Local Government Affairs Subcommittee

Monday, February 9, 2015
4:00 PM
Webster Hall (212 Knott)

Meeting Packet

Steve Crisafulli
Speaker

Debbie Mayfield
Chair

The Florida House of Representatives

Local Government Affairs Subcommittee

Representative Steve Crisafulli
Speaker

Representative Debbie Mayfield
Chair

Meeting Agenda
Monday, February 09, 2015
212 Knott, Webster Hall
04:00 p.m. – 06:00 p.m.

I. **Call to Order**

II. **Roll Call**

III. **Welcome and Opening Remarks**

IV. **Consideration of the Following Bill(s):**

HB 41 Hazardous Walking Conditions by Metz

HB 179 Public Records/Tax Collectors by Eagle

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

HB 337 Local Government Services by Mayfield

V. **Adjournment**

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 41 Hazardous Walking Conditions
SPONSOR(S): Metz
TIED BILLS: **IDEN./SIM. BILLS:** SB 154

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee		Zaborske	Miller
2) Education Appropriations Subcommittee			
3) Education Committee			

SUMMARY ANALYSIS

HB 41 relates to identifying, inspecting, and correcting hazardous walking conditions on roads students walk along or cross in order to walk to school. The current statute applies to elementary school students through grade 6 living within a 2 mile radius of a school. Currently, the law states the intent is for the condition to be corrected within a reasonable time, but does not require entities with jurisdiction over a road with an identified hazardous walking condition to correct the condition. The bill:

- Requires district school boards and other governmental entities to cooperate to identify and correct hazardous walking conditions;
- Requires the entity with jurisdiction over the road to correct the hazardous condition within a reasonable time;
- Requires the entity with jurisdiction over the road to include correction of a hazardous condition in its next annual 5-year capital improvements program or provide a statement of the factors justifying why a correction is not so included;
- Revises the criteria identifying hazardous walking conditions for walkways parallel to the road;
- Creates a new hazardous walking condition category, "crossings over the road";
- Requires additional parties to participate with the representatives of the school district and entity with jurisdiction over the road in inspecting the walking condition and determining whether it is hazardous;
- Allows the district school board, after notice, to initiate an administrative proceeding if the local governmental entities cannot agree whether the condition is hazardous; and
- Provides a hazardous walking condition determination may not be used as evidence in a civil action for damages against a governmental entity.

The bill has an indeterminate fiscal impact on state or local government revenues and expenditures (see Fiscal Analysis Section).

The bill is effective on July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Generally, school districts do not receive state funding to transport students in grades K-12 living 2 miles or less from the schools they attend.[1] However, state funds must be allocated to transport any public elementary school student whose grade level does not exceed grade 6[2] and who is subjected to a "hazardous walking condition" until the sooner of correcting the hazard or the projected completion date of correcting the hazard.[3] The intent of the law is for district school boards to cooperate with the state or local governmental entities with responsibility for roads to identify and correct hazardous walking conditions within a reasonable period of time.[4]

Hazardous Walking Condition

Hazardous walking conditions currently are classified according to walkways either parallel or perpendicular to a road along which students must walk to and from school.

For walkways *parallel* to a road, a hazardous walking condition exists if there is less than a 4-foot wide surface for students to walk adjacent to the road.[5] Not only must the walking surface be at least 4-feet wide, but if the road is uncurbed with a posted speed limit of 55 miles per hour, the walking surface adjacent to the road also must be at least 3-feet from the edge of the road or it will be a hazardous walking condition.[6]

Even if the above criteria are met for walkways *parallel* to the road, a walking condition nevertheless will *not* be considered hazardous if:

- The road is in a residential area with little or no transient traffic;[7]
- The volume of traffic[8] on the road is less than 180 vehicles per hour, per direction, during the time when students walk to and from school;[9] or
- The road is located in a residential area with a posted speed limit of 30 miles per hour or less.[10]

For walkways *perpendicular* to a road, a hazardous walking condition exists if:

- Traffic volume on the road exceeds the rate of 360 vehicles per hour, per direction, during the time when students walk to and from school *and* the crossing site is uncontrolled, meaning it is an intersection or other designated crossing site where no crossing guard,

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[1] S. 1011.68(1), F.S.; FLA. ADMIN. CODE R. 6A-3.001(3) ("A reasonable walking distance for any student who is not otherwise eligible for transportation pursuant to Section 1011.68, F.S., is any distance not more than two (2) miles between the home and school or one and one-half (1 1/2) miles between the home and the assigned bus stop.").
[2] S. 1006.23(1), F.S.
[3] S. 1006.23(1), F.S.; s. 1011.68(1)(e), F.S.
[4] S. 106.23(2)(a), F.S. Current law does not define what is a reasonable period of time.
[5] S. 1006.23(4)(a)1., F.S.
[6] *Id.*
[7] S. 1006.23(4)(a)2.a., F.S.
[8] "Traffic volume [is] determined by the most current traffic engineering study conducted by a state or local governmental agency." S.1006.23(4), F.S.
[9] S. 1006.23(4)(a)2.b., F.S.
[10] S. 1006.23(4)(a)2.c., F.S.

traffic enforcement officer, stop sign, or other traffic control signal is present when students walk to and from school;[11] or

- Total traffic volume on the road exceeds 4,000 vehicles per hour through an intersection or other crossing site controlled by a stop sign or other traffic control signal *and* no crossing guards or other traffic enforcement officers are present during the time when students walk to and from school.[12]

Inspecting, Determining, & Reporting Hazardous Walking Conditions

Identification of hazardous walking conditions begins when the district school superintendent or that person's designee receives a request to review a condition perceived to be hazardous to students in the district living within the 2-mile radius of a school and who walk to school.[13]

After the request for review is received, the perceived hazardous walking condition is inspected by the district school superintendent, or designee, and the state or local governmental entity with jurisdiction over the road.[14]

Current law requires the district school superintendent, or designee, and the governmental entity having jurisdiction over the road, or its representative, to mutually determine whether the walking condition is hazardous to students.

