State Affairs Committee

Thursday, February 20, 2020
8:00 AM – 12:00 PM
Morris Hall (17 HOB)

Jose R. Oliva
Speaker

Blaise Ingoglia
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time: Thursday, February 20, 2020 08:00 am

End Date and Time: Thursday, February 20, 2020 12:00 pm

Location: Morris Hall (17 HOB)

Duration: 4.00 hrs

Consideration of the following bill(s):

HJR 369 Limitation on Homestead Assessments by Roth
HB 371 Limitations on Homestead Assessments by Roth
CS/HB 503 Tampa Bay Area Regional Transit Authority by Transportation & Infrastructure Subcommittee, Diamond
CS/HB 537 Home-based Businesses by Business & Professions Subcommittee, Donalds
CS/HB 571 Vehicle and Vessel Registration Data and Functionality by Transportation & Infrastructure Subcommittee, Fernandez-Barquin
CS/CS/HB 637 Impact Fees by Ways & Means Committee, Local, Federal & Veterans Affairs Subcommittee, DiCeglie
CS/HB 705 Emergency Sheltering of Persons with Pets by Oversight, Transparency & Public Management Subcommittee, Killebrew, Toledo
CS/HB 729 Administrative Procedures by Oversight, Transparency & Public Management Subcommittee, Rodriguez, A. M., Gregory
HB 851 Community Development District Bond Financing by Altman
HB 853 State Park Fee Waivers and Discounts by Buchanan
HJR 877 Ad Valorem Tax Discount for Spouses of Certain Deceased Veterans Who Had Permanent, Combat-Related Disabilities by Killebrew
HB 879 Surviving Spouse Ad Valorem Tax Reduction by Killebrew
CS/HB 971 Electric Bicycles by Transportation & Infrastructure Subcommittee, Grant, M.
HB 1005 Voting Systems by Byrd
CS/HB 1039 Transportation Network Companies by Transportation & Infrastructure Subcommittee, Rommel
CS/HB 1047 Construction Materials Mining Activities by Government Operations & Technology Appropriations Subcommittee, Avila
HJR 1325 Repeal of Public Campaign Financing Requirement by Aloupis
HB 1327 Campaign Finance by Aloupis
CS/CS/HB 1371 Traffic and Pedestrian Safety by Transportation & Tourism Appropriations Subcommittee, Transportation & Infrastructure Subcommittee, Fine, Caruso
HB 1465 Hardee County Economic Development Authority, Hardee County by Bell

Consideration of the following proposed committee substitute(s):

PCS for HB 609 -- Environmental Contamination

Consideration of the following proposed committee bill(s):

PCB SAC 20-05 -- State Advisory Bodies
PCB SAC 20-06 -- Essential State Infrastructure

NOTICE FINALIZED on 02/18/2020 4:11PM by Denson.Tori

HJR 369

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 369 Limitation on Homestead Assessments
SPONSOR(S): Roth
TIED BILLS: HB 371, HB 671 **IDEN./SIM. BILLS:** SJR 146

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	11 Y, 0 N	Rivera	Miller
2) Ways & Means Committee	17 Y, 0 N	Curry	Langston
3) State Affairs Committee		Rivera	Williamson

SUMMARY ANALYSIS

Local governments impose and collect ad valorem taxes on real and tangible personal property within Florida. All property in Florida is subject to taxation and must be assessed at just value unless an exemption or exception is authorized by the Florida Constitution. Under the homestead exemption, persons with legal and equitable title in real property on which they or their dependent permanently reside may have a portion of the just value of their property exempted from taxation.

A homestead property must be assessed at just value, which may only be increased by up to 3 percent every year pursuant to the Save Our Homes (SOH) assessment limitation. The accumulated difference between the just value and the assessed value is the SOH benefit. Homestead property owners may transfer the SOH benefit to a new homestead if the new homestead is established by January 1 of the second year subsequent to abandonment of their old homestead.

The joint resolution proposes an amendment to the Florida Constitution extending the period to transfer the SOH benefit from a prior homestead to a new homestead by an additional year. As such, the SOH benefit can be transferred to a new homestead if the new homestead is established by January 1 of the third year subsequent to abandonment of the old homestead.

The joint resolution, if passed by the Legislature, would be considered by the electorate at the next general election on November 3, 2020. If adopted at the 2020 general election, the resolution would take effect January 1, 2021.

The Revenue Estimating Conference (REC) determined the joint resolution had a zero/negative indeterminate impact because of the need for voter approval. If the constitutional amendment does not pass, the impact is zero. However, if approved, REC estimates the joint resolution would reduce local property taxes by $1.8 million, beginning in fiscal year 2021-2022, eventually growing to an annual reduction of $10.2 million.

A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature.

The Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Property Taxes in Florida

The Florida Constitution reserves ad valorem taxation on real and tangible personal property to local governments and prohibits the state from levying ad valorem taxes on such property.[1] 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.[2] The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes[3] and provides for specified assessment limitations, property classifications, and exemptions.[4] After the property appraiser considers 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.[5]

Property Tax Exemptions

Unless expressly exempted from taxation, all real and personal property and leasehold interests in the state are subject to taxation.[6] The Legislature is without authority to grant an exemption from taxes without a constitutional basis[7] and any modifications to existing ad valorem tax exemptions must be consistent with the constitutional provision authorizing the exemption.[8] Article VII, sections 3 and 6 of the Florida Constitution, authorize specific tax exemptions, including the Homestead exemption.

Homestead Exemption

Article VII, section 6 of the Florida Constitution provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent, upon such real estate, is eligible for a $25,000 homestead tax exemption. This exemption reduces the taxable value of the property used to calculate all ad valorem tax levies, including school district levies. An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding school district levies.[9] Certain classes of Florida residents may receive additional homestead exemptions, including certain disabled veterans who are 65 years or older,[10] surviving spouses of veterans who died in active duty,[11] and first responders suffering total or permanent disability from injuries sustained while on duty.[12]

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[1] Art. VII, s. 1(a), Fla. Const.

[2] 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.

[3] Art. VII, s. 4, Fla. Const.

[4] Art. VII, ss. 3, 4, and 6, Fla. Const.

[5] S. 196.031, F.S.

[6] S. 196.001, F.S.; *see also Sebring Airport Authority v. McIntyre*, 642 So. 2d 1072, 1073 (Fla. 1994), noting exemptions are strictly construed against the party claiming them.

[7] *Archer v. Marshall*, 355 So. 2d 781, 784 (Fla. 1978).

[8] *Sebring Airport Auth. V. McIntyre*, 783, So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp v. Kinney*, 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

[9] Art. VII, s. 6(a), Fla. Const. and s. 196.031, F.S.

[10] Art. VII, s. 6(e), Fla. Const. and s. 196.082, F.S.

[11] Art. VII, s. 6(f)(1), Fla. Const. and s. 196.081(4), F.S.

[12] Art VII, s. 6(f)(3), Fla. Const. and s. 196.102(2), F.S.

Save Our Homes Assessment Limitation and Portability[13]

A property receiving a homestead exemption must be assessed at just value as of January 1 of the year the property receives the exemption, unless there is a change of ownership, and cannot be assessed at more than just value.[14] The Florida Constitution limits the amount of change in the assessed value of a homestead property as of each January 1 to the lesser of 3 percent or the percentage change in the Consumer Price Index (CPI).[15] This cap on the change in the assessed value is called the Save Our Homes (SOH) assessment limitation and the accumulated difference between the assessed value and the just value is the SOH benefit.[16]

If there is a change in ownership[17] and a new homestead is established, the property must be assessed at just value as of January 1 of the year following the change unless the new owner transfers a SOH benefit from a previous homestead to the new homestead.[18] The ability to transfer the SOH benefit is known as portability. A homestead property owner may transfer up to $500,000 of the SOH benefit to the new homestead if the owner received a homestead exemption as of January 1 in either of the immediately preceding two years.[19] Beginning January 1, 2017, an owner of homestead property that was significantly damaged or destroyed as the result of a hurricane or tropical storm may elect to abandon his or her homestead as of the date of the storm, even if a homestead exemption was received in the following year, and transfer the SOH benefit to a new homestead within two years of the storm.[20]

Effect of Proposed Changes

The joint resolution proposes an amendment to Article VII, section 4(d) of the Florida Constitution, to extend the period for a homestead property owner to transfer a prior SOH benefit to a new homestead from two years to three years. If approved by the voters, a homeowner who establishes a new homestead as of January 1 would be able to have the new homestead assessed at less than just value if the homeowner received a prior homestead exemption as of January 1 of any of the immediately preceding three years.

B. SECTION DIRECTORY:

Not applicable to joint resolutions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

[13] In 1992 and 2008, Florida voters approved amendments to the Florida Constitution known as the Save Our Homes amendments which limited the increase in assessed value of homestead property and allowed the accrued benefit to be transferred to a new homestead property within a two-year timeframe. *See* art. VII, s. 4(d), Fla. Const.
[14] Art. VII, s. 4(d)(2), Fla. Const. and s. 193.155, F.S.
[15] Art. VII, s. 4(d)(1), Fla. Const. and s. 193.155, F.S.
[16] *See* Department of Revenue, Save Our Homes Assessment Limitation and Portability Transfer Brochure, http://floridarevenue.com/property/Documents/pt112.pdf (last visited Feb. 12, 2020).
[17] A change of ownership is any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person. *See* s. 193.155(3), F.S.
[18] Art. VII, s. 4(d)(3), Fla. Const.
[19] Art. VII, s. 4(d)(8), Fla. Const.; s. 193.155(8), F.S. The two-year timeframe is calculated from the time the old homestead exemption is abandoned and not the sale of the old homestead. *See* Department of Revenue, Save Our Homes Assessment Limitation and Portability Transfer Brochure, http://floridarevenue.com/property/Documents/pt112.pdf (last visited Feb. 12, 2020).
[20] S. 193.155(8)(m), F.S.

