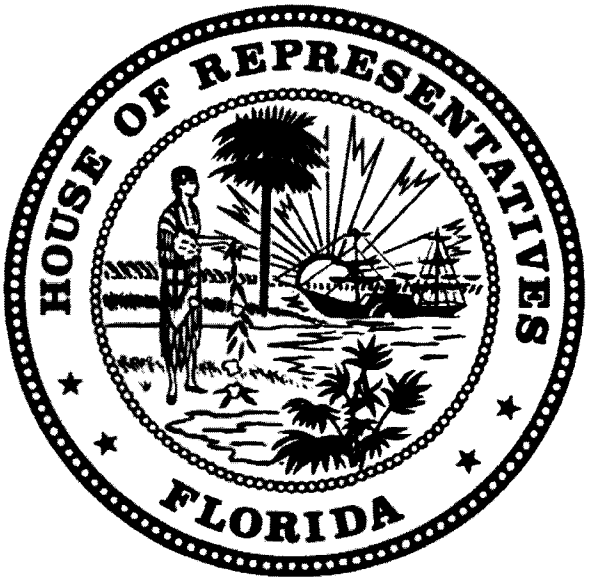

Local & Federal Affairs Committee

Meeting Packet

Thursday, March 19, 2015
9:00 am – 11:00 am
Webster Hall (212 Knott)

Steve Crisafulli
Speaker

Dennis K. Baxley
Chair

The Florida House of Representatives

Local & Federal Affairs Committee

Representative Steve Crisafulli
Speaker

Representative Dennis K. Baxley
Chair

Meeting Agenda
Thursday, March 19, 2015
212 Knott, Webster Hall
09:00 a.m. – 11:00 a.m.

I. **Call to Order**

II. **Roll Call**

III. **Welcome and Opening Remarks**

IV. **Consideration of the following bills:**

CS/CS/HB 209 Emergency Fire Rescue Services & Facilities Surtax by Finance & Tax Committee, Local Government Affairs Subcommittee, Artiles

HB 225 All-American Flag Act by Cortes, B., Campbell

CS/HB 361 Military Housing Ad Valorem Tax Exemptions by Finance & Tax Committee, Trumbull, Smith

HB 365 Designated Areas for Skateboarding, Inline Skating, Paintball, or Freestyle or Mountain & Off-Roading Bicycling by Gonzalez

HB 537 Pub. Rec./Community Development District Surveillance Recordings by Burgess

HM 949 Regulation of Carbon Dioxide Emissions from Fossil Fuel-Fired Electric Generating Units by Rodrigues, R.

V. **Adjournment**

317 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4860 Fax: (850) 717-6413

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 209 Emergency Fire Rescue Services and Facilities Surtax
SPONSOR(S): Finance & Tax Committee; Local Government Affairs Subcommittee; Artiles
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	13 Y, 0 N, As CS	Darden	Miller
2) Finance & Tax Committee	15 Y, 0 N, As CS	Wolfgang	Langston
3) Local & Federal Affairs Committee		Darden	Kiner

SUMMARY ANALYSIS

Current law, s. 212.055(8),F.S., enables counties to adopt a discretionary sales surtax of up to one percent to help fund emergency fire and rescue services, subject to approval by a majority of the qualified electors in a referendum. The county must have an interlocal agreement with a majority of emergency fire rescue service providers within the county as a prerequisite to conducting the referendum on enacting an Emergency Fire Rescue Services and Facilities Surtax. Only service providers who are signatories to the interlocal agreement are entitled to the revenue generated by the sales surtax. Distribution of surtax revenues to each service provider depends either on the actual amounts collected within each participating jurisdiction or, if the county contains any special fire control districts, the proportion of each participating jurisdiction's expenditures for fire control and emergency services to the total of all such expenditures for all participating jurisdictions. Any local government entity that receives surtax revenues is required to reduce its ad valorem tax levy or non-ad valorem assessment in the following fiscal years by the amount the entity expects to receive in surtax revenues. If more surtax revenues are received than were expected, the proceeds must be applied as a rebate to the final millage.

The bill amends the distribution formula for counties that have adopted an Emergency Fire Rescue Services and Facilities Surtax. The bill removes the requirement for the county government to enter into an interlocal agreement as a prerequisite for holding a referendum on the surtax. If the surtax is approved by referendum, the proceeds would instead be distributed to all local government entities providing emergency fire rescue services in the county. The bill amends the procedure for distributing revenue generated by the surtax, creating a uniform system of proportional allocation, with a pro rata distribution based on average annual spending of ad valorem and non-ad valorem assessment revenue on fire rescue services in the 5 fiscal years preceding the year that the surtax takes effect by all entities in the county providing fire services. The bill returns any surplus surtax revenues to the county if it cannot be applied to reduce ad valorem or non ad valorem assessments levied by the entity. The county must reduce its millage rates to offset the surplus surtax proceeds.

On Friday, February 6, 2015, the Revenue Estimating Impact Conference estimated that the provisions of a similar bill would have a zero or indeterminate positive fiscal impact on county and municipal government revenue.

The effective date of the bill is July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Government Budgeting and Fire Prevention and Emergency Medical Treatment

Counties,[1] cities, and fire districts[2] currently bear the primary responsibility for providing fire protection and prevention. Oftentimes, the county, city, or a special district also provides or financially supports emergency medical services. Under the Florida Constitution, local governments may not levy taxes except for ad valorem taxes or unless granted authority by the Legislature.[3] However, cities and counties have broad home rule authority, and, by state law, counties have limited authority to levy a sales surtax on the transactions subject to state sales tax.[4] Generally, fire services are funded using ad valorem taxes or non-ad valorem assessments. There is currently a surtax available for local governments to support emergency fire rescue services,[5] but there are no local governments levying the surtax at this time.

Therefore, funds for fire services are generally included in the normal local government budget process. Each year, taxing authorities propose a budget, advertise and hold public hearings, and consider public input before setting a final budget and millage rates. This is commonly called the Truth in Millage or TRIM process.

There are some statewide limits on how much a millage rate can increase relative to the roll-back rate. A roll-back rate is the rate at which the current tax base would produce the same taxes levied as the previous year. When a tax base increases, maintaining the same millage rate represents an increase in taxes. Millage rates are typically different for every taxing authority, depending on the budget of each.

Local government budget and millages are set according to a process described in s. 200.065, F.S. The county fiscal year is from October 1 through September 30 each year. Local governments hold a hearing(s) to adopt their final budgets and millage rates between September 18 and October 3 of each year.[6] Ad valorem taxes and most non-ad valorem assessments are paid annually between November 1 and April 1.

Emergency Fire Rescue Services Surtax

If not already imposing two discretionary sales surtaxes of indefinite duration, a county may pass an ordinance to levy a sales surtax of up to one percent for Emergency Fire Rescue Services and Facilities.[7] The surtax may be used to fund "emergency fire rescue services," which includes fire prevention and extinguishing, protection of life and property from natural or intentionally-created fires, and providing emergency medical treatment.[8]

Authorization for the Emergency Fire Rescue Services and Facilities Surtax was added in 2009.[9] To levy the surtax, the county must pass an ordinance, which becomes effective upon approval by a

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[1] S. 125.01, F.S.
[2] Ch. 191, F.S.; ch. 189, F.S.
[3] Fla. Const. art. VII, s. 1(a); Fla. Const. art. VII, 9(a).
[4] S. 212.054, F.S.; s. 212.055, F.S.
[5] S. 212.055(8), F.S.
[6] S. 200.065, F.S.
[7] S. 212.055(8)(a), F.S.
[8] *Id.*
[9] The Emergency Fire Rescue Services and Facilities Surtax was authorized initially by Ch. 2009-182, Laws of Florida.

majority of the qualified electors in a referendum.[10] Since the passage of the statute, no county has levied the surtax.[11]

The proceeds of the surtax are distributed according to an interlocal agreement between the county and local government entities[12] providing fire services in the county.[13] The formula to be used for distribution is stated in s. 212.055(8)(d), F.S., which states the interlocal agreement shall only specify:

- The amount of surtax to be distributed to each participating government entity based on the actual amounts collected within the jurisdiction of that entity, as determined by Department of Revenue population allocations, or;
- If the county has one or more special fire control districts, the amount of surtax to be distributed to each participating municipality and fire control district, as based on those entities' proportional spending on fire control and emergency rescue services from both ad valorem taxes and non-ad valorem assessments in the preceding five years.[14]

The Department of Revenue may retain an administrative fee, and the county may also charge an administrative fee equal to the lesser of actual costs or two percent of the sales surtax collected.[15] If a multicounty independent special district provides emergency fire rescue services inside a portion of the county, the county may not levy the Emergency Fire Rescue Services and Facilities Surtax inside the boundaries of that district.[16] The existence of the interlocal agreement is a prerequisite for holding a referendum to approve the ordinance.[17]

The interlocal agreement must include a majority of service providers within the county.[18] If a local government entity providing fire control services is not part of the interlocal agreement, it is not entitled to any proceeds from the surtax.[19]

If one local government entity provides personnel or equipment to another on a long-term basis, the entity receiving personnel or equipment must agree to the distribution of its share of the surtax to the providing entity. The amount of this distribution cannot exceed the providing entity's costs for furnishing the services to the receiving entity.[20]

When collections of the surtax begin, the county and participating local governments must reduce ad valorem taxes and non-ad valorem assessments used to pay for fire control and emergency rescue services by the estimated amount of revenue provided by the surtax.[21] Surtax collections begin on the January 1 following a successful referendum.[22] The Department of Revenue distributes surtax revenues each month.[23]

If the revenue collected from the surtax is higher than the estimated amount, the surplus must be used to reduce ad valorem taxes the following year.[24] The statute requires such excess collections to be

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[10] S. 212.055(8)(b), F.S.
[11] Office of Economic and Demographic Research, *2014 Local Government Financial Information Handbook,* 193.
[12] Municipalities, dependent special districts, independent special districts, and/or municipal service taxing units.
[13] S. 212.055(8)(c), F.S.
[14] S. 212.055(8)(d), F.S. This provision does not apply, however, if the county and one or more participating local governments have an interlocal agreement prohibiting one or more other jurisdictions from providing pre-hospital medical treatment inside the prohibited jurisdiction's boundaries, or if the county has issued a certificate of public convenience and necessity or its equivalent to a county department or dependent special district of the county. S. 212.055(8)(h), F.S.
[15] *Id.*
[16] S. 212.055(8)(j), F.S..
[17] S. 212.055(8)(b), F.S.
[18] S. 212.055(8)(d), F.S.
[19] S. 212.055(8)(g), F.S.
[20] S. 212.055(8)(d), F.S.
[21] S. 212.055(8)(e), F.S.
[22] S. 212.055(8)(i), F.S.
[23] S. 212.054(b), F.S.
[24] S. 212.055(8)(f), F.S.

applied as a "rebate to the final millage."[25] From the context of the statute, this provision appears to state a procedure for the taxing authority to provide taxpayers with the required reduction of ad valorem taxes, rather than create an additional type of reimbursement amount.