The district school superintendent or designee must report to the Department of Education the final determination whether the walking condition is hazardous to students.[15]

The statute does not provide a process for resolving a dispute between the district school officials and the government entity with jurisdiction over the subject road as to whether a hazardous walking condition exists.

Correcting Hazardous Walking Conditions

Upon determining that a condition is hazardous to students, the district school board must request the entity having jurisdiction over the road for a determination whether the hazard will be corrected and a projected completion date for any correction.[16] Current law, however, does not require the entity with jurisdiction over the road having a hazardous walking condition to correct the condition.

Effect of Proposed Changes

The bill changes the current law's intent language to make mandatory the cooperation between school districts and governmental entities to identify hazardous walking conditions, and adds a requirement that those entities also cooperate in correcting such hazards. The bill also requires the governmental entities with jurisdiction over a road with a hazardous walking condition to correct the condition within a reasonable period of time.

Hazardous Walking Condition

For walkways *parallel* to a road, the bill:

[11] S. 1006.23(4)(b)1., F.S.
[12] S. 1006.23(4)(b)2., F.S.
[13] S. 1006.23(3), F.S.
[14] S. 1006.23(2), F.S.
[15] S. 1006.23(3), F.S.
[16] S. 1006.23(2)(b), F.S.

- Retains the requirement for an area at least 4 feet wide adjacent to the road upon which students may walk but excludes drainage ditches, sluiceways, swales, or channels, from any calculation of that 4 foot area;
- By changing the posted speed limit from 55 miles per hour to 50 miles per hour or greater, the bill expands the number of uncurbed roads required to have at least a 3 foot buffer from the edge of the road to the required 4 foot area on which students may walk; and
- Removes the exception for roads students walk along in residential areas with little or no transient traffic.

The bill does not change the criteria for hazardous walking conditions for walkways *perpendicular* to the road.

The bill adds a new subsection for "crossings over the road." Under this subsection any *uncontrolled crossing site*[17] which students must use when walking to and from school will be considered a hazardous walking condition if the road has:

- A posted speed limit of 50 miles per hour or greater; or
- 6 lanes or more, not including turn lanes, regardless of the speed limit.

Inspecting, Determining, & Reporting Hazardous Walking Conditions

Under the bill, inspection of a perceived hazardous walking condition will be initiated by request for review from the district school superintendent. The alleged hazardous condition will be inspected jointly by:

- A representative of the school district;
- A representative of the state or local governmental entity with jurisdiction over the perceived hazardous location;
- A representative of the municipal police department for a municipal road, a representative of the sheriff's office of a county road, *or* a representative of the Department of Transportation for a State road; and
- If the jurisdiction is within an area for which there is a metropolitan planning organization, a representative of that organization.

The bill changes the procedure for determining whether a walking condition is hazardous. If all representatives concur the condition constitutes a hazardous walking condition, they must report that determination in writing to the district school superintendent. The district school superintendent then must request a position statement from the state or local governmental entity with jurisdiction over the road regarding correcting the condition.

If the governmental representatives are unable to reach a consensus, then the reasons for lack of consensus must be reported to the district school superintendent, who shall provide a report and recommendation to the district school board. The bill does not state who must submit a report to the district school superintendent when the governmental representatives are unable to reach a consensus, which could result in multiple reports, nor does it state what must be included in the report and recommendation.

[17] An uncontrolled crossing site, as stated in the discussion of the present situation, means an intersection or other designated crossing site where no crossing guard, traffic enforcement officer, or stop sign or other traffic control signal is present during the time students walk to and from school. S. 1006.23(4)(b)1., F.S.

Administrative Procedure Act (APA) Review of Determination

Further, if the governmental representatives cannot reach a consensus, the bill allows the district school board to initiate an administrative proceeding under the Administrative Procedure Act[18] (APA) to determine whether the condition constitutes a hazardous walking condition.

The APA provides the uniform procedures[19] for agencies to administer substantive programs, including rulemaking,[20] taking final action affecting the substantial interests of a party,[21] and issuing declaratory statements.[22] Pertinent to the bill are the APA's definition of "agency"[23] and hearing process on agency final action.[24]

The bill authorizes the district school board to initiate an administrative proceeding but does not state which agency action would be subject to the administrative proceeding. Because the entity with jurisdiction over the road has the duty of correcting the hazardous condition, the bill context appears to suggest the petition for hearing would be from the decision of that entity, which typically would be the State, a county, or a municipality. Generally, local governmental officers and entities are not considered "agencies" under the APA.[25] However, certain local officers and governmental entities, excluding municipalities or metropolitan planning organizations,[26] can be "expressly made subject to [the APA] by general or special law."[27]

Under the APA, a party must petition for a hearing within 21 days from notice of the agency's intended action.[28] The bill requires that before initiating the administrative proceeding the district school board gives the local governmental entities with jurisdiction over the road at least 30 days written notice of its intent to file.[29] Additionally, the bill prohibits initiating an administrative proceeding if during the 30-day period the local governmental entities concur in writing that the condition is a hazardous walking condition and provide a position statement to the district school superintendent. Under the APA, the petition for hearing is filed with the agency proposing to take final action;[30] in this case, the agency would be the entity with jurisdiction over the road. If the petition is filed and the hearing proceeds, the bill provides the district school board has the burden of proving by the greater weight of the evidence that the walking condition is hazardous.[31] Under the APA, if no material facts are in dispute, the agency may choose not to refer the petition to the Division of Administrative Hearings and instead conduct its own hearing.[32] Once the hearing is concluded, the agency issues a final order.[33]

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[18] Ch. 120, F.S.
[19] S. 120.515, F.S.
[20] S. 120.54, F.S.
[21] S. 120.569, F.S.
[22] S. 120.565, F.S.
[23] The definition of "[a]gency" includes all executive branch agencies with statewide jurisdiction, officers and governmental entities with jurisdiction in more than one county, educational units such as school districts, and local entities made subject to the APA by general or special law; the definition excludes municipalities and metropolitan planning organizations. S. 120.52(1), F.S.
[24] S. 120.569, F.S.
[25] *See* n. 23.
[26] S. 120.52(1), F.S. ("'Agency' . . . does not include a municipality or legal entity created solely by a municipality; . . . a metropolitan planning organization created pursuant to s. 339.175. . . .").
[27] S. 120.52(1)(c), F.S.
[28] Rule 28-106.111(4), F.A.C.
[29] The 30-day notice requirement appears to conflict with Rule 28-106.111(4), F.A.C., which provides: Any person who receives written notice of an agency decision and who fails to file a written request for a hearing within 21 days waives the right to request a hearing on such matters."
[30] S. 120.569(2)(a), F.S.
[31] The APA provides findings of fact shall be based upon a preponderance, or the greater weight, of evidence. S. 120.57(1)(j), F.S. As the petitioning party, under present law the school board has the burden of proving the hazardous condition. *Florida Dept. of Transp. v. J.W.C. Co.*, 396 So. 2d 778, 788 (Fla. 1st DCA 1981).
[32] S. 120.57(2), F.S.
[33] S. 120.569(2)(l), F.S.

In addition to the existing requirements of the APA, if the district school board prevails in the administrative proceeding, the bill will require the district school superintendent to report the outcome to the Department of Education and initiate a formal request for correction of the hazardous walking condition by requesting from the entity with jurisdiction over the road a position statement regarding correction.

Correcting Hazardous Walking Conditions

The bill revises the process for correcting a hazardous walking condition. Within 90 days after receiving a request to correct the hazardous walking condition, the state or local governmental entity must inform the district school superintendent whether the entity will include correction of the hazardous walking condition in its next annual 5-year capital improvements program and, if so, when the correction will be completed.

If the next annual 5-year capital improvements program will not include correction of the condition, then the governmental entity must state the factors justifying such conclusion in writing to the district school superintendent and the Department of Education. The interaction between this requirement and the bill's statement that the entity with jurisdiction over the road shall repair the hazardous condition within a reasonable time is unclear.

Evidence in Civil Action

The bill makes the designation of a hazardous walking condition inadmissible as evidence in a civil action for damages against a governmental entity under s. 768.28, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 1006.23, F.S., by revising criteria for determining hazardous walking conditions for public school students; revises procedures for inspection and identification of hazardous conditions; authorizes district school superintendents to initiate formal requests for correction of hazardous conditions; requires district school boards to provide transportation to students who would be subjected to hazardous conditions; requires state or local entities with jurisdiction over roads with hazardous conditions to correct condition; provides requirements for governmental entities relating to capital improvement programs; and makes the designation of hazardous walking conditions inadmissible as evidence in civil actions for damages against a governmental entity.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. The bill may increase the costs related to taking necessary corrective action (1) if interpreted as requiring corrective action within a reasonable time period after a walking condition is determined to be hazardous; (2) by creating a new category of road crossing, "crossings over the road"; (3) by applying the hazardous criteria to certain residential neighborhoods formerly excluded by law; and (4) by changing the criteria for determining acceptable walkways and bringing more roads under consideration by expanding the applicable speed limit. The more expansive criteria

may result in walking conditions formerly not considered hazardous now being deemed hazardous walking conditions. To the extent that a local governmental entity does correct the condition, it would cover any such costs, which amount cannot be quantified at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. The bill may increase the costs related to taking necessary corrective action (1) if interpreted as requiring corrective action within a reasonable time period after a walking condition is determined to be hazardous; (2) by creating a new category of road crossing, "crossings over the road"; (3) by applying the hazardous criteria to certain residential neighborhoods formerly excluded by law; and (4) by changing the criteria for determining acceptable walkways and bringing more roads under consideration by expanding the applicable speed limit. The more expansive criteria may result in walking conditions formerly not considered hazardous now being deemed hazardous walking conditions. To the extent that a state entity does correct the condition, it would cover any such costs, which amount cannot be quantified at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not compel counties or municipalities with jurisdiction over particular roads having hazardous walking conditions to correct such conditions within a specific time or subject to a specific consequence. Thus, the bill does not mandate local governments take any corrective action or expend funds beyond such amounts as called for under the present law. To the extent requiring the correction of hazardous walking conditions "within a reasonable time" may operate to increase expenditures in a shorter time frame, the bill could operate as a mandate under Art. VII, s. 18(a), Fla. Const. If so, the legislation would still bind county and city governments if:

a. The Legislature expressly determines the proposed law fulfills an important state interest; and either
b. The expenditure is required to comply with a law that applies to all persons similarly situated, including state and local governments; or
c. The bill is approved by a two-thirds vote of the membership in each chamber.[34]

A bill interpreted as requiring expenditures by counties and municipalities is exempt from the constitutional mandate provision if the bill would have an insignificant fiscal impact.[35]

[34] Art. VII, s. 18(a), Fla. Const.

[35] Long standing policy of the legislature has deemed "insignificant fiscal impact" to be an amount equal to 10 cents per capita. Since Florida's population was estimated to be approximately 19 million people in 2009, a fiscal impact of less than $1.9 million statewide on cities and counties is deemed "insignificant" for purposes of Art. VII, s. 18(d), Fla. Const.

If the fiscal impact of the bill is calculated not to exceed $1.9 million, the impact is insignificant and there is no mandate. However, if the potential cost exceeds 1.9 million, to meet the terms of the constitutional provision the bill would require an express determination by the Legislature that the bill fulfills an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As written, the bill requires the district school board to work cooperatively not only to identify, but also to correct a hazardous walking condition, even though the provisions regarding correcting a hazardous walking condition seem to put that responsibility on the entity with jurisdiction over the road.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to hazardous walking conditions; amending s. 1006.23, F.S.; revising criteria that determine a hazardous walking condition for public school students; revising procedures for inspection and identification of hazardous walking conditions; authorizing a district school superintendent to initiate a formal request for correction of a hazardous walking condition; authorizing a district school board to initiate an administrative proceeding under certain circumstances and providing requirements therefor; requiring a district school board to provide transportation to students who would be subjected to hazardous walking conditions; requiring state or local governmental entities with jurisdiction over a road with a hazardous walking condition to correct the condition within a reasonable period of time; providing requirements for a governmental entity relating to its capital improvements program; providing requirements relating to a civil action for damages; providing an effective date.

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

Section 1. Section 1006.23, Florida Statutes, is reordered and amended to read:

1006.23 Hazardous walking conditions.—

(1) DEFINITION.—As used in this section, the term "student" means any public elementary school student whose grade level does not exceed grade 6.

(2)~~(4) STATE CRITERIA FOR DETERMINING~~ HAZARDOUS WALKING CONDITIONS.—

(a) Walkways parallel to the road.—

1. It shall be considered a hazardous walking condition with respect to any road along which students must walk in order to walk to and from school if there is not an area at least 4 feet wide adjacent to the road, not including drainage ditches, sluiceways, swales, or channels, having a surface upon which students may walk without being required to walk on the road surface. In addition, whenever the road along which students must walk is uncurbed and has a posted speed limit of 50 ~~55~~ miles per hour or greater, the area as described above for students to walk upon shall be set off the road by no less than 3 feet from the edge of the road.

2. ~~The provisions of~~ Subparagraph 1. does ~~do~~ not apply when the road along which students must walk:

~~a. Is in a residential area which has little or no transient traffic;~~

a.~~b.~~ Is a road on which the volume of traffic is less than 180 vehicles per hour, per direction, during the time students walk to and from school; or

b.~~c.~~ Is located in a residential area and has a posted

speed limit of 30 miles per hour or less.

(b) Walkways perpendicular to the road.—It shall be considered a hazardous walking condition with respect to any road across which students must walk in order to walk to and from school if:

1. ~~If~~ The traffic volume on the road exceeds the rate of 360 vehicles per hour, per direction (including all lanes), during the time students walk to and from school and if the crossing site is uncontrolled. For purposes of this subsection, an "uncontrolled crossing site" is an intersection or other designated crossing site where no crossing guard, traffic enforcement officer, or stop sign or other traffic control signal is present during the times students walk to and from school.

2. ~~If~~ The total traffic volume on the road exceeds 4,000 vehicles per hour through an intersection or other crossing site controlled by a stop sign or other traffic control signal, unless crossing guards or other traffic enforcement officers are also present during the times students walk to and from school.

Traffic volume shall be determined by the most current traffic engineering study conducted by a state or local governmental agency.

(c) Crossings over the road.—It shall be considered a hazardous walking condition with respect to any road at any uncontrolled crossing site which students must walk in order to

walk to and from school if:

1. The road has a posted speed limit of 50 miles per hour or greater; or

2. The road has six lanes or more, not including turn lanes, regardless of the speed limit.

(3) IDENTIFICATION OF HAZARDOUS CONDITIONS.—

(a) When a request for review is made by ~~to~~ the district school superintendent with respect to a road over which a state or local governmental entity has jurisdiction ~~or the district school superintendent's designee~~ concerning a condition perceived to be hazardous to students in that district who live within the 2-mile limit and who walk to school, such condition shall be inspected jointly by a representative of the school district, ~~and~~ a representative of the state or local governmental entity with ~~that has~~ jurisdiction over the perceived hazardous location, and a representative of the municipal police department for a municipal road, a representative of the sheriff's office for a county road, or a representative of the Department of Transportation for a state road. If the jurisdiction is within an area for which there is a metropolitan planning organization, a representative of that organization shall also be included. The governmental representatives shall determine whether the condition constitutes a hazardous walking condition as provided in subsection (2). If the governmental representatives concur that a condition constitutes a hazardous walking condition as

provided in subsection (2), they shall report that determination in writing to the district school superintendent, who shall initiate a formal request for correction as provided in subsection (4).

(b) If the governmental representatives are unable to reach a consensus, the reasons for lack of consensus shall be reported to the district school superintendent, who shall provide a report and recommendation to the district school board. The district school board may initiate an administrative proceeding under chapter 120 seeking a determination as to whether the condition constitutes a hazardous walking condition as provided in subsection (2) after providing at least 30 days' notice in writing to the local governmental entities having jurisdiction over the road of its intent to do so unless, within 30 days after such notice is provided, the local governmental entities concur in writing that the condition is a hazardous walking condition as provided in subsection (2) and provide the position statement pursuant to subsection (4). If an administrative proceeding is initiated under this paragraph, the district school board has the burden of proving such condition by the greater weight of evidence. If the district school board prevails, the district school superintendent shall report the outcome to the Department of Education and initiate a formal request for correction of the hazardous walking condition as provided in subsection (4). ~~The district school superintendent or his or her designee and the state or local governmental~~

~~entity or its representative shall then make a final determination that is mutually agreed upon regarding whether the hazardous condition meets the state criteria pursuant to this section. The district school superintendent or his or her designee shall report this final determination to the Department.~~

(4)~~(2)~~ TRANSPORTATION; CORRECTION OF HAZARDS.—

(a) A district school board ~~It is intended that district school boards~~ and other governmental entities shall work cooperatively to identify and correct conditions that are hazardous along student walking routes to school, and a district school board shall ~~that district school boards~~ provide transportation to students who would be subjected to such conditions. Additionally, ~~It is further intended that~~ state or local governmental entities with ~~having~~ jurisdiction over a road along which a hazardous walking condition is determined to exist shall correct the condition ~~such hazardous conditions~~ within a reasonable period of time.

(b) Upon a determination pursuant to subsection (3) ~~this section~~ that a hazardous walking condition exists ~~is hazardous to students~~, the district school superintendent ~~board~~ shall request a position statement with respect to correction of such condition ~~determination~~ from the state or local governmental entity with ~~having~~ jurisdiction over the road. Within 90 days after receiving such request, the state or local governmental entity shall inform the district school superintendent ~~regarding~~

whether the entity will include correction of the hazardous walking condition in its next annual 5-year capital improvements program ~~hazard will be corrected~~ and, if so, when correction of the condition will be completed. If the hazardous walking condition will not be included in the state or local governmental entity's next annual 5-year capital improvements program, the factors justifying such conclusion must be stated in writing to the district school superintendent and the Department of Education ~~regarding a projected completion date~~.

(c) State funds shall be allocated for the transportation of students subjected to a hazardous walking condition. However, ~~such hazards, provided that~~ such funding shall cease upon correction of the hazardous walking condition ~~hazard~~ or upon the projected completion date, whichever occurs first.

(5) CIVIL ACTION.—In a civil action for damages brought against a governmental entity under s. 768.28, the designation of a hazardous walking condition under this section is not admissible in evidence.

Section 2. This act shall take effect July 1, 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 Government Affairs Subcommittee

Representative Metz offered the following:

Amendment (with title amendment)

Remove lines 113-114 and insert:

board. The district school board may initiate a proceeding under chapter 86 seeking a determination as to

Remove lines 122-123 and insert:

position statement pursuant to subsection (4). If a proceeding is initiated under this paragraph, the

Remove line 140 and insert:

cooperatively to identify conditions that are

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

Remove line 10 and insert:

school board to initiate a declaratory judgment proceeding

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 179 Public Records/Tax Collectors
SPONSOR(S): Eagle
TIED BILLS: **IDEN./SIM. BILLS:** SB 200

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee		Zaborske	Miller
2) Government Operations Subcommittee			
3) Finance & Tax Committee			

SUMMARY ANALYSIS

Currently tax collectors are authorized by law to send certain notices via electronic mail (e-mail). HB 179 would create s. 197.3225, F.S., which would exempt tax collectors in Florida from releasing a taxpayer's e-mail address when held by a tax collector for the following purposes:

- Sending the taxpayer a quarterly tax notice for prepayment of estimated taxes;
- Obtaining the taxpayer's consent to send the tax notice;
- Sending the taxpayer an additional tax notice or delinquent tax notice; or
- Sending a third party, mortgagee, or vendee a tax notice.

An e-mail address held for any of the above purposes will be considered confidential and exempt from public record requirements. However, e-mail addresses provided by a taxpayer on the tax collector's website for other means of correspondence will not be exempt from Florida public records laws.

The public records exemption is subject to the Open Government Sunset Review Act. The bill provides for repeal of the exemption on October 2, 2020, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

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 public record exemption; therefore, 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) and (b) 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:

- 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.[3]

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.

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.[4] If the Legislature has determined the information to be confidential then the information is not subject to inspection by the public.[5] Also, if the information is deemed to be confidential it may only be released to those persons and entities designated in the

[1] Art I., s. 24(c), Fla. Const.
[2] S. 119.15, F.S.
[3] S. 119.15(6)(b), F.S.
[4] *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).
[5] *Id.*

statute.[6] However, the agency is not prohibited from disclosing the records in all circumstances where the records are only exempt.[7]

Tax Collectors' E-mail Notices

In 2011, local tax collectors were given the authority to electronically send, with the taxpayer's consent, certain notices via e-mail.[8] Under current law the taxpayer's private e-mail address is a public record, and a government agency must post on its website that all e-mail addresses are public records.[9]

Effect of Proposed Changes

The bill exempts disclosing through public records requests e-mail addresses held by local tax collectors for the purpose of sending certain notices and obtaining consent from the taxpayer to send the tax notice via e-mail.

Section 1

Pursuant to Art. I, s. 24(c) of the State Constitution, the exemption cannot be broader than necessary to accomplish the stated purpose of the law. The bill makes a taxpayer's e-mail address confidential and exempt from public records when held by the tax collector for the purpose of:

- Sending the taxpayer a quarterly tax notice for prepayment of estimated taxes;[10]
- Obtaining the taxpayer's consent to send the tax notice;[11]
- Sending the taxpayer an additional tax notice or delinquent tax notice;[12] or
- Sending a third party, mortgagee, or vendee a tax notice.[13]

If the tax collector holds an e-mail address, even if it is the same e-mail address the bill proposes is exempt, the e-mail address would not be exempt from a public records request when held for any reason other than the above purposes. It is unclear how local tax collector offices will distinguish between those requests for disclosure exempted under the bill and those requests which are not exempt, for the same email address.

The public records exemption is subject to the Open Government Sunset Review Act[14] and will stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2

The bill sets forth a statement of public necessity as required by the State Constitution.[15] The bill provides that e-mail addresses are unique to individuals and when combined with other personal identifying information they can be used for identity theft, taxpayer scams, and other invasive contacts. It further provides that the public availability of personal e-mail addresses invites and exacerbates

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[6] *Id.*
[7] *See Williams v. City of Minneola,* 575 So.2d 683, 687 (Fla. 5th DCA), *review den.,* 589 So.2d 289 (Fla. 1991).
[8] Ss. 197.222(3); 197.322(3); 197.343; 197.344(1), F.S.
[9] S. 668.6076, F.S., (requiring "[a]ny agency . . . or legislative entity that operates a website and uses electronic mail . . . post the following statement . . . : Under Florida law, e-mail addresses are public records. If you do not want your e-mail address released in response to a public records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing.").
[10] S. 197.222(3), F.S.
[11] S. 197.322(3), F.S.
[12] S. 197.343, F.S.
[13] S. 197.344(1), F.S.
[14] S. 119.15, F.S.
[15] Art. I, s. 24(a), Fla. Const.

thriving and well-documented criminal activities and puts taxpayers at an increased risk of harm, and that making e-mail addresses confidential would significantly curtail such harm. No information is available as to whether scams or frauds have been perpetrated utilizing any Florida property tax notices.

B. SECTION DIRECTORY:

Section 1: Creates s. 197.3225, F.S., providing an exemption from public records requirements for e-mail addresses held by tax collectors for certain tax notice purposes; provides for further legislative review and repeal of the exemption under the Open Government Sunset Review Act.

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:

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

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   See FISCAL COMMENTS.

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:

The bill could create a minimal fiscal impact on local tax collectors because staff responsible for complying with public record requests could require training related to expansion of the public record exemption. In addition, local tax collectors could incur costs associated with redacting the exempt information prior to releasing a record. These costs, however, would be absorbed, as they appear to be part of the day-to-day responsibilities of local tax collectors.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to the e-mail address of a taxpayer held for use under certain circumstances. The bill's public necessity statement suggests that public records disclosures combining e-mail addresses with other personal identifying information could harm taxpayers. No information is available on whether there are any documented instances of such harm in relation to any taxpayer notices underlying the proposed exemption. If the bill is designed to address a concern that disclosing personal e-mail addresses in conjunction with other personal identifying information could harm taxpayers, the bill does not require the e-mail address being exempted from a public records request be within a document containing other personal identifying information.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for executive branch rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

Section 2 of the bill sets forth the statement of public necessity. As written, a taxpayer's e-mail address will be confidential and exempt if held by a tax collector for the purpose of obtaining the consent of the taxpayer for the electronic transmission of a tax notice and sending a tax notice, but does not specifically state which types of tax notices (a quarterly tax notice for prepayment of estimated taxes, an additional tax notice or delinquent tax notice, and a tax notice to a designated third party, mortgagee, or vendee).

Other Comments

Using e-mail correspondence comes with some risks. "Phishing," for example, "is a scam typically carried out through unsolicited email and/or websites that pose as legitimate sites and lure unsuspecting victims to provide personal and financial information."[16] As recently as January 8, 2015, the Internal Revenue Service on its website warned consumers about e-mail scams where consumers receive an e-mail claiming that a payment through the Electronic Federal Tax Payment System was rejected and directing the recipient to a bogus link, which, when clicked, downloads malicious software (malware) that infects the victim's computer and sends back personal and financial information from the

[16] Internal Revenue Service, Report Phishing and Online Scams, available at http://www.irs.gov/uac/Report-Phishing (accessed January 30, 2015).

computer to use to commit identity theft.[17] No information is available on whether similar scams have been perpetrated utilizing Florida property tax notices.

In 2004, Florida enacted the Electronic Mail Communications Act[18] "to promote the integrity of electronic commerce and . . . to protect the public and legitimate businesses from deceptive and unsolicited commercial electronic mail."[19] The Act generally prohibits sending spam e-mails that falsify the email routing information, or contain false or misleading information. Under the Act, spammers may be sued by the Attorney General and Internet Service Providers, and may have to pay actual damages or damages of $500 for each unlawful message, as well as attorney's fees and costs. Additionally, under the Act, a person commits either a misdemeanor of the first degree or a felony of the third degree[20] if the person transmits to an e-mail address held by a Florida resident certain unsolicited commercial electronic mail messages.[21] Current law also criminalizes the use of personal identification information, including e-mail addresses.[22]

The Department of Revenue analyzed the bill and questioned whether the bill intentionally omitted from the list of notices set forth in the bill other tax notices[23] the tax collector may send via e-mail.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[17] Beware of e-Mail Scams about Electronic Federal Tax Payments, http://www.irs.gov/uac/Beware-of-e-Mail-Scams-about-Electronic-Federal-Tax-Payments (accessed January 30, 2015).
[18] Ch. 2004-233, L.O.F.; 2004SB2574; codified at ss. 668.60 - 668.610, F.S.
[19] S. 668.601, F.S.
[20] S. 668.608, F.S.
[21] S. 668.603, F.S. Specifically, the Act prohibits transmitting an unsolicited commercial electronic mail message to an e-mail address held by a Florida resident which uses a third party's Internet domain name without permission, contains falsified or missing routing information misleading information in identifying the point of origin or the transmission path, contains false or misleading information in the subject line, or contains false or deceptive information in the body of the message designed to cause damage. S. 668.603(1)(a)-(d), F.S.
[22] S. 817.568, F.S.
[23] Ss. 197.182(1)(m), 197.432(7), & 197.472(5), F.S.

A bill to be entitled

An act relating to public records; creating s. 197.3225, F.S.; providing an exemption from public records requirements for e-mail addresses obtained by a tax collector for the purpose of electronically sending certain tax notices or obtaining the consent of a taxpayer for electronic transmission of certain tax notices; providing for future 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 197.3225, Florida Statutes, is created to read:

197.3225 Confidentiality of e-mail addresses.—

(1) A taxpayer's e-mail address held by a tax collector for any of the following purposes is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Sending a quarterly tax notice for prepayment of estimated taxes to the taxpayer pursuant to s. 197.222(3).

(b) Obtaining the taxpayer's consent to send the tax notice described in s. 197.322(3).

(c) Sending an additional tax notice or delinquent tax notice to the taxpayer pursuant to s. 197.343.

(d) Sending a tax notice to a designated third party, mortgagee, or vendee pursuant to s. 197.344(1).

(2) 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 the e-mail address of a taxpayer which is held by a tax collector for the purpose of sending a tax notice or obtaining the consent of the taxpayer to the electronic transmission of a tax notice be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. E-mail, rather than traditional postal mail, is increasingly used as a means for communicating and conducting business, including official state and local business such as the payment of taxes. In order to conduct business electronically with a tax collector, the taxpayer must report his or her personal e-mail address. Under current law, e-mail addresses are public records available to anyone for any purpose. However, such addresses are unique to the individual and, when combined with other personal identifying information, can be used for identity theft, taxpayer scams, and other invasive contacts. The public availability of personal e-mail addresses invites and exacerbates thriving and well-documented criminal activities and puts taxpayers at increased risk of harm. Such harm would be significantly curtailed by allowing a

tax collector to preserve the confidentiality of taxpayer e-mail addresses.

Section 3. 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:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee		Darden	Miller
2) Government Operations Appropriations Subcommittee			
3) Local & Federal Affairs Committee			

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 has an indeterminate negative fiscal impact on state and local governments, depending on the extent to which state and 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 were 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:

This bill may have an indeterminate negative fiscal impact on state and local governments, depending on the extent to which state and 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.

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[41] and Florida[42] 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.[43] 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.[44] 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.[45]

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.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

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

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 #: HB 337 Local Government Services
SPONSOR(S): Mayfield
TIED BILLS: **IDEN./SIM. BILLS:** SB 442

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee		Zaborske	Miller
2) Energy & Utilities Subcommittee			
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

HB 337 amends ss. 153.03(1) and 180.02, F.S., relating to counties or municipalities providing water and sewage facilities or public works.

Currently, a county must have a municipality's permission to provide water or sewer facilities to a property already being furnished such facilities by a municipality. The bill expands that prohibition to include water or sewer services. The bill also allows a county to furnish such facilities or services outside the municipality's boundary, without the municipality's permission, if a prior consent agreement between the municipality and the county regarding such facilities or service has expired.

Current law allows municipalities to extend and execute their corporate powers outside their corporate limits as desirable or necessary for the promotion of the public health, safety, and welfare. The bill requires the express consent of county's board of county commissioners in order for a municipality to extend and apply such powers.

The bill has an indeterminate fiscal impact on state or local government revenues and expenditures.

The bill is effective on July 1, 2015.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Counties

Article VIII, s. 1, of the State Constitution establishes the powers of non-charter counties and charter counties. Non-charter counties have the power of self-government as provided by general law or special law.[1] Charter counties have broader powers; these counties have all powers of local self-government not inconsistent with general law or special law approved by vote of the electors and may enact ordinances not inconsistent with general law.[2]

General law provides all counties the power to provide and regulate water and sewer utility services.[3] However, a county may not construct, own, or operate any water or sewer facilities on property within the corporate limits of a municipality without the consent of the municipality's governing body.[4] In addition, a county may not furnish such facilities to property already being furnished similar facilities by a municipality without the consent of the municipality's governing body, unless the county owned such facilities on the property before the property was included within the municipality's limits.[5]

Municipalities

Pursuant to Art. VIII, s. 2(b), of the State Constitution, municipalities have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law. The legislative body of each municipality has the power to enact legislation on any subject upon which the state Legislature may act, with certain exceptions.[6]

Municipalities are authorized by general law to provide water and sewer utility services.[7] With respect to public works projects, including water and sewer utility services,[8] municipalities may extend and execute their corporate powers outside of their corporate limits as "desirable or necessary for the promotion of the public health, safety and welfare."[9]

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[1] Art. VIII, s. 1(f), Fla. Const.
[2] Art. VIII, s. 1(g), Fla. Const.
[3] S. 125.01(1)(k), F.S. (a county may "provide and regulate waste and sewage collection and disposal, water and alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems, and conservation programs"); s. 153.03(1), F.S. (authorizes counties to "purchase and/or construct and to improve, extend, enlarge, and reconstruct a water supply system or systems or sewage disposal system or systems within such county and any adjoining county or counties").
[4] S. 153.03(1), F.S. An exception exists where such facilities were owned by the county on such property prior to the time such property was included within the corporate limits of such municipality.
[5] *Id.*
[6] Pursuant to s. 166.021(3)(a)-(d), F.S., a municipality may not enact legislation on the following: the subjects of annexation, merger, and exercise of extraterritorial power, which require general law or special law; any subject expressly prohibited by the constitution; any subject expressly preempted to state or county government by the constitution or by general law; and any subject preempted to a county pursuant to a county charter adopted under the authority of the State constitution.
[7] Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes).
[8] S. 180.06, F.S., authorizes other public works projects, including alternative water supplies, maintenance of water flow and bodies of water for sanitary purposes.
[9] S. 180.02(2), F.S.

Effect of Proposed Changes

Section 1

The bill expands the current prohibition against counties providing, absent the municipality's permission, water or sewer facilities to a property to which a municipality already furnishes such facilities to also include water or sewer services. Additionally, the bill allows a county, without a municipality's permission, to furnish such facilities or services outside the municipality's boundary if a prior consent agreement between the municipality and the county regarding such facilities or service has expired.

Section 2

The bill prohibits municipalities from extending and executing their corporate powers in relation to public works projects outside their corporate limits (i.e., the unincorporated areas of a county) without the express consent of the board of county commissioners, regardless of whether extending or executing such powers would be "desirable or necessary for the promotion of the public health, safety and welfare."[10]

B. SECTION DIRECTORY:

Section 1: Amends s. 153.03(1), F.S., related to the powers of counties to provide water and sewer services. Expands the current prohibition against counties, absent the municipality's permission, providing water or sewer facilities to a property to which a municipality already furnishes such facilities to also include water or sewer services. Allows a county, without a municipality's permission, to furnish such facilities or services outside the municipality's boundary if a prior consent agreement between the municipality and the county regarding such facilities or services has expired.

Section 2: Amends s. 180.02(2), F.S., related to the power of municipalities to provide public works by prohibiting municipalities from extending and executing their corporate powers in relation to public works projects outside their corporate limits without the express consent of the board of county commissioners.

Section 3: 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.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

[10] S. 180.02(2), F.S.

Those municipalities currently providing water and wastewater facilities or services outside their municipal boundaries pursuant to a consent agreement between the municipality and the county may experience a reduction in revenues upon the expiration of a consent agreement.

2. Expenditures:

Municipalities and counties may incur costs associated with the bill's requirement that a county consent to the application or extension of municipal powers to provide public works in unincorporated areas of a county.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take 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:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to local government services; amending s. 153.03, F.S.; authorizing a county to provide certain services and facilities outside the boundaries of a municipality without the express consent of the municipality's governing body under certain circumstances; amending s. 180.02, F.S.; prohibiting a municipality from extending its corporate powers within unincorporated areas of a county without the express consent of the county's governing body; providing an effective date.

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

Section 1. Subsection (1) of section 153.03, Florida Statutes, is amended to read:

153.03 General grant of power.—Any of the several counties of the state which may hereafter come under the provisions of this chapter as hereinafter provided is hereby authorized and empowered:

(1) To purchase and/or construct and to improve, extend, enlarge, and reconstruct a water supply system or systems or sewage disposal system or systems, or both, within such county and any adjoining county or counties and to purchase and/or construct or reconstruct water system improvements or sewer improvements, or both, within such county and any adjoining

county or counties and to operate, manage and control all such systems so purchased and/or constructed and all properties pertaining thereto and to furnish and supply water and sewage collection and disposal services to any of such counties and to any municipalities and any persons, firms or corporations, public or private, in any of such counties; provided, however, that none of the facilities provided by this chapter may be constructed, owned, operated or maintained by the county on property located within the corporate limits of any municipality without the consent of the council, commission or body having general legislative authority in the government of such municipality unless such facilities were owned by the county on such property prior to the time such property was included within the corporate limits of such municipality. A ~~No~~ county may not ~~shall~~ furnish ~~any of the~~ facilities or services provided by this chapter to a ~~any~~ property already being furnished such ~~like~~ facilities or services by a ~~any~~ municipality without the express consent of the council, commission, or body having general legislative authority in the government of such municipality unless the facilities or services will be provided outside the boundary of that municipality and a prior consent agreement between the parties related to the provision of facilities or services outside the municipality boundary, has expired.

Section 2. Subsection (2) of section 180.02, Florida Statutes, is amended to read:

180.02 Powers of municipalities.—

(2) A ~~Any~~ municipality may extend and execute all of its corporate powers to accomplish ~~applicable for the accomplishment of~~ the purposes of this chapter outside of its corporate limits, as hereinafter provided and as may be desirable or necessary to promote ~~for the promotion of~~ the public health, safety, and welfare or to accomplish ~~for the accomplishment of~~ the purposes of this chapter; provided, however, that such ~~said~~ corporate powers do ~~shall~~ not extend or apply within the corporate limits of another municipality or extend to or apply within the unincorporated areas of a county without the express consent of the board of county commissioners of such county.

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