responders, and requires the governing body of a participating county to adopt guidelines and procedures to ensure that the confidential information is not made public.

This bill has no fiscal impact.

This bill will take effect on July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The yellow dot program is a system to alert first responders at an accident scene to search for medical information about the injured—especially if the injured is unconscious or unable to speak.¹ According to the newspaper *USA Today*, the yellow dot program is "... simple but effective: [p]articipants in the free program receive a yellow dot to place on their rear window; it alerts emergency services personnel to look for a corresponding yellow folder in the glove box."² The yellow folder may include the injured participant's name, photograph, emergency contact information, medical information, hospital preference, and other vital information.

The program began in Connecticut in 2002, and now, with slight variations, is in counties scattered across at least eight other states: Kansas, Illinois, Iowa, Minnesota, Massachusetts, Virginia, Alabama and New York.³

Effect of Proposed Changes

The bill authorizes the governing body of a county to create a yellow dot critical motorist medical information program to facilitate the provision of emergency medical care to program participants by emergency medical responders by making critical medical information readily available to responders in the event of a motor vehicle accident or a medical emergency involving a participant's vehicle.

Under the bill, a person's participation in the program is voluntary and free. A county, or group of counties, may solicit sponsorships from business entities and not-for-profit organizations to cover expenditures, including the cost of the yellow dot decals and folders that are provided free of charge to participants. Two or more counties also may enter into an interlocal agreement to solicit such sponsorships.

The bill also authorizes DHSMV and DOT to provide education and training to encourage emergency medical responders to participate in the program. DHSMV and DOT may also take reasonable measures to publicize the program.

Any owner or lessee of a motor vehicle may participate in the program upon submission of an application and documentation on a form prescribed by the governing body of the county. The application form must include a statement that the information submitted will be disclosed only to authorized personnel of law enforcement and public safety agencies, emergency medical services agencies, and hospitals in the case of a motor vehicle accident or other emergency situation. The application must describe the confidential nature of the medical information voluntarily provided by the participant. The application must include a notice to the participant stating that, by providing the medical information and signing the form, he or she agrees to the disclosure of the medical information to authorized personnel and their use of such information in the case of a motor vehicle accident or other emergency situation.

After submitting a completed application, the participant is given a yellow dot decal to affix onto the lower left corner of his or her vehicle's rear window (or a clearly visible location on a motorcycle), a yellow dot folder, and a form for the participant's information.

¹ Additional information about the Yellow Dot program at www.yellow-dot.com (Last viewed on 2/5/14).

² "Yellow Dot car program speeds to help crash victims." Larry Copeland, *USA Today* (5/24/2011) at http://usatoday30.usatoday.com/news/nation/2011-05-23-yellow-dot-seniors-drivers-baby-boomers_n.htm (Last viewed on 2/5/14).

³ *Id.*

The form, which is to be placed inside the yellow dot folder, must contain the following information:

- the participant's name;
- the participant's photograph;
- emergency contact information of no more than two persons;
- the participant's medical information, including medical conditions, recent surgeries, allergies and medications;
- the participant's hospital preference; and
- contact information for no more than two physicians.

The yellow dot folder must be stored in the glove compartment of a motor vehicle or in a compartment attached to a motorcycle. The use of the information contained in the yellow dot folder by an emergency medical responder at the scene is limited to the following functions:

- to positively identify the participant;
- to ascertain whether the participant has a medical condition that might impede communications between the participant and the responder;
- to access the medical information form; and
- to ensure that the participant's current medications and preexisting medical conditions are considered when emergency medical treatment is administered for any injury to or condition of the participant.

A motor vehicle passenger may also participate in the yellow dot program, but may not be issued a decal if a decal is issued to the owner or lessee of the motor vehicle in which the person rides.

When the driver of a vehicle with an affixed yellow dot decal is involved in an accident or emergency situation, an emergency medical responder at the scene is authorized to search the glove compartment of the vehicle for the corresponding yellow dot folder. With regard to liability, the bill provides that—except for wanton or willful conduct—an emergency medical responder, or the employer of a responder, does not incur any liability if the responder disseminates or fails to disseminate any information from the yellow dot folder to any other emergency medical responder, hospital, or health care provider who renders emergency medical treatment to the participant.

The governing body of a participating county is required to adopt guidelines and procedures to prevent the public disclosure of confidential information through the program.

B. SECTION DIRECTORY:

Section 1: Creates an unnumbered section of law authorizing a motorist medical information program.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None. Neither DHSMV nor DOT is required to provide training, education or to publicize the program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS.

D. FISCAL COMMENTS:

The bill does not require a county to create a yellow dot program. If the governing body of a county decides to create such a program, the bill authorizes the county's governing body to seek sponsorships to cover costs. Public participation in the program is voluntary and free.

The cost of the program is unknown. Yellow Dot LLC, a Nevada business, advertises a booklet with a sticker priced at \$5.00.⁴

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments

Under its home rule powers,⁵ a county may enact a yellow dot program without the authority provided by this bill. Nonetheless, a statute, such as the one proposed, may serve to encourage participation in this program, while requiring some uniformity.

⁴ See, <http://www.yellow-dot.com/3301.html>. (Last viewed 2/5/14).

⁵ Home rule powers are conferred to Florida counties by Article VIII, Section 1(f), of the Florida Constitution (1968), and by s. 125.01, F.S.

CS/HB 19 creates a public record exemption for a yellow dot program participant's personal and medical information that is held by a participating county. CS/HB 19 is linked to the passage of this bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 14, 2014, the Transportation & Highway Safety Subcommittee adopted a strike-all amendment to HB 17 before reporting it favorably as a committee substitute. The amendment makes technical changes to conform to the Senate companion. The strike-all does not change the substance of the bill. The strike-all also removes the provision that would have authorized emergency medical responders to inform a participant's emergency contacts about the location, condition, or death of the participant. However, this is not generally a common practice or responsibility of emergency medical responders.

This analysis is drafted to CS/HB 17.

26 Section 1. Yellow dot critical motorist medical
 27 information program; yellow dot decal, folder, and information
 28 form.—

29 (1) The governing body of a county may create a yellow dot
 30 critical motorist medical information program to facilitate the
 31 provision of emergency medical care to program participants by
 32 emergency medical responders by making critical medical
 33 information readily available to responders in the event of a
 34 motor vehicle accident or a medical emergency involving a
 35 participant's vehicle.

36 (2) (a) The governing body of a county may solicit
 37 sponsorships from business entities and not-for-profit
 38 organizations to cover the costs of the program, including the
 39 cost of decals and folders that must be provided free of charge
 40 to participants. Two or more counties may enter into an
 41 interlocal agreement to solicit such sponsorships.

42 (b) The Department of Highway Safety and Motor Vehicles or
 43 the Department of Transportation may provide education and
 44 training to encourage emergency medical responders to
 45 participate in the program and may take reasonable measures to
 46 publicize the program.

47 (3) Any owner or lessee of a motor vehicle may participate
 48 in the program upon submission of an application and
 49 documentation in the form and manner prescribed by the governing
 50 body of the county.

51 (a) The application form must include a statement that the

52 information submitted will be disclosed only to authorized
 53 personnel of law enforcement and public safety agencies,
 54 emergency medical services agencies, and hospitals for the
 55 purposes authorized in subsection (5).

56 (b) The application form must describe the confidential
 57 nature of the medical information voluntarily provided by the
 58 participant and must include a notice to the participant stating
 59 that, by providing the medical information and signing the form,
 60 he or she agrees to the disclosure of the medical information to
 61 authorized personnel and their use of such information solely
 62 for the purposes listed in subsection (5).

63 (c) The county may not charge a fee to participate in the
 64 yellow dot program.

65 (4) A participant shall receive a yellow dot decal, a
 66 yellow dot folder, and a form containing the personal and
 67 medical information provided by the participant.

68 (a) The participant shall affix the decal onto the rear
 69 window in the left lower corner of a motor vehicle or in a
 70 clearly visible location on a motorcycle.

71 (b) A person who rides in a motor vehicle as a passenger
 72 may also participate in the program but may not be issued a
 73 decal if a decal has been issued to the owner or lessee of the
 74 motor vehicle in which the person rides.

75 (c) The yellow dot folder, which shall be stored in the
 76 glove compartment of the motor vehicle or in a compartment
 77 attached to a motorcycle, shall contain a form with the

78 | following information about the participant:

79 | 1. The participant's name.

80 | 2. The participant's photograph.

81 | 3. Emergency contact information for no more than two

82 | persons.

83 | 4. The participant's medical information, including

84 | medical conditions, recent surgeries, allergies, and current

85 | medications.

86 | 5. The participant's hospital preference.

87 | 6. Contact information for no more than two physicians.

88 | (5) (a) If the driver or a passenger of a motor vehicle is

89 | involved in a motor vehicle accident or emergency situation and

90 | a yellow dot decal is affixed to the vehicle, an emergency

91 | medical responder at the scene may search the glove compartment

92 | of the vehicle for the corresponding yellow dot folder.

93 | (b) The use of the information contained in the yellow dot

94 | folder by an emergency medical responder at the scene is limited

95 | to the following purposes:

96 | 1. To positively identify the participant.

97 | 2. To ascertain whether the participant has a medical

98 | condition that might impede communications between the

99 | participant and the responder.

100 | 3. To access the medical information form.

101 | 4. To ensure that the participant's current medications

102 | and preexisting medical conditions are considered when emergency

103 | medical treatment is administered for any injury to or condition

104 of the participant.

105 (6) Except for wanton or willful conduct, an emergency
 106 medical responder or his or her employer is not liable if a
 107 responder disseminates or fails to disseminate any information
 108 from the yellow dot folder to any other emergency medical
 109 responder, hospital, or health care provider who renders
 110 emergency medical treatment to the participant.

111 (7) The governing body of a participating county shall
 112 adopt guidelines and procedures to prevent the public disclosure
 113 of confidential information through the program.

114 Section 2. This act shall take effect July 1, 2014.



Amendment No.

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: Economic Affairs Committee
 2 Representative Slosberg offered the following:

Amendment (with title amendment)

Remove lines 105-110

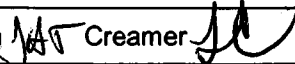


T I T L E A M E N D M E N T

11 Remove lines 17-18 and insert:
 12 medical responders; requiring

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 19 Public Records/Yellow Dot Critical Motorist Medical Information Program
SPONSOR(S): Government Operations Subcommittee; Transportation & Highway Safety Subcommittee; Slosberg
TIED BILLS: CS/HB 17 **IDEN./SIM. BILLS:** CS/SB 350

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	12 Y, 0 N, As CS	Thompson	Miller
2) Government Operations Subcommittee	12 Y, 0 N, As CS	Stramski	Williamson
3) Economic Affairs Committee		Thompson	Cremer 

SUMMARY ANALYSIS

CS/HB 17 authorizes the governing body of a county to create a yellow dot critical motorist medical information program for the purpose of assisting emergency medical responders and program participants in the event of a motor vehicle accident or a medical emergency involving a participant's vehicle. After submitting a completed application, a participant is given a yellow dot decal to affix onto the lower left corner of his or her vehicle's rear window, a yellow dot folder, and a form that contains certain personal and medical information about the participant, to be stored in the participant's vehicle.

This bill, which is linked to the passage of CS/HB 17, creates a public record exemption for personal identifying information of a participant in a yellow dot critical motorist medical information program that is held by the a county participating in such program. The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill may have an insignificant negative fiscal impact on local governments that opt to participate in a yellow dot program. The bill does not appear to have a fiscal impact on the state. See FISCAL COMMENTS.

The bill provides an effective date that is contingent on the passage of CS/HB 17 or similar legislation.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² 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:

- allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- protects 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.
- protects trade or business secrets.

Yellow Dot Program

The yellow dot program is a system to alert first responders at an accident scene to search for medical information about the injured, especially if the injured is unconscious or unable to speak. The program provides medical personnel with vital information about the victim during the first critical hours after injury when prompt treatment is most effective.³

The program began in Connecticut in 2002, and now, with slight variations, is in counties scattered across at least eight other states: Kansas, Illinois, Iowa, Minnesota, Massachusetts, Virginia, Alabama and New York.⁴ Participants in the program receive a yellow dot sticker to place on their rear window. The sticker alerts emergency services personnel to look for a corresponding yellow folder in the glove box.⁵ The yellow folder may include the injured participant's name, photograph, emergency contact information, medical information, hospital preference, and other vital information.

CS/HB 17 (2014)

CS/HB 17 authorizes the governing body of a county to create a yellow dot critical motorist medical information program for the purpose of assisting emergency medical responders and program participants in the event of a motor vehicle accident or a medical emergency. After submitting a

¹ Section 24(c), Art. I of the State Constitution.

² See s. 119.15, F.S.

³ Additional information about the yellow dot program is available at www.yellow-dot.com (last viewed on February 28, 2014).

⁴ *Id.*

⁵ "Yellow Dot car program speeds to help crash victims." Larry Copeland, USA Today (May 24, 2011) at http://usatoday30.usatoday.com/news/nation/2011-05-23-yellow-dot-seniors-drivers-baby-boomers_n.htm (last viewed on February 28, 2014).

completed application, a participant is given a yellow dot decal to affix onto the lower left corner of his or her vehicle's rear window (or a clearly visible location on a motorcycle), a yellow dot folder, and a form for the participant's personal and medical information.

The form, which is placed inside the yellow dot folder and stored in the participant's vehicle, contains the following information:

- the participant's name;
- the participant's photograph;
- emergency contact information for no more than two persons;
- the participant's medical information, including medical conditions, recent surgeries, allergies and medications;
- the participant's hospital preference; and
- contact information for no more than two physicians.

Effect of Proposed Changes

The bill provides that personal identifying information of a participant in a yellow dot critical motorist medical information program, which is held by a county participating in such program, is exempt⁶ from public record requirements. The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.⁷

The bill provides an effective date that is contingent upon the passage of CS/HB 17 or similar legislation, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

B. SECTION DIRECTORY:

- Section 1: Creates an unnumbered section of law to create a public record exemption for information of participants in a yellow dot critical motorist medical information program.
- Section 2: Provides a statement of public necessity.
- Section 3: Provides an effective date contingent upon the passage of CS/HB 17 or similar legislation.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁶ 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 the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

⁷ Section 24(c), Art. I of the State Constitution.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Participation in the yellow dot program by a county is not mandatory. The bill could create a minimal fiscal impact on a county that opts to create a yellow dot program, because staff responsible for complying with public record requests could require training related to the creation of the public record exemption. In addition, a participating county could incur costs associated with redacting the exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of county government.