The use of surtax proceeds does not relieve counties and participating local governments from the provisions of Chapter 200, F.S. or any other provision of law establishing millage caps or limiting undesignated budget reserves.[26]

Effect of Proposed Changes

The bill removes the requirement for an interlocal agreement between the county and participating local government entities as a prerequisite to a referendum for imposition of an Emergency Fire Rescue Services and Facilities Surtax. If the county passed an ordinance to levy the surtax, subsequently approved by the electors in a referendum, all local government entities providing fire control and emergency rescue services within the county would share in the proceeds of the surtax based on the amended statutory formula. The bill provides for distributing the revenue generated from the surtax to local government entities in proportion to their average annual expenditures from ad valorem taxes and non-ad valorem assessments on fire control and emergency fire rescue services over the 5 fiscal years preceding the year that the surtax takes effect. The county will revise the proportionate distributions if the entity changes its service area. This formula would apply to all counties levying the surtax regardless of whether the county contained a special fire control district.

Since an interlocal agreement would no longer be required for the distribution of surtax revenues, the bill removes other references to such agreements. Local government entities still would be entitled to a share of the surtax proceeds when providing personnel and equipment on a long-term basis to another entity in the county. Local government entities also still would be required to reduce ad valorem taxes and non-ad valorem assessments for fire control and emergency rescue by the estimated amount of surtax revenue. These provisions, however, would apply to each local government entity (including the county) providing fire services in the county.[27] The bill returns any surplus surtax revenues to the county if it cannot be applied to reduce ad valorem or non-ad valorem assessments levied by the entity. The county must reduce its millage rates to offset the surplus surtax proceeds.

B. SECTION DIRECTORY:

Section 1: Amends s. 212.055(8), F.S., to remove a requirement for an interlocal agreement between counties and local government entities providing fire rescue service, and to adjust the distribution formula for revenues collected by the surtax.

Section 2: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[25] *Id.*
[26] *Id.*
[27] The removal of the interlocal agreement requirement erases the distinction between participating and non-participating service providers.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On Friday, February 6, 2015, the Revenue Estimating Impact Conference estimated that the provisions of this bill would have a zero or indeterminate positive fiscal impact on county and municipal government revenue.[28]

2. Expenditures:

Counties implementing the surtax would incur the cost of holding a referendum and other implementation expenses, offset in part by an administrative fee not to exceed two percent of the surtax collected.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals and businesses in counties implementing the surtax would face higher sales taxes, but would receive a reduction in ad valorem taxes and non-ad valorem assessments.

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 and 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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 12, 2015, the Finance and Tax Committee adopted two amendments and reported the bill favorably as a committee substitute.

The first amendment clarified what happens if the entity receiving surtax proceeds had already reduced the millage to zero. Because the entity can't reduce the assessments further, the money would go back to the county to be applied against the county's assessments.

[28] *Id.*

The second amendment freezes the proportional distribution at what it would be in the first year of levying the assessment. The county will revise the proportionate distributions if the entity changes its service area.

On February 17, 2015, the Local Government Affairs Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment restored deleted language concerning the procedure for providing taxpayers with the required additional reduction in ad valorem taxes due to actual surtax collections.

This analysis has been updated to reflect the bill as amended.

A bill to be entitled

An act relating to the emergency fire rescue services and facilities surtax; amending s. 212.055, F.S.; revising the distribution of surtax proceeds; deleting a provision requiring the county governing authority to develop and execute interlocal agreements with local government entities providing emergency fire and rescue services; requiring a local government entity requesting and receiving certain personnel or equipment from another service provider to pay for such personnel or equipment from its share of surtax proceeds; providing for application of funds if a local government entity receiving a share of the surtax is unable to further reduce ad valorem taxes; deleting a provision requiring local government entities to enter into an interlocal agreement in order to receive surtax proceeds; providing an effective date.

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

Section 1. Paragraphs (b) through (j) of subsection (8) of section 212.055, Florida Statutes, are amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales

surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

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

(b) Upon the adoption of the ordinance, the levy of the surtax must be placed on the ballot by the governing authority of the county enacting the ordinance. The ordinance will take effect if approved by a majority of the electors of the county voting in a referendum held for such purpose. The referendum shall be placed on the ballot of a regularly scheduled election. The ballot for the referendum must conform to the requirements of s. 101.161. ~~The interlocal agreement required under paragraph (d) is a condition precedent to holding the referendum.~~

(c) Pursuant to s. 212.054(4), the proceeds of the discretionary sales surtax collected under this subsection, less an administrative fee that may be retained by the Department of Revenue, shall be distributed by the department to the county. The county shall distribute the proceeds it receives from the department to <u>each local government entity providing emergency</u>

fire rescue services in the county. The surtax proceeds, less an administrative fee not to exceed 2 percent of the surtax collected, shall be distributed by the county based on each entity's average annual expenditures of ad valorem taxes and non-ad valorem assessments for fire control and emergency fire rescue services in the 5 fiscal years preceding the year that the surtax takes effect in proportion to the average annual total of the expenditures for all entities receiving such proceeds in the 5 fiscal years preceding the fiscal year for which the surtax takes effect. The county shall revise these distribution proportions to reflect any change in service area among entities receiving surtax distributions ~~the participating jurisdictions that have entered into an interlocal agreement with the county under this subsection. The county may also charge an administrative fee for receiving and distributing the surtax in the amount of the actual costs incurred, not to exceed 2 percent of the surtax collected~~.

(d) If a local government entity requests ~~The county governing authority must develop and execute an interlocal agreement with participating jurisdictions, which are the governing bodies of municipalities, dependent special districts, independent special districts, or municipal service taxing units that provide emergency fire and rescue services within the county. The interlocal agreement must include a majority of the service providers in the county.~~

~~1. The interlocal agreement shall only specify that:~~

~~a. The amount of the surtax proceeds to be distributed by the county to each participating jurisdiction is based on the actual amounts collected within each participating jurisdiction as determined by the Department of Revenue's population allocations in accordance with s. 218.62; or~~

~~b. If a county has special fire control districts and rescue districts within its boundary, the county shall distribute the surtax proceeds among the county and the participating municipalities or special fire control and rescue districts based on the proportion of each entity's expenditures of ad valorem taxes and non-ad valorem assessments for fire control and emergency rescue services in each of the immediately preceding 5 fiscal years to the total of the expenditures for all participating entities.~~

~~2. Each participating jurisdiction shall agree that if a participating jurisdiction is requested to provide~~ personnel or equipment <u>from</u> ~~to~~ any other service provider~~,~~ on a long-term basis <u>and the personnel or equipment is provided</u> ~~pursuant to an interlocal agreement~~, the <u>local government entity</u> ~~jurisdiction~~ providing the service is entitled to payment from the requesting service provider from that provider's share of the surtax proceeds for all costs of the equipment or personnel.

(e) Upon the surtax taking effect and initiation of collections, <u>each local government entity receiving a share of surtax proceeds</u> ~~a county and any participating jurisdiction entering into the interlocal agreement~~ shall reduce the ad

valorem tax levy or any non-ad valorem assessment for fire control and emergency rescue services in its next and subsequent budgets by the estimated amount of revenue provided by the surtax.

(f) Use of surtax proceeds authorized under this subsection does not relieve a local government entity from complying with ~~the provisions of~~ chapter 200 and any related provision of law that establishes millage caps or limits undesignated budget reserves and procedures for establishing rollback rates for ad valorem taxes and budget adoption. If surtax collections exceed projected collections in any fiscal year, any surplus distribution shall be used to further reduce ad valorem taxes in the next fiscal year. These proceeds shall be applied as a rebate to the final millage, after the TRIM notice is completed in accordance with this provision. If a local government entity receiving a share of the surtax is unable to further reduce ad valorem taxes because the millage rate is zero, the funds shall be applied to reduce any non-ad valorem assessments levied for the purposes described in this section. If no ad valorem or non-ad valorem reduction is possible, the surplus surtax collections shall be returned to the county, and the county shall reduce the county millage rates to offset the surplus surtax proceeds.

~~(g) Municipalities, special fire control and rescue districts, and contract service providers that do not enter into an interlocal agreement are not entitled to receive a portion of~~

~~the proceeds of the surtax collected under this subsection and are not required to reduce ad valorem taxes or non-ad valorem assessments pursuant to paragraph (e).~~

~~(h) The provisions of sub-subparagraph (d)1.a. and subparagraph (d)2. do not apply if:~~

~~1. There is an interlocal agreement with the county and one or more participating jurisdictions which prohibits one or more jurisdictions from providing the same level of service for prehospital emergency medical treatment within the prohibited participating jurisdictions' boundaries; or~~

~~2. The county has issued a certificate of public convenience and necessity or its equivalent to a county department or a dependent special district of the county.~~

(g) ~~(i)~~ Surtax collections shall be initiated on January 1 of the year following a successful referendum in order to coincide with s. 212.054(5).

(h) ~~(j)~~ Notwithstanding s. 212.054, if a multicounty independent special district created pursuant to chapter 67-764, Laws of Florida, levies ad valorem taxes on district property to fund emergency fire rescue services within the district and is required by s. 2, Art. VII of the State Constitution to maintain a uniform ad valorem tax rate throughout the district, the county may not levy the discretionary sales surtax authorized by this subsection within the boundaries of the district.

Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 225 All-American Flag Act
SPONSOR(S): Cortes and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 590

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	9 Y, 0 N	Darden	Miller
2) Government Operations Appropriations Subcommittee	12 Y, 0 N	White	Topp
3) Local & Federal Affairs Committee		Darden	Kiner

SUMMARY ANALYSIS

Current law requires the display of the United States and state flags in certain venues, but does not specify any requirements for the manufacturing or source of materials for United States or state flags purchased by the state or local governments.