Article XI, section 5(d) of the Florida Constitution requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately preceding the week the election is held. The statewide average cost for the Division of Elections (division) within the Department of State to advertise constitutional amendments, in English and Spanish,[21] in newspapers for the 2018 election cycle was $92.93 per English word of the originating document. The division estimates the publication costs for advertising the proposed amendment will be at least $58,174.18.[22] This cost will likely be paid from non-recurring General Revenue funds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the proposed amendment is approved by the electorate and implemented by the Legislature, an increased number of homeowners would be able to transfer their SOH benefit to a new homestead.

D. FISCAL COMMENTS:

The Revenue Estimating Conference (REC) determined the joint resolution had a zero/negative indeterminate impact because of the need for voter approval. If the constitutional amendment does not pass, the impact is zero. However, if approved, REC estimates that the joint resolution would reduce local property taxes by $1.8 million, beginning in fiscal year 2021-2022, eventually growing to an annual reduction of $10.2 million.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The mandates provision applies only to general laws, not a joint resolution to amend the Constitution.

2. Other:

The Legislature may propose amendments to the state constitution by joint resolution approved by three-fifths of the membership of each house.[23] The amendment must be submitted to the electors at the next general election more than 90 days after the proposal has been filed with the Secretary of State's office, unless pursuant to law enacted by a three-fourths vote of the membership of each house, and limited to a single amendment or revision, it is submitted at an earlier special election held more than 90 days after such filing.[24]

[21] Section 203 of the Federal Voting Rights Act requires the Department of State (DOS) to publish a Spanish version of the amendment in addition to an English version. *See* Email from Brittany N. Dover, Legislative Affairs Director, DOS, "RE: Information Requested - Amendment Costs for HJR 369 (HB 671)" (January 7, 2020) (on file with the Local, Federal & Veterans Affairs Subcommittee).

[22] *See* Email from Brittany N. Dover, Legislative Affairs Director, DOS, "RE: Information Requested - Amendment Costs for HJR 369 (HB 671)" (January 7, 2020) (on file with the Local, Federal & Veterans Affairs Subcommittee).

[23] Art. XI, s. 1, Fla. Const.

[24] Art. XI, s. 5, Fla. Const.

Article XI, section 5(e) of the Florida Constitution, requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose. Without an effective date, the amendment becomes effective on the first Tuesday after the first Monday in the January following the election, which will be January 5, 2021. However, the joint resolution provides an effective date of January 1, 2021.

B. RULE-MAKING AUTHORITY:

The joint resolution neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

House Joint Resolution

A joint resolution proposing an amendment to Section 4 of Article VII and the creation of a new section in Article XII of the State Constitution to increase the period of time during which the accrued benefit from specified limitations on homestead property tax assessments may be transferred from a prior homestead to a new homestead and to provide an effective date.

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

That the following amendment to Section 4 of Article VII and the creation of a new section in Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 4. Taxation; assessments.—

By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for

noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land used for conservation purposes shall be classified by general law and assessed solely on the basis of character or use.

(c) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(d) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) No assessment shall exceed just value.

(3) After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year, unless the provisions of paragraph (8) apply. Thereafter, the homestead shall be assessed as provided in this subsection.

(4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead, unless the provisions of paragraph (8) apply. That assessment shall only change as provided in this subsection.

(5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(7) The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

(8)

a. A person who establishes a new homestead as of January 1~~, 2009, or January 1 of any subsequent year~~ and who has

received a homestead exemption pursuant to Section 6 of this Article as of January 1 of any ~~either~~ of the three ~~two~~ years immediately preceding the establishment of the new homestead is entitled to have the new homestead assessed at less than just value. ~~If this revision is approved in January of 2008, a person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007.~~ The assessed value of the newly established homestead shall be determined as follows:

1. If the just value of the new homestead is greater than or equal to the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of $500,000 or the difference between the just value and the assessed value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned. Thereafter, the homestead shall be assessed as provided in this subsection.

2. If the just value of the new homestead is less than the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be equal to the just value of the new homestead divided by the just value of the prior homestead and multiplied by the assessed value of the prior homestead.

However, if the difference between the just value of the new homestead and the assessed value of the new homestead calculated pursuant to this sub-subparagraph is greater than $500,000, the assessed value of the new homestead shall be increased so that the difference between the just value and the assessed value equals $500,000. Thereafter, the homestead shall be assessed as provided in this subsection.

b. By general law and subject to conditions specified therein, the legislature shall provide for application of this paragraph to property owned by more than one person.

(e) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

(f) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse

if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

(g) For all levies other than school district levies, assessments of residential real property, as defined by general law, which contains nine units or fewer and which is not subject to the assessment limitations set forth in subsections (a) through (d) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent (10%) of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) After a change of ownership or control, as defined by general law, including any change of ownership of a legal entity that owns the property, such property shall be assessed at just value as of the next assessment date. Thereafter, such property shall be assessed as provided in this subsection.

(4) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition,

reduction, or improvement, the property shall be assessed as provided in this subsection.

(h) For all levies other than school district levies, assessments of real property that is not subject to the assessment limitations set forth in subsections (a) through (d) and (g) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent (10%) of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) The legislature must provide that such property shall be assessed at just value as of the next assessment date after a qualifying improvement, as defined by general law, is made to such property. Thereafter, such property shall be assessed as provided in this subsection.

(4) The legislature may provide that such property shall be assessed at just value as of the next assessment date after a change of ownership or control, as defined by general law, including any change of ownership of the legal entity that owns the property. Thereafter, such property shall be assessed as provided in this subsection.

(5) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition,

reduction, or improvement, the property shall be assessed as provided in this subsection.

(i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property:

(1) Any change or improvement to real property used for residential purposes made to improve the property's resistance to wind damage.

(2) The installation of a solar or renewable energy source device.

(j)

(1) The assessment of the following working waterfront properties shall be based upon the current use of the property:

a. Land used predominantly for commercial fishing purposes.

b. Land that is accessible to the public and used for vessel launches into waters that are navigable.

c. Marinas and drystacks that are open to the public.

d. Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.

(2) The assessment benefit provided by this subsection is subject to conditions and limitations and reasonable definitions as specified by the legislature by general law.

ARTICLE XII

SCHEDULE

Transfer of the accrued benefit from specified limitations on homestead property tax assessments; increased portability period.—This section and the amendment to Section 4 of Article VII, which extends to three years the time period during which the accrued benefit from specified limitations on homestead property tax assessments may be transferred from a prior homestead to a new homestead, shall take effect January 1, 2021.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 4

ARTICLE XII

LIMITATIONS ON HOMESTEAD PROPERTY TAX ASSESSMENTS; INCREASED PORTABILITY PERIOD TO TRANSFER ACCRUED BENEFIT.—Proposing an amendment to the State Constitution, effective January 1, 2021, to increase, from 2 years to 3 years, the period of time during which accrued Save-Our-Homes benefits may be transferred from a prior homestead to a new homestead.

HB 371

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 371 Limitations on Homestead Assessments
SPONSOR(S): Roth
TIED BILLS: HJR 369 **IDEN./SIM. BILLS:** CS/SB 148

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	11 Y, 0 N	Rivera	Miller
2) Ways & Means Committee	17 Y, 0 N	Curry	Langston
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SUMMARY ANALYSIS

Local governments impose and collect ad valorem taxes on real and tangible personal property within Florida. All property in Florida is subject to taxation and must be assessed at just value unless an exemption or exception is authorized by the Florida Constitution. Under the homestead exemption, persons with legal and equitable title in real property on which they or their dependent permanently reside may have a portion of the just value of their property exempted from taxation.

A homestead property must be assessed at just value, which may only be increased by up to 3 percent every year pursuant to the Save Our Homes (SOH) assessment limitation. The accumulated difference between the just value and the assessed value is the SOH benefit. Homestead property owners may transfer a SOH benefit to a new homestead if they establish the new homestead by January 1 of the second year subsequent to abandonment of their old homestead.

HJR 369 (2020) proposes an amendment to the Florida Constitution extending the period to transfer the SOH benefit from a prior homestead to a new homestead by an additional year. This bill, which is linked to the passage of HJR 369, implements the provisions of HJR 369 by extending the period to transfer a SOH benefit from a prior homestead by an additional year. The bill also deletes obsolete provisions.

The Revenue Estimating Conference (REC) determined the bill had a zero/negative indeterminate impact because of the need for voter approval of the related joint resolution. If the constitutional amendment does not pass, the impact is zero. However, if approved, REC determined the joint resolution would reduce local property taxes by $1.8 million, beginning in fiscal year 2021-2022, eventually growing to an annual reduction of $10.2 million.

The bill takes effect on the same date that HJR 369 (2020), or a similar joint resolution, is approved by the electors at the general election to be held in November 2020 or at an earlier special election specifically authorized for that purpose. If approved by the voters in the general election held November 2020, the joint resolution will become effective on January 1, 2021. The changes in the bill will apply to the 2021 tax roll.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Property Taxes in Florida

The Florida Constitution reserves ad valorem taxation on real and tangible personal property to local governments and prohibits the state from levying ad valorem taxes on such property.[1] 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.[2] The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes[3] and provides for specified assessment limitations, property classifications, and exemptions.[4] After the property appraiser considers 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.[5]

Property Tax Exemptions

Unless expressly exempted from taxation, all real and personal property and leasehold interests in the state are subject to taxation.[6] The Legislature is without authority to grant an exemption from taxes without a constitutional basis[7] and any modifications to existing ad valorem tax exemptions must be consistent with the constitutional provision authorizing the exemption.[8] Article VII, sections 3 and 6 of the Florida Constitution, authorize specific tax exemptions, including the Homestead exemption.

Homestead Exemption

Article VII, section 6 of the Florida Constitution provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a $25,000 homestead tax exemption. This exemption reduces the taxable value of the property used to calculate all ad valorem tax levies including school district levies. An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding school district levies.[9] Certain classes of Florida residents may receive additional homestead exemptions, including veterans who are 65 years or older,[10] surviving spouses of veterans who died in active duty, and first responders suffering total or permanent disability from injuries sustained while on duty.[11]

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[2] 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.

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[4] Art. VII, ss. 3, 4, and 6, Fla. Const.