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:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record exemption. The bill creates a public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for personal identifying information of a participant in a yellow dot critical motorist medical information program, which is held by a county participating in such program. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its stated purpose.

Right to Privacy

Article I, s. 23 of the State Constitution grants all Florida citizens the right to privacy. Consequently, Florida courts have recognized patients' rights to secure the confidentiality of their health information (medical records); however, that right must be balanced with and yields to any compelling state interest.⁸

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

OTHER COMMENTS: Records of Emergency Calls

Section 401.30, F.S., requires emergency medical services entities that are licensed⁹ by the Department of Health to maintain accurate records of emergency calls. Such records that contain patient examination or treatment information are confidential and exempt from public record requirements and may not be disclosed without the consent of the person to whom they pertain.¹⁰ As this exemption only applies to records that are acquired by emergency medical services as a result of an emergency call, it does not appear to protect yellow dot critical motorist information held by a participating county.

OTHER COMMENTS: Health Insurance Portability and Accountability Act of 1996 (HIPAA)

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule¹¹ protects individually identifiable health information held by "covered entities." Covered entities include health plans, health care clearinghouses, and health care providers. A health care provider is defined as any person or organization who furnishes, bills, or is paid for health care in the normal course of business. However, a health care provider is considered a covered entity if it transmits any health information electronically.¹² Consequently, if a state, county, or local government performs functions that make it a covered entity, compliance with the HIPAA Privacy Rule is required.¹³ A county entity that is tasked with implementing a yellow dot program may be subject to the HIPAA Privacy Rule if it comes within the definition of "health care provider."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Transportation & Highway Safety Subcommittee

On January 14, 2014, the Transportation & Highway Safety Subcommittee adopted a strike-all amendment to HB 19 before reporting it favorably as a committee substitute. The amendment made technical changes to conform to the Senate companion. Specifically, the strike-all:

- revises the level of protection the exemption provides from confidential and exempt to simply exempt;
- narrows the exemption to only apply to the personal identifying information of a participant in a yellow dot critical motorist medical information program;
- clearly defines the records custodian to be the governing body of a county participating in the program;
- removes the exception to the exemption, which was a bill drafting error; and
- conforms the public necessity statement to the revised exemption.

⁸ See *State v. Johnson*, 814 So.2d 390 (Fla. 2002); distinguished in *Limbaugh v. State of Florida* 887 So.2d 387 (Fla. 4th DCA 2004); and *Rasmussen v. S. Fla. Blood Serv. Inc.*, 500 So.2d 533 (Fla. 1987) (privacy interests of blood donors defeated AIDS victim's claim to obtain via subpoena names and addresses of blood donors who may have contributed the tainted blood).

⁹ Section 401.23(13), F.S., defines "licensee" as any basic life support service, advanced life support service, or air ambulance service licensed by the Department of Health pursuant to part III of ch. 401, F.S.

¹⁰ Section 401.30(4), F.S.

¹¹ Pub. L. 104-191, 110 Stat. 1936.

¹² 45 CFR 160.103.

¹³ See 45 CFR 160.103, for more information regarding HIPAA definitions of covered entity, health care provider, health plan and health care clearinghouse.

This analysis is drafted to the committee substitute as passed by the Transportation and Highway Safety Subcommittee.

Government Operations Subcommittee

On March 5, 2014, the Government Operations Subcommittee adopted an amendment to CS/HB 19 and reported the bill favorably as a committee substitute. The amendment:

- clarifies that the public record exemption applies to exempt information held by counties participating in a yellow dot critical motorist medical information program, and not just to information held by county governing bodies;
- revises the repeal date of the exemption to conform to the Open Government Sunset Review Act; and
- conforms the public necessity statement to the exemption.

This analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.

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A bill to be entitled
 An act relating to public records; providing an
 exemption from public records requirements for
 personal identifying information of participants in a
 yellow dot critical motorist medical information
 program; providing for future legislative review and
 repeal of the exemption; providing a statement of
 public necessity; providing a contingent effective
 date.

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

Section 1. Public records exemption; participants in a
 yellow dot critical motorist medical information program.-

(1) Personal identifying information of a participant in a
 yellow dot critical motorist medical information program which
 is held by a county participating in such program is exempt from
 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the
 State Constitution.

(2) This section is subject to the Open Government Sunset
 Review Act in accordance with s. 119.15, Florida Statutes, and
 shall stand repealed on October 2, 2019, unless reviewed and
 saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public
 necessity that the personal identifying information of a
 participant in a yellow dot critical motorist medical

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

27 | information program which is held by a county participating in
 28 | such program be made exempt from s. 119.07(1), Florida Statutes,
 29 | and s. 24(a), Article I of the State Constitution. Nevertheless,
 30 | allowing participating counties to distribute yellow dot
 31 | folders, as well as allowing emergency medical responders and
 32 | law enforcement agents to access the information provided in
 33 | yellow dot folders, will ensure the most rapid and effective
 34 | treatment for victims of serious traffic accidents. If the
 35 | personal identifying information of a participant in such
 36 | program were not exempt from disclosure, any person could
 37 | inspect and copy documentation that identifies the program
 38 | participant. Consequently, the availability of such information
 39 | to the public would result in the invasion of the program
 40 | participant's privacy. Finally, protecting the personal
 41 | identifying information of a participant in such program
 42 | prevents the identification of program participants who could be
 43 | victimized by robbery, burglary, or illicit drug activities.
 44 | Accordingly, the Legislature finds that the harm to a program
 45 | participant which could result from the release of personal
 46 | identifying information of the participant outweighs any minimal
 47 | public benefit that would be derived from disclosure of that
 48 | information to the public. Therefore, it is the finding of the
 49 | Legislature that such identifying information must be made
 50 | exempt from public disclosure.

51 | Section 3. This act shall take effect on the same date
 52 | that HB 17 or similar legislation authorizing the governing body


CS/CS/HB 19

2014

53 | of a county to create a yellow dot critical motorist medical
54 | information program takes effect, if such legislation is adopted
55 | in the same legislative session or an extension thereof and
56 | becomes a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 155 Defense Contracting
SPONSOR(S): Economic Development & Tourism Subcommittee and Smith
TIED BILLS: IDEN./SIM. BILLS: SB 596

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	9 Y, 2 N, As CS	Collins	West
2) Finance & Tax Subcommittee	17 Y, 1 N	Wolfgang	Langston
3) Economic Affairs Committee		Collins DC	Creamer 

SUMMARY ANALYSIS

The bill creates a new economic development tax incentive program to reward businesses receiving national security-related federal contracts for hiring more Florida-based subcontractors. Qualifying businesses may reduce the computation of adjusted federal income used to determine state corporate income tax liability by an amount equal to four percent of each subcontract awarded to a qualifying Florida-based subcontractor. To receive the incentive, a business must submit specified documentation regarding qualified subcontract awards to the Department of Economic Opportunity (DEO), which is responsible for certifying applicants.

The bill places caps on the amount of qualified subcontract awards DEO may certify for a single company in a single tax year and on the total amount of qualified subcontract awards DEO may certify in a single tax year program-wide.

DEO and the Department of Revenue (DOR) are granted rule-making authority to implement the bill.

The Revenue Estimating Impact Conference met on January 17, 2014, and estimated that the bill would have a negative impact on general revenues of \$3.3 million per fiscal year on a recurring basis and no impact on local government revenues or expenditures.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida's Defense Industry

Florida is home to three of ten unified combatant commands and hosts two of only four Navy deep water ports in the country with adjacent airfields, the military's only space launch facility on the east coast, the Marine Corps' only maritime prepositioning facility, and one of only three Navy Fleet Readiness Centers. The state also hosts several critical research, development, testing and evaluation centers. In addition, the Joint Gulf Range Complex connects test and training ranges that extend from Key West to northwest Florida and across the eastern Gulf of Mexico, and encompasses 180,000 square miles of Department of Defense-controlled airspace.¹

The defense industry accounted for 9.4 percent of state gross domestic product in 2011. Defense-related spending, direct and indirect, added up to \$73.4 billion in 2011, \$12.4 billion of which was allocated for procurements.² In 2011, Florida businesses generated \$13.6 billion in U.S. Department of Defense (DOD) contract awards, ranking the state 5th in the nation. The state is home to many of the nation's leading defense contractors and a large pool of highly skilled workers and veterans.³

According to the federal government, 111,516 contracts have been awarded to prime contractors by DOD and the National Aeronautics and Space Administration (NASA) from federal fiscal year 2012 through the current federal fiscal year for work done in Florida. Combined, these contracts have a total value of more than \$24 billion. There have been 3,628 subcontracts awarded through those 111,516 prime contracts, valued at more than \$5 billion. Of those, 2,891 subcontracts, valued at \$3.9 billion, have been awarded to businesses located in Florida, which accounts for 79.7 percent of all subcontracts awarded by prime contractors who have received federal contracts for work to be done in Florida by DOD and NASA.⁴

Federal Contracting Overview

The typical federal procurement process involves an agency identifying the goods and services it needs, determining the most appropriate method for purchasing those items, and carrying out an acquisition process. Under most procurement processes, an agency posts a solicitation on the Federal Business Opportunities (FedBizOpps) website. Interested businesses prepare their offers in response to the solicitation, and agency personnel evaluate the offers. To be eligible to compete for government contracts, a business must first obtain a Data Universal Numbering System (DUNS) number and register with the System for Award Management (SAM). Many agencies provide assistance and services to potential and existing federal contractors.

Businesses may serve as subcontractors for other businesses awarded federal contracts, known as "prime contractors." Most federal agencies release information on their websites listing prime contractors that have been awarded federal contracts, which serves as a valuable resource for potential subcontractors. Other agencies, including the General Services Administration, Department of

¹ Enterprise Florida, *Florida Defense Factbook*, January 2013.

² Enterprise Florida, *Florida Defense Industry Economic Impact Analysis*; January 2013.

³ Enterprise Florida, *Defense and Homeland Security*, <http://www.enterpriseflorida.com/industries/defense-homeland-security/> (last accessed on February 27, 2014).

⁴ United States Office of Management and Budget, *USASpending.gov*; <http://usaspending.gov/> (last accessed on January 21, 2014).

Homeland Security, and Small Business Administration provide more specific information regarding subcontracting opportunities with prime contractors on their websites.⁵

Florida Corporate Income Tax

Florida levies corporate income tax on corporations of 5.5% for income earned in Florida.⁶ The calculation of Florida corporate income tax starts with a corporation's federal taxable income.⁷ After certain addbacks and subtractions to federal taxable income required by chapter 220, F.S., the amount of adjusted federal income attributable to Florida is determined by the application of an apportionment formula.⁸ The Florida corporate income tax uses a three-factor apportionment formula consisting of property, payroll, and sales (which is double-weighted) to measure the portion of a multistate corporation's business activities attributable to Florida.⁹ Income that is apportioned to Florida using this formula is then subject to the Florida income tax. The first \$50,000 of net income is exempt.¹⁰

Effect of Proposed Changes

The bill creates s. 288.1046, F.S., the Defense Works in Florida Incentive, which encourages defense contractors receiving federal contracts to select Florida-based small business subcontractors. This incentive provides certified businesses a reduction in their corporate income tax. The bill defines the following terms:

- Florida Prime Contractor – A business entity operating in the state that is awarded a prime contract.
- Florida Small Business Subcontractor – A business entity that maintains its primary place of business in the state, has 250 or fewer employees, is awarded a subcontract from a Florida Prime Contractor, and has no subsidiary or affiliate business relationship to the prime contractor making the award.
- Prime Contract – A contract that is awarded directly from the federal government.
- Qualified Defense Work – A Prime Contract awarded after September 30, 2013, for manufacturing, engineering, construction, distribution, research, development, or other activities related to equipment, supplies, technology, or other goods or services that support national security or space-related activities.
- Qualified Subcontract Award – Qualified Defense Work subcontracted from a Florida Prime Contractor to a Florida Small Business Subcontractor which is executed in the state and meets the requirements of the bill.

The bill allows Florida Prime Contractors awarded a Prime Contract for Qualified Defense Work to reduce its computed adjusted federal income under s. 220.13, F.S., by an amount equal to four percent of any Qualified Subcontract Award it awards a Florida Small Business Subcontractor. To qualify for the incentive, a Florida Prime Contractor must apply to DEO and be certified that it is subject to chapter 220, has been awarded Qualified Defense Work, and has awarded a Qualified Subcontract Award of at least \$250,000. A Florida Prime Contractor may claim the incentive only for taxable years beginning on or after January 1, 2014.

Within 10 days of certifying an application, DEO is required to supply the Florida Prime Contractor with a letter of certification for each certified application, as well as a copy of such letter to DOR. Following

⁵ L. Elaine Halchin, Congressional Research Service; *Overview of the Federal Procurement Process and Resources*; September 11, 2012.

⁶ Section 220.11, F.S.

⁷ Section 220.12, F.S.

⁸ Section 220.15, F.S.

⁹ Section 220.15, F.S.

¹⁰ Section 220.14, F.S.

certification, a Florida Prime Contractor may claim the incentive by applying separately to DEO for each Qualified Subcontract Award it has made to a Florida Small Business Subcontractor. Each application should contain documentation including copies of contracts, tax records, or employment records. For a multiyear Qualified Subcontract Award, DEO will certify the full amount of the award in the year it was awarded but the Florida Prime Contractor may only claim the incentive in the taxable year in which payment was made to the Florida Small Business Subcontractor.

DEO is permitted to certify up to \$250 million in aggregate Qualified Subcontract Awards for a single Florida Prime Contractor per tax year, resulting in no more than \$10 million in reduced taxable income and no more than \$550,000 in reduced taxes. The bill also includes a cap of \$2.5 billion in aggregate Qualified Subcontract Awards resulting in no more than \$100 million in reduced taxable income, and no more than \$5.5 million in reduced taxes for all certified applicants in a single tax year.

The bill also amends s. 220.13, F.S., to allow the incentive to be included among the list of adjusted federal income subtractions allowed under current law.

B. SECTION DIRECTORY:

- Section 1: Creates s. 288.1046, F.S., the Defense Works in Florida Incentive, to provide a reduction in the computation of adjusted federal income as used to determine state corporate income tax liability for businesses receiving federal defense contracts who subcontract with certain Florida-based small businesses.
- Section 2: Amends s. 220.13, F.S., to provide a subtraction to adjusted federal taxable income.
- Section 3: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Impact Conference met on January 17, 2014, and estimated that this bill would have a negative recurring impact on general revenues of \$3.3 million per year beginning in fiscal year 2014-2015.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive effect on Florida-based defense industry small business subcontractors.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DEO and the DOR may adopt rules to administer this section.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2014, the House Economic Development & Tourism Subcommittee adopted a strike-all amendment and passed the bill as a CS. The amendment:

- Amends s. 220.13, F.S. to allow the incentive to be included among the list of adjusted federal income subtractions in current law.
- Removes a provision from the bill that prevented work awarded locally by military installations from being included in the definition of "qualified defense work."
- Adds a requirement to the bill that "qualified subcontract awards" must be at least \$250,000 in order to qualify for the incentive.
- Adds a provision which allows eligible businesses to claim the new incentive for taxable years beginning on or after January 1, 2014.
- Makes technical changes and drafting corrections to the bill.

The analysis has been updated to reflect the amendment.

1 A bill to be entitled
 2 An act relating to defense contracting; creating s.
 3 288.1046, F.S.; establishing the Defense Works in
 4 Florida Incentive; providing definitions; providing
 5 that certain prime contractors may apply to the
 6 Department of Economic Opportunity to certify that
 7 such contractors may reduce their computation of
 8 adjusted federal income by a certain amount when
 9 awarded a prime contract; providing requirements to
 10 apply for a reduction in computation of income;
 11 providing that a prime contractor must apply
 12 separately for each qualified subcontract award;
 13 providing guidelines for the department to certify an
 14 award; providing rulemaking authority; amending s.
 15 220.13, F.S.; revising definition of "adjusted federal
 16 income" for corporate income tax purposes; providing
 17 for certain reduction in computation of income, to
 18 conform; providing an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Section 288.1046, Florida Statutes, is created
 23 to read:

24 288.1046 Defense Works in Florida Incentive.-

25 (1) As used in this section, the term:

26 (a) "Florida prime contractor" means a business entity

27 operating in the state that is awarded a prime contract.

28 (b) "Florida small business subcontractor" means a
 29 business entity that:

30 1. Maintains its primary place of business in the state;

31 2. Has 250 or fewer employees at the time a qualified
 32 subcontract award, as defined in paragraph (e), is made;

33 3. Is awarded a subcontract from a Florida prime
 34 contractor; and

35 4. Has no subsidiary or affiliate business relationship to
 36 the prime contractor making the award.

37 (c) "Prime contract" means a contract that is awarded
 38 directly from the Federal Government.

39 (d) "Qualified defense work" means a prime contract
 40 awarded for manufacturing, engineering, construction,
 41 distribution, research, development, or other activities related
 42 to equipment, supplies, technology, or other goods or services
 43 that directly or indirectly support the United States Armed
 44 Forces or that can be reasonably determined to support national
 45 security, including space related activities. The term does not
 46 include contracts awarded before October 1, 2013.

47 (e) "Qualified subcontract award" means qualified defense
 48 work, in part or in whole, subcontracted from a Florida prime
 49 contractor to a Florida small business subcontractor, which is
 50 executed in the state, is valued at over \$250,000, and is
 51 determined by the department to meet the criteria in paragraphs
 52 (a) through (d).

53 (2) A Florida prime contractor may apply to the department
54 to certify that it may reduce its computation of adjusted
55 federal income under s. 220.13 by an amount equal to 4 percent
56 of the subcontract award if such prime contractor:

57 (a) Is subject to chapter 220;

58 (b) Is awarded qualified defense work; and

59 (c) Awards a qualified subcontract award.

60 (3) A Florida prime contractor may claim the incentive
61 under subsection (2) only for taxable years beginning on or
62 after January 1, 2014, and must apply separately to the
63 department, for each qualified subcontract award and provide the
64 department required documentation including, but not limited to,
65 the application for the award and copies of contracts, tax
66 records, or employment records.

67 (4) The department may establish application, approval,
68 appeal, and accountability processes as necessary. The
69 department may consult with Enterprise Florida, Inc., and the
70 Florida Defense Support Task Force as necessary to administer
71 this section.

72 (a) Within 10 days after certifying a qualified
73 subcontract award, the department shall provide:

74 1. A letter certifying the award to the applicant; and

75 2. A copy of the letter certifying the award to the
76 Department of Revenue.

77 (b) The department may certify, for each Florida prime
78 contractor applicant per calendar year, up to \$250 million in

79 aggregate qualified subcontract awards, resulting in no more
 80 than \$10 million in reduced taxable income and no more than
 81 \$550,000 in reduced taxes.

82 (c) The department may certify in total, per calendar
 83 year, up to \$2.5 billion in aggregate qualified subcontract
 84 awards, resulting in no more than \$100 million in reduced
 85 taxable income and no more than \$5.5 million in reduced taxes.

86 (d) For a multiyear qualified subcontract award:

87 1. The department shall certify the full amount of the
 88 award under paragraphs (b) and (c) in the calendar year it was
 89 awarded; and

90 2. The Florida prime contractor may claim the incentive in
 91 the taxable year in which payment is made to the Florida small
 92 business subcontractor.

93 (5) The department and the Department of Revenue may adopt
 94 rules to administer this section.

95 Section 2. Paragraph (b) of Subsection (1) of 220.13,
 96 Florida Statutes, is amended to read:

97 220.13 "Adjusted federal income" defined.—

98 (1) The term "adjusted federal income" means an amount
 99 equal to the taxpayer's taxable income as defined in subsection
 100 (2), or such taxable income of more than one taxpayer as
 101 provided in s. 220.131, for the taxable year, adjusted as
 102 follows:

103 (b) Subtractions.—

104 1. There shall be subtracted from such taxable income:

105 a. The net operating loss deduction allowable for federal
 106 income tax purposes under s. 172 of the Internal Revenue Code
 107 for the taxable year, except that any net operating loss that is
 108 transferred pursuant to s. 220.194(6) may not be deducted by the
 109 seller,

110 b. The net capital loss allowable for federal income tax
 111 purposes under s. 1212 of the Internal Revenue Code for the
 112 taxable year,

113 c. The excess charitable contribution deduction allowable
 114 for federal income tax purposes under s. 170(d)(2) of the
 115 Internal Revenue Code for the taxable year, and

116 d. The excess contributions deductions allowable for
 117 federal income tax purposes under s. 404 of the Internal Revenue
 118 Code for the taxable year.

119
 120 However, a net operating loss and a capital loss shall never be
 121 carried back as a deduction to a prior taxable year, but all
 122 deductions attributable to such losses shall be deemed net
 123 operating loss carryovers and capital loss carryovers,
 124 respectively, and treated in the same manner, to the same
 125 extent, and for the same time periods as are prescribed for such
 126 carryovers in ss. 172 and 1212, respectively, of the Internal
 127 Revenue Code.

128 2. There shall be subtracted from such taxable income any
 129 amount to the extent included therein the following:

130 a. Dividends treated as received from sources without the

131 United States, as determined under s. 862 of the Internal
 132 Revenue Code.

133 b. All amounts included in taxable income under s. 78 or
 134 s. 951 of the Internal Revenue Code.

135
 136 However, as to any amount subtracted under this subparagraph,
 137 there shall be added to such taxable income all expenses
 138 deducted on the taxpayer's return for the taxable year which are
 139 attributable, directly or indirectly, to such subtracted amount.
 140 Further, no amount shall be subtracted with respect to dividends
 141 paid or deemed paid by a Domestic International Sales
 142 Corporation.

143 3. In computing "adjusted federal income" for taxable
 144 years beginning after December 31, 1976, there shall be allowed
 145 as a deduction the amount of wages and salaries paid or incurred
 146 within this state for the taxable year for which no deduction is
 147 allowed pursuant to s. 280C(a) of the Internal Revenue Code
 148 (relating to credit for employment of certain new employees).

149 4. There shall be subtracted from such taxable income any
 150 amount of nonbusiness income included therein.

151 5. There shall be subtracted any amount of taxes of
 152 foreign countries allowable as credits for taxable years
 153 beginning on or after September 1, 1985, under s. 901 of the
 154 Internal Revenue Code to any corporation which derived less than
 155 20 percent of its gross income or loss for its taxable year
 156 ended in 1984 from sources within the United States, as

157 | described in s. 861(a)(2)(A) of the Internal Revenue Code, not
 158 | including credits allowed under ss. 902 and 960 of the Internal
 159 | Revenue Code, withholding taxes on dividends within the meaning
 160 | of sub-subparagraph 2.a., and withholding taxes on royalties,
 161 | interest, technical service fees, and capital gains.

162 | 6. There shall be subtracted from such taxable income 4
 163 | percent of the amount of the subcontract award certified by the
 164 | Department of Economic Opportunity pursuant to s. 288.1046.

165 | 7. Notwithstanding any other provision of this code,
 166 | except with respect to amounts subtracted pursuant to
 167 | subparagraphs 1. and 3., any increment of any apportionment
 168 | factor which is directly related to an increment of gross
 169 | receipts or income which is deducted, subtracted, or otherwise
 170 | excluded in determining adjusted federal income shall be
 171 | excluded from both the numerator and denominator of such
 172 | apportionment factor. Further, all valuations made for
 173 | apportionment factor purposes shall be made on a basis
 174 | consistent with the taxpayer's method of accounting for federal
 175 | income tax purposes.

176 | Section 3. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 189 Growth Management
SPONSOR(S): Boyd
TIED BILLS: IDEN./SIM. BILLS: SB 374

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	11 Y, 0 N	Duncan	West
2) Local & Federal Affairs Committee	16 Y, 0 N	Flegiel	Rojas
3) Economic Affairs Committee		Duncan <i>pdd</i>	Creamer <i>SS</i>

SUMMARY ANALYSIS

HB 189 revises the prohibition on initiative and referendum processes for local comprehensive plan amendments or map amendments by removing a provision that allows such initiatives or referendum processes for any local comprehensive plan amendment or map amendment that affects more than five parcels of land under certain conditions.

The bill prohibits initiative or referendum processes for any local comprehensive plan amendment or map amendment, unless the initiative or referendum process is expressly authorized by specific language in a local government charter which was lawful and in effect on June 1, 2011.

The bill is effective upon becoming law.

The bill does not have a fiscal impact on state or local government revenues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 2006, voters in the City of St. Pete Beach amended the city's charter to require voter referendums on all future changes to comprehensive plans, redevelopment plans, and building height regulations.¹ This process, often called "Hometown Democracy," caused delay in the local development process.² In November 2010, a similar proposal with statewide effect appeared on the general election ballot as a proposed amendment to Florida's Constitution. Florida voters decided against implementing Hometown Democracy statewide with a 67.1 percent 'no' vote, rejecting Amendment 4.³ In March 2011, voters in the City of St. Pete Beach repealed the town's Hometown Democracy provisions by 54.18 percent.⁴

The 2011 Legislature passed HB 7207, known as the "Community Planning Act."⁵ Among other things, the bill prohibited local governments from adopting initiative or referendum processes for any development orders, comprehensive plan amendments, or map amendments in an attempt to provide clarity in local land development processes.⁶ Prior to the passage of the act, local governments were prohibited from adopting initiative or referendum processes for comprehensive plan amendments or map amendments affecting 5 or fewer parcels of land.⁷

At the time, the Town of Longboat Key, the Town of Yankeetown, and the City of Miami Beach had land use referendum or initiative processes in place.⁸ One of these affected governments, the Town of Yankeetown (Yankeetown), had a charter provision which specifically authorized a referendum vote on comprehensive plan amendments affecting more than five parcels of land.⁹ Following the enactment of HB 7207 (2011), Yankeetown filed a complaint in the Leon County Circuit Court against the Department of Community Affairs (DCA), now the Department of Economic Opportunity (DEO), stating its desire to maintain its charter provision.¹⁰

In September 2011, DCA and Yankeetown reached a proposed settlement agreement contingent upon the Legislature passing, and the Governor signing into law, a proposed amendment to the Community

¹ "Is St. Pete Beach a Valid Case Study for Amendment 4?" *St. Petersburg Times*, March 15, 2010.

<http://www.politifact.com/florida/statements/2010/mar/19/citizens-lower-taxes-and-stronger-economy/st-pete-beach-amendment-4-hometown-democracy/> (last visited Jan. 15, 2014).

² *Id.*

³ Florida Department of State, Division of Elections, November 2, 2010 General Election Official Results.

<http://doe.dos.state.fl.us/elections/resultsarchive/Index.asp?ElectionDate=11/2/2010&DATAMODE=> (last visited Jan 15, 2014).

⁴ Pinellas County Supervisor of Elections, 2011 Municipal Election Results, St. Pete Beach Charter Amendment 1.

<http://enr.votepinellas.com/FL/Pinellas/26521/43085/en/vts.html?cid=0116> (last visited Jan. 15, 2014).

⁵ Part II of ch. 163, F.S. is known as the "Community Planning Act." Section 163.3161(1), F.S.

⁶ Section 7, ch. 2011-139, L.O.F., (HB 7207). Section 163.3167(8), F.S., (2011).

⁷ Section 163.3167(12), F.S. (2010).

⁸ Florida Department of Economic Opportunity, Division of Community Development, Email to House Economic Development & Tourism Subcommittee staff (Jan. 22, 2014). Email on file with the subcommittee.

⁹ *See Town of Yankeetown, FL v. Dep't of Econ. Opportunity, et. al.*, No. 37 2011-CA-002036 (Fla. 2d Cir. Ct. 2011), Town of Yankeetown's Amended Complaint for Declaratory Judgment, p. 3 (Aug. 9, 2011).

¹⁰ *Id.* The complaint alleged that ch. 2011-139, L.O.F., violated the single subject provision in s. 6, Art. III, State Constitution, and that it was read by a misleading, inaccurate title. Yankeetown also alleged that the law contained unconstitutionally vague terms and contained an unlawful delegation of legislative authority. The City of St. Pete Beach also filed a motion to intervene as a defendant in the case, on the same side as the state.

Planning Act.¹¹ During the 2012 legislative session, the resulting bill, CS/HB 7081, amended s. 163.3167(8), F.S., to allow charter provisions like that of Yankeetown to remain valid. The bill was intended to have a limited impact, protecting only those local government charter provisions that: 1) were in effect as of June 1, 2011; and 2) authorized an initiative or referendum process for development orders, comprehensive plan amendments, or map amendments.¹² The Legislature passed the bill on March 7, 2012, and the Governor signed CS/HB 7081 into law on April 6, 2012.¹³

Chapter 2012-99, L.O.F., (CS/HB 7081) left open the possibility for an interpretation that deemed all referendum or initiative provisions in effect as of June 1, 2011, as valid, not merely those specifically related to development orders, comprehensive plan amendments, or map amendments.

In October 2012, the Palm Beach County Circuit Court ruled that CS/HB 7081 (2012) extended the exception to all local government general referendum or initiative charter provisions in effect as of June 1, 2011.¹⁴ The court held that such a general provision encompassed specific land amendments, such as development orders and comprehensive map amendments, despite the charter language not specifically authorizing either. This interpretation was contrary to the intent of the 2011 and 2012 legislation, which sought to restrict those voting mechanisms.

In 2013, the Legislature passed CS/HB 7019¹⁵ and CS/CS/HB 537,¹⁶ which narrowed the interpretation of s. 163.3167(8), F.S., while preserving the intent and purpose of the Community Planning Act. The laws prohibited initiative or referendum processes for any development order, local comprehensive plan amendment, or map amendment. However, if a local government charter specifically authorizes initiative and referendum voting processes for land use amendments and was lawful and in effect June 1, 2011, then such processes are allowed for local comprehensive plan amendments or map amendments affecting more than five parcels of land. Initiative and referendum processes relating to development orders were removed from the exception and were prohibited.

The Town of Longboat Key is one of the few local governments that have a land use referendum or initiative process in its charter. The provision in the Town of Longboat Key charter states, "The present density limitations provided in the existing comprehensive plan as adopted March 12, 1984 shall not be increased without the referendum approval of the electors of Longboat Key."¹⁷ Thus, the Town of Longboat Key is prohibited from authorizing a referendum vote on local comprehensive plan amendments affecting less than five parcels of land.

Effect of Proposed Changes

The bill revises the prohibition on initiative or referendum processes for local comprehensive plan amendments or map amendments by removing a provision that allows such initiatives or referendum processes for any local comprehensive plan amendment or map amendment that affects more than five parcels of land under certain conditions.

¹¹ Settlement Letter between the Department of Community Affairs and St. Pete Beach and Yankeetown, Re: Case No. 37 2011 CA 002036 (Sept. 28, 2011). Letter on file with the House Economic Development & Tourism Subcommittee.

¹² Section 1, ch. 2012-99, L.O.F.

¹³ CS/HB 7081 became law on April 6, 2012 and was published as ch. 2012-99, L.O.F.

¹⁴ *City of Boca Raton v. Kennedy, et. al.*, Case No. 2012CA009962MB (Fla. 15th Cir. Ct. 2012), Order denying plaintiff, City of Boca Raton's and Intervener/Co-Plaintiff, Archstone Palmetto Park, LLC's Motions for Summary Judgment and Granting Defendants' Motion for Summary Judgment. J. Chernow Brown, Oct. 16, 2012.

¹⁵ Section 3, ch. 2013-213, L.O.F.

¹⁶ Section 1, ch. 2013-115, L.O.F.

¹⁷ Longboat Key Charter, Article II, Section 22(b). Municode Library, Longboat Key, Florida Code of Ordinances, Codified through Ordinance No. 2013-31, passed Dec. 2, 2013 (Supp. No. 5, Update 3).

http://library.municode.com/HTML/14959/level2/LOKECH_ARTIITOCO.html#LOKECH_ARTIITOCO_S22COPLTO (Retrieved Feb. 6th, 2014).

The bill prohibits initiative or referendum processes for any local comprehensive plan amendment or map amendment, unless the initiative or referendum process is expressly authorized by specific language in a local government charter which was lawful and in effect on June 1, 2011. The bill effectively exempts the Town of Longboat Key's referendum charter provision from the state statutory provision prohibiting such initiative or referendum processes for local comprehensive plan amendments or map amendments.

Additionally, the bill provides that it is the intent of the Legislature that initiative and referendum processes be prohibited in regard to any local comprehensive plan amendment or map amendment, except as narrowly permitted under s. 163.3167(8)(b), F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3167(8)(b) and (c), F.S., relating to the scope of the Community Planning Act, to revise the prohibition of initiative or referendum processes for local comprehensive plan amendments or map amendments.

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

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: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have

to raise revenues in the aggregate; or reduce the percentage of a 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

N/A

1 A bill to be entitled
 2 An act relating to growth management; amending s.
 3 163.3167, F.S.; revising restrictions on an initiative
 4 or referendum process in regard to local comprehensive
 5 plan amendments and map amendments; providing an
 6 effective date.

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

9
 10 Section 1. Paragraphs (b) and (c) of subsection (8) of
 11 section 163.3167, Florida Statutes, are amended to read:

12 163.3167 Scope of act.—

13 (8)

14 (b) An initiative or referendum process in regard to any
 15 local comprehensive plan amendment or map amendment is
 16 prohibited unless. ~~However, an initiative or referendum process~~
 17 ~~in regard to any local comprehensive plan amendment or map~~
 18 ~~amendment that affects more than five parcels of land is allowed~~
 19 if it is expressly authorized by specific language in a local
 20 government charter that was lawful and in effect on June 1,
 21 2011. A general local government charter provision for an
 22 initiative or referendum process is not sufficient.


23 (c) It is the intent of the Legislature that initiative
 24 and referendum be prohibited in regard to any development order.
 25 It is the intent of the Legislature that initiative and
 26 referendum be prohibited in regard to any local comprehensive

27 | plan amendment or map amendment, except as specifically and
 28 | narrowly permitted in paragraph (b) ~~with regard to local~~
 29 | ~~comprehensive plan amendments that affect more than five parcels~~
 30 | ~~of land or map amendments that affect more than five parcels of~~
 31 | ~~land~~. Therefore, the prohibition on initiative and referendum
 32 | stated in paragraphs (a) and (b) is remedial in nature and
 33 | applies retroactively to any initiative or referendum process
 34 | commenced after June 1, 2011, and any such initiative or
 35 | referendum process that has been commenced or completed
 36 | thereafter is hereby deemed null and void and of no legal force
 37 | and effect.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 231 Admissions Tax
SPONSOR(S): Brodeur and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 330

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	11 Y, 0 N	Collins	West
2) Finance & Tax Subcommittee	17 Y, 0 N	Pewitt	Langston
3) Economic Affairs Committee		Collins DC	Creamer 

SUMMARY ANALYSIS

Section 212.04, F.S., provides that every person who sells or receives anything of value by way of admissions is exercising a taxable privilege at the rate of six percent of the sales price of admission. The section exempts from this tax admission to specified sporting events, including all-star games produced by the National Football League (NFL), Major League Baseball (MLB), National Hockey League (NHL), and National Basketball Association (NBA). In addition, the MLB Home Run Derby, held in conjunction with the MLB All-Star Game, and the Rookie Challenge, Celebrity Game, 3-Point Shooting Contest, and Slam Dunk Challenge, all produced as part of the NBA's All-Star Game festivities, are also exempt from the admissions tax.

The bill adds the Major League Soccer All-Star Game to the list of events exempted from the sales tax on admissions. It also replaces the list of specific NBA All-Star Game-associated events exempted under current law with language that includes all NBA-produced all-star events held at an arena, convention center, municipal facility or other such facility.

The Revenue Estimating Impact Conference met on January 17, 2014 and estimated that this bill would have no revenue impact on state or local government in fiscal year 2014-2015, but would have a negative, indeterminate impact on state and local government revenues thereafter.

The bill provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Professional Sports in Florida

There are nine major professional sports teams based in Florida covering each of the major professional sports leagues; the National Football League (NFL), Major League Baseball (MLB), National Basketball Association (NBA), and National Hockey League (NHL). The oldest major professional sports franchise in the state is the Miami Dolphins (NFL). The Dolphins franchise began play in 1966. The newest major professional sports team in the state is the Tampa Bay Rays (MLB) baseball franchise. The Rays franchise began play in 1998. The Miami Marlins (MLB), Tampa Bay Buccaneers (NFL), Jacksonville Jaguars (NFL), Orlando Magic (NBA), Miami Heat (NBA), Tampa Bay Lightning (NHL), and Florida Panthers (NHL) are all based within the state as well. MLB's Spring Training Grapefruit League is also based in Florida, with 15 teams claiming the state as their second home for preseason training and exhibition games.¹

Beginning in 2015, the state will be home to a tenth major professional sports team when the Orlando City Soccer Club begins play as the 21st Major League Soccer (MLS) franchise.² MLS is the premier professional soccer organization in the United States, having been launched in 1996 and boasting eight franchises currently valued at over \$100 million.³

Florida has hosted the NBA All-Star Game three times, most recently in Orlando in 2012. It hosted the MLS All-Star Game in Orlando in 1998.

Sales Tax on Admissions

Section 212.04, F.S. provides that every person who sells or receives anything of value by way of admissions is exercising a taxable privilege at the rate of six percent. The section exempts from this tax admission to specified sporting events, including:

- NFL's Pro Bowl or Super Bowl.
- Semifinal or championship games for national collegiate tournaments.
- All-star games of the MLB, NBA, or NHL.
- MLB's Home Run Derby (held in conjunction with the MLB All-Star Game).
- NBA's Rookie Challenge, Celebrity Game, 3-Point Shooting Contest, and Slam Dunk Challenge (held in conjunction with the NBA All-Star Game).

Effect of Proposed Changes

The bill amends s. 212.04, F.S. to add the MLS All-Star Game to the list of events exempted from the sales tax on admissions. The bill also replaces the list of specific NBA all-star events exempted from

¹ Florida Sports Foundation, *Sports in Florida*

http://www.flasports.com/index.php?option=com_content&view=article&id=97&Itemid=211 (last accessed January 14, 2014).

² Major League Soccer, *Major League Soccer Names Orlando City SC as 21st Franchise, Set for 2015 Debut*, November 19, 2013; <http://www.mlssoccer.com/news/article/2013/11/19/major-league-soccer-names-orlando-city-21st-franchise-set-2015-debut> (last accessed January, 2014).

³ Forbes, *Major League Soccer's Most Valuable Teams* November 20, 2013;

<http://www.forbes.com/sites/chris-smith/2013/11/20/major-league-soccer-s-most-valuable-teams/> (last accessed January 14, 2014).

the tax under current law with language that includes all NBA-produced all-star events held at an arena, convention center, municipal facility or other such facility.

B. SECTION DIRECTORY:

Section 1: Amends s. 212.04(2)(a), F.S., to exempt the Major League Soccer All-Star Game from the admissions tax, and to clarify previously exempted events associated with the National Basketball League All-Star Game.

Section 2: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Impact Conference met on January 17, 2014 and estimated that this bill would have no revenue impact on state revenues in fiscal year 2014-2015, but would have a negative, indeterminate impact on General Revenue and state trust funds thereafter.

2. Expenditures:

The Department of Revenue estimates that there will be an insignificant operational impact.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Impact Conference met on January 17, 2014 and estimated that this bill would have no revenue impact on local government revenues in fiscal year 2014-2015, but would have a negative, indeterminate impact thereafter.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Revenue Estimating Impact Conference adopted a negative indeterminate impact except for the first year cash, which is zero. If all-star events were to occur within the next five years, the impact for an MLS All-Star Game would be \$100,000, while an NBA all-star event would have an impact of \$100,000. Neither NBA franchise, nor the recently awarded MLS franchise has been selected to host future all-star events by their respective league governing bodies as of January 2014. Therefore, the estimated impact is indeterminate.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill creates an exemption from sales tax, including discretionary sales taxes levied by local governments; however, an exemption may apply as the negative impact to local government is expected to be insignificant.

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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1 A bill to be entitled
 2 An act relating to the admissions tax; amending s.
 3 212.04, F.S.; revising the professional sporting
 4 events that are exempt from the admissions tax;
 5 providing an effective date.

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

8
 9 Section 1. Paragraph (a) of subsection (2) of section
 10 212.04, Florida Statutes, is amended to read:

11 212.04 Admissions tax; rate, procedure, enforcement.—

12 (2)(a) A tax may not be levied on:

13 1. ~~No tax shall be levied on~~ Admissions to athletic or
 14 other events sponsored by elementary schools, junior high
 15 schools, middle schools, high schools, community colleges,
 16 public or private colleges and universities, deaf and blind
 17 schools, facilities of the youth services programs of the
 18 Department of Children and Families ~~Family Services~~, and state
 19 correctional institutions if ~~when~~ only student, faculty, or
 20 inmate talent is used. However, this exemption does ~~shall~~ not
 21 apply to admission to athletic events sponsored by a state
 22 university, and the proceeds of the tax collected on such
 23 admissions shall be retained and used by each institution to
 24 support women's athletics as provided in s. 1006.71(2)(c).

25 2.a. ~~No tax shall be levied on~~ Dues, membership fees, and
 26 admission charges imposed by not-for-profit sponsoring
 27 organizations. To receive this exemption, the sponsoring
 28 organization must qualify as a not-for-profit entity under ~~the~~

29 ~~provisions of~~ s. 501(c)(3) of the Internal Revenue Code of 1954,
 30 as amended.

31 ~~3.b. No tax shall be levied on~~ Admission charges to an
 32 event sponsored by a governmental entity, sports authority, or
 33 sports commission if ~~when~~ held in a convention hall, exhibition
 34 hall, auditorium, stadium, theater, arena, civic center,
 35 performing arts center, or publicly owned recreational facility
 36 and if ~~when~~ 100 percent of the risk of success or failure lies
 37 with the sponsor of the event and 100 percent of the funds at
 38 risk for the event belong to the sponsor, and student or faculty
 39 talent is not exclusively used. As used in this subparagraph
 40 ~~sub-subparagraph~~, the terms "sports authority" and "sports
 41 commission" mean a nonprofit organization that is exempt from
 42 federal income tax under s. 501(c)(3) of the Internal Revenue
 43 Code and that contracts with a county or municipal government
 44 for the purpose of promoting and attracting sports-tourism
 45 events to the community with which it contracts.

46 ~~4.3. No tax shall be levied on~~ An admission paid by a
 47 student, or on the student's behalf, to any required place of
 48 sport or recreation if the student's participation in the sport
 49 or recreational activity is required as a part of a program or
 50 activity sponsored by, and under the jurisdiction of, the
 51 student's educational institution if, ~~provided~~ his or her
 52 attendance is as a participant and not as a spectator.

53 ~~5.4. No tax shall be levied on~~ Admissions to the National
 54 Football League championship game or Pro Bowl; ~~on~~ admissions to
 55 any semifinal game or championship game of a national collegiate
 56 tournament; ~~on~~ admissions to a Major League Baseball, Major

57 League Soccer, National Basketball Association, or National
 58 Hockey League all-star game; ~~on~~ admissions to the Major League
 59 Baseball Home Run Derby held before the Major League Baseball
 60 All-Star Game; or ~~on~~ admissions to ~~the~~ National Basketball
 61 Association all-star events produced by the National Basketball
 62 Association and held at a facility such as an arena, convention
 63 center, or municipal facility ~~Rookie Challenge, Celebrity Game,~~
 64 ~~3-Point Shooting Contest, or Slam Dunk Challenge.~~

65 6.5. A participation fee or sponsorship fee imposed by a
 66 governmental entity as described in s. 212.08(6) for an athletic
 67 or recreational program if ~~is exempt when~~ the governmental
 68 entity by itself, or in conjunction with an organization exempt
 69 under s. 501(c)(3) of the Internal Revenue Code of 1954, as
 70 amended, sponsors, administers, plans, supervises, directs, and
 71 controls the athletic or recreational program.

72 ~~7.6. Also exempt from the tax imposed by this section to~~
 73 ~~the extent provided in this subparagraph are Admissions to live~~
 74 theater, live opera, or live ballet productions in this state
 75 which are sponsored by an organization that has received a
 76 determination from the Internal Revenue Service that the
 77 organization is exempt from federal income tax under s.
 78 501(c)(3) of the Internal Revenue Code of 1954, as amended, if
 79 the organization actively participates in planning and
 80 conducting the event, is responsible for the safety and success
 81 of the event, is organized for the purpose of sponsoring live
 82 theater, live opera, or live ballet productions in this state,
 83 has more than 10,000 subscribing members and has among the
 84 stated purposes in its charter the promotion of arts education

85 | in the communities ~~which~~ it serves, and will receive at least 20
 86 | percent of the net profits, if any, of the events ~~which~~ the
 87 | organization sponsors and will bear the risk of at least 20
 88 | percent of the losses, if any, from the events ~~which~~ it sponsors
 89 | if the organization employs other persons as agents to provide
 90 | services in connection with a sponsored event. Before ~~Prior to~~
 91 | March 1 of each year, such organization may apply to the
 92 | department for a certificate of exemption for admissions to such
 93 | events sponsored in this state by the organization during the
 94 | immediately following state fiscal year. The application must
 95 | ~~shall~~ state the total dollar amount of admissions receipts
 96 | collected by the organization or its agents from such events in
 97 | this state sponsored by the organization or its agents in the
 98 | year immediately preceding the year in which the organization
 99 | applies for the exemption. Such organization shall receive the
 100 | exemption only to the extent of \$1.5 million multiplied by the
 101 | ratio that such receipts bear to the total of such receipts of
 102 | all organizations applying for the exemption in such year;
 103 | however, ~~in no event shall~~ such exemption granted to any
 104 | organization may not exceed 6 percent of such admissions
 105 | receipts collected by the organization or its agents in the year
 106 | immediately preceding the year in which the organization applies
 107 | for the exemption. Each organization receiving the exemption
 108 | shall report each month to the department the total admissions
 109 | receipts collected from such events sponsored by the
 110 | organization during the preceding month and shall remit to the
 111 | department an amount equal to 6 percent of such receipts reduced
 112 | by any amount remaining under the exemption. Tickets for such

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113 | events sold by such organizations may ~~shall~~ not reflect the tax
 114 | otherwise imposed under this section.

115 | 8.7. ~~Also exempt from the tax imposed by this section are~~
 116 | Entry fees for participation in freshwater fishing tournaments.



117 | 9.8. ~~Also exempt from the tax imposed by this section are~~
 118 | Participation or entry fees charged to participants in a game,
 119 | race, or other sport or recreational event if spectators are
 120 | charged a taxable admission to such event.

121 | 10.9. ~~No tax shall be levied on~~ Admissions to any
 122 | postseason collegiate football game sanctioned by the National
 123 | Collegiate Athletic Association.

124 | Section 2. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 469 Move Over Act
SPONSOR(S): Transportation & Highway Safety Subcommittee; Raschein
TIED BILLS: IDEN./SIM. BILLS: SB 478

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	13 Y, 0 N, As CS	Thompson	Miller
2) Economic Affairs Committee		Thompson	Cremer  

SUMMARY ANALYSIS

CS/HB 469 amends the "Florida Move-Over Act" to add sanitation vehicles and utility service vehicles to the list of vehicles for which a driver must move over or slow down.

The act relates to the operation of motor vehicles when approaching a parked "authorized emergency vehicle" or wrecker, on the roadside. The act requires that, where there are two or more lanes traveling in the same direction, drivers must merge into the lane farthest from an emergency vehicle or wrecker parked on the roadside when the emergency vehicle is making use of visual signals or the wrecker is displaying amber rotating or flashing lights and performing a recovery or loading on the roadside. In instances where changing lanes is unsafe or the driver is traveling on a two-lane road, the driver must slow to a speed that is 20 miles per hour (mph) less than the posted speed limit, unless the posted limit is 20 mph or less. In that case, the driver is required to slow to a speed of 5 mph. These requirements are in addition to those requiring that a driver yield for a moving emergency vehicle.

A violation of the act is a non-criminal traffic infraction punishable as a moving violation. Violators are subject to a \$30 penalty, court costs of up to \$124 depending on the jurisdiction, and imposition of three points against the violator's driver's license.

The bill amends the act so that it also applies to a "sanitation vehicle" performing a task related to the provision of sanitation services on the roadside, or "utility service vehicle" performing a task related to the provision of utility services on the roadside.

The bill defines a sanitation vehicle as a motor vehicle that bears an emblem that is visible from the roadway and clearly identifies that the vehicle belongs to or is under contract with an entity that provides garbage, trash, refuse, or recycling collection.

The bill defines a utility service vehicle as a motor vehicle that bears an emblem that is visible from the roadway and clearly identifies that the vehicle belongs to or is under contract with an entity that provides electric, natural gas, water, wastewater, cable, telephone, or communications services.

The bill's fiscal impact is not expected to be significant.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 2002, the Legislature created the Florida Move-Over Act.¹ The act relates to the operation of motor vehicles when approaching a parked authorized emergency vehicle² or wrecker, on the roadside. Specifically, when approaching a parked emergency vehicle that is making use of visual signals, or a wrecker that is displaying amber rotating or flashing lights and performing a recovery or loading on the roadside, as soon as it is safe, unless otherwise directed by a law enforcement officer, drivers are required to:

- vacate the lane closest to the emergency vehicle or wrecker if driving on a highway with two or more lanes that travel in the direction of the emergency vehicle or wrecker.

If changing lanes cannot be safely accomplished or when travelling on a two lane road, drivers approaching an emergency vehicle or wrecker are required to:

- slow to a speed that is 20 mph less than the posted speed limit when the posted speed limit is 25 mph or greater; or
- travel at 5 mph when the posted speed limit is 20 mph or less.³

Violations are a non-criminal traffic infraction punishable as a moving violation. Violators are subject to a \$30 penalty,⁴ court costs of up to \$124 depending on the jurisdiction,⁵ and imposition of three points against the violator's driver's license.⁶

DHSMV is required to provide an educational awareness campaign informing the motoring public about the act. Information must be provided in all newly printed driver's license educational materials after July 1, 2002.⁷

These requirements are in addition to those requiring that a motorist yield for a moving emergency vehicle. These requirements do not relieve a driver of an emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.

In 2013, there were 17,118 citations issued by law enforcement in the State of Florida for Move Over Act violations.⁸

¹ s. 1, chapter 2002-217, Laws of Florida; codified as s. 316.126(1)(b), F.S.

² For purposes of the Move Over Act, s. 316.003(1), F.S., defines "authorized emergency vehicles" as vehicles of the fire department (fire patrol), police vehicles, and such ambulances and emergency vehicles of municipal departments, public service corporations operated by private corporations, the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, the Department of Health, the Department of Transportation, and the Department of Corrections as are designated or authorized by their respective department or the chief of police of an incorporated city or any sheriff of any of the various counties.

³ s. 316.126(1)(b), F.S.

⁴ s. 318.18(2)(d), F.S.

⁵ The Florida Court Clerks & Comptrollers Distribution Schedule of Court Related Filing Fees, Service Charges, Costs and Fines, Including Recording Schedule, Effective July 2013. Page 14, lines 14 – 23, delineate optional additions of up to \$26, and page 31, lines 1257 – 1269 delineate additional court costs of up to \$98. See the Florida Court Clerks & Comptrollers website at https://www.flclerks.com/public_info.html (Last viewed 2/25/14).

⁶ s. 322.27(3)(d)(7), F.S.

⁷ s. 316.126(2), F.S.

⁸ This information was received from DHSMV via email on 1/24/14 and is on file with the Transportation and Highway Safety Subcommittee.

Proposed Changes

The bill amends the act to add sanitation vehicles and utility service vehicles to the list of vehicles for which a driver must move over or slow down.

Specifically, in addition to moving over or slowing down for emergency vehicles and wreckers, when approaching a sanitation vehicle that is performing a task related to the provision of sanitation services on the roadside or a utility service vehicle that is performing a task related to the provision of utility services on the roadside, unless otherwise directed by a law enforcement officer, drivers would be required to:

- vacate the lane closest to the utility service vehicle if driving on a highway with two or more lanes that travel in the direction of the utility service vehicle.

If changing lanes cannot be safely accomplished or when travelling on a two lane road, drivers approaching a utility service vehicle would be required to:

- slow to a speed that is 20 mph less than the posted speed limit when the posted speed limit is 25 mph or greater; or
- travel at 5 mph when the posted speed limit is 20 mph or less.

The bill defines a sanitation vehicle as:

a motor vehicle that bears an emblem that is visible from the roadway and clearly identifies that the vehicle belongs to or is under contract with a person, entity, cooperative, board, commission, district, or unit of local government that provides garbage, trash, refuse, or recycling collection.

The bill defines a utility service vehicle as:

a motor vehicle that bears an emblem that is visible from the roadway and clearly identifies that the vehicle belongs to or is under contract with a person, entity, cooperative, board, commission, district, or unit of local government that provides electric, natural gas, water, wastewater, cable, telephone, or communications services.

The bill also makes several technical changes to superfluous and out of date language.

B. SECTION DIRECTORY:

Section 1: Amends s. 316.003, F.S., defining the terms sanitation vehicle and utility service vehicle.

Section 2: Amends s. 316.126, F.S., revising the Florida Move-Over Act to include sanitation vehicles and utility service vehicles to the list of motor vehicles for which a driver is required to move over or slow down.

Section 3: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section, below.

2. Expenditures:

See FISCAL COMMENTS section, below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS section, below.

2. Expenditures:

See FISCAL COMMENTS section, below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to DHSMV, "[t]here is an increased probability for the motoring public to be cited and receive a fine if the Move Over Law is expanded to include utility vehicles."⁹ Violations are a civil traffic infraction punishable as a moving violation. A driver who fails to move over for either a sanitation vehicle or utility service vehicle is subject to a fine of \$30 plus up to \$124 in court costs, depending on the jurisdiction, and an assessment of 3 points against his or her driver license.

D. FISCAL COMMENTS:

To the extent that this bill reduces crashes, and, thereby improves the safety of sanitation and utility workers and their vehicles, sanitation and utility service providers will benefit from reduced costs of worker injuries and fatalities, and of damages to their respective vehicles and equipment. The sanitation and utility service providers covered by the bill include both publically-owned and privately-owned providers.

According to DHSMV, it will not be directly impacted by the bill.¹⁰

DHSMV is currently required to provide an educational awareness campaign informing the motoring public about the act. DHSMV is required to provide information in all newly printed driver's license educational materials. The bill will require DHSMV to revise these materials to include Move-Over Act requirements concerning sanitation and utility service vehicles. The fiscal impact of the revision is unknown at this time, but should be minimal.

There were 17,118 citations issued for Move Over Act violations in 2013.¹¹ In addition, state and local governments may experience a positive fiscal impact from the fines that are generated by violations of the newly created requirement to move over or slow down for sanitation and utility service vehicles. However, because the number of violations that will occur pursuant to the bill cannot be ascertained, the fiscal impact is indeterminate. These impacts are not expected to be significant.

⁹ See DHSMV's agency bill analysis for HB 469. A copy of the agency bill analysis is on file with the Florida House of Representatives, Transportation & Highway Safety Subcommittee.

¹⁰ Id.

¹¹ This information was received from DHSMV via email on 1/24/14 and is on file with the Transportation and Highway Safety Subcommittee.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No exercise of rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2014, the Transportation and Highway Safety Subcommittee adopted a strike-all amendment to HB 469 before reporting it favorable as a committee substitute. The amendment made the Move Over Act applicable to sanitation vehicles.

This analysis is drafted to the committee substitute as reported favorably by the Transportation & Highway Safety Subcommittee.

1 A bill to be entitled
 2 An act relating to the Move Over Act; amending s.
 3 316.003, F.S.; providing definitions; amending s.
 4 316.126, F.S.; requiring a driver to move over when
 5 approaching a sanitation or utility service vehicle
 6 performing a service-related task on the roadside;
 7 providing an effective date.

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

10
 11 Section 1. Subsections (92) and (93) are added to section
 12 316.003, Florida Statutes, to read:

13 316.003 Definitions.—The following words and phrases, when
 14 used in this chapter, shall have the meanings respectively
 15 ascribed to them in this section, except where the context
 16 otherwise requires:

17 (92) SANITATION VEHICLE.—A motor vehicle that bears an
 18 emblem that is visible from the roadway and clearly identifies
 19 that the vehicle belongs to or is under contract with a person,
 20 entity, cooperative, board, commission, district, or unit of
 21 local government that provides garbage, trash, refuse, or
 22 recycling collection.

23 (93) UTILITY SERVICE VEHICLE.—A motor vehicle that bears
 24 an emblem that is visible from the roadway and clearly
 25 identifies that the vehicle belongs to or is under contract with
 26 a person, entity, cooperative, board, commission, district, or

27 unit of local government that provides electric, natural gas,
 28 water, wastewater, cable, telephone, or communications services.

29 Section 2. Section 316.126, Florida Statutes, is amended
 30 to read:

31 316.126 Operation of vehicles and actions of pedestrians
 32 on approach of an authorized emergency, sanitation, or utility
 33 service vehicle.—

34 (1)(a) Upon the immediate approach of an authorized
 35 emergency vehicle, while en route to meet an existing emergency,
 36 the driver of every other vehicle shall, when such emergency
 37 vehicle is giving audible signals by siren, exhaust whistle, or
 38 other adequate device, or visible signals by the use of
 39 displayed blue or red lights, yield the right-of-way to the
 40 emergency vehicle and shall immediately proceed to a position
 41 parallel to, and as close as reasonable to the closest edge of
 42 the curb of the roadway, clear of any intersection and shall
 43 stop and remain in position until the authorized emergency
 44 vehicle has passed, unless otherwise directed by a ~~any~~ law
 45 enforcement officer.

46 (b) If ~~When~~ an authorized emergency vehicle displaying
 47 ~~making use of~~ any visual signals is parked on the roadside, a
 48 sanitation vehicle is performing a task related to the provision
 49 of sanitation services on the roadside, a utility service
 50 vehicle is performing a task related to the provision of utility
 51 services on the roadside, or a wrecker displaying amber rotating
 52 or flashing lights is performing a recovery or loading on the

53 | roadside, the driver of every other vehicle, as soon as it is
 54 | safe:

55 | 1. Shall vacate the lane closest to the emergency vehicle,
 56 | sanitation vehicle, utility service vehicle, or wrecker when
 57 | driving on an interstate highway or other highway with two or
 58 | more lanes traveling in the direction of the emergency vehicle,
 59 | sanitation vehicle, utility service vehicle, or wrecker, except
 60 | when otherwise directed by a law enforcement officer. If such
 61 | movement cannot be safely accomplished, the driver shall reduce
 62 | speed as provided in subparagraph 2.

63 | 2. Shall slow to a speed that is 20 miles per hour less
 64 | than the posted speed limit when the posted speed limit is 25
 65 | miles per hour or greater; or travel at 5 miles per hour when
 66 | the posted speed limit is 20 miles per hour or less, when
 67 | driving on a two-lane road, except when otherwise directed by a
 68 | law enforcement officer.

69 | (c) The Department of Highway Safety and Motor Vehicles
 70 | shall provide an educational awareness campaign informing the
 71 | motoring public about the Move Over Act. The department shall
 72 | provide information about the Move Over Act in all newly printed
 73 | driver ~~driver's~~ license educational materials ~~after July 1,~~
 74 | ~~2002.~~

75 |
 76 | This section does not relieve the driver of an authorized
 77 | emergency vehicle from the duty to drive with due regard for the
 78 | safety of all persons using the highway.

79 | (2) Every pedestrian using the road right-of-way shall
 80 | yield the right-of-way until the authorized emergency vehicle
 81 | has passed, unless otherwise directed by a law enforcement ~~any~~
 82 | ~~police~~ officer.

83 | (3) An ~~Any~~ authorized emergency vehicle, when en route to
 84 | meet an existing emergency, shall warn all other vehicular
 85 | traffic along the emergency route by an audible signal, siren,
 86 | exhaust whistle, or other adequate device or by a visible signal
 87 | by the use of displayed blue or red lights. While en route to
 88 | such emergency, the emergency vehicle shall otherwise proceed in
 89 | a manner consistent with the laws regulating vehicular traffic
 90 | upon the highways of this state.

91 | (4) This section does not ~~Nothing herein contained shall~~
 92 | diminish or enlarge any rules of evidence or liability in any
 93 | case involving the operation of an emergency vehicle.

94 | (5) This section does ~~shall~~ not ~~operate to~~ relieve the
 95 | driver of an authorized emergency vehicle from the duty to drive
 96 | with due regard for the safety of all persons using the highway.

97 | (6) A violation of this section is a noncriminal traffic
 98 | infraction, punishable pursuant to chapter 318 as either a
 99 | moving violation for infractions of subsection (1) or subsection
 100 | (3), or as a pedestrian violation for infractions of subsection
 101 | (2).

102 | Section 3. This act shall take effect July 1, 2014.



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: Economic Affairs Committee
 2 Representative Watson, B. offered the following:

Amendment (with directory and title amendments)

5 Remove lines 29-78 and insert:

6 (94) SURVEYING AND MAPPING CREW.-One or more surveyors and
 7 mappers as defined in s. 472.005(3), or employees as defined in
 8 s. 472.005(9), or subordinates as defined in s. 472.005(10), on
 9 the roadside who are performing the practice of surveying and
 10 mapping as defined in s. 472.005(4) (a), and who are accompanied
 11 by a vehicle that bears an emblem that is visible from the
 12 roadway or signage that is visible from the roadway.

13 Section 2. Paragraph (b) of subsection (1) and subsections
 14 (2) through (6) of section 316.126, Florida Statutes, are
 15 amended to read:



Amendment No. 1

16 316.126 Operation of vehicles and actions of pedestrians
17 on approach of authorized emergency vehicle and roadside
18 entities.-

19 (1)

20 (b)1. When approaching an entity who is performing a task
21 as described in subparagraph 2. an authorized emergency vehicle
22 making use of any visual signals is parked or a wrecker
23 displaying amber rotating or flashing lights is performing a
24 recovery or loading on the roadside, the driver shall of every
25 other vehicle, as soon as it is safe:

26 a.1. ~~Shall~~ Vacate the lane closest to the entity
27 performing the task emergency vehicle or wrecker when driving on
28 an interstate highway or other highway with two or more lanes
29 traveling in the direction of such entity the emergency vehicle
30 or wrecker, unless except when otherwise directed by a law
31 enforcement officer; ~~or. If such movement cannot be safely~~
32 ~~accomplished, the driver shall reduce speed as provided in~~
33 ~~subparagraph 2.~~

34 b.2. If such movement described in sub-subparagraph a.
35 cannot be safely accomplished, shall slow to a speed that is 20
36 miles per hour less than the posted speed limit when the posted
37 speed limit is 25 miles per hour or greater; or travel at 5
38 miles per hour when the posted speed limit is 20 miles per hour
39 or less, when driving on a two-lane road, except when otherwise
40 directed by a law enforcement officer.

41 2. Subparagraph 1. applies to every driver approaching:



Amendment No. 1

- 42 a. An authorized emergency vehicle that is parked on the
- 43 roadside and displaying any visual signals;
- 44 b. A sanitation vehicle that is performing a task related
- 45 to the provision of sanitation services on the roadside;
- 46 c. A utility service vehicle that is performing a task
- 47 related to utility services on the roadside;
- 48 d. A surveying and mapping crew that is performing a task
- 49 on the roadside related to the practice of surveying and mapping
- 50 pursuant to s. 472.005(4) (a).

51
52 This section does not relieve the driver of an authorized
53 emergency vehicle from the duty to drive with due regard for the
54 safety of all persons using the highway.

55
56
57
58 -----

D I R E C T O R Y A M E N D M E N T

59 Remove line 11 and insert:

60 Section 1. Subsections (92), (93), and (94) are added to
61 section
62

63
64
65
66
67 -----



Amendment No. 1


68
69
70
71
72

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

Remove lines 5-6 and insert:
approaching a sanitation or utility service vehicle or a
surveying and mapping crew performing tasks on the roadway;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 599 Pub. Rec./Automated License Plate Recognition Systems
SPONSOR(S): Government Operations Subcommittee; Transportation & Highway Safety Subcommittee; Hutson
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 226

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Highway Safety Subcommittee	10 Y, 0 N, As CS	Thompson	Miller
2) Government Operations Subcommittee	11 Y, 0 N, As CS	Williamson	Williamson
3) Economic Affairs Committee		Thompson	Cremer 

SUMMARY ANALYSIS

Automated license plate recognition (ALPR) is a mass surveillance method that uses optical character recognition of images to read vehicle license plates. ALPRs are used by law enforcement as a method of cataloging the movements of traffic or individuals. In Florida, ALPR technology has been utilized by local and state law enforcement for the last several years.

The bill creates a public record exemption for the following information held by an agency:

- Images and data obtained through the use of an ALPR system; and
- Personal identifying information of an individual in data generated or resulting from images obtained through the use of an ALPR system.

The bill authorizes release of the confidential and exempt information in certain circumstances.

The bill provides for retroactive application of the public record exemption. It provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

The bill could create a minimal fiscal impact on state and local governments. See FISCAL COMMENTS section.

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² 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:

- allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- protects 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.
- protects trade or business secrets.

Automated License Plate Recognition

Automated license plate recognition (ALPR) is a surveillance method that uses computerized optical character recognition to extract vehicle license plate information from an image or a sequence of images. ALPR is used by law enforcement as a method of cataloging the movements of traffic or individuals.

ALPR cameras can be set up at fixed locations or mounted on police cars. They can capture over 3,000 license plate images per minute³ and make a record of the license plate. ALPR images can be captured clearly, day or night, no matter how fast the car is traveling. The data also includes the date, time, and location of the image.⁴

The records are stored in law enforcement databases and checked against hot lists, contained within electronic clearinghouses such as the National Crime Information Center database,⁵ for tags associated with criminal activity.

¹ Section 24(c), Art. I of the State Constitution.

² See s. 119.15, F.S.

³ New York State Division of Criminal Justice Services, Suggested Guidelines: Operation of License Plate Reader Technology 2011, <http://criminaljustice.state.ny.us/ofpa/pdfdocs/finallprguidelines01272011a.pdf>, page 11 (last viewed January 16, 2014).

⁴ *Id.*, at pages 5-8.

⁵ According to the Federal Bureau of Investigation, the National Crime Information Center database (NCIC) is an electronic clearinghouse of crime data that can be tapped into by virtually every criminal justice agency nationwide, 24 hours a day and 365 days a year. By the end of Fiscal Year (FY) 2011, NCIC contained 11.7 million active records in 19 files. During FY 2011, NCIC averaged 7.9 million transactions per day. The NCIC database currently consists of 21 files. There are seven property files containing records of stolen articles, boats, guns, license plates, parts, securities, and vehicles. There are 14 persons files, including: Supervised Release;

License plate images and data associated with these images are the primary forms of information collected by ALPR systems: ALPR data may be stored in an individual ALPR unit until it is either transferred to another server or discarded. Data files compiled in ALPR systems typically contain:

- black and white plate image;
- contextual color image;
- electronically readable format of plate alphanumeric characters (optical character recognition of plate numbers);
- location and GPS coordinates;
- time and date of image capture; and
- camera identification.⁶

The contextual image, sometimes referred to as an overview image, may capture additional identifying features of the vehicle such as make, model, color, bumper sticker, or damage. Also, it may capture the vehicle in context, including the surrounding area.⁷

A 2011 national survey found that nearly three-quarters (71 percent) of the 70 responding agencies reported using ALPRs, and 85 percent plan to acquire or increase their use of the technology over the next five years.⁸

ALPR Data Collection in Florida

Florida law enforcement officers currently use ALPR surveillance; however, data collection restrictions for law enforcement do not exist. As such, license plate data can be gathered through the use of an ALPR. In July 2012, the American Civil Liberties Union (ACLU) submitted public record requests to nine cities and counties in Florida to obtain information on how local governments use ALPRs.⁹

The ACLU found that ALPRs capture information including the license plate number, date, time, and location of every scan. The information is collected and pooled into regional sharing systems (databases). The Florida Department of Law Enforcement (FDLE) currently has agreements with 111 police departments and sheriff's offices for access to ALPR data.¹⁰

Proposed Changes

The bill defines an "automated license plate recognition system" as a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data. It also defines the terms "active," "criminal intelligence information," and

National Sex Offender Registry; Foreign Fugitive; Immigration Violator; Missing Person; Protection Order; Unidentified Person; United States Secret Service Protective; Gang; Known or Appropriately Suspected Terrorist; Wanted Person; Identity Theft; Violent Person; and National Instant Criminal Background Check System Denied Transaction. The system also contains images that can be associated with NCIC records to help agencies identify people and property items. The Interstate Identification Index, which contains automated criminal history record information, is accessible through the same network as NCIC. More information on the NCIC can be found at <http://www.fbi.gov/about-us/cjis/ncic> (last viewed March 7, 2014).

⁶ International Association of Chiefs of Police, *Automated License Plate Recognition Systems; Policy and Operational Guidance for Law Enforcement*, at http://www.theiacp.org/Portals/0/pdfs/IACP_ALPR_Policy_Operational_Guidance.pdf, page 13 (last viewed November 20, 2013).

⁷ *Id.*

⁸ Police Executive Research Forum, *Critical Issues in Policing Series; How Are Innovations in Technology Transforming Policing?* (January 2012), at http://policeforum.org/library/critical-issues-in-policing-series/Technology_web.pdf, page two (last viewed November 20, 2013).

⁹ American Civil Liberties Union *Automatic License Plate Reader Documents: Interactive Map* - <https://www.aclu.org/maps/automatic-license-plate-reader-documents-interactive-map> (last viewed November 20, 2013).

¹⁰ Email received from FDLE on October 28, 2013 (on file with the Transportation and Highway Safety Subcommittee).

“criminal investigative information;”¹¹ “agency;”¹² and “criminal justice agency.”¹³

The bill creates a public record exemption for information collected through the use of an ALPR system. Specifically, the following information held by an agency is confidential and exempt¹⁴ from public record requirements:

- images and data obtained through the use of an ALPR system; and
- personal identifying information of an individual in data generated or resulting from images obtained through the use of an ALPR system.

Such information may be disclosed:

¹¹ The bill provides that the terms “active,” “criminal intelligence information,” and “criminal investigative information” have the same meanings as provided in s. 119.011(3), F.S. Section 119.011(3), F.S., provides the following definitions:

(a) “Criminal intelligence information” means 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.

(b) “Criminal investigative information” means 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.

(c) “Criminal intelligence information” and “criminal investigative information” do not include:

1. The time, date, location, and nature of a reported crime.
2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h), F.S.
3. The time, date, and location of the incident and of the arrest.
4. The crime charged.
5. Documents given or required by law or agency rule to be given to the person arrested, except as provided in s. 119.071(2)(h), F.S., and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from s. 119.07(1), F.S., until released at trial if it is found that the release of such information would:

- a. Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and
 - b. Impair the ability of a state attorney to locate or prosecute a codefendant.
6. Informations and indictments except as provided in s. 905.26, F.S.

(d) The word “active” has the following meaning:

1. Criminal intelligence information is considered “active” as 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.
2. Criminal investigative information is considered “active” as 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.

In addition, criminal intelligence and criminal investigative information is considered “active” while such information is directly related to pending prosecutions or appeals. The word “active” does not apply to information in cases which are barred from prosecution under the provisions of s. 775.15, F.S., or other statute of limitation.

¹² The bill provides that the term “agency” has the same meaning as provided in s. 119.011, F.S. Section 119.011(2), F.S., defines “agency” to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law. It also includes, for the purposes of chapter 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

¹³ The bill provides that the term “criminal justice agency” has the same meaning as provided in s. 119.011, F.S. Section 119.011(4), F.S., defines “criminal justice agency” to mean any law enforcement agency, court, or prosecutor; any other agency charged by law with criminal law enforcement duties; any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or the Department of Corrections.

¹⁴ 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 the statutory exemption. See Attorney General Opinion 85-62 (August 1, 1985).

- by or to a criminal justice agency in the performance of a criminal justice agency's official duties.
- to an individual to whom the license plate is registered, unless such information constitutes active criminal intelligence information or active criminal investigative information.

The bill provides for retroactive application¹⁵ of the public record exemption.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

B. SECTION DIRECTORY:

Section 1: creates s. 316.0777, F.S., to create a public record exemption for certain information collected through the use of ALPR systems.

Section 2: provides a public necessity statement.

Section 3: provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could create a minimal fiscal impact on agencies that collect ALPR data. Staff responsible for complying with public record requests could require training related to the creation of the public record exemption. In addition, an agency could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

¹⁵ The Supreme Court of Florida ruled that a public record exemption is not to be applied retroactively unless the legislation clearly expresses intent that such exemption is to be applied retroactively. Access to public records is a substantive right. Thus, a statute affecting that right is presumptively prospective and there must be a clear legislative intent for the statute to apply retroactively. See *Memorial Hospital-West Volusia, Inc. v. News-Journal Corporation*, 729 So.2d. 373 (Fla. 2001).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a new public record exemption; thus, it includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates the public record exemption to protect from public disclosure images, data, and personal identifying information, held by an agency and obtained through the use of an automated license plate recognition system.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Transportation & Highway Safety Subcommittee

On February 4, 2014, the Transportation & Highway Safety Subcommittee adopted one amendment to HB 599 before reporting it favorably as a committee substitute. The amendment revises the public record exemption so that it specifically addresses the images and data that an ALPR would capture and store.

The analysis is drafted to the committee substitute as approved by the Transportation and Highway Safety Subcommittee.

Government Operations Subcommittee

On March 5, 2014, the Government Operations Subcommittee adopted two amendments to CS/HB 599 and reported the bill favorably with committee substitute. The amendments co-located all of the definitions into one section of the bill and corrected a drafting error in the public necessity statement.

The analysis is drafted to the committee substitute as approved by the Government Operations Subcommittee.

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 316.0777, F.S.; providing definitions; providing a
 4 public records exemption for images and data obtained
 5 through the use of an automated license plate
 6 recognition system and personal identifying
 7 information of an individual in data generated from
 8 such images; providing conditions for disclosure of
 9 such images and information; providing for retroactive
 10 applicability of the exemption; providing for future
 11 legislative review and repeal of the exemption;
 12 providing a statement of public necessity; providing
 13 an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Section 316.0777, Florida Statutes, is created
 18 to read:

19 316.0777 Automated license plate recognition systems;
 20 public records exemption.-

21 (1) As used in this section, the term:

22 (a) "Active," "criminal intelligence information," and
 23 "criminal investigative information" have the same meanings as
 24 provided in s. 119.011(3).

25 (b) "Agency" has the same meaning as provided in s.
 26 119.011.

27 (c) "Automated license plate recognition system" means a
 28 system of one or more mobile or fixed high-speed cameras
 29 combined with computer algorithms to convert images of license
 30 plates into computer-readable data.

31 (d) "Criminal justice agency" has the same meaning as
 32 provided in s. 119.011.

33 (2) The following information held by an agency is
 34 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 35 of the State Constitution:

36 (a) Images and data obtained through the use of an
 37 automated license plate recognition system.

38 (b) Personal identifying information of an individual in
 39 data generated or resulting from images obtained through the use
 40 of an automated license plate recognition system.

41 (3) Such information may be disclosed as follows:

42 (a) Any such information may be disclosed by or to a
 43 criminal justice agency in the performance of the criminal
 44 justice agency's official duties.

45 (b) Any such information relating to a license plate
 46 registered to an individual may be disclosed to the individual,
 47 unless such information constitutes active criminal intelligence
 48 information or active criminal investigative information.

49 (4) This exemption applies to such information held by an
 50 agency before, on, or after the effective date of this
 51 exemption.

52 (5) This section is subject to the Open Government Sunset

53 Review Act in accordance with s. 119.15 and shall stand repealed
54 on October 2, 2019, unless reviewed and saved from repeal
55 through reenactment by the Legislature.

56 Section 2. The Legislature finds that it is a public
57 necessity that images and data obtained through the use of an
58 automated license plate recognition system held by an agency and
59 personal identifying information in data generated from such
60 images be made confidential and exempt from s. 119.07(1),
61 Florida Statutes, and s. 24(a), Article I of the State
62 Constitution. The exemption protects sensitive personal
63 information that, if released, could be defamatory to an
64 individual or jeopardize the safety of an individual by allowing
65 a third party to track a person's movements and compile a
66 history on where a person has driven. This exemption is
67 necessary because the public disclosure of such information
68 constitutes an unwarranted invasion into the personal life and
69 privacy of a person. The harm from disclosing such information
70 outweighs any public benefit that can be derived from widespread
71 and unregulated public access to such information.

72 Section 3. This act shall take effect July 1, 2014.



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: Economic Affairs Committee
 2 Representative Hutson offered the following:

Amendment (with title amendment)

Remove lines 36-37 and insert:

6 (a) Images and data containing or providing personal
 7 identifying information obtained through the use of an automated
 8 license plate recognition system.

Remove line 57 and insert:

11 necessity that images and data containing or providing personal
 12 identifying information obtained through the use of an

16 -----
 17 **T I T L E A M E N D M E N T**



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/CS/HB 599 (2014)

Amendment No. 1

18 Remove line 4 and insert:
19 public records exemption for images and data containing or
20 providing personal identifying information obtained
21

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 731 POW-MIA Chair of Honor Memorial
SPONSOR(S): Government Operations Appropriations Subcommittee; Hood, Jr.
TIED BILLS: IDEN./SIM. **BILLS:** CS/SB 608

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Veteran & Military Affairs Subcommittee	11 Y, 0 N	Dugan	Kiner
2) Government Operations Appropriations Subcommittee	12 Y, 0 N, As CS	White	Topp
3) Economic Affairs Committee		Dugan <i>RD</i>	Creamer <i>MC</i>

SUMMARY ANALYSIS

The bill establishes the Prisoners of War-Missing In Action Chair of Honor Memorial (Memorial) to honor the sacrifices endured by members of the United States Armed Forces who were held as Prisoners Of War or remain Missing In Action.

The bill requires the Department of Management Services (DMS) to designate an area of the Capitol Complex for the Memorial and to consult with the Florida Department of Veterans' Affairs (DVA) and the Florida chapters of Rolling Thunder, Inc., regarding the design, construction, installation, and continuous management of the Memorial.

The Memorial will be funded by the Florida chapters of Rolling Thunder, Inc., without a direct appropriation of state funds; however, the DMS will incur minimal costs associated with the maintenance of the area in which the Memorial is placed.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Prisoners of War-Missing In Action (POW-MIA)

More than 83,000 Americans remain missing from World War II, the Korean War, the Cold War, the Vietnam War and the 1991 Gulf War.¹ Currently, there are a total of 9,533 unaccounted for military servicemembers from the Korean War and the Vietnam War,² with 217 indicating Florida as their home of record.³ In addition, 34 military servicemembers from Florida have either been accounted for (including POW returnees and POW escapees) or their remains have been recovered and identified from the Korean War and the Vietnam War.⁴

In accordance with the Missing Service Personnel Act,⁵ the current number of personnel missing from operations in Iraq and other current conflicts is seven: two servicemembers from Operation Desert Storm; one servicemember and three Department of Defense contractors from Operation Iraqi Freedom; and one servicemember from Operation Enduring Freedom.⁶

Military Recognition by the Florida Legislature

The Florida Legislature recognizes the military service of Florida residents through the Florida Veterans' Hall of Fame and the Florida Medal of Honor Wall. The Florida Veterans' Hall of Fame recognizes and honors those military veterans who, through their works and lives during or after military service, made a significant contribution to the State of Florida.⁷ The Florida Medal of Honor Wall recognizes and honors those who are accredited, or associated by birth, to the State of Florida, who through their conspicuous bravery and gallantry during wartime, and at considerable risk to their own lives, earned the Medal of Honor.⁸

There are no funds generated by the Veterans' Hall of Fame or Medal of Honor Wall for the benefit of veterans or their families.

Rolling Thunder, Inc.

Incorporated in 1995, Rolling Thunder, Inc., is a non-profit organization with over 94 chartered chapters throughout the United States and members abroad, including eight chapters in Florida.⁹

The major function of Rolling Thunder, Inc., is to publicize the POW-MIA issue: to educate the public that many American Prisoners Of War were left behind after all previous wars and to help correct the

¹ Department of Defense Prisoner of War, Missing Personnel Office (DPMO), available at: <http://www.dtic.mil/dpmo> (last viewed March 12, 2014).

² DPMO website, Summary Statistics, available at: http://www.dtic.mil/dpmo/summary_statistics/ (last viewed March 12, 2014).

³ DPMO website, Korean War, POW/MIA List, U.S. Servicemen, by Home of Record State, available at: <http://www.dtic.mil/dpmo/korea/reports/state/?State=fl> (last viewed March 12, 2014); DPMO website, Vietnam War, POW/MIA List, U.S. Servicemen, by Home of Record State, available at: <http://www.dtic.mil/dpmo/vietnam/reports/state/?State=fl> (last viewed March 12, 2014).

⁴ Id.

⁵ 10 U.S.C. §§ 1501-1513, Missing Service Personnel Act (MSPA). The MSPA tasks the DPMO with responsibility for policy, control and oversight of the entire process of investigation and recovery of missing persons (including matters related to search, rescue, escape and evasion) and for coordination between the Department of Defense and other U.S. agencies on all matters concerning missing persons.

⁶ DPMO website, available at: <http://www.dtic.mil/dpmo/> (last viewed March 12, 2014).

⁷ s. 265.003, F.S.

⁸ s. 265.002, F.S.

⁹ Rolling Thunder, Inc., website, available at: <http://www.rollingthunder1.com/index.html> (last viewed March 12, 2014).

past and to protect the future veterans from being left behind should they become Prisoners Of War or Missing In Action.¹⁰

Management of the Capitol Complex

The Department of Management Services (DMS) serves as the managing agency for the Capitol Complex¹¹, which includes the operation and maintenance of both the grounds and buildings. According to the DMS, this responsibility for the condition of the facilities has historically included assistance in establishing and maintaining public memorials throughout the Capitol Complex.¹² Tasks include project management oversight of the design and construction of memorials and restoration of the state's historic structures. This activity involves coordination with the designated administering agency and often the Department of State, Division of Historical Resources.

Effect of Proposed Changes

The bill creates s. 265.0031, F.S., to establish the Prisoners of War-Missing In Action Chair of Honor Memorial (Memorial) to honor the sacrifices endured by members of the United States Armed Forces who were held as Prisoners of War or remain Missing In Action.

The bill requires the DMS to designate an area of the Capitol Complex¹³ for the memorial and to consult with the DVA and the Florida chapters of Rolling Thunder, Inc., regarding the design, construction, installation, and continuous management of the memorial.

The Memorial will be funded by the Florida chapters of Rolling Thunder, Inc., without a direct appropriation of state funds; however, the Department of Management Services (DMS) will incur minimal costs associated with the maintenance of the area in which the Memorial is placed.

Effective Date

The bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1: Creates s. 265.0031, F.S., to establish the POW-MIA Chair of Honor Memorial.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Memorial will not require a direct appropriation of state funds, but the DMS will incur minimal costs associated with the maintenance of the area in which the Memorial is placed.

¹⁰ Id.

¹¹ Section 281.01 of the Florida statutes defines "Capitol Complex" to include the portions of Tallahassee, Leon County, Florida, commonly referred to as the Capitol, the Historic Capitol, the Senate Office Building, the House Office Building, the Knott Building, the Pepper Building, the Holland Building, and the curtilage of each, including the state-owned lands and public streets adjacent thereto within an area bounded by and including Monroe Street, Jefferson Street, Duval Street, and Gaines Street. The term shall also include the State Capital Circle Office Complex located in Leon County, Florida.

¹² See the Agency Bill Analysis for SB 608. The analysis is on file with the House Veteran & Military Affairs Subcommittee staff.

¹³ Id.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Not Applicable.

B. RULE-MAKING AUTHORITY:

Not Applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None..

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 4, 2014, the Government Operations Appropriations Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment further clarifies that the POW-MIA Chair of Honor Memorial will be funded by the Florida chapters of Rolling Thunder, Inc.

This analysis is drafted to the Committee Substitute as passed by the Government Operations Appropriations Subcommittee.

1 A bill to be entitled
 2 An act relating to the POW-MIA Chair of Honor
 3 Memorial; creating s. 265.0031, F.S.; providing
 4 legislative intent; defining the term "Capitol
 5 Complex"; establishing the POW-MIA Chair of Honor
 6 Memorial; authorizing the Florida chapters of Rolling
 7 Thunder, Inc., to fund the memorial; requiring the
 8 Department of Management Services to designate an area
 9 of the Capitol Complex for the memorial; requiring the
 10 department to consult with the Department of Veterans'
 11 Affairs and the Florida chapters of Rolling Thunder,
 12 Inc., regarding specific aspects of the memorial;
 13 providing an effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Section 265.0031, Florida Statutes, is created
 18 to read:

19 265.0031 POW-MIA Chair of Honor Memorial.-

20 (1) It is the intent of the Legislature to recognize and
 21 honor the sacrifices endured by members of the Armed Forces of
 22 the United States who were held as prisoners of war or remain as
 23 missing in action.

24 (2) For purposes of this section, the term "Capitol
 25 Complex" has the same meaning as in s. 281.01.

26 (3) There is established the POW-MIA Chair of Honor

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27 | Memorial.


28 | (a) The POW-MIA Chair of Honor shall be funded by the
29 | Florida chapters of Rolling Thunder, Inc., without appropriation
30 | of state funds.

31 | (b) The Department of Management Services shall designate
32 | an area for the memorial in the Capitol Complex and shall
33 | consult with the Department of Veterans' Affairs and the Florida
34 | chapters of Rolling Thunder, Inc., regarding the design,
35 | construction, installation, and continuous management of the
36 | memorial.

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 809 Manatee County
SPONSOR(S): Boyd
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	17 Y, 0 N	Kelly	Rojas
2) Economic Affairs Committee		Collins DC	Creamer 

SUMMARY ANALYSIS

HB 809 would repeal the Manatee Law Library Special Act (Act), including ch. 30957 (1955), 1961-2455, 1963-1581, 1969-1283, 1972-615, 1979-506, 1980-535, 1991-395, and 1996-511, L.O.F. Manatee County (County) states the Act's provisions for a law library are no longer in use. The County identifies this is largely due to changes in the Florida Constitution and general law which make the Act no longer legally necessary or effective.

HB 809 will take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

The Manatee Law Library Special Act

The Legislature created the Manatee Law Library Special Act (Act) in 1955.¹ The Act provides for the establishment and maintenance of a county law library in the court house at the county seat of Manatee County, Florida (County). The Act also provides for the purchase and maintenance of legal materials in the County law library, as well as the employment of staff to maintain these legal materials.²

In 1961, the Legislature enacted ch.1961-2455, L.O.F., which further amended the Act to allow for the establishment and maintenance of a county law library. Under the Act, the funds for the library would be generated from an occupational license tax on members of the Florida Bar residing, practicing, or maintaining a law office in the County. The County's Tax Collector would then collect and distribute these fees to the Clerk of the Court for deposit in the County Law Library Fund (Fund).³ In addition, the Act creates a Manatee County Law Library Committee to act as the advisory body to the maintenance of the library, including the creation of a librarian position to be hired and paid from the Fund. Finally, the Act establishes that the Clerk of the Court can collect certain cost and fees on civil cases commenced in circuit and county court.⁴ These cost and fees will also be held in the Fund to be used under this Act.⁵

Between the years of 1963 to 1996, the Legislature amended the Act to increase the amount of the occupational license tax as well as the cost and fees for civil cases commenced in circuit and county court.⁶ Also within these years, the Legislature clarified the composition of the Manatee County Law Library Committee to include circuit judges, county judges, and three practicing attorneys who were to be members of the Manatee County Bar Association (MBCA). In 1971, the Legislature amended the Act to include the establishment, maintenance, and operation of a legal aid program in the County which the MBCA would administer. Finally, the Act established that the MBCA would be responsible for hiring one or more law librarians for the library.

Florida Statutes and Other Law

Currently s. 29.008(1), F.S.,⁷ and the Florida Constitution⁸ require counties to fund facilities for trial courts. These facilities include all necessary building infrastructures for the housing of legal materials for general public use.⁹ Further, current law provides that the state budget must pay for judicial reference resources and basic legal materials accessible to the public.¹⁰ While the Florida Statutes are

¹ Chapter 30957 (1955), L.O.F.

² *Id.*

³ The Fund is also established in the Act. *See* ch.1961-2455, L.O.F.

⁴ These fees includes costs for commencing a civil case in circuit court, costs for commencing a civil case in county court, costs incurred in county court, and costs or fees for issuance of documents. *See* ch. 1961-2455, L.O.F.

⁵ *Id.*

⁶ Chapters 1961-2455, 1963-1581, 1969-1283, 1972-615, 1979-506, 1980-535, 1991-395, and 1996-511, L.O.F.

⁷ "Counties are required by s. 14, Art. V of the State Constitution to fund the cost of communications services, existing radio systems, existing multiagency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the circuit and county courts, public defenders' offices, state attorneys' offices, and the offices of the clerks of the circuit and county courts performing court-related functions."

⁸ FLA. CONST. art. V, s. 14.

⁹ Section 29.008(1)(a), F.S.

¹⁰ Section 29.004(7), (12), F.S.

silent on providing for a librarian for these facilities, the Manatee County Commission adopted Manatee County Code s. 2-4-4.5(2), which provides County funds to hire personnel and legal materials for the local libraries.¹¹

There is no current provision for a law library advisory committee in the Florida Statutes or the Manatee County Code.

Effect of Proposed Changes

HB 809 would repeal the Manatee Law Library Special Act, including ch. 30957 (1955), 1961-2455, 1963-1581, 1969-1283, 1972-615, 1979-506, 1980-535, 1991-395, and 1996-511, L.O.F.

The County has followed and satisfied general law by designing a law library in the County's new judicial center. Additionally, the state funds all judicial reference resources and the County pays for the employment of library personnel.

As for the advisory committee provision in the Act, the County states the MBCA has given full support to repeal this Act, so long as the County continues to fund the library personnel.¹² In addition, the MCBA has committed to begin forming a Law Library Committee to take the place of the current committee set up in the Act.

Finally, the County states the repeal of the Act will allow the County to be more efficient with its use of technology, especially with replacing physical legal sources with sources that can be found through legal online services. This will bring about nominal cost savings to the County, and no cost increase to the public.

HB 809 bill will take effect upon becoming law.

B. SECTION DIRECTORY:

Section 1: Repeals ch. 30957 (1955), 1961-2455, 1963-1581, 1969-1283, 1972-615, 1979-506, 1980-535, 1991-395, and 1996-511, L.O.F.

Section 2: Provides for an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 31, 2013

WHERE? *Bradenton Herald*, a daily newspaper of general circulation, published in Manatee County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? Not applicable.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

¹¹ Manatee County Code s. 2-4-4.5(2) allocates 25 percent of the \$65 added criminal conviction fines to fund local libraries.

¹² Manatee County Code s. 2-2-4.5(2).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A.

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1 A bill to be entitled
2 An act relating to Manatee County; repealing chapters
3 30957 (1955), 61-2455, 63-1581, 69-1283, 72-615, 79-
4 506, 80-535, 91-395, and 96-511, Laws of Florida,
5 relating to the Manatee County Law Library, certain
6 license and court fees collected for use by the
7 library, the Manatee County Law Library Committee, and
8 the law librarian; providing an effective date.

9

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

11

12 Section 1. Chapters 30957 (1955), 61-2455, 63-1581, 69-
13 1283, 72-615, 79-506, 80-535, 91-395, and 96-511, Laws of
14 Florida, are repealed.

15

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

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 919 Bay County Tourist Development Council, Bay County
SPONSOR(S): Patronis
TIED BILLS: IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	16 Y, 0 N	Flegiel	Rojas
2) Economic Affairs Committee		Collins DC	Creamer <i>DC</i>

SUMMARY ANALYSIS

The Bay County Tourist Development Council (Council) is a nine member advisory council that creates plans to promote tourism in Bay County using funds from the tourist development tax.

Two membership seats on the Council are reserved for elected officials from a municipality within the Bay County Tourist Development Tax District (tax district), with one seat reserved for an official from the most populous municipality. The tax district encompasses the cities of Panama City Beach and Mexico Beach. Presently, both municipal officials on the Council are from Panama City Beach, which generates over 95 percent of all revenue from the tourist development tax.

The Council is currently contemplating expansion of the tax district into Panama City. If this occurs, statute would automatically grant one municipal seat on the Council to Panama City, despite it generating less revenue than Panama City Beach, because it would become the most populous city in the tax district.

HB 919 provides an exemption from general law for the membership requirements of the Council, requiring both municipal officials to come from the city that generates the highest amount of revenue from the tourist development tax. This ensures Panama City Beach will retain both municipal seats on the Council, maintaining the status quo if the tax district expands to include Panama City.

This bill is effective upon becoming law.

According to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) may apply to this bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Tourist Development Councils

A Tourist Development Council is a county level advisory council that creates plans to promote tourism with funds generated by a county's tourism development tax, an optional bed tax levied on hotel room rates.¹ The Council prepares a tourist development plan that estimates the revenue from the tax and allocates the funds toward specific uses. Eligible uses may include: repairing, constructing, or acquiring convention centers, auditoriums, sports stadiums and arenas, aquariums, and museums; promoting and advertising tourism or establishing tourism information centers; and maintaining beaches and shorelines.²

The tourist development plan is prepared by the Council in anticipation of the county levying the tourist development tax. The Board of County Commissioners (Board) must approve the plan and incorporate it into an ordinance authorizing the levy of the tourist development tax.³ County electors must then approve the ordinance authorizing levy of the tax by referendum.⁴

The Council is intended to have an advisory capacity and any major amendments it makes to the tourism development plan must be approved by the Board.⁵

Membership on a Tourist Development Council is limited to citizens of the county and consists of:

- one member from the county board;
- two elected municipal officials, one of whom must be from the most populous city in the county or sub-county tax district; and
- six members who are individuals involved in the tourism industry, three or four of whom must be subject to the tax.⁶

The Bay County Tourist Development Council

The Bay County Ordinances created the Bay County Tourist Development Council.⁷ The current tourist development tax rate in Bay County is five percent.⁸ Three of the five cents collected are designated to promote tourism, one cent is designated to maintain and protect beaches, and one cent is designated

¹ Section 125.0104, F.S. Specifically, the tax is levied on "every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, condominium, or timeshare resort for a term of 6 months or less."

² Section 125.0104(5), F.S.

³ Section 125.0104(4)(a), F.S.

⁴ Section 125.0104(6)(a), F.S.

⁵ Section 125.0104(4)(d), F.S.

⁶ Section 125.0104(4)(e), F.S.

⁷ Bay County Code, Sec. 14-43.

http://library.municode.com/HTML/14281/level4/BAY_CO_CODE_CH14LITAMIBURE_ARTIITODETA_DIV1GE.html#BAY_CO_CODE_C_H14LITAMIBURE_ARTIITODETA_DIV1GE_S14-43TODECO

⁸ 2014 Local option Tourist/Food and Beverage/ Tax Rates in Florida's Counties. Office of Economic and Demographic Research.

to support low cost air service.⁹ In FY 2012-2013, Bay County collected \$16,189,140 in tourist development tax revenue, \$15,734,252 of which was collected in Panama City Beach.¹⁰

The tax is collected from a special taxing district that stretches along the gulf coast of Bay County from Phillips Inlet Bridge on the west end to the intersection of Thomas Drive and West Highway 98 on the east end.¹¹ The district also includes Shell Island and Crooked Island (Mexico Beach). The district covers the entire expanse of Panama City Beach, as well as unincorporated portions of Bay County that are adjacent to Panama City Beach. The district does not cover any portion of Panama City.

Bay County ordinance requires two members of the council to be elected municipal officials, a less specific standard than provided in state law. However, the council is still required to comply with the membership rules provided in the Florida Statutes.¹² There are seven incorporated cities in Bay County. Panama City is the most populous, with a population of 36,484. Panama City Beach has a population of 12,018.¹³ Because the tax district does not encompass Panama City, the most populous city in the sub-county portion of the tax district is Panama City Beach. Presently, both elected municipal officials sitting on the Council are from Panama City Beach.¹⁴

The Council is considering plans to expand the tax district to cover portions of Panama City.¹⁵ If this occurs, Panama City would obtain a seat on the Council, despite collecting significantly less tourist development tax revenue than Panama City Beach. Panama City has indicated support for allowing Panama City Beach to retain both seats on the council in the event of the tax district expansion through passage of a resolution which requests that the Bay County Legislative Delegation approve a bill that provides for two members of the Council to be elected from the municipality that has generated the highest revenues from the tax.¹⁶

In 2013, the House passed and the Governor signed HB 1007, a similar bill which revised the membership requirements of the Lee County Tourist Development Council.

Effect of Proposed Changes

HB 919 provides an exemption from general law for the two municipal official seats on the Council. The bill revises the membership requirements for these seats, reserving both for elected officials from the municipality generating the most revenue from the tourist development tax. The bill removes the requirement that one seat shall be filled by an official from the most populous municipality in the tax district.

The bill effectively allocates two seats on the Council to elected officials from Panama City Beach, because the city generates the most revenue from the tourist tax. The other cities located in the tax district, Mexico Beach and potentially Panama City (if the district expands), will not be eligible to have a seat on the Council unless they begin to generate the highest revenues for the tax district.

⁹ Bay County Comprehensive Annual Financial Report for Fiscal Year, ending Sep. 30, 2012. p. B-12.

¹⁰ Bay County Tourism Development Revenue Analysis. <http://www.visitpanamacitybeach.com/partners/about-the-tdc/tourist-development-tax/> Retrieved Feb. 26th, 2014.

¹¹ Tourist Development Tax. Bay County Clerk of Court and Comptroller. <http://www.baycoclerk.com/finance/tourist-development-tax/> Retrieved Feb. 25th, 2014.

¹² Bay County Code Sec. 14-43.

¹³ 2010 US Census Populations. See Office of Economic and Demographic Research City Profiles. <http://edr.state.fl.us/Content/area-profiles/2010-census-city/n-r.cfm>. Retrieved Feb. 25th, 2014.

¹⁴ "About the TDC." <http://www.visitpanamacitybeach.com/partners/about-the-tdc/> Retrieved Feb. 26th, 2014.

¹⁵ Minutes from the Bay County TDC/CVB Combined Board Meeting, p.7. Dec. 18th, 2013.

<http://www.visitpanamacitybeach.com/partners/about-the-tdc/board-meeting-minutes/> Retrieved Feb 26th, 2014.

¹⁶ Panama City Resolution No. 11262013.8. Adopted by the City of Panama City Commission on Nov. 26, 2013.

http://library1.municode.com:80/minutes/home.htm?view=home&doc_action=setdoc&doc_keytype=tocid&doc_key=9b5279273dc1ffb6eef20760ce3f485&infobase=30067

B. SECTION DIRECTORY:

Section 1: Creates exemption from general law, changing the membership requirements for the two elected municipal officials sitting on the Council.

Section 2: Provides that the act shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 27th, 2013.

WHERE? *The News Herald*, a daily newspaper published at Panama City, in Bay 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to the Bay County Tourist Development
 3 Council, Bay County; revising membership of the
 4 council; providing an exception to general law;
 5 providing an effective date.

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

8
 9 Section 1. Bay County Tourist Development Council;
 10 composition.-

11 (1) Notwithstanding s. 125.0104(4)(e), Florida Statutes,
 12 the Bay County Tourist Development Council as established by Bay
 13 County ordinance pursuant to s. 125.0104, Florida Statutes,
 14 shall be composed of nine members who shall be appointed by the
 15 Board of County Commissioners of Bay County:

16 (a) The chair of the Board of County Commissioners of Bay
 17 County or any other member of the county commission designated
 18 by the chair shall serve on the council.

19 (b) Two members of the council shall be elected municipal
 20 officials, both of whom shall be from the municipality that
 21 generated the highest revenues from the tourist tax in the
 22 previous 5 fiscal years.

23 (c) Six members of the council shall be persons who are
 24 involved in the tourist industry and who have demonstrated an
 25 interest in tourist development, not less than three nor more
 26 than four of whom shall be owners or operators of motels,

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27 | hotels, recreational vehicle parks, or other tourist
28 | accommodations in the county and subject to the tax.

29 | (2) Each member of the council must be an elector of the
30 | county.

31 | (3) Except as otherwise expressly provided in this
32 | section, s. 125.0104(4)(e), Florida Statutes, applies to the Bay
33 | County Tourist Development Council.

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