The bill requires all United States and state flags purchased by the state, a county, or a municipality for public use, after January 1, 2016, to be made in the United States entirely from domestically grown, produced, and manufactured materials.

The bill is not anticipated to have a fiscal impact on state government. The bill may have an insignificant negative fiscal impact local governments, depending on the extent to which local governments are currently purchasing flags that do not comply with the requirements of the bill and the cost difference between compliant and non-compliant flags.

The effective date of the bill is July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Display of United States and State Flags

The United States and state flags must be displayed in certain venues under current law. The United States flag must be displayed at the state capitol[1] and at every county courthouse,[2] public auditorium,[3] polling station on election days,[4] and on the grounds and in the classrooms of public K-20 educational institutions.[5] The state flag must be displayed on the grounds of every public K-20 educational institution in the state.[6] Display of the state flag is otherwise governed by protocols adopted by the Governor.[7]

Procurement of Flags

Purchases by the executive branch are regulated by the provisions of Chapter 287, F.S. The Department of Management Services (DMS) is responsible for the procurement of goods and services for all state agencies.[8] DMS employs state-wide purchasing rules to coordinate purchases across the various agencies of the state, utilizing the buying power of the state to promote efficiency and savings in the procurement process.[9] Agencies are defined by Chapter 287 as "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government." [10] State universities and colleges, including their boards of trustees, are specifically excluded from this definition of agency.[11]

Accounting requirements for purchases vary depending on the value of the services. Formal competitive bidding is required for all contracts in excess of $35,000.[12] For contracts between $2,500 and $35,000, agencies should receive informal bids when practical, but may conform to "good purchasing practices," such as written quotations or written records of telephone quotations.[13] For contracts less than $2,500, agencies are only required to conform to good purchasing practices.[14]

While there is currently no specific state law on flag procurement, most flags purchased by DMS are manufactured in the United States from domestically-sourced materials. Of the 772 flags purchased by agencies via MyFloridaMarketPlace[15] in fiscal year 2012-13, 682 were produced by RESPECT of Florida.[16] RESPECT of Florida is a 501(c)3[17] non-profit organization under contract with DMS[18] to

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[1] S. 256.01, F.S.
[2] S. 256.01, F.S.
[3] S. 256.11, F.S.
[4] S. 256.011(1), F.S.
[5] S. 1000.06(1), F.S.
[6] S. 1000.06(1), F.S.; *see also* s. 256.032, F.S. (requiring state flag to be displayed on grounds of every elementary and secondary public school).
[7] S. 256.015(1), F.S.
[8] S. 287.042(1)(a), F.S.
[9] S. 287.032, F.S.
[10] S. 287.012(1), F.S.
[11] S. 287.012(1), F.S. Other statutes define the word "agency" differently in different contexts. *See*, s. 120.52(1), F.S.
[12] S. 287.057, F.S.
[13] Rule 60A-1.002(3), F.A.C.
[14] Rule 60A-1.002(2), F.A.C.
[15] The online procurement system operated by DMS through which agencies may make certain types of purchases, at http://www.dms.myflorida.com/business_operations/state_purchasing/myfloridamarketplace (accessed January 30, 2015).
[16] HB 201 Bill Analysis, Department of Management Services, March 6, 2014.

administer the State Use Program, designed to provide employment opportunities for handicapped individuals.[19] All United States and state flags sold by RESPECT are assembled in the organization's Miami employment center from materials produced in the United States.[20]

The legislative and judicial branches have separate procurement processes. The purchase of flags for the House of Representatives and Senate are handled by each chamber's administrative offices. Procurement for the judicial branch falls under the aegis of the Office of State Courts Administrator.[21]

The procurement of goods and services by counties, municipalities, and school districts are not governed by the provisions of Chapter 287, F.S.[22] Generally, flags purchased by counties, municipalities, or school districts would only be subject to local ordinance. Current law, however, does authorize the Department of State to provide state flags to schools, governmental agencies, and other groups and organizations at no cost, up to an annual cost for the Department of $15,000 per year.[23]

Current law gives a preference to Florida businesses in the awarding of competitive bids, equal to either the preference given by the lowest out-of-state vendor's home state or five percent (if no preference is given by the lowest out-of-state vendor's home state).[24] State agencies, universities, colleges, school districts, and other political subdivisions are required to give this preference,[25] but counties and municipalities are specifically excluded from the requirement.[26]

While it is possible that some of the flags purchased by state and local governments are foreign-made, the quantity is likely to be small. The Flag Manufacturers Association of America estimates that 95 percent of United States flags are manufactured entirely in the United States.[27] According to the Census Bureau, 302.7 million dollars of "fabricated flags, banner, and similar emblems" were produced in the United States in 2007,[28] while four million dollars' worth of flags was imported in 2013.[29]

Procurement of Flags by the Federal Government and Other States

The federal government is required to purchase domestically manufactured goods if the contract amount exceeds a minimum threshold.[30] These requirements can be waived by the President of the United States under the Trade Agreements Act of 1979, if a waiver is necessary for the purpose of entering into trade agreements with other countries.[31] According to the Congressional Research Service, waivers under the Trade Agreement Act of 1979 are heavily used, resulting in little remaining scope for the Buy American Act provisions.[32]

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[17] 26 U.S.C. s. 501(c)(3).
[18] *See* Rule 60E-1.003, F.A.C. (authorizing DMS to designate a "Central, Non-Profit Agency" to provide services specified in ss. 413.032-413.037, F.S.).
[19] Id.
[20] Id.
[21] *See* Fla. R. Jud. Admin. 2.205(e)(2).
[22] *Cf.* S. 287.055(2)(b), F.S. (including "a municipality, a political subdivision, a school district, or a school board" in the definition of "agency" for the purposes of procuring architectural, engineering, and surveying services).
[23] S. 256.031(1), F.S.
[24] S. 287.084(1)(a), F.S.
[25] Id.
[26] S. 287.084(1)(c), F.S.
[27] Flag Manufacturers Association of America, *FAQ's*, http://fmaa-usa.com/info/FAQ.php (last visited January 29, 2015).
[28] U.S. Census Bureau News, *Profile America Facts for Features, The Fourth of July 2013*, http://www.census.gov/newsroom/facts-for-features/2013/cb13-ff14.html (last visited January 29, 2015).
[29] U.S. Census Bureau News, *Profile America Facts for Features, The Fourth of July 2014,* http://www.census.gov/newsroom/facts-for-features/2014/cb14-ff16.html (last visited January 29, 2015).
[30] 41 U.S.C. s. 8301, *et seq.* ("Buy American Act of 1933")
[31] 41 U.S.C. s. 2501, *et seq.*
[32] *Domestic Content Restrictions: The Buy American Act and Complementary Provisions of Federal Law*, Congressional Research Service, January 6, 2014, available at http://www.hsdl.org/?view&did=749327.

Other provisions of federal law, however, require domestically produced goods. The Berry Amendment[33] requires a "super percentage" of certain types of goods (including flags) to be wholly domestic in origin.[34] Another statute prohibits the Department of Veterans Affairs from procuring burial flags that were not domestically produced and manufactured.[35]

Several states have existing statutes requiring the use of domestically manufactured flags. Oklahoma requires all flags purchased by the state and all political subdivisions to be manufactured in the United States.[36] Massachusetts has a similar law that applies to all public institutions.[37] Arizona requires a domestically-manufactured United States flag to be displayed in all public school classrooms.[38] Tennessee requires any United States or state flag purchased under a state contract to be manufactured in the United States.[39] Minnesota prohibits the sale of United States flag produced outside the United States.[40]

EFFECT OF PROPOSED CHANGES

The bill provides that the act may be cited as the "All-American Flag Act."

The bill requires any United States or state flag purchased for public use by the state, a county, or municipality, on or after January 1, 2016, must be wholly made in the United States, including the growth of materials, production, and manufacturing.

B. SECTION DIRECTORY:

Section 1: Provides the act may be cited as "All-American Flag Act."

Section 2: Creates s. 256.014, F.S., relating to purchase of a United States flag or state flag for public use, requiring flags purchased by the state, a county, or a municipality to be manufactured in the United States from materials grown, produced, and manufactured in the United States.

Section 3: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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[33] 10 U.S.C. s. 2533a.
[34] *Domestic Content Legislation: The Buy American Act and Complementary Little Buy American Provisions*, Congressional Research Service, April 25, 2012, available at http://fas.org/sgp/crs/misc/R42501.pdf.
[35] 38 U.S.C. s. 2301(h)(1).
[36] Okla. Stat. tit. 25, s. 158.
[37] Mass. Gen. Laws ch. 2, s. 6.
[38] Ariz. Rev. Stat. s. 15-1626(17).
[39] Tenn. Code Ann. s. 4-1-301(d).
[40] Minn. Stat. s. 325E.65.

None.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could have a positive economic impact on businesses selling United States and state flags that are domestically-produced and sourced. The bill could have a negative impact on businesses selling United States and state flags that are either imported or produced domestically from foreign materials.

D. FISCAL COMMENTS:

The bill is not anticipated to have a fiscal impact on state government. The bill may have an insignificant negative fiscal impact local governments, depending on the extent to which local governments are currently purchasing flags produced outside of the United States or made from foreign materials and the cost difference between those flags and domestically-produced and sourced flags. Most state government entities currently purchase their flags through the RESPECT of Florida DMS State Term Contract, whose flags are assembled in Miami from materials produced in the United States. Local governments can also purchase flags through this contract, which has competitive pricing. DMS purchases all flags through RESPECT and does not anticipate any fiscal impact as a result of the bill.[41]

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:

Impairment of Contract

Both the United States[42] and Florida[43] constitutions prohibit the state from passing laws impairing existing contractual rights. Contractual rights are impaired to the extent the law changes the substantive rights of the parties in the existing contract.[44] For an impairment of contractual rights to be constitutionally valid, the law must balance the state's objective against the harm to the contract, intruding on the contractual right no more than is necessary to achieve the public purpose of the law.[45] The ability of the state to modify contractual obligations is most limited when a final agreement has been reached between a party and the state.[46]

While the bill only applies to purchases of flags by state or local governments after January 1, 2016, it is possible the state or a local government may have existing contracts that are not compliant with the bill that extend beyond that date.