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[6] S. 196.001, F.S.; *see also Sebring Airport Authority v. McIntyre*, 642 So. 2d 1072, 1073 (Fla. 1994), noting exemptions are strictly construed against the party claiming them.

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[10] Art. VII, s. 6(e), Fla. Const. and s. 196.082, F.S.

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Save Our Homes Assessment Limitation and Portability[12]

A property receiving a homestead exemption must be assessed at just value as of January 1 of the year the property receives the exemption, unless there is a change of ownership, and cannot be assessed at more than just value.[13] The Florida Constitution limits the amount of change in the assessed value of a homestead property as of each January 1 to the lesser of 3 percent or the percentage change in the Consumer Price Index (CPI).[14] This cap on the change in the assessed value is called the Save Our Homes (SOH) assessment limitation and the accumulated difference between the assessed value and the just value is the SOH benefit.[15]

If there is a change in ownership[16] and a new homestead is established, the property must be assessed at just value as of January 1 of the year following the change unless the new owner transfers a SOH benefit from a previous homestead to the new homestead.[17] The ability to transfer the SOH benefit is known as portability. A homestead property owner may transfer up to $500,000 of a SOH benefit to a new homestead if the owner received the homestead exemption as of January 1 in either of the immediately preceding two years.[18] Beginning January 1, 2017, an owner of homestead property significantly damaged or destroyed by a hurricane or tropical storm may abandon his or her homestead as of the date of the storm within two years of the storm, even if a homestead exemption was received in the following year, and transfer the SOH benefit to a new homestead.[19]

HJR 369 (2020)

HJR 369 (2020) proposes an amendment to Article VII, section 4(d) of the Florida Constitution, to extend the period for a homestead property owner to transfer a prior SOH benefit to a new homestead from two years to three years. If approved by the voters, the joint resolution will be effective on January 1, 2021.

Effect of Proposed Changes

This bill, which is linked to the passage of HJR 369 (2020), implements the constitutional amendment. The bill extends the portability period for homestead property owners to transfer a prior SOH benefit from two years to three years. A homeowner who establishes a new homestead as of January 1 would be able to have the new homestead assessed at less than just value if the homeowner received a prior homestead exemption as of January in any of the immediately preceding three years. The portability period for homeowners of storm-damaged or destroyed homesteads is also extended from two to three years. The bill also deletes obsolete language applying to homestead exemptions available in 2008. If the joint resolution is approved by the voters, the changes in this bill will begin with the 2021 tax roll.

B. SECTION DIRECTORY:

Section 1. Amends s. 193.155, F.S., extending the portability of the SOH benefit from two years to three years.

Section 2. Specifies the bill applies to the 2021 tax rolls.

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[12] In 1992 and 2008, Florida voters approved amendments to the Florida Constitution known as the Save Our Homes amendments which limited the increase in assessed value of homestead property and allowed the accrued benefit to be transferred to a new homestead property within a two-year timeframe.
[13] Art. VII, s. 4(d)(2), Fla. Const. and s. 193.155, F.S.
[14] Art. VII, s. 4(d)(1), Fla. Const. and s. 193.155, F.S.
[15] *See* Department of Revenue, Save Our Homes Assessment Limitation and Portability Transfer Brochure, http://floridarevenue.com/property/Documents/pt112.pdf (last visited Feb. 12, 2020).
[16] A change of ownership is any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person. *See* s. 193.155(3), F.S.
[17] Art. VII, s. 4(d)(3), Fla. Const.
[18] Art. VII, s. 4(d)(8), Fla. Const.; s. 193.155(8), F.S. The two-year timeframe is calculated from the time the old homestead exemption is abandoned and not the sale of the old homestead. *See* Department of Revenue, Save Our Homes Assessment Limitation and Portability Transfer Brochure, http://floridarevenue.com/property/Documents/pt112.pdf (last visited Feb. 12, 2020).
[19] S. 193.155(8)(m), F.S.

Section 3. Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

The bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference (REC) determined the joint resolution had a zero/negative indeterminate impact because of the need for voter approval. If the constitutional amendment does not pass, the impact is zero. However, if approved, REC determined the joint resolution would reduce local property taxes by $1.8 million, beginning in fiscal year 2021-2022, eventually growing to an annual reduction of $10.2 million.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the voters approve HJR 369 and this bill passes, an increased number of homestead property owners will be able to transfer a previous SOH benefit to a new homestead.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The mandates provision does not apply to constitutional amendments. This act simply conforms statutes to a new constitutional requirement.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to limitations on homestead assessments; amending s. 193.155, F.S.; revising the timeframe during which the accrued benefit from specified limitations on homestead property tax assessments may be transferred from a prior homestead to a new homestead; deleting obsolete provisions; revising the timeframe during which an owner of homestead property significantly damaged or destroyed by a named tropical storm or hurricane must establish a new homestead to make a certain election; providing applicability; providing a contingent effective date.

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

Section 1. Subsection (8) of section 193.155, Florida Statutes, is amended to read:

193.155 Homestead assessments.—Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption unless the provisions of subsection (8) apply.

(8) Property assessed under this section shall be assessed at less than just value when the person who establishes a new

homestead has received a homestead exemption as of January 1 of any ~~either~~ of the 3 ~~2~~ immediately preceding years. ~~A person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007, and only if this subsection applies retroactive to January 1, 2008.~~ For purposes of this subsection, a husband and wife who owned and both permanently resided on a previous homestead shall each be considered to have received the homestead exemption even though only the husband or the wife applied for the homestead exemption on the previous homestead. The assessed value of the newly established homestead shall be determined as provided in this subsection.

(a) If the just value of the new homestead as of January 1 is greater than or equal to the just value of the immediate prior homestead as of January 1 of the year in which the immediate prior homestead was abandoned, the assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of $500,000 or the difference between the just value and the assessed value of the immediate prior homestead as of January 1 of the year in which the prior homestead was abandoned. Thereafter, the homestead shall be assessed as provided in this section.

(b) If the just value of the new homestead as of January 1 is less than the just value of the immediate prior homestead as

of January 1 of the year in which the immediate prior homestead was abandoned, the assessed value of the new homestead shall be equal to the just value of the new homestead divided by the just value of the immediate prior homestead and multiplied by the assessed value of the immediate prior homestead. However, if the difference between the just value of the new homestead and the assessed value of the new homestead calculated pursuant to this paragraph is greater than $500,000, the assessed value of the new homestead shall be increased so that the difference between the just value and the assessed value equals $500,000. Thereafter, the homestead shall be assessed as provided in this section.

(c) If two or more persons who have each received a homestead exemption as of January 1 of any ~~either~~ of the 3 ~~2~~ immediately preceding years and who would otherwise be eligible to have a new homestead property assessed under this subsection establish a single new homestead, the reduction from just value is limited to the higher of the difference between the just value and the assessed value of either of the prior eligible homesteads as of January 1 of the year in which either of the eligible prior homesteads was abandoned, but may not exceed $500,000.

(d) If two or more persons abandon jointly owned and jointly titled property that received a homestead exemption as of January 1 of any ~~either~~ of the 3 ~~2~~ immediately preceding

years, and one or more such persons who were entitled to and received a homestead exemption on the abandoned property establish a new homestead that would otherwise be eligible for assessment under this subsection, each such person establishing a new homestead is entitled to a reduction from just value for the new homestead equal to the just value of the prior homestead minus the assessed value of the prior homestead divided by the number of owners of the prior homestead who received a homestead exemption, unless the title of the property contains specific ownership shares, in which case the share of reduction from just value shall be proportionate to the ownership share. In the case of a husband and wife abandoning jointly titled property, the husband and wife may designate the ownership share to be attributed to each spouse by following the procedure in paragraph (f). To qualify to make such a designation, the husband and wife must be married on the date that the jointly owned property is abandoned. In calculating the assessment reduction to be transferred from a prior homestead that has an assessment reduction for living quarters of parents or grandparents pursuant to s. 193.703, the value calculated pursuant to s. 193.703(6) must first be added back to the assessed value of the prior homestead. The total reduction from just value for all new homesteads established under this paragraph may not exceed $500,000. There shall be no reduction from just value of any new homestead unless the prior homestead

is reassessed at just value or is reassessed under this subsection as of January 1 after the abandonment occurs.

(e) If one or more persons who previously owned a single homestead and each received the homestead exemption qualify for a new homestead where all persons who qualify for homestead exemption in the new homestead also qualified for homestead exemption in the previous homestead without an additional person qualifying for homestead exemption in the new homestead, the reduction in just value shall be calculated pursuant to paragraph (a) or paragraph (b), without application of paragraph (c) or paragraph (d).

(f) A husband and wife abandoning jointly titled property who wish to designate the ownership share to be attributed to each person for purposes of paragraph (d) must file a form provided by the department with the property appraiser in the county where such property is located. The form must include a sworn statement by each person designating the ownership share to be attributed to each person for purposes of paragraph (d) and must be filed prior to either person filing the form required under paragraph (h) to have a parcel of property assessed under this subsection. Such a designation, once filed with the property appraiser, is irrevocable.

(g) For purposes of receiving an assessment reduction pursuant to this subsection, a person entitled to assessment under this section may abandon his or her homestead even though

it remains his or her primary residence by notifying the property appraiser of the county where the homestead is located. This notification must be in writing and delivered at the same time as or before timely filing a new application for homestead exemption on the property.

(h) In order to have his or her homestead property assessed under this subsection, a person must file a form provided by the department as an attachment to the application for homestead exemption, including a copy of the form required to be filed under paragraph (f), if applicable. The form, which must include a sworn statement attesting to the applicant's entitlement to assessment under this subsection, shall be considered sufficient documentation for applying for assessment under this subsection. The department shall require by rule that the required form be submitted with the application for homestead exemption under the timeframes and processes set forth in chapter 196 to the extent practicable.

(i)1. If the previous homestead was located in a different county than the new homestead, the property appraiser in the county where the new homestead is located must transmit a copy of the completed form together with a completed application for homestead exemption to the property appraiser in the county where the previous homestead was located. If the previous homesteads of applicants for transfer were in more than one county, each applicant from a different county must submit a

separate form.