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[41] Email on file with the House Government Operations Appropriations Subcommittee (February 19, 2015).
[42] U.S. Const. art. 1, § 9, cl. 10. ("No State shall . . . pass any . . . Law impairing the Obligation of Contracts.")
[43] Fla. Const. art. I, s. 10. ("No . . . law impairing the obligation of contracts shall be passed.")
[44] *Manning v. Travelers Ins. Co.*, 250 So. 2d 872, 874 (Fla. 1971).
[45] *Pomponio v. Claridge of Pomapano Condominium, Inc.*, 378 So. 2d 774, 779-80 (Fla. 1979).
[46] *Chiles v. United Faculty of Fla.*, 615 So. 2d 671, 672 (Fla. 1993).

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires the state, counties, and municipalities to purchase American-produced and sourced United States and state flags. The bill does not require United States or state flags purchased by special districts to meet these requirements.

The bill does not contain a method of verification to ensure the flags purchased by state and local governments are manufactured in the United States from domestic materials.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to flags; providing a short title; creating s. 256.041, F.S.; requiring a United States flag or a state flag that is purchased on or after a specified date by the state, a county, or a municipality for public use to be made in the United States; providing an effective date.

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

Section 1. This act may be cited as the "All-American Flag Act."

Section 2. Section 256.041, Florida Statutes, is created to read:

256.041 Purchase of United States flag or state flag for public use.—When the state, a county, or a municipality purchases a United States flag or a state flag for public use, the flag must be made in the United States from articles, materials, or supplies, all of which are grown, produced, and manufactured in the United States. This section applies to the purchase of a flag on or after January 1, 2016.

Section 3. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 361 Military Housing Ad Valorem Tax Exemptions
SPONSOR(S): Trumbull and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 686

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	16 Y, 0 N, As CS	Dugan	Langston
2) Veteran & Military Affairs Subcommittee	10 Y, 1 N	Renner	Kiner
3) Local & Federal Affairs Committee		Renner	Kiner

SUMMARY ANALYSIS

Current Florida law provides an exemption from ad valorem taxation for property owned by the United States. This exemption specifically applies to leasehold interests in property owned by the United States government when the lessee serves or performs a governmental, municipal or public purpose or function. Federal law also recognizes the immunity of property of the United States from ad valorem taxation.

The bill recognizes in statute that leaseholds and improvements constructed and used to provide housing pursuant to the federal Military Housing Privatization Initiative (Housing Initiative) on land owned by the federal government are exempt from ad valorem taxation.

The bill provides a definition of property of the United States that includes any leasehold interest of, and improvements affixed to, land owned by the United States acquired or constructed and used pursuant to the Housing Initiative. The bill provides that the term "improvements" includes actual housing units and any facilities that are directly related to such units, regardless of whether title is held by the United States. The bill also provides that it is not necessary for an application for an exemption to be filed or approved by the property appraiser.

Typically, such leaseholds and improvements are executed through public-private ventures (PPV), whereby the title ultimately reverts back to the military department. Until recently, local governments have not attempted to assess ad valorem taxes on Housing Initiative projects.

The bill does not apply to transient public lodging establishments (hotels).

On February 2, 2015, the Revenue Estimating Conference estimated the bill will have a local government revenue impact of either zero or negative, indeterminate on local government collections of ad valorem revenues.

The bill applies retroactively to January 1, 2007.

The bill has an effective date of July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background- Military Housing Privatization Initiative

During the 1990s, the Department of Defense (DoD) designated nearly two-thirds (approximately 180,000 houses) of its domestic family housing inventory as inadequate, needing repair or complete replacement.[1] Many of the housing units were constructed during World War II or soon after, and were designed only to last a few years. In addition, many older units had environmental problems such as lead-based paint, asbestos, and could not meet current building codes.[2] To remedy the problem, the DoD estimated it would cost approximately $20 billion and take up to 40 years using the traditional military construction (MILCON) approach. In response, the DoD began seeking a cheaper and faster solution.[3]

In 1996, Congress enacted[4] the Military Housing Privatization Initiative (Housing Initiative) to provide the DoD with authority to allow private-sector financing and expertise in order to improve the military housing situation.[5] Such authority includes:[6]

- guarantees, both loan and rental;
- conveyance or leasing of existing property and facilities;
- differential lease payments;
- investments, both limited partnerships and stock or bond ownership; and/or
- direct loans.

In a typical privatized military housing project, a military department (Army, Navy, or Air Force) enters into an agreement with a private developer selected in a competitive process to own, maintain and operate military family housing. Jointly, the military department and private developer create a public-private venture (PPV). The military department then leases land (improved, unimproved or both) to the PPV for a term of 50 years while retaining both a present and future interest in the land and any improvements. As part of the terms of the lease agreement, the private developer is subsequently responsible for constructing new housing units or renovating existing housing units and leasing this housing, giving preference to service members and their families.[7] The land and title to the housing units conveyed to the PPV, as well as any improvements made by the PPV, during the duration of the lease automatically revert to the military department upon expiration or termination of the ground lease.[8] The Housing Initiative provides flexibility in the structure and terms of the transactions with the

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[1] GAO-09-352, *Military Housing Privatization*, at page 1, available at: http://www.gao.gov/assets/290/289739.pdf.
[2] Phillip Morrison, *State Property Tax Implications for Military Privatized Family Housing Program*, Vol. 56, Air Force Law Review, page 263 (2005).
[3] The Office of the Deputy Under Secretary of Defense (DUSD) Installations and Environment, Military Privatization Initiative, Overview, available at: http://www.acq.osd.mil/housing/overview.htm (last visited February 12, 2015). According to this site, the DoD currently owns 257,000 family housing units on- and off-base. About 60 percent need to be renovated or replaced because they have not been sufficiently maintained or modernized over the last 30 years.
[4] National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104-106, §§ 2801-2841 (1996).
[5] 10 U.S.C. § 2871 et seq.
[6] 10 U.S.C. §§ 2872-2878
[7] Each military department develops a "waterfall" policy, where preference is generally given in the following order: (1) active duty military personnel with dependents, (2) active duty without families, (3) military reservists, (4) DoD civilians, (5) military retirees, (6) civilians.
[8] GAO-09-352, at pages 10 and 11.

private sector. Unlike traditional MILCON projects, these projects are controlled by a private developer acting through the PPV rather than through unilateral government control. [9,10]

There are currently Housing Initiative developments at the following military installations in Florida:[11]

- Eglin Air Force Base
- Hurlburt Field
- MacDill Air Force Base
- Naval Air Station Jacksonville
- Naval Air Station Key West
- Naval Air Station Pensacola
- Naval Air Station Whiting Field
- Naval Station Mayport
- Naval Support Activity Panama City
- Patrick Air Force Base
- Tyndall Air Force Base

Property Taxes in Florida

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.[12] The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.[13] The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,[14] and it provides for specified assessment limitations, property classifications and exemptions.[15] After the property appraiser has considered any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.[16] Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.[17] The Florida Constitution strictly limits the Legislature's authority to provide exemptions or adjustments to just value.[18] However, the Florida Constitution provides for property tax relief in the form of certain valuation differentials, assessment limitations, and exemptions.[19]

Taxation of United States Property

Generally, the federal government and property owned by the federal government are immune from state and local taxation.[20] The federal government's immunity from taxation required by state law

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[9] Phillip Morrison article, *supra* note 2, at page 266.
[10] DUSD, Installations and Environment, Housing Projects, Projects Awarded as of February 2012, available at: http://www.acq.osd.mil/housing/projawarded.htm (last visited February 12, 2015).
[11] DUSD, Installations and Environment, Housing Projects, Projects Awarded, Florida, available at: http://www.acq.osd.mil/housing/state_fl.htm (last visited February 12, 2015).
[12] Fla. Const. art. VII, s. 1(a).
[13] Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.
[14] Fla. Const., art. VII, s. 4.
[15] Fla. Const. art. VII, ss. 3, 4, and 6.
[16] s. 196.031, F.S.
[17] Fla. Const. art. VII, ss. 3 and 6.
[18] Fla. Const. art. VII, ss. 3, 4, and 6.
[19] Valuation differentials, assessment limitations, and exemptions are authorized in article VII of the Florida Constitution.
[20] *McCullough v. Maryland,* 17 U.S. (4 Wheat.) 316 (1819); *United States v. New Mexico*, 455 U.S. 720 (1982).

extends to its agents and its instrumentalities.[21] Congress has the exclusive authority to determine whether and to what extent its instrumentalities are immune from state and local taxes.[22]

Statutory Exemption for United States Property

Current law recognizes the immunity that property of the United States enjoys, and the ability of Congress to waive that immunity in specified circumstances: "All property of the United States shall be exempt from ad valorem taxation except such property as is subject to tax . . . under any law of the United States."[23] Thus, federally-owned property may be subject to taxation in Florida if specifically allowed by federal law; however, Housing Initiative property does not allow such taxation.[24]

Current law also provides an exemption from ad valorem and intangible taxation for leasehold interests in property owned by the United States when the lessee is performing a "governmental, municipal, or public purpose or function" as defined in s. 196.012(6), F.S.[25] Under s. 196.012(6), F.S., such a purpose is deemed served when "the lessee... is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit or ... would otherwise be a valid subject for the allocation of public funds." This section of statute does not specifically describe leaseholds and improvements constructed pursuant to the Housing Initiative as being eligible for this exemption from ad valorem taxation.

Current Litigation

Until recently, no attempt had been made to subject the Housing Initiatives projects in Florida to ad valorem tax. In 2012, the Monroe County property appraiser reversed a position he had held for several years and asserted that the Housing Initiative project improvements at Naval Air Station Key West were subject to tax retroactive to 2008 because the owner of the improvements was not exempt.[26] However, a circuit court judge in the Sixteenth Judicial Circuit determined that such improvements are exempt from property tax because the use and ownership of the improvements are consistent with the property tax exemptions provided in s. 196.199.[27] The court found that the operation, construction and renovation of military housing is a governmental function,[28] and, even though the nongovernmental lessee technically held legal title to the property, the United States Navy was the equitable owner of the property.[29] The Monroe County property appraiser appealed the decision to the Third District Court of Appeals.[30] On March 11, 2015, the court found that the Navy has its ultimate purpose served by the agreement with Southeast Housing, oversees construction, controls access to the properties, supervises operations, directs the rental of the properties, continues to benefit from the revenue, receives most of the profits, and takes back title to the properties at the end of the lease within the useful life of the improvements. Therefore, the improvements are immune from state ad valorem taxation because the Navy retains beneficial ownership of the improvements.

In 2014, a similar lawsuit was filed in Escambia County after the county property appraiser denied the ad valorem tax exemption for a Housing Initiative lessee in 2013.[31] In Escambia County, the original exemption was granted in 2008 based on the percentage of rented units occupied by active duty personnel, as determined by "rent rolls" provided annually by the Housing Initiative lessee.[32] The

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[21] *Kern-Limerick, Inc. v. Scurlock,* 347 U.S. 110 (1954); Rohr Corp. v. San Diego County, 362 U.S. 628 (1960).
[22] *Maricopa County v. Valley Bank*, 318 U.S. 357 (1943).
[23] s. 196.199(1)(a), F.S.
[24] 10 U.S.C. § 2878(e)(1).
[25] s. 196.199(2)(a), F.S.
[26] *Southeast Housing LLC v. Borglum*, No. 2012-CA-000831-K (Fla. 16th Cir. Ct., August 2012).
[27] *Southeast Housing LLC v. Borglum*, No. 2012-CA-000831-K, (Fla. 16th Cir. Ct., March 2014).
[28] Id. at page 9.
[29] Id. at page 11.
[30] *Russell v. Southeast Housing LLC*, No. 3D14-746 (3d DCA, May 2014).
[31] *Southeast Housing LLC v. Jones*, No. 2014-CA-000293 (Fla. 1st Cir. Ct., February 2014).
[32] *Southeast Housing LLC v. Jones*, No. 2014-CA-000293, Plaintiff's Complaint at paragraph 41,(July 23, 2014).

property appraiser granted the ad valorem exemption in 2008 through 2012, but removed and denied the exemption in 2013. The property appraiser notified the Housing Initiative lessee of the removal and denial through a letter sent on July 1, 2013, which stated that "Florida law...provides that property owned by a non-governmental entity or lessee...shall be subject to ad valorem taxation."[33] The Housing Initiative lessee filed a lawsuit on July 23, 2014, arguing that the property appraiser's removal and denial of the exemption is contrary to both state and federal law and is without legal basis or authorization.

Also in 2014, a similar lawsuit was filed in Santa Rosa County after the county property appraiser terminated a PILOT Agreement (Payment In Lieu of Taxes Agreement) entered into with a Housing Initiative lessee.[34] After an initial denial of the ad valorem exemption in 2008, the property appraiser and the lessee executed the PILOT agreement on January 21, 2009.[35] The agreement provided payment from the Housing Initiative lessee to various local governments in the county in exchange for the Housing Initiative project's classification as exempt from ad valorem taxation.[36] The payment represented the ad valorem taxes, recalculated annually, that would have been due from the civilian occupied military housing units (but not the land, which remains exempt under federal ownership).[37] Further, the agreement provided the parties agreed that the military housing units occupied by active duty or retired military personnel and their families were exempt from ad valorem taxation.[38] On November 27, 2013, the property appraiser sent the Housing Initiative lessee a letter providing notification that the PILOT agreement would be terminated effective December 31, 2013. The Housing Initiative lessee filed a lawsuit on December 17, 2014, arguing that the property appraiser's removal and denial of the exemption is contrary to both state and federal law and is without legal basis or authorization.

Additionally, a similar lawsuit was filed in Okaloosa County after the county property appraiser denied ad valorem exemption for a Housing Initiative lessee in 2014.[39] In Okaloosa County, the Housing Initiative lessee entered into Housing Initiative projects in 2013 at Eglin Air Force Base and Hurlburt Field, and submitted an application for ad valorem exemption on February 27, 2014.[40] However, the county property appraiser denied the application for each property on June 19, 2014.[41] The Housing Initiative lessee filed a lawsuit on December 3, 2014, arguing that the property appraiser's denial of the exemption was incorrect because equitable title to the properties is held by the United States.

Effect of Proposed Changes

The bill recognizes in statute that leaseholds and improvements constructed and used to provide housing pursuant to the federal Military Housing Initiative on land owned by the federal government are exempt from ad valorem taxation.

The bill provides a definition of property of the United States that includes any leasehold interest of, and improvements affixed to, land owned by the United States acquired or constructed and used pursuant to the Housing Initiative. The bill provides that the term "improvements" includes actual housing units and any facilities that are directly related to such units. The bill also provides that it is not necessary for an application for an exemption to be filed or approved by the property appraiser.

The bill does not apply to transient public lodging establishments (hotels).

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[33] Id. at paragraphs 50 and 51.
[34] *Southeast Housing, LLC, v. Brown*, No. 2014-CA-1174 (Fla. 1st Cir. Ct., December 17, 2014).
[35] *Southeast Housing LLC v. Brown*, No. 2014-CA-1174, Plaintiff's Complaint at paragraph 45 (December 17, 2014).
[36] Id. at paragraphs 48 through 51.
[37] Id.
[38] Id.
[39] *Corvias Air Force Living, LLC, v. Smith*, No. 2014-CA-004502F (Fla. 1st Cir. Ct. December 4, 2014).
[40] *Corvias Air Force Living, LLC, v. Smith*, No. 2014-CA-004502F, Plaintiff's Complaint paragraph 20, 21, and 25 (December 4, 2014).
[41] Id. at paragraph 26.

B. SECTION DIRECTORY:

Section 1. Amends s. 196.199, F.S., relating to the government property ad valorem exemption.

Section 2. Provides retroactive applicability to January 1, 2007.

Section 3. Provides an effective date of July 1, 2015.

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:

   The Revenue Estimating Conference estimates the bill could have zero or a negative, indeterminate impact on local government collections of ad valorem revenues.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Clarifying ad valorem tax exemption eligibility standards for United States property may ensure that military housing developed pursuant to the Housing Initiative will not be subjected to taxation.

D. FISCAL COMMENTS:

The negative, indeterminate fiscal impact possibility is a result of the uncertainty regarding the current administration of the tax. The various property appraiser offices of the state and the DOR play a role in the administration of the tax.

Four out of eight county property appraisers with Housing Initiative projects in their respective counties currently have litigation pending regarding the removal and denial of ad valorem exemptions on the Housing Initiative properties. The remaining four are treating the properties as exempt.

In response to the lawsuit filed against the Monroe County Property Appraiser, the Florida Department of Revenue filed an answer with the Court in which it concurred with the Housing Initiative lessee that the improvements at Naval Air Station Key West were exempt ad valorem taxation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Article VII, section 18 of the Florida Constitution may apply because, if the courts determine that ad valorem taxation is appropriate on improvements to Housing Initiative property, this bill may reduce the authority of local governments to raise total aggregate revenues by exempting such property from ad valorem taxation. However, the bill may be exempt under article VII, section 18(d) of the Florida Constitution because it may have an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 12, 2015, the Finance & Tax Committee adopted an amendment which revised the bill to remove unneeded section directory language.

This bill analysis is written to House Bill 361 as amended.

A bill to be entitled

An act relating to military housing ad valorem tax exemptions; amending s. 196.199, F.S.; providing that certain leasehold interests and improvements to land owned by the United States, a branch of the United States Armed Forces, or any agency or quasi-governmental agency of the United States are exempt from ad valorem taxation under specified circumstances; providing that such leasehold interests and improvements are entitled to an exemption from ad valorem taxation without an application being filed for the exemption or the property appraiser approving the exemption; providing nonapplicability of provisions to transient public lodging establishments; providing retroactive applicability; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 196.199, Florida Statutes, is amended to read:

196.199 Government property exemption.—

(1) Property owned and used by the following governmental units shall be exempt from taxation under the following conditions:

(a)1. All property of the United States is ~~shall be~~ exempt

from ad valorem taxation, except such property as is subject to tax by this state or any political subdivision thereof or any municipality under any law of the United States.

2. Notwithstanding any other provision of law, for purposes of the exemption from ad valorem taxation provided in subparagraph 1., property of the United States includes any leasehold interest of and improvements affixed to land owned by the United States, any branch of the United States Armed Forces, or any agency or quasi-governmental agency of the United States if the leasehold interest and improvements are acquired or constructed and used pursuant to the federal Military Housing Privatization Initiative of 1996, 10 U.S.C. ss. 2871 et seq. As used in this subparagraph, the term "improvements" includes actual housing units and any facilities that are directly related to such housing units, including any housing maintenance facilities, housing rental and management offices, parks and community centers, and recreational facilities. Any leasehold interest and improvements described in this subparagraph, regardless of whether title is held by the United States, shall be construed as being owned by the United States, the applicable branch of the United States Armed Forces, or the applicable agency or quasi-governmental agency of the United States and are exempt from ad valorem taxation without the necessity of an application for exemption being filed or approved by the property appraiser. This subparagraph does not apply to a transient public lodging establishment as defined in s. 509.013.

Section 2. This act applies retroactively to January 1, 2007.

Section 3. This act shall take effect July 1, 2015.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 361 (2015)

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	_____

Committee/Subcommittee hearing bill: Local & Federal Affairs Committee

Representative Trumbull offered the following:

Amendment (with title amendment)

Remove line 52 and insert:

transient public lodging establishment as defined in s. 509.013, and does not affect any existing agreements to provide municipal services by cities and counties.

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

Remove line 15 and insert:

providing that existing agreements to provide municipal services by cities and counties are not affected; providing retroactive applicability; providing an

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 365 Designated Areas for Skateboarding, Inline Skating, Paintball, or Freestyle or Mountain & Off-Roading Bicycling
SPONSOR(S): Gonzalez
TIED BILLS: None **IDEN./SIM. BILLS:** SB 408

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	12 Y, 1 N	Darden	Miller
2) Civil Justice Subcommittee	12 Y, 0 N	Malcolm	Bond
3) Local & Federal Affairs Committee		Darden	Kiner

SUMMARY ANALYSIS

Government entities may designate specific areas for skateboarding, inline skating, paintball, freestyle bicycling, or mountain and off-road bicycling. In those areas, the government entity is required to post a rule stating which activities are authorized in the area and that children under 17 years of age may not engage in the activity without written consent from the child's parents or legal guardians. A government entity's failure to obtain written consent may potentially create liability for injuries.

The bill repeals the requirement that a government entity obtain written consent from a parent or guardian before a child under the age of 17 can engage in skateboarding, inline skating, or freestyle bicycling in designated areas. The bill also amends the written consent requirement for paintball and mountain and off-road bicycling to require the approval of only one parent or guardian.

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

The effective date of the bill is July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Under current law, governmental entities[1] can designate specific areas of property they own or control for skateboarding, inline skating, paintball, freestyle bicycling, or mountain and off-road bicycling.[2] Many of the largest cities in the state operate skateboarding and inline skating parks.[3] In those areas, the government entity is required to post a rule stating which activities are authorized in the area and stating that children under 17 years of age may not engage in the activity without written consent from the child's parents or legal guardians.[4]

Some government entities have expressed concern about the mechanics of obtaining written consent. Risk managers and attorneys representing local governments have questioned who would secure the consent from the parent and what procedures can be used to verify the information.[5] Governmental entities have also expressed concern over the level of liability protection provided by the assumption of risk defense, since s. 316.0085, F.S., provides that parties engaging in the activity assume the inherent risk, regardless of age, but the written consent requirement suggests the waiver is not applicable when concerning minors.[6]

A government entity or public employee may be held liable if there was:

- A failure to guard against or warn of a dangerous condition of which a participant does not and cannot reasonably be expected to have notice;[7]
- An act of gross negligence that is the proximate cause of the injury;[8] or
- Failure of the governmental entity to obtain written consent from parents or legal guardians before allowing a child under 17 years of age to engage in the allowed activity in the designated area, unless the child's participation is in violation of posted rules.[9]

Public employees or government entities are not otherwise liable for personal injuries or property damage resulting from engaging in the permitted activity.[10] The statute does not limit the liability for independent concessionaries and other parties, even if the party is in a contractual relationship with the governmental entity for use of the public property.[11]

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[1] "Governmental entity" includes the United States, the State of Florida, any county or municipality, or any department, agency, or other instrumentality thereof, school board, special authority, or other entity exercising governmental authority. S. 316.0085(2), F.S.
[2] S. 316.0085(3), F.S.
[3] *See* Joseph G. Jarret, *Skating on Thin Concrete: The Florida Legislature's Response to Skateboarders and Skaters*, FLORIDA BAR JOURNAL, November 2002, at 74. The cities of Gainesville, Jacksonville, Orlando, St. Petersburg, Tallahassee, and Tampa, among others, have constructed skate parks.
[4] S. 316.0085(3), F.S.
[5] Jarret, *supra* note 3 at 74.
[6] *Id.*
[7] S. 316.0085(5)(a), F.S.
[8] S. 316.0085(5)(b), F.S.
[9] S. 316.0085(5)(c), F.S. For mountain or off-road bicycling, the parent or legal guardian must demonstrate written consent was given before the child entered the designated area.
[10] S. 316.0085(4), F.S.
[11] S. 316.0085(6), F.S.

Participants and observers in skateboarding, inline skating, paintball, freestyle bicycling, or mountain and off-road bicycling assume the "inherent risk"[12] of the activities, regardless of age, and are therefore legally responsible for all damages, injuries, or deaths which result.[13] Participants engaged in skateboarding, inline skating, paintball, or freestyle or mountain and off-road bicycling, whether in designated areas or not, are responsible for:

- Using equipment within the limits of his or her ability;[14]
- Using equipment as intended;[15]
- Maintaining control of him or herself and the equipment used;[16] and
- Refraining from acting in a manner that could cause or contribute to the death or injury of any person.[17]

Government entities are not required to eliminate or limit the inherent risk in the activity.[18] An insurance policy carried by a government entity which covers any activity described in the statute does not constitute a waiver of the protections provided by the statute.[19]

EFFECT OF PROPOSED CHANGES

The bill repeals the requirement for a government entity providing a designated area for skateboarding, inline skating, or freestyle bicycling to obtain written consent from a parent or legal guardian before permitting a child under 17 years of age to engage in the allowed activity. The bill retains the written consent requirement before a child engages in paintball or mountain and off-road bicycling in a designated area.

The bill amends the written consent requirement to require only the permission of one parent or legal guardian. The bill also removes language in current law that provides that a governmental entity may not be shielded from liability if it fails to obtain written consent from a parent or legal guardian before a child under the age of 17 engages in skateboarding, inline skating, or freestyle bicycling in a designated area.

B. SECTION DIRECTORY:

Section 1: Amends s. 316.0085, F.S., relating to skateboarding; inline skating; freestyle or mountain and off-roading bicycling; paintball; definitions; liability.

Section 2: Provides an effective date of July 1, 2015.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

[12] S. 316.0085(2)(b), F.S. ("'Inherent risk' means those dangers or conditions that are characteristic of, intrinsic to, or an integral part of skateboarding, inline skating, paintball and freestyle or mountain and off-board bicycling.").
[13] S. 316.0085(7)(a), F.S.
[14] S. 316.0085(7)(b)(1), F.S.
[15] *Id.*
[16] S. 316.0085(7)(b)(2), F.S.
[17] S. 316.0085(7)(b)(3), F.S.
[18] *Id.*
[19] S. 316.0085(8), F.S.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

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 and 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:

The bill does not provide for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to designated areas for skateboarding, inline skating, paintball, or freestyle or mountain and off-roading bicycling; amending s. 316.0085, F.S.; deleting the requirement that a governmental entity that provides a designated area for skateboarding, inline skating, or freestyle bicycling obtain the written consent of the parent or legal guardian of a child under a certain age before allowing the child to participate in these activities in such area; requiring the governmental entity to post a rule indicating that consent forms are required for children under a certain age before participation in paintball or mountain and off-road bicycling; providing an effective date.

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

Section 1. Subsection (3) and paragraph (c) of subsection (5) of section 316.0085, Florida Statutes, are amended to read:

316.0085 Skateboarding; inline skating; freestyle or mountain and off-road bicycling; paintball; definitions; liability.—

(3)(a) This section does not grant authority or permission for a person to engage in skateboarding, inline skating, paintball, or freestyle or mountain and off-road bicycling on

property owned or controlled by a governmental entity unless such governmental entity has specifically designated such area for skateboarding, inline skating, paintball, or freestyle or mountain and off-road bicycling. Each governmental entity shall post a rule in each specifically designated area that identifies all authorized activities.

(b) Each governmental entity shall post a rule in each specifically designated area for paintball or mountain and off-road bicycling which ~~and~~ indicates that a child under 17 years of age may not engage in such ~~any of those~~ activities until the governmental entity has obtained written consent, in a form acceptable to the governmental entity, from the child's parent or legal guardian ~~parents or legal guardians~~.

(5) This section does not limit liability that would otherwise exist for any of the following:

(c) The failure of a governmental entity that provides a designated area for ~~skateboarding, inline skating,~~ paintball~~, or freestyle~~ or mountain and off-road bicycling to obtain the written consent, in a form acceptable to the governmental entity, from the parents or legal guardians of any child under 17 years of age before allowing ~~authorizing~~ such child to participate in ~~skateboarding, inline skating,~~ paintball~~, or freestyle~~ or mountain and off-road bicycling in such designated area, unless that child's participation is in violation of posted rules governing the authorized use of the designated area, except that a parent or legal guardian must demonstrate

that written consent to engage in mountain or off-road bicycling in a designated area was provided to the governmental entity before entering the designated area.

Nothing in this subsection creates a duty of care or basis of liability for death, personal injury, or damage to personal property. Nothing in this section shall be deemed to be a waiver of sovereign immunity under any circumstances.

Section 2. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 537 Pub. Rec./Community Development District Surveillance Recordings
SPONSOR(S): Burgess, Jr. and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 962

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	11 Y, 0 N	Zaborske	Miller
2) Government Operations Subcommittee	9 Y, 3 N	Williamson	Williamson
3) Local & Federal Affairs Committee		Zaborske	Kiner

SUMMARY ANALYSIS

Community development districts (CDDs) are special districts that are local units of special purpose government, created pursuant to ch. 190, F.S., and limited to the authority provided in that act. CDDs are governed by a five-member board of supervisors, and have governmental authority to manage and finance infrastructure for planned developments.

Some CDDs utilize video cameras to provide security and surveillance within their community. The security cameras are set up at fixed locations in public areas such as community roadway entrances, pool areas, and clubhouses. The video is used to provide leads in the event of a crime on CDD property, or violations regarding misuse of CDD property or rules.

A CDD is considered an "agency" pursuant to the state's public policy regarding access to government records; thus, its records are subject to Florida's public record requirements. Currently, a public record exemption does not exist that would specifically protect CDD surveillance recordings from public record disclosure requirements. As a result, CDD surveillance recordings must be disclosed to anyone who makes a request.

The bill creates a public record exemption for CDD surveillance recordings. Specifically, the bill provides that any surveillance recording created to monitor activities occurring inside or outside of a public building or on public property that is held by a CDD is confidential and exempt from public record requirements.

The bill allows a CDD to disclose surveillance recordings to a law enforcement agency in the furtherance of its official duties and responsibilities, or pursuant to a court order.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, 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 a minimal fiscal impact on CDDs.

The bill has an effective date of July 1, 2015.

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 Law

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.

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.

Public Records Exemptions

The Legislature 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]

The Open Government Sunset Review Act[2] provides that a public record 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:[3]

- 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.

The Open Government Sunset Review Act requires the automatic repeal of a newly created exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[4]

Exempt versus Confidential and Exempt

There is a difference between records the Legislature has determined to be exempt and those which have been determined to be confidential and exempt.[5] If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.[6] In addition, if the information is deemed to be confidential it may be released only to those persons and entities

[1] Art I, s. 24(c), Fla. Const.
[2] *See* s. 119.15, F.S.
[3] S. 119.15(6)(b), F.S.
[4] S. 119.15(3), F.S.
[5] *WFTV, Inc. v. Sch. Bd. of Seminole County,* 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review den.,* 892 So. 2d 1015 (Fla. 2004).
[6] *Id.*

designated in statute.[7] However, the agency is not prohibited from disclosing the records in all circumstances where the records are exempt only.[8]

Community Development Districts

Community development districts (CDDs) are special districts that are local units of special purpose government, created pursuant to ch. 190, F.S., the "Uniform Community Development District Act of 1980," and limited to the authority provided in that act. CDDs are governed by a five-member board of supervisors,[9] and have governmental authority to manage and finance infrastructure for planned developments.[10] They are, in effect, a means by which private entities secure development capital through bond sales repaid by assessments on public improvements and community facilities.

Some CDDs utilize video cameras to provide security and surveillance within their community.[11] The security cameras are set up at fixed locations in public areas such as community roadway entrances, pool areas, and clubhouses. The video is used to provide a CDD board or law enforcement with leads in the event of a crime on CDD property, or violations regarding the misuse of CDD property or rules.[12]

The Florida Department of State's record retention schedule for state and local agencies requires surveillance recordings to be retained for at least 30 days.[13] After 30 days, the recordings may be deleted or written over, or stored for longer periods. This includes CDD surveillance recordings.

A CDD is considered an "agency"[14] pursuant to Florida's public record requirements, and unless a specific public record exemption exists that would protect the recordings from public access, a CDD is required to allow access to the records to anyone for inspection or copying.[15]

Currently, a public record exemption does not exist that would specifically protect CDD surveillance recordings from public record requirements. As a result, unless a CDD chooses to discard or record over the recordings after 30 days, they must be disclosed to anyone who makes a request.

Proposed Changes

The bill creates a public record exemption for CDD surveillance recordings. Specifically, the bill provides that any surveillance recording created to monitor activities occurring inside or outside of a public building or on public property that is held by a CDD is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

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[7] *Id.*
[8] *See Williams v. City of Minneola,* 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review den.,* 589 So. 2d 289 (Fla. 1991).
[9] *See* s. 190.006, F.S.
[10] *See* s. 190.002(1)(a), F.S.
[11] Pursuant to s. 190.012(2)(d), F.S., CDDs have "the power to plan, establish, acquire, construct or reconstruct, enlarge or extend, equip, operate, and maintain . . . systems and facilities for: . . . [s]ecurity, including, but not limited to, guard-houses, fences and gates, electronic intrusion-detection systems, and patrol cars...."
[12] For more information on CDD surveillance cameras, see Jim Flateau, "Let's increase residents' privacy," *The Ballantrae Communicator,* Vol. 6, No. 4 (April-June 2014), p. 4, at ballantraecdd.org/other_docs/communicator/apr-jun-2014.pdf (last visited 2/20/2015).
[13] According to the State of Florida General Records Schedule GS1-SL for State and Local Government Agencies, effective February 19, 2015, at page 37 Item #302, surveillance recordings are only required to be maintained for 30 days. This document can be viewed at http://dos.myflorida.com/library-archives/records-management/general-records-schedules/ (Last viewed 2/19/15).
[14] Section 119.011(2), F.S., defines agency as any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, 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.
[15] S. 119.07(1), F.S.

The bill provides that a CDD may disclose such recording to a law enforcement agency in the furtherance of its official duties and responsibilities, or pursuant to a court order.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, 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. 190.0121, F.S., relating to the creation of a public record exemption for surveillance recordings held by a community development district.

Section 2: Provides a public necessity statement.

Section 3: Provides an effective date of July 1, 2015.

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:

   The bill could create a minimal fiscal impact on CDDs because staff responsible for complying with public record requests could require training related to the new public record exemption. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of CDDs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   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 surveillance recordings captured by a community development district.

B. RULE-MAKING AUTHORITY:

The bill does not authorize or require agency rulemaking for implementation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Retroactive Application

The Supreme Court of Florida ruled that a public record exemption does not apply retroactively unless the legislation clearly expresses such intent.[16] The bill does not contain a provision requiring retroactive application. According to reports, CDDs have been utilizing surveillance cameras for several years. Even though the Florida Department of State's record retention schedule for state and local agencies requires retention of surveillance recordings for at least 30 days, after 30 days the recordings can be written over or deleted. However, surveillance recordings also may be stored for longer periods.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[16] *Memorial Hospital-West Volusia, Inc. v. News-Journal Corp.*, 729 So. 2d 373 (Fla. 2001).

A bill to be entitled

An act relating to public records; creating s. 190.0121, F.S.; providing an exemption from public records requirements for surveillance recordings held by a community development district; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Section 190.0121, Florida Statutes, is created to read:

190.0121 Public records exemption; surveillance recordings.—

(1) Any surveillance recording created to monitor activities occurring inside or outside of a public building or on public property that is held by a community development district is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(2) A district may disclose such a recording:

(a) To a law enforcement agency in the furtherance of its official duties and responsibilities; or

(b) Pursuant to a court order.

(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed

on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that any surveillance recording created to monitor activities occurring inside or outside of a public building or on public property that is held by a community development district be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Community development districts provide surveillance of public areas in order to monitor activities occurring within the district and to ensure the security of the residents. The exemption for surveillance recordings allows community development districts to effectively and efficiently provide security and surveillance while maintaining the privacy of the residents and the guests of the residents, including those who use community facilities. Without the public records exemption, coverage and other technical aspects of the surveillance system would be revealed and would make it easier for individuals who wish to evade detection by the surveillance systems to do so. As such, the Legislature finds that it is a public necessity to protect the disclosure of such surveillance recordings held by a community development district.

Section 3. This act shall take effect July 1, 2015.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 949 Regulation of Carbon Dioxide Emissions from Fossil Fuel-Fired Electric Generating Units
SPONSOR(S): Rodrigues
TIED BILLS: None. **IDEN./SIM. BILLS:** SM 1228

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	9 Y, 3 N	Keating	Keating
2) Local & Federal Affairs Committee		Kiner KLK	Kiner KLK
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

On June 18, 2014, the U.S. Environmental Protection Agency (EPA), pursuant to section 111(d) of the federal Clean Air Act (CAA), published a proposed rule to address greenhouse gas emissions from existing power plants (the "Clean Power Plan"). In its proposed rule, the EPA proposes state-specific, rate-based goals for carbon emissions from existing plants and guidelines for states to follow in developing plans to achieve the goals. The EPA is currently processing public comments on the proposed rule and plans to issue a final rule this summer (2015).

Under the proposed Clean Power Plan, each state, by June 30, 2016, must submit to the EPA a plan to implement the guidelines set forth in the rule. With respect to Florida, the EPA's proposed rule requires a 38 percent reduction in carbon emissions from 2012 rates by 2030, with much of the reduction required by 2020 to meet the EPA's interim compliance schedule. Under the proposed rule, a state may request a one-year extension if it demonstrates a need for additional time to submit a complete plan or a two-year extension to develop a multi-state plan. The provisions of the proposed rule are subject to change in the final rule.

This memorial urges the United States Congress to direct the EPA to revise its proposed Clean Power Plan as follows:

- Extend by 1 year the date by which states are required to submit a state plan to the EPA, thereby providing more time to finalize technical work and state legislative and rulemaking activities.
- Decrease the proposed interim and final state goals expressed as adjusted output for the weighted average emission rates for all affected electric generating units in Florida.
- Extend by 5 years the interim plan compliance schedule for meeting the proposed state goals for reductions in carbon dioxide emission rates.
- Extend by 5 years the date by which final goals for carbon dioxide emission rates must be reached.
- Prohibit retirement of an electric generating unit before the end of its engineering lifetime unless the affected utility has fully recovered the costs of construction and financing of the unit, the state has sufficient replacement capacity, and grid reliability is maintained.

Copies of the memorial must be dispatched to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the Administrator of the EPA, and each member of the Florida delegation to the United States Congress.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The U.S. Environmental Protection Agency (EPA) regulates air emissions from stationary and mobile sources under the authority of the Clean Air Act (CAA).[1] Under section 109 of the CAA, the EPA must set National Ambient Air Quality Standards (NAAQS) for air pollutants deemed hazardous to the public health or welfare.[2] The EPA has set NAAQS for six common pollutants referred to as "criteria pollutants": ozone, particulate matter, carbon monoxide, sulfur dioxide, nitrogen dioxide, and lead.[3] Section 110 of the CAA requires each state to adopt a plan (state implementation plan or SIP) that provides for enforcement of the NAAQS.[4] In addition, Section 112 of the CAA authorizes the EPA to set emission standards for sources of specified pollutants referred to as "hazardous air pollutants."[5]

Section 111(b) of the CAA authorizes the EPA to establish standards of performance for a *new or modified* stationary source of air pollution that "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare."[6] Standards of performance are set by category of stationary sources, and each category is set by the EPA.[7] The standard for each category must be based on "the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the [EPA] determines has been adequately demonstrated."[8]

When the EPA establishes standards of performance for a new or modified source under section 111(b) of the CAA, each state must develop a plan for enforcing the standards for such new sources located in the state.[9] Further, section 111(d) of the CAA mandates that the EPA prescribe regulations that require each state to establish standards of performance for any *existing* source to which the EPA standards would apply if it were a new source, provided that the pollutant at issue is not already regulated as a criteria pollutant or a hazardous air pollutant.[10] Standards for existing sources are set through a process that includes the establishment of federal guidelines followed by the development of state plans to meet the federal guidelines.[11] To reflect technology differences between new and existing sources, the standards established by states for existing sources may be less stringent than those established by the EPA for new sources.[12] Further, the state may take into account, among other factors, the remaining useful life of the existing source to which the standard applies.[13] State standards and implementation plans are subject to EPA review and approval.[14]

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[1] U.S. Environmental Protection Agency, Summary of the Clean Air Act, *available at* http://www2.epa.gov/laws-regulations/summary-clean-air-act (last accessed March 10, 2015).
[2] 42 U.S.C. § 7409.
[3] U.S. Environmental Protection Agency, Clean Air Act Requirements and History, *available at* http://www.epa.gov/air/caa/requirements.html (last accessed March 10, 2015).
[4] 42 U.S.C. § 7410. SIPs are subject to review and approval by the EPA. The Florida Department of Environmental Protection is responsible for implementing air pollution programs in Florida that are in compliance with federal requirements.
[5] 42 U.S.C. § 7412.
[6] 42 U.S.C. § 7411(b)(1).
[7] *Id.*
[8] 42 U.S.C. § 7411(a)(1).
[9] 42 U.S.C. § 7411(c).
[10] 42 U.S.C. § 7411(d).
[11] U.S Environmental Protection Agency, What EPA is Doing: Reducing carbon pollution from the power sector, *available at* http://www2.epa.gov/carbon-pollution-standards/what-epa-doing (last accessed March 10, 2015).
[12] *Id.*
[13] 42 U.S.C. § 7411(d).
[14] *Id.*

Under the authority granted in section 111(b) of the CAA,[15] the EPA, on April 13, 2012, proposed rules setting forth performance standards for carbon emissions[16] from new electric power plants.[17] The adoption of performance standards for this new source triggered the development of federal guidelines and state standards under section 111(d) of the CAA for carbon emissions from existing power plants.

On June 25, 2013, President Barack Obama issued a Presidential Memorandum which recognized that the EPA had begun rulemaking for new power plants and directed the EPA to issue standards, regulations, or guidelines, as appropriate, that address carbon emissions from existing power plants pursuant to its authority under the CAA.[18] The Presidential Memorandum requested that the EPA issue such guidelines for existing plants by June 1, 2014, issue final guidelines for existing plants by June 1, 2015, and require submission of state implementation plans and standards by June 30, 2016.

On June 18, 2014, the EPA published a proposed rule to address greenhouse gas emissions from existing power plants (the "Clean Power Plan").[19] In its proposed rule, the EPA proposes state-specific, rate-based goals for carbon emissions from existing plants and guidelines for states to follow in developing plans to achieve the goals. The proposed rule requires Florida to reduce carbon emissions from its 2012 rate of 1,238 pounds per megawatt-hour to a rate of 740 pounds per megawatt-hour by 2030, a 38 percent reduction. The proposed rule establishes an interim goal of 794 pounds per megawatt-hour, with much of the reduction required by 2020 to meet the EPA's interim compliance schedule.[20]

The EPA invited public comment on the proposed rule. The Public Service Commission, Department of Environmental Protection, Office of Public Counsel, Department of Agriculture and Consumer Services, and the Attorney General (jointly with other state attorneys general) each submitted comments in response to the proposed rule.[21] The EPA is currently processing these comments and all other public comments submitted on the proposed Clean Power Plan and plans to issue final rules this summer (2015) related to both new power plants and existing power plants.

Under the proposed rule, each state, by June 30, 2016, must submit to the EPA a plan to implement the guidelines set forth in the rule. The EPA intends to develop federal plans to apply to states that do not submit a state plan. Under the proposed rule, a state may request a one year extension if it needs additional time to submit a complete plan. To obtain an extension, the state must submit an initial plan by June 30, 2016, that contains certain required components. The initial state plan must also

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[15] In Am. Elec. Power Co., Inc. v. Connecticut, 131 S. Ct. 2527 (2011), the U.S. Supreme Court affirmed the EPA's authority to regulate stationary sources of greenhouse gases (like electric power plants), so long as the EPA made an "endangerment finding" to justify the regulation.

[16] According to the EPA's website, carbon dioxide is a greenhouse gas that is naturally present in the atmosphere as part of the Earth's carbon cycle (the natural circulation of carbon among the atmosphere, oceans, soil, plants, and animals). The main human activity that emits carbon dioxide is the combustion of fossil fuels (coal, natural gas, and oil) for energy and transportation. The combustion of fossil fuels to generate electricity is the largest single source of carbon dioxide emissions in the nation, accounting for about 38 percent of total U.S. carbon dioxide emissions and 32 percent of total U.S. greenhouse gas emissions in 2011. The type of fossil fuel used to generate electricity will emit different amounts of carbon dioxide, but to produce a given amount of electricity, burning coal will produce more carbon dioxide than oil or natural gas. See http://www.epa.gov/climatechange/ghgemissions/gases/co2.html (last accessed March 10, 2015).

[17] Notice of Proposed Rulemaking entitled "Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units"; Docket ID No. EPA-HQ-OAR-2013-0495.

[18] Memorandum to the Environmental Protection Agency from President Barak Obama, (June 25, 2013), *available at* http://www.whitehouse.gov/the-press-office/2013/06/25/presidential-memorandum-power-sector-carbon-pollution-standards (last accessed March 10, 2015).

[19] "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units"; Docket ID No. EPA-HQ-OAR-2013-0602. See https://federalregister.gov/a/2014-13726 (last accessed March 10, 2015).

[20] Presentation by the Department of Environmental Protection to the Energy & Utilities Subcommittee, Florida House of Representatives, on March 4, 2015.

[21] Presentation by the Public Service Commission to the Energy & Utilities Subcommittee, Florida House of Representatives, on March 4, 2015.

document the reasons the state needs more time and include commitments to concrete steps that will ensure that the state will submit a complete plan by June 30, 2017. The proposed rule identifies the following "approvable" justifications for seeking an extension beyond 2016: a state's required schedule for legislative approval and administrative rulemaking; the need for multi-state coordination in the development of an individual state plan; or the process and coordination necessary to develop a multi-state plan. A state may request an extension through June 30, 2018, if it is working with other states to develop a multi-state plan.

As with other components of the proposed rule, the proposed timelines for development of state plans are subject to change in the final rule. The EPA notes in the proposed rule that its framework regulations (40 CFR 60.23) require that state plans be submitted to the EPA within nine months of promulgation of the emission guidelines, unless the EPA specifies otherwise.

As compared to other sections of the CAA, the EPA rarely has used section 111(d). Thus, there are limited precedents for how the EPA will or should implement performance standards for carbon emissions under section 111(d) of the CAA.[22]

Effect of Proposed Changes

This memorial urges the United States Congress to direct the EPA to revise its proposed Clean Power Plan as follows:

- Extend by 1 year the date by which states are required to submit a state plan to the EPA, thereby providing more time to finalize technical work and state legislative and rulemaking activities.
- Decrease the proposed interim and final state goals expressed as adjusted output for the weighted average emission rates for all affected electric generating units in Florida.
- Extend by 5 years the interim plan compliance schedule for meeting the proposed state goals for reductions in carbon dioxide emission rates.
- Extend by 5 years the date by which final goals for carbon dioxide emission rates must be reached.
- Prohibit retirement of an electric generating unit before the end of its engineering lifetime unless the affected utility has fully recovered the costs of construction and financing of the unit, the state has sufficient replacement capacity, and grid reliability is maintained.

The memorial provides that copies thereof be dispatched to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the Administrator of the EPA, and each member of the Florida delegation to the United States Congress.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[22] Pew Center on Global Climate Change, GHG New Source Performance Standards for the Power Section: Options for EPA and the States, at p.5, *available at* http://www.c2es.org/docUploads/EPA-HQ-OAR-2011-0090-2950.1.pdf (last accessed March 10, 2015).

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.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

House Memorial

A memorial to the Congress of the United States, urging Congress to direct the United States Environmental Protection Agency to revise the proposed regulations that address carbon dioxide emissions from existing fossil fuel-fired electric generating units.

WHEREAS, a reliable and affordable electricity supply is vital to the economic growth, jobs, and overall well-being of the nation and the citizens of each state, and

WHEREAS, emanating from each state's sovereignty and the protections of the Tenth Amendment to the United States Constitution, each state has the exclusive authority to regulate the provision of electricity to ensure a reliable and affordable supply of electricity for its citizens, and

WHEREAS, environmental regulations should be based on sound science and a transparent and comprehensive program that addresses environmental issues, the nation's broader economic prosperity, and long-term energy affordability for citizens, and

WHEREAS, the regulation of the retail sale and local distribution of electricity is a function of sovereign states that federal agencies have a duty to respect and preserve, and

WHEREAS, on June 25, 2013, the President of the United States issued a memorandum to the Administrator of the United States Environmental Protection Agency (EPA) directing the EPA to develop guidelines to control greenhouse gas emissions from

existing fossil fuel-fired power plants under section 111(d) of the federal Clean Air Act and to seek input from the states, and

WHEREAS, pursuant to section 111(d) of the Clean Air Act, the EPA issued proposed regulations and guidelines limiting carbon dioxide emissions from existing fossil fuel-fired electric generating units (EGUs) on June 2, 2014, and published the regulations for comment in the Federal Register on June 18, 2014, and

WHEREAS, the EPA, by its proposed regulations and guidelines, has asserted authority over greenhouse gas emissions to regulate carbon dioxide performance standards for existing fossil fuel-fired EGUs despite that those plants are already regulated under the air toxics program under section 112 of the Clean Air Act, and

WHEREAS, since the Clean Air Act does not authorize the EPA to regulate emissions beyond the physical boundaries of an individual EGU, the EPA cannot mandate that EGUs reduce demand for electricity by customers and cannot require EGUs to increase their reliance on natural gas or renewable energy sources because each of those activities is exclusively within the police powers of the state, and

WHEREAS, the proposed regulations are based on the EPA's assessment of each state's ability to improve the efficiency of the existing fossil fuel-fired EGUs, revise operations or retire coal-fired EGUs, substantially increase the use of natural gas, significantly increase reliance on renewable energy sources, and

substantially reduce the use of electricity by consumers, all in a plan and on a schedule that are neither achievable nor workable, and

WHEREAS, the Attorney General of Florida, the Florida Public Service Commission, and the Florida Department of Environmental Protection have each sent comments to the EPA expressing concerns about implementation of the proposed regulations, and

WHEREAS, the proposed regulations, if enacted, would effectively amount to a federal takeover of the electricity generation system of the United States, and

WHEREAS, the proposed regulations, by the EPA's own estimates, would have a major impact on the economy of each state and significant consequences for electricity generation, transmission, distribution, and use within this state, NOW, THEREFORE,

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

That the United States Congress is urged to direct the United States Environmental Protection Agency to revise the proposed regulations to:

(1) Extend by 1 year the date by which states would be required to submit a state plan to the EPA, thereby providing more time to finalize technical work and state legislative and rulemaking activities.

(2) Decrease the proposed interim and final state goals expressed as adjusted output for the weighted average emission rates for all affected EGUs in Florida.

(3) Extend by 5 years the interim plan compliance schedule for meeting the proposed state goals for reductions in carbon dioxide emission rates.

(4) Extend by 5 years the date by which final goals for carbon dioxide emission rates must be reached.

(5) Prohibit retirement of an EGU before the end of its engineering lifetime unless the affected utility has fully recovered the costs of construction and financing of the EGU, the state has sufficient replacement capacity, and grid reliability is maintained.

BE IT FURTHER RESOLVED that copies of this memorial be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, to the Administrator of the United States Environmental Protection Agency, and to each member of the Florida delegation to the United States Congress.