2. The property appraiser in the county where the previous homestead was located must return information to the property appraiser in the county where the new homestead is located by April 1 or within 2 weeks after receipt of the completed application from that property appraiser, whichever is later. As part of the information returned, the property appraiser in the county where the previous homestead was located must provide sufficient information concerning the previous homestead to allow the property appraiser in the county where the new homestead is located to calculate the amount of the assessment limitation difference which may be transferred and must certify whether the previous homestead was abandoned and has been or will be reassessed at just value or reassessed according to the provisions of this subsection as of the January 1 following its abandonment.

3. Based on the information provided on the form from the property appraiser in the county where the previous homestead was located, the property appraiser in the county where the new homestead is located shall calculate the amount of the assessment limitation difference which may be transferred and apply the difference to the January 1 assessment of the new homestead.

4. All property appraisers having information-sharing agreements with the department are authorized to share

confidential tax information with each other pursuant to s. 195.084, including social security numbers and linked information on the forms provided pursuant to this section.

5. The transfer of any limitation is not final until any values on the assessment roll on which the transfer is based are final. If such values are final after tax notice bills have been sent, the property appraiser shall make appropriate corrections and a corrected tax notice bill shall be sent. Any values that are under administrative or judicial review shall be noticed to the tribunal or court for accelerated hearing and resolution so that the intent of this subsection may be carried out.

6. If the property appraiser in the county where the previous homestead was located has not provided information sufficient to identify the previous homestead and the assessment limitation difference is transferable, the taxpayer may file an action in circuit court in that county seeking to establish that the property appraiser must provide such information.

7. If the information from the property appraiser in the county where the previous homestead was located is provided after the procedures in this section are exercised, the property appraiser in the county where the new homestead is located shall make appropriate corrections and a corrected tax notice and tax bill shall be sent.

8. This subsection does not authorize the consideration or adjustment of the just, assessed, or taxable value of the

previous homestead property.

9. The property appraiser in the county where the new homestead is located shall promptly notify a taxpayer if the information received, or available, is insufficient to identify the previous homestead and the amount of the assessment limitation difference which is transferable. Such notification shall be sent on or before July 1 as specified in s. 196.151.

10. The taxpayer may correspond with the property appraiser in the county where the previous homestead was located to further seek to identify the homestead and the amount of the assessment limitation difference which is transferable.

11. If the property appraiser in the county where the previous homestead was located supplies sufficient information to the property appraiser in the county where the new homestead is located, such information shall be considered timely if provided in time for inclusion on the notice of proposed property taxes sent pursuant to ss. 194.011 and 200.065(1).

12. If the property appraiser has not received information sufficient to identify the previous homestead and the amount of the assessment limitation difference which is transferable before mailing the notice of proposed property taxes, the taxpayer may file a petition with the value adjustment board in the county where the new homestead is located.

(j) Any person who is qualified to have his or her property assessed under this subsection and who fails to file an

application by March 1 may file an application for assessment under this subsection and may, pursuant to s. 194.011(3), file a petition with the value adjustment board requesting that an assessment under this subsection be granted. Such petition may be filed at any time during the taxable year on or before the 25th day following the mailing of the notice by the property appraiser as provided in s. 194.011(1). Notwithstanding s. 194.013, such person must pay a nonrefundable fee of $15 upon filing the petition. Upon reviewing the petition, if the person is qualified to receive the assessment under this subsection and demonstrates particular extenuating circumstances judged by the property appraiser or the value adjustment board to warrant granting the assessment, the property appraiser or the value adjustment board may grant an assessment under this subsection. ~~For the 2008 assessments, all petitioners for assessment under this subsection shall be considered to have demonstrated particular extenuating circumstances.~~

(k) Any person who is qualified to have his or her property assessed under this subsection and who fails to timely file an application for his or her new homestead in the first year following eligibility may file in a subsequent year. The assessment reduction shall be applied to assessed value in the year the transfer is first approved, and refunds of tax may not be made for previous years.

(l) The property appraisers of the state shall, as soon as

practicable after March 1 of each year and on or before July 1 of that year, carefully consider all applications for assessment under this subsection which have been filed in their respective offices on or before March 1 of that year. If, upon investigation, the property appraiser finds that the applicant is entitled to assessment under this subsection, the property appraiser shall make such entries upon the tax rolls of the county as are necessary to allow the assessment. If, after due consideration, the property appraiser finds that the applicant is not entitled to the assessment under this subsection, the property appraiser shall immediately prepare a notice of such disapproval, giving his or her reasons therefor, and a copy of the notice must be served upon the applicant by the property appraiser by personal delivery or by registered mail to the post office address given by the applicant. The applicant may appeal the decision of the property appraiser refusing to allow the assessment under this subsection to the value adjustment board, and the board shall review the application and evidence presented to the property appraiser upon which the applicant based the claim and hear the applicant in person or by agent on behalf of his or her right to such assessment. Such appeal shall be heard by an attorney special magistrate if the value adjustment board uses special magistrates. The value adjustment board shall reverse the decision of the property appraiser in the cause and grant assessment under this subsection to the

applicant if, in its judgment, the applicant is entitled to the assessment or shall affirm the decision of the property appraiser. The action of the board is final in the cause unless the applicant, within 60 days following the date of refusal of the application by the board, files in the circuit court of the county in which the homestead is located a proceeding against the property appraiser for a declaratory judgment as is provided under chapter 86 or other appropriate proceeding. The failure of the taxpayer to appear before the property appraiser or value adjustment board or to file any paper other than the application as provided in this subsection does not constitute a bar to or defense in the proceedings.

(m) For purposes of receiving an assessment reduction pursuant to this subsection, an owner of a homestead property that was significantly damaged or destroyed as a result of a named tropical storm or hurricane may elect, in the calendar year following the named tropical storm or hurricane, to have the significantly damaged or destroyed homestead deemed to have been abandoned as of the date of the named tropical storm or hurricane even though the owner received a homestead exemption on the property as of January 1 of the year immediately following the named tropical storm or hurricane. The election provided for in this paragraph is available only if the owner establishes a new homestead as of January 1 of the third ~~second~~ year immediately following the storm or hurricane. This

paragraph shall apply to homestead property damaged or destroyed on or after January 1, 2017.

Section 2. This act applies beginning with the 2021 tax roll.

Section 3. This act shall take effect on the effective date of the amendment to the State Constitution proposed by HJR 369 or a similar joint resolution having substantially the same specific intent and purpose, if such amendment to the State Constitution is approved at the general election held in November 2020 or at an earlier special election specifically authorized by law for that purpose.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 503 Tampa Bay Area Regional Transit Authority
SPONSOR(S): Transportation & Infrastructure Subcommittee, Diamond and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 368

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	13 Y, 0 N, As CS	Johnson	Vickers
2) State Affairs Committee		Johnson	Williamson

SUMMARY ANALYSIS

The Tampa Bay Area Regional Transit Authority (TBARTA) is an agency of the state, covering Hernando, Hillsborough, Manatee, Pasco, and Pinellas counties, whose purpose is to plan, develop, fund, implement, and operate a regional transit system in the Tampa Bay area. TBARTA's governing board consists of 13 voting members and two non-voting advisors. The 13 voting board members include:

- One county commissioner from each of its five member counties;
- The mayors of the largest municipalities, by population, within the service area of each of the following independent transit agencies: Pinellas Suncoast Transit Authority (St. Petersburg) and Hillsborough Area Regional Transit Authority (Tampa);
- Two members appointed from the governing boards of the Pinellas Suncoast Transit Authority and the Hillsborough Area Regional Transit Authority; and
- Four members from the regional business community appointed by the Governor.

Seven members of the board constitutes a quorum, and the vote of seven members is necessary for the board to take any action.

The bill authorizes the mayors from the largest municipalities within the TBARTA service area to designate an alternate, who must be a member of the municipality's city council, to attend board meetings and to act in their place with full voting rights. The bill provides that a simple majority of board members constitutes a quorum and a simple majority of the voting members present is necessary for any action to be taken by the governing board. The bill renames the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee as the Chairs Coordinating Committee and deletes the requirement that TBARTA provide administrative support and direction to the committee. Finally, the bill deletes an obsolete provision related to a 2018 report.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Tampa Bay Area Regional Transit Authority

Part V of ch. 343, F.S., creates the Tampa Bay Area Regional Transit Authority (TBARTA)[1] as a body politic and corporate and agency of the state, covering Hernando, Hillsborough, Manatee, Pasco, and Pinellas counties and any other contiguous county that is party to an agreement of participation.[2]

TBARTA's purpose is to plan, develop, fund, implement, and operate a regional transit system in the Tampa Bay area.[3] TBARTA must produce a regional transit development plan, integrating the transit development plans of participant counties, with priority assigned to regionally significant transit projects and facilities.[4]

TBARTA's governing board consists of 13 voting members and two non-voting advisors. The secretary of the Department of Transportation (DOT) appoints two non-voting advisors to the board who are the district secretaries for the two DOT districts within TBARTA's designated area. The 13 voting members of the board are appointed as follows:

- The county commissions of Hernando, Hillsborough, Manatee, Pasco, and Pinellas counties each appoint one county commissioner to the board;
- Two members of the board are the mayors of the municipalities with the largest populations[5] within the service area of each of the following independent transit agencies: Pinellas Suncoast Transit Authority (St. Petersburg) and Hillsborough Area Regional Transit Authority (Tampa);
- The following independent transit agencies each appoint from the membership of their governing bodies one member to the board: Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority; and
- The Governor appoints four members from the regional business community, each of whom must reside in one of the counties governed by the authority and may not be an elected official.[6]

Seven members of the board constitutes a quorum, and the vote of seven members is necessary for TBARTA to take any action.[7] A vacancy does not impair the right of a quorum of the board to exercise all rights and perform all duties of TBARTA.[8]

Beginning July 1, 2017, TBARTA's board was required to evaluate the abolishment, continuance, modification, or establishment of the following committees:

- Planning committee;
- Policy committee;
- Finance committee;
- Citizens advisory committee;
- TBARTA Metropolitan Planning Organization Chairs Coordinating Committee;
- Transit management committee; and
- Technical advisory committee.

After the board completed its evaluation, it was required to submit its recommendations for abolishment, continuance, modification, or establishment of the committees to the President of the

[1] Prior to 2017, TBARTA was named the Tampa Bay Area Regional Transportation Authority.
[2] Sections 343.90 and 343.91(1)(a), F.S.
[3] Section 343.922(1), F.S.
[4] Section 343.922(3), F.S.
[5] The municipality with the largest population is determined by the most recent decennial census.
[6] Section 343.92(2), F.S.
[7] Section 343.92(8), F.S.
[8] *Id.*

Senate and the Speaker of the House of Representatives before the beginning of the 2018 Regular Legislative Session.[9] The report was submitted in January 2018.[10]

TBARTA Metropolitan Planning Organization Chairs Coordinating Committee

The TBARTA Metropolitan Planning Organization Chairs Coordinating Committee (committee) is created within TBARTA, and is composed of the metropolitan planning organizations (MPO's)[11] serving Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota counties. TBARTA is required to provide administrative support and direction to the committee. The committee must, at a minimum:

- Coordinate transportation projects deemed to be regionally significant by the committee;
- Review the impact of regionally significant land use decisions on the region;
- Review all proposed regionally significant transportation projects in the respective transportation improvement programs which affect more than one of the MPO's represented on the committee; and
- Institute a conflict resolution process to address any conflict that may arise in the planning and programming of such regionally significant projects.[12]

The committee conducts two meetings a year, one in the summer and one in the fall. Every year, the committee receives public comment and adopts the West Central Florida Regional Roadway Network, Transportation Regional Incentive Program Priority Projects, and Regional Multi-Use Trail Priority Projects. The committee transmits these priorities to DOT. The committee also makes a yearly recommendation to TBARTA's board for the TBARTA regional priority projects.[13]

Effect of the Bill

The bill authorizes the mayors of the largest municipalities within the service areas of the Pinellas Suncoast Transit Authority (St. Petersburg) and the Hillsborough Regional Transit Authority (Tampa) to designate alternates. The mayor's designated alternative must be an elected member of the municipality's city council and approved as the mayor's designated alternate by the municipality's city council. In the event that the mayor is unable to attend a TBARTA board meeting, the mayor's designated alternate must attend the meeting on the mayor's behalf and has the full right to vote.

The bill revises the quorum requirements for TBARTA's board meeting, allowing for a simple majority of the TBARTA board to constitute a quorum. It also provides that a simple majority, rather than seven members, are necessary for any action to be taken by the board.

The bill removes obsolete language that required TBARTA to submit recommendations for abolishment, continuance, modification, or establishment of TBARTA committees to the Legislature before the 2018 Regular Session.

The bill renames the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee as the Chairs Coordinating Committee, modifies its organization so it is no longer created within TBARTA, and deletes the requirement that TBARTA provide administrative support and direction to the committee. The bill does not change the committee's membership.

The bill also removes requirements that TBARTA present regional transit development plans to the committee and coordinate plans and projects with the committee.

B. SECTION DIRECTORY:

Section 1 amends s. 339.175, F.S., relating to metropolitan planning organizations.

[9] Section 343.92(9), F.S.
[10] A copy of the report is on file with the Transportation & Infrastructure Subcommittee.
[11] MPOs are federally-required transportation planning entities in urbanized areas with populations of 50,000 or more.
[12] Section 339.175(6)(i), F.S.
[13] TBARTA, *MPOs Chairs Coordinating Committee*, available at https://tbarta.com/en/boards-committees/mpos-chairs-coordinating-committee/ (last visited Feb. 4, 2020).

Section 2 amends s. 343.92, F.S., relating to TBARTA.

Section 3 amends s. 343.922, F.S., providing TBARTA's powers and duties.

Section 4 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to impact state revenues.

2. Expenditures:

   The bill does not appear to impact state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to impact local government revenues.

2. Expenditures:

   The bill may reduce TBARTA's expenditures associated with no longer being required to staff the committee.

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 expenditure 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:

This bill does not provide a grant of rulemaking authority nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Transportation & Infrastructure Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Renamed the TBARTA Metropolitan Planning Organization's Chairs Coordinating Committee the Chairs Coordinating Committee and eliminated the requirement that TBARTA provide administrative support and direction to the committee;
- Required the mayor's designee to be an elected official of the city council of the mayor's municipality and be approved by such body;
- Provided that a simple majority of board members constitutes a quorum and a simple majority of the voting members present will be necessary for any action to be taken by the board;
- Deleted an obsolete provision related to TBARTA committees; and
- Removed provisions from the bill authorizing board members to attend meetings telephonically or electronically.

This analysis is drafted to the committee substitute as approved by the Transportation & Infrastructure Subcommittee.

A bill to be entitled

An act relating to the Tampa Bay Area Regional Transit Authority; amending s. 339.175, F.S.; renaming the Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee; deleting a requirement that the authority provide the committee with administrative support and direction; amending s. 343.92, F.S.; authorizing a mayor's designated alternate to serve as a member of the governing board of the authority; providing membership requirements; specifying the designated alternate's right to vote; providing quorum requirements; deleting obsolete provisions; amending s. 343.922, F.S.; conforming provisions to changes made by the act; repealing powers and duties of the authority relating to the committee; providing an effective date.

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

Section 1. Paragraph (i) of subsection (6) of section 339.175, Florida Statutes, is amended to read:

339.175 Metropolitan planning organization.—

(6) POWERS, DUTIES, AND RESPONSIBILITIES.—The powers, privileges, and authority of an M.P.O. are those specified in this section or incorporated in an interlocal agreement

authorized under s. 163.01. Each M.P.O. shall perform all acts required by federal or state laws or rules, now and subsequently applicable, which are necessary to qualify for federal aid. It is the intent of this section that each M.P.O. shall be involved in the planning and programming of transportation facilities, including, but not limited to, airports, intercity and high-speed rail lines, seaports, and intermodal facilities, to the extent permitted by state or federal law.

(i) There is created the ~~Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization~~ Chairs Coordinating Committee ~~is created within the Tampa Bay Area Regional Transit Authority~~, composed of the M.P.O.'s serving Citrus, Hernando, Hillsborough, Manatee, Pasco, Pinellas, Polk, and Sarasota Counties. ~~The authority shall provide administrative support and direction to the committee.~~ The committee must, at a minimum:

1. Coordinate transportation projects deemed to be regionally significant by the committee.

2. Review the impact of regionally significant land use decisions on the region.

3. Review all proposed regionally significant transportation projects in the respective transportation improvement programs which affect more than one of the M.P.O.'s represented on the committee.

4. Institute a conflict resolution process to address any conflict that may arise in the planning and programming of such

regionally significant projects.

Section 2. Subsections (10) and (11) of section 343.92, Florida Statutes, are renumbered as subsections (9) and (10), respectively, and paragraph (b) of subsection (2) and present subsections (8) and (9) of that section are amended to read:

343.92 Tampa Bay Area Regional Transit Authority.—

(2) The governing board of the authority shall consist of 13 voting members appointed no later than 45 days after the creation of the authority.

(b) The 13 voting members of the board shall be as follows:

1. The county commissions of Hernando, Hillsborough, Manatee, Pasco, and Pinellas Counties shall each appoint one county commissioner to the board. Members appointed under this subparagraph shall serve 2-year terms with not more than three consecutive terms being served by any person. If a member under this subparagraph leaves elected office, a vacancy exists on the board to be filled as provided in this subparagraph within 90 days.

2.a. Two members of the board shall be the mayor, or the mayor's designated alternate, of the largest municipality within the service area of each of the following independent transit agencies or their legislatively created successor agencies: Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority. The largest municipality is that

municipality with the largest population as determined by the most recent United States Decennial Census.

b. The mayor's designated alternate must be an elected member of the municipality's city council and approved as the mayor's designated alternate by the municipality's city council. In the event the mayor is unable to attend a meeting, the mayor's designated alternate shall attend the meeting on the mayor's behalf and has the full right to vote.

3. The following independent transit agencies or their legislatively created successor agencies shall each appoint from the membership of their governing bodies one member to the board: Pinellas Suncoast Transit Authority and Hillsborough Area Regional Transit Authority. Each member appointed under this subparagraph shall serve a 2-year term with not more than three consecutive terms being served by any person. If a member no longer meets the transit authority's criteria for appointment, a vacancy exists on the board, which must be filled as provided in this subparagraph within 90 days.

4. The Governor shall appoint to the board four members from the regional business community, each of whom must reside in one of the counties governed by the authority and may not be an elected official. Of the members initially appointed under this subparagraph, one shall serve a 1-year term, two shall serve 2-year terms, and one shall serve a term as the initial chair as provided in subsection (5). Thereafter, a member

appointed under this subparagraph shall serve a 2-year term with not more than three consecutive terms being served by any person.

Appointments may be staggered to avoid mass turnover at the end of any 2-year or 4-year period. A vacancy during a term shall be filled within 90 days in the same manner as the original appointment for the remainder of the unexpired term.

(8) A simple majority ~~Seven members~~ of the board shall constitute a quorum, and a simple majority of the voting members present shall be necessary for any action to be taken by the board ~~the vote of seven members is necessary for any action to be taken by the authority~~. The authority may meet upon the constitution of a quorum. A vacancy does not impair the right of a quorum of the board to exercise all rights and the ability to perform all duties of the authority.

~~(9) Beginning July 1, 2017, the board must evaluate the abolishment, continuance, modification, or establishment of the following committees:~~

~~(a) Planning committee.~~

~~(b) Policy committee.~~

~~(c) Finance committee.~~

~~(d) Citizens advisory committee.~~

~~(e) Tampa Bay Area Regional Transit Authority Metropolitan Planning Organization Chairs Coordinating Committee.~~

~~(f) Transit management committee.~~

~~(g) Technical advisory committee.~~

~~The board must submit its recommendations for abolishment, continuance, modification, or establishment of the committees to the President of the Senate and the Speaker of the House of Representatives before the beginning of the 2018 Regular Session.~~

Section 3. Paragraphs (e), (f), and (g) of subsection (3) of section 343.922, Florida Statutes, are amended to read:

343.922 Powers and duties.—

(3)

(e) The authority shall present the original regional transit development plan and updates to the governing bodies of the counties within the designated region~~, to the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee,~~ and to the legislative delegation members representing those counties within 90 days after adoption.

~~(f) The authority shall coordinate plans and projects with the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee, to the extent practicable, and participate in the regional M.P.O. planning process to ensure regional comprehension of the authority's mission, goals, and objectives.~~

~~(g) The authority shall provide administrative support and~~

~~direction to the TBARTA Metropolitan Planning Organization Chairs Coordinating Committee as provided in s. 339.175(6)(i).~~

Section 4. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 537 Home-Based Businesses
SPONSOR(S): Business & Professions Subcommittee, Donalds and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 778

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	7 Y, 3 N, As CS	Wright	Anstead
2) State Affairs Committee		Moehrle	Williamson
3) Commerce Committee			

SUMMARY ANALYSIS

The Florida Constitution grants local governments broad home rule authority, and county and municipal governments may exercise those powers of self-government that are provided by general or special law. As such, general law and home rule authority determines whether local governments are able to regulate businesses, and to what degree. Currently, some local governments have ordinances specific to regulating home-based businesses, or businesses which operate out of a residence. Some local governments regulate the types of businesses that may be carried on at a residence and others regulate the space in which business may occur.

The bill provides that local governments may not enact or enforce any ordinance, regulation, or policy, or take any action to license or otherwise regulate a home-based business in a manner that is different from other businesses in a local government's jurisdiction.

In order to be considered a home-based business, the bill requires that:

- the business operates, in whole or in part, from a residential property;
- the employees of the home-based business reside in the residence, except for up to two employees that do not reside at the residence. However, employees of the home-based business that do not primarily work at the residential dwelling are not required to reside in the dwelling;
- parking for the business activities of the home-based business complies with local zoning requirements;
- the use of the residential property is consistent with the uses of the residential areas that surround the property, but incidental and short term business uses and activities are permitted; and
- the activities of the home-based business are secondary to the property's use as a residential dwelling.

The bill provides that home-based businesses will only be subject to applicable business taxes in the county and municipality where the home-based business is located.

The bill allows a party to challenge any local government action regulating home-based businesses. The prevailing party is entitled to recover reasonable attorney fees and costs.

The bill has an indeterminate fiscal impact on local governments and does not appear to have a fiscal impact on the state.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Local Government Authority

The Florida Constitution grants authority for broad home rule by local governments. Non-charter county governments may exercise those powers of self-government that are provided by general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by vote of the electors.[2]

Likewise, municipalities[3] have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform functions, provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[4]

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.[5] Special districts are created by general law,[6] special act,[7] local ordinance,[8] or rule of the Governor and Cabinet.[9] A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.[10]

A "dependent special district" is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district's governing body are removable at will by the governing body of a single county or municipality, or the district's budget is subject to the approval of the governing body of a single county or municipality.[11] An "independent special district" is any district that is not a dependent special district.[12]

Local Business Tax

The local business tax authorized in ch. 205, F.S., represents the fees charged and the method by which a local government authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction.[13] Counties and municipalities may levy a business tax.[14]

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[1] Art. VIII, s. 1(f), Fla. Const.
[2] Art. VIII, s. 1(g), Fla. Const.
[3] A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."
[4] Art. VIII, s. 2(b), Fla. Const. *See also* s. 166.021(1), F.S.
[5] *See Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545 (Fla. 2019).
[6] Section 189.031(3), F.S.
[7] *Id*.
[8] S. 189.02(1), F.S.
[9] S. 190.005(1), F.S. *See*, generally, s. 189.012(6), F.S.
[10] *2018 – 2020 Local Gov't Formation Manual*, p. 62, https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf (last visited Dec. 19, 2019).
[11] S. 189.012(2), F.S.
[12] S. 189.012(3), F.S.
[13] S. 205.022(5), F.S.
[14] Ss. 205.033 and 205.043, F.S.

Revenue Sources Based on Home Rule Authority

Pursuant to home rule authority, local governments may impose proprietary fees, regulatory fees, and special assessments to pay the cost of providing a facility or service or regulating an activity. A regulatory fee should not exceed the regulated activity's cost and is generally required to be applied solely to the regulated activity's cost for which the fee is imposed.[15]

Businesses and Occupations

General law determines whether local governments are able to regulate occupations and businesses, and to what degree.[16] If state law preempts regulation for an occupation, then, generally, local governments may not regulate that occupation.[17] For example, Florida law currently preempts local regulation with regard to the following:

- assessing local fees associated with providing proof of licensure as a contractor, or providing, recording, or filing evidence of workers' compensation insurance coverage by a contractor; [18]
- assessing local fees and rules regarding low-voltage alarm system projects;[19]
- tobacco and nicotine products;[20]
- firearms, weapons, and ammunition;[21]
- employment benefits;[22]
- polystyrene products;[23]
- public lodging establishments and public food service establishments;[24] and
- disposable plastic bags.[25]

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances.[26] For example, Florida law specifically authorizes regulations relating to:

- zoning and land use;[27]
- the levy of "reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter";[28]
- the levy of local business taxes;[29]
- building code inspection fees;[30]
- tattoo establishments;[31]
- massage practices;[32]
- child care facilities;[33]
- taxis and other vehicles for hire;[34] and
- waste and sewage collection.[35]

[15] EDR, *supra* note 12, at 9.
[16] Art. VIII, s. 1(f), Fla. Const.; Art. VII, s. 9(a), Fla. Const.; Art. VIII, s. 2(b), Fla. Const.; s. 166.021(1), F.S.
[17] *Id*.; Wolf and Bolinger, *supra* note 17.
[18] S. 553.80(7)(a)5.c., F.S.
[19] S. 489.503(14), F.S.
[20] Ch. 569, F.S., and s. 386.209, F.S.
[21] S. 790.33(1), F.S.
[22] S. 218.077, F.S.
[23] S. 500.90, F.S.
[24] S. 509.032, F.S.
[25] S. 403.7033, F.S.
[26] *Supra* note 16.
[27] S. 125.01(1)(h), F.S.
[28] S. 166.221, F.S.
[29] Ch. 205, F.S.
[30] S. 166.222, F.S.
[31] S. 381.00791, F.S.
[32] S. 480.052, F.S.
[33] S. 402.306, F.S.
[34] S. 125.01(1)(n), F.S.
[35] S. 125.01(1)(k), F.S.

Home-based Business Regulations

Currently, some local governments have ordinances specific to regulating home-based businesses, or businesses which operate out of a residence. Some local governments regulate the types of businesses that may be carried on at a residence and others regulate the space in which business may occur. Examples include:

- In Volusia County, home-based businesses are required to occupy no more than 25 percent of the habitable floor area of the residence,[36]
- In Tampa, home-based businesses may not be conducted in any accessory building;[37]
- In Naples, home-based businesses are not allowed to conduct retail, wholesale, or warehousing activities at the residence;[38] and
- In Gainesville, a home-based business may not have more than one automobile used for the home-based business parked on the premises within view of surrounding properties. Such automobile may not have more than two signs, not exceeding two square feet in area, each mounted flat against or painted along the sides.[39]

Effect of the Bill

The bill provides that local governments may not:

- prohibit, restrict, regulate, or license home-based businesses in a manner that is different from other businesses in a local government's jurisdiction; or
- enact or enforce any ordinance, regulation, or policy, or take any action to license or otherwise regulate a home-based business in violation of the provisions in the bill.

In order to be considered a home-based business, the bill requires that:

- the business operates, in whole or in part, from a residential property;
- the employees of the home-based business reside in the residence, except that up to two employees that do not reside at the residence may work at the residence. However, other employees of the home-based business that do not primarily work at the residence are not required to reside in the residence;
- parking related to the business activities of the home-based business complies with local zoning requirements;
- as viewed from the street, the use of the residential property is consistent with the uses of the residential areas that surround the property. However, incidental and short term business uses may be conducted at the residence; and
- the activities of the home-based business are secondary to the property's use as a residential dwelling.

The bill allows a home-based business that operates from a residential property to operate in an area zoned for residential use.

Home-based businesses will only be subject to applicable business taxes in the county and municipality where the home-based business is located.

The bill allows a party to challenge any local government action regulating home-based businesses. The prevailing party is entitled to recover reasonable attorney fees and costs incurred in challenging or defending the action, including reasonable appellate attorney fees and costs.

[36] Volusia County, FL., Ch. 72, art. II, div. 8, s. 72-283.
[37] Tampa, FL., Ch. 27, art. VI, div. 2, s. 27-282.5.
[38] Naples, FL., Ch. 56, art. III, s. 56-92.
[39] Gainesville, FL., Ch. 30, art. V, div. 2, s. 30-5.37.

B. SECTION DIRECTORY:

Section 1 Creates s. 559.955, F.S., relating to requirements for home-based businesses.

Section 2 Provides an effective date of July 1, 2020.

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:

Indeterminate. The bill provides that home-based businesses will only be subject to applicable business taxes in the county and municipality where the home-based business is located.

2. Expenditures:

Indeterminate. The bill allows a party to challenge any local government action regulating home-based businesses. The prevailing party is entitled to recover reasonable attorney fees and costs incurred in challenging or defending the action, including reasonable appellate attorney fees and costs.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow more home-based businesses to operate more freely and efficiently.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill prohibits local governments, except the county and municipality where the home-based business is located, from collecting business taxes from home-based businesses. However, an exemption may apply given that laws having an insignificant fiscal impact are exempt from the requirements of Art. VII, s. 18 of the Florida Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither requires nor provides authority for agency rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill allows a “party” to bring a claim against a local government for certain actions against home-based businesses. It would be more precise to replace “party” with “home-based business,” or “substantially affected person.”

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Business & Professions Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS removed the following provisions from the bill:

- The total state preemption on the regulation and licensing of home-based businesses;
- Requirements relating to the Florida Building Code, traffic, noise, waste, and recycling; and
- Legislative findings.

The PCS added the following provisions to the bill:

- Authority to bring a legal challenge against any local government action related to home-based businesses, including attorney fees and costs for the prevailing party;
- A prohibition on local governments from regulating home-based businesses differently than other businesses;
- Clarification that home-based businesses are only subject to applicable business taxes where the home-based business is located; and
- Clarification that home-based businesses may have employees, which do not primarily work or reside at the residence.

This analysis is drafted to the committee substitute as approved by the Business & Professions Subcommittee.

A bill to be entitled

An act relating to home-based businesses; creating s. 559.955, F.S.; specifying conditions under which a business is considered a home-based business; authorizing a home-based business to operate in a residential zone under certain circumstances; prohibiting a local government from certain actions relating to the licensure and regulation of home-based businesses; providing an effective date.

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

Section 1. Section 559.955, Florida Statutes, is created to read:

559.955 Home-based businesses; local government restrictions.-

(1) For purposes of this section, a business is considered a home-based business if it operates, in whole or in part, from a residential property and meets the following criteria:

(a) The employees of the home-based business who work at the residential dwelling also reside in the residential dwelling, except that up to two employees who do not reside at the residential dwelling may work at the residential dwelling. However, other employees of the home-based business who do not primarily work at the residential dwelling are not required to

reside in the dwelling.

(b) Parking related to the business activities of the home-based business complies with local zoning requirements.

(c) As viewed from the street, the use of the residential property is consistent with the uses of the residential areas that surround the property. However, incidental and short-term business uses and activities may be conducted at the residential property.

(d) The activities of the home-based business are secondary to the property's use as a residential dwelling.

(2) A home-based business that operates from a residential property as provided in subsection (1):

(a) May operate in an area zoned for residential use.

(b) May not be prohibited, restricted, regulated, or licensed in a manner that is different from other businesses in a local government's jurisdiction.

(c) Shall only be subject to applicable business taxes under chapter 205 in the county and municipality in which the home-based business is located.

(3) Local governments may not enact or enforce any ordinance, regulation, or policy, or take any action to license or otherwise regulate a home-based business in violation of this section.

(4) A party may challenge any local government action in violation of this section. The prevailing party in a challenge

is entitled to recover reasonable attorney fees and costs incurred in challenging or defending the action, including reasonable appellate attorney fees and costs.

Section 2. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 571 Vehicle and Vessel Registration Data and Functionality
SPONSOR(S): Transportation & Infrastructure Subcommittee, Fernandez-Barquin
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1086

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	15 Y, 0 N, As CS	Roth	Vickers
2) Transportation & Tourism Appropriations Subcommittee	12 Y, 0 N	Hicks	Davis
3) State Affairs Committee		Roth	Williamson

SUMMARY ANALYSIS

Tax collectors are authorized agents of the Department of Highway Safety and Motor Vehicles (DHSMV) who issue motor vehicle and vessel registration certificates, motor vehicle registration license plates and validation stickers, and vessel numbers and decals to applicants. Each tax collector must keep a full and complete record and account of all validation stickers, mobile home stickers, vessel decals, or other properties received by him or her from DHSMV. Both DHSMV and the tax collectors use third-party agents who provide information technology support, including online and mobile applications.

The Florida Real Time Vehicle Information System (FRVIS) is the database application maintained by DHSMV to issue and account for tags, titles, and registrations for motor vehicles and vessels. FRVIS must be installed in every tax collector's and license tag agent's office in accordance with a schedule established by DHSMV in consultation with the tax collectors and contingent upon funds being made available for the system by the state.

The bill provides, that for the purpose of enhancing customer services provided by tax collectors on behalf of DHSMV, DHSMV must provide tax collectors and their agents with the real-time access to the same data and functionality that DHSMV provides to all other third-parties, including data related to motor vehicle and mobile home registration certificates, registration license plates and validation stickers as well as vessel registration certificates and vessel numbers and decals including, but not limited to, each owner's current residential and electronic mail address.

The bill appears to have an indeterminate negative fiscal impact on the state and an indeterminate positive fiscal impact on local governments. *See* Fiscal Analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Registration Requirements

Upon the receipt of an initial application for registration and payment of the appropriate license tax and other fees required by law, the Department of Highway Safety and Motor Vehicles (DHSMV) must assign to the motor vehicle a registration license number consisting of letters and numbers and issue the owner a certificate of registration and a registration license plate.[1] For each registration period after the one in which the metal license plate is issued, and until the license plate is required to be replaced, a validation sticker showing the month and year of expiration must be issued upon payment of the proper license tax amount and fees and is valid for not more than 12 or 24 months accordingly.[2]

DHSMV is responsible for issuing vessel registrations.[3] Applications for titles and registrations must be filed at a county tax collector's office.[4] Every vessel operated, used, or stored on the waters of Florida must be registered unless it is:

- A vessel operated, used, and stored exclusively on private lakes and ponds;
- A vessel owned by the United States Government;
- A vessel used exclusively as a ship's lifeboat; or
- A non-motor-powered vessel less than 16 feet in length or a non-motor-powered canoe, kayak, racing shell, or rowing scull, regardless of length.[5]

The certificate of registration must be pocket-sized and be available for inspection on the vessel for which it is issued whenever such vessel is in operation.[6] Additionally, a decal signifying the year or years during which the certificate is valid must be furnished by DHSMV with each certificate of registration issued and affixed to the front of the vessel.[7]

Florida Real Time Vehicle Information System

DHSMV maintains the Florida Real Time Vehicle Information System (FRVIS) that facilitates the collection of taxes and fees for tags, titles, and registrations associated with motor vehicles and vessels.[8] Local tax collector and tag agent offices throughout the state process tag, title, and registration transactions through FRVIS.[9] According to DHSMV, FRVIS processed approximately 413.1 million transactions for the collection of approximately $3.22 billion in revenue from taxes and fees associated with tags, titles, and registrations for motor vehicles and vessels during Fiscal Year 2018-2019, including amounts retained by local tax collector and tag agent offices.[10] These funds, together with all other sources of DHSMV's revenue, are distributed through FRVIS to various state agencies, including DHSMV, and non-state entities in accordance with Florida Statutes.[11]

In addition to residential street addresses, DHSMV may collect and store e-mail addresses in FRVIS. E-mail addresses may be used, in lieu of the United States Postal Service, to provide certain renewal

[1] Section 320.06(1)(a), F.S.
[2] Section 320.06(1)(c), F.S.
[3] Section 328.48(3), F.S.
[4] Section 328.48(1)(a), F.S.
[5] Section 328.48(2), F.S.
[6] Section 328.48(4), F.S.
[7] Section 328.48(5), F.S.
[8] DHSMV, *Florida Real Time Vehicle Information System (FRVIS): Information Technology Operational Audit*, at 1 (April 2014), available at https://flauditor.gov/pages/pdf_files/2014-183.pdf (last visited February 10, 2020).
[9] *Id.* at 1-2.
[10] E-mail from Kevin Jacobs, Deputy Legislative Affairs Director, DHSMV, RE: HB 571, (December 19, 2019). On file with the Transportation & Infrastructure Subcommittee.
[11] DHSMV, *supra* at 2, FN 8.

notices, including registration renewal notices, driver license renewal notices, and vessel registration renewal notices.[12]

Registration Duties of Tax Collectors

Tax collectors are authorized agents of DHSMV that issue motor vehicle and vessel registration certificates, motor vehicle registration license plates and validation stickers, mobile home stickers, and vessel numbers and decals to applicants.[13] Each tax collector must keep a full and complete record and account of all validation stickers, mobile home stickers, vessel decals, or other properties received by him or her from DHSMV.[14] FRVIS must be installed in every tax collector's and license tag agent's office in accordance with a schedule established by DHSMV in consultation with the tax collectors and contingent upon funds being made available for the system by the state.[15]

Memorandums of Understanding

Access to DHSMV's systems and data is governed by various Memorandums of Understanding (MOU) between DHSMV, tax collectors, and other third-party entities. The MOUs document how the data will be used and protected and ensure compliance with various state and federal laws, including the federal Driver's Privacy Protection Act.[16] Both DHSMV and the tax collector's offices utilize private vendors and agents who assist with various technology support services and are governed by MOUs.

Effect of Proposed Changes

The bill requires DHSMV to provide tax collectors and their approved agents and vendors with real-time access to the same vehicle and mobile home registration data and functionality that DHSMV provides to other third-parties. The accessible real-time data received from DHSMV must be related to motor vehicle and mobile home registration certificates, registration license plates, and validation stickers, including but not limited to, each owner's current residential and electronic mail address.

The bill also requires DHSMV to provide tax collectors and their approved agents and vendors with real-time access to the same vessel registration data and functionality that DHSMV provides to other third-parties. The accessible real-time data received from DHSMV must be related to vessel registration certificates and vessel numbers and decals, including but not limited to, each owner's current residential and electronic mail address.

B. SECTION DIRECTORY:

Section 1: Amends s. 320.03, F.S., relating to registration; duties of tax collectors; International Registration Plan.

Section 2: Amends s. 328.73, F.S., relating to registration; duties of tax collectors.

Section 3: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill will likely have no impact on state government revenues.

2. Expenditures:

[12] Sections 319.40, 320.95, 322.08(10), 328.30, and 328.80, F.S.
[13] Sections 320.03(1) and 328.73(1), F.S.
[14] Sections 320.03(3) and 328.73(2), F.S.
[15] Section 320.03(4)(b), F.S.
[16] DHSMV Agency Analysis of 2020 House Bill 571, p. 2 (December 20, 2019).

According to DHSMV, the systems, including FRVIS, will need to be programed to provide real-time access to the same data and functionality that is provided to all other third-parties. Depending on the number of use cases (or specific situations) identified and approved, the amount of programming to implement the change will likely increase as the number of use cases increase. One use case requires approximately 500 hours of programming, at a rate of $85 per hour.[17] The number of use cases are not known at this time. Therefore, the negative fiscal impact associated with DHSMV programming efforts is indeterminate; however, DHSMV expects these costs can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Tax collectors may see a positive indeterminate fiscal impact as a result of having real time access to data that could allow them to process additional transactions that they currently do not have the ability to process.

2. Expenditures:

The bill will likely have no impact on local government expenditures.

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 expenditure 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:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Comments: Department of Highway Safety and Motor Vehicles
DHSMV has indicated the bill is written broadly and may warrant clarification concerning the definition of "functionality." Additionally, DHSMV has expressed concern that the bill requires access to functions and data, but does not authorize or require an MOU. However, it is unclear whether the lack of express authorization would prohibit DHSMV from entering into MOUs. According to DHSMV, an MOU enables the department to determine if a requested use is permissible and allows DHSMV to hold the parties accountable to the standards outlined in the agreement. Without an MOU, DHSMV has indicated it is

[17] E-mail from Suzie Carey, Chief Financial Officer, DHSMV, RE: HB 571, (January 22, 2020). On file with the Transportation & Infrastructure Subcommittee.

unclear how the department can properly oversee third-party agents and vendors' use of the functions and data and deny access if the data is misused.[18]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 21, 2020, the Transportation & Infrastructure Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed language authorizing DHSMV to require MOUs between DHSMV and the tax collector's approved agents or vendors when an agent or vendor requests real-time access to data or functionality related to motor vehicles, mobile homes, and vessels.

This analysis is drafted to the committee substitute as approved by the Transportation & Infrastructure Subcommittee.

[18] E-mail from Kevin Jacobs, Deputy Legislative Affairs Director, DHSMV, RE: 571, (January 21, 2020). On file with the Transportation & Infrastructure Subcommittee.

A bill to be entitled

An act relating to vehicle and vessel registration data and functionality; amending ss. 320.03 and 328.73, F.S.; requiring the Department of Highway Safety and Motor Vehicles to provide tax collectors and their approved agents and vendors with real-time access to certain vehicle and vessel registration data and functionality in the same manner as provided to other third parties; providing an effective date.

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

Section 1. Paragraph (b) of subsection (4) of section 320.03, Florida Statutes, is amended to read:

320.03 Registration; duties of tax collectors; International Registration Plan.—

(4)

(b) The Florida Real Time Vehicle Information System shall be installed in every tax collector's and license tag agent's office in accordance with a schedule established by the department in consultation with the tax collectors and contingent upon funds being made available for the system by the state. For the purpose of enhancing customer services provided by tax collectors on behalf of the department, the department shall provide tax collectors and their approved agents and

vendors with real-time access to the same data and functionality that all other third parties receive from the department related to motor vehicle and mobile home registration certificates, registration license plates, and validation stickers, including, but not limited to, each applicant's current residential address and each applicant's current electronic mail address collected pursuant to s. 320.95.

Section 2. Subsection (1) of section 328.73, Florida Statutes, is amended to read:

328.73 Registration; duties of tax collectors.—

(1) The tax collectors in the counties of the state, as authorized agents of the department, shall issue registration certificates and vessel numbers and decals to applicants, subject to the requirements of law and in accordance with rules of the department. For the purpose of enhancing customer services provided by tax collectors on behalf of the department, the department shall provide tax collectors and their approved agents and vendors with real-time access to the same data and functionality that all other third parties receive from the department related to vessel registration certificates and vessel numbers and decals, including, but not limited to, each applicant's current residential address and each applicant's current electronic mail address collected pursuant to s. 328.30.

Section 3. This act shall take effect July 1, 2020.

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: State Affairs Committee
Representative Fernandez-Barquin offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (c) of subsection (2) of section 319.32, Florida Statutes, is created to read:

319.32 Fees; service charges; disposition.—

(c) In exercising their authority to contract with a license plate agent, the tax collector shall determine the additional service charges which shall be collected by the privately owned license plate agents approved by the tax collector and shall be fully itemized and disclosed to the customer. The license plate agent shall enter into a contract with the tax collector regarding the disclosure of additional service charges.

Section 2. Subsection (5) of section 320.03, Florida Statutes, is amended to read:

320.03 Registration; duties of tax collectors; International Registration Plan.—

(5) In addition to the fees required under s. 320.08, a fee of 50 cents shall be charged on every license registration sold to cover the costs of the Florida Real Time Vehicle Information System. The fees collected shall be deposited into the Highway Safety Operating Trust Fund to be used exclusively to fund the system. The fee may only be used to fund the system equipment, software, personnel associated with the maintenance and programming of the system, and networks used in the offices of the county tax collectors as agents of the department and the ancillary technology necessary to integrate the system with other tax collection systems. Other tax collector systems may include technology systems provided by vendors contracted with the tax collector for in-person transactions of motor vehicle and mobile home registration certificates, registration license plates, and validation stickers and online motor vehicle and mobile home registration renewals and validation stickers. Upon tax collector request, the department shall provide the tax collector and their approved vendors with the same data access and interface functionality that other third parties receive from the department, including, but not limited to, bulk data for vehicle registrations and each applicant's current

residential address and electronic mail address collected pursuant to s. 320.95. Such data and functionality shall be used only for purposes of fulfilling the tax collector's statutory duties, and it may not be resold or used for any other purpose. For purposes of this subsection, other tax collector systems do not include electronic filing systems pursuant to s. 320.10. The department shall administer this program upon consultation with the Florida Tax Collectors, Inc., to ensure that each county tax collector's office is technologically equipped and functional for the operation of the Florida Real Time Vehicle Information System and that tax collectors' approved vendors protect customer privacy and data collection. Tax collectors and their approved license plate agents shall enter into a memorandum of understanding with the department regarding use of the Florida Real Time Vehicle Information system in accordance with s. 320.03(4)(b). Any designated revenue collected to support functions of the county tax collectors and not used in a given year must remain exclusively in the trust fund as a carryover to the following year.

Section 3. Subsection (3) of section 320.04, Florida Statutes, is created and current subsection (3) of section 320.04, Florida Statutes, is redesignated as subsection (4) to read:

320.04 Registration service charge.—

(3) In exercising their authority to contract with a

License Plate Agent, the tax collector shall determine the additional service charges which shall be collected by privately owned license plate agents approved by the tax collector and shall be fully itemized and disclosed to the customer. The license plate agent shall enter into a contract with the tax collector regarding the disclosure of additional service charges.

(4)~~(3)~~ The department may absorb all or any portion of any interchange, assessment, charge back, authorization or settlement or equivalent fees charged by financial institutions relating to a credit or debit card transaction. The department may request approval to establish additional budget authority to pay additional fees related to credit and debit card transactions pursuant to s. 216.177.

Section 4. Paragraph (b) of subsection (7) of section 328.72, Florida Statutes, is created to read:

328.72 Classification; registration; fees and charges; surcharge; disposition of fees; fines; marine turtle stickers.—

(7)(a) SERVICE FEE.—In addition to other registration fees, the vessel owner shall pay the tax collector a $2.25 service fee for each registration issued, replaced, or renewed. Except as provided in subsection (15), all fees, other than the service charge, collected by a tax collector must be remitted to the department not later than 7 working days following the last day of the week in which the money was remitted. Vessels may

travel in salt water or fresh water.

(b) In exercising their authority to contract with a License Plate Agent, the tax collector shall determine the additional service charges which shall be collected by privately owned license plate agents approved by the tax collector and shall be fully itemized and disclosed to the customer. The license plate agent shall enter into a contract with the tax collector regarding the disclosure of additional service charges.

Section 5. Subsection (1) of section 328.73, Florida Statutes, is amended to read:

328.73 Registration; duties of tax collectors.—

(1) The tax collectors in the counties of the state, as authorized agents of the department, shall issue registration certificates and vessel numbers and decals to applicants, subject to the requirements of law and in accordance with rules of the department. Other tax collector systems may include technology systems provided by vendors contracted with the tax collector for in-person and online vessel registration certificates and vessel numbers and decals. Upon tax collector request, the department shall provide the tax collector and their approved vendors with the same data access and interface functionality that other third parties receive from the department, including, but not limited to, bulk data for vessel registrations and each applicant's current residential address

and electronic mail address collected pursuant to s. 320.95. Such data and functionality shall be used only for purposes of fulfilling the tax collector's statutory duties, and it may not be resold or used for any other purpose.

Section 6. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert: An act relating to vehicle and vessel registration data and functionality; amending s. 319.32, F.S.; requiring the tax collector to determine service charges collected by privately owned license plate agents for motor vehicle titles; amending s. 320.03; requiring the Department of Highway Safety and Motor Vehicles to provide tax collectors and their approved agents and vendors with real-time access to certain vehicle registration data and functionality in the same manner as provided to other third parties; amending s. 320.04, F.S.; requiring the tax collector to determine service charges collected by privately owned license plate agents for motor vehicle registrations; amending s. 328.72, F.S., requiring the tax collector to determine service charges collected by privately owned license plate agents for vessel registrations and titles; amending s. 328.73, F.S., requiring the Department of Highway Safety and Motor Vehicles to provide tax collectors and their approved

agents and vendors with real-time access to certain vessel registration data and functionality in the same manner as provided to other third parties; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 637 Impact Fees
SPONSOR(S): Ways & Means Committee, Local, Federal & Veterans Affairs Subcommittee, DiCeglie and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1066

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	13 Y, 1 N, As CS	Moehrle	Miller
2) Ways & Means Committee	12 Y, 2 N, As CS	Aldridge	Langston
3) State Affairs Committee		Moehrle	Williamson

SUMMARY ANALYSIS

Impact fees are imposed by local governments to fund local infrastructure needed to expand local services to meet the demands of population growth caused by development. An impact fee ordinance enacted by a county, municipality, or special district must meet certain minimum statutory criteria. The calculation of the amount due must have a rational nexus both to the need for additional capital facilities and to the expenditures of funds collected and the benefits accruing to the new construction. The timing of collecting these fees must occur after issuance of the building permit.

The bill requires counties, municipalities, and special districts that adopt, collect, or administer an impact fee, to calculate the fee based on the most recent and localized data collected within the last 36 months and exclude any cost that does not meet the definition of "infrastructure." The local government must segregate the revenues and expenditures of any impact fee that addresses the entity's infrastructure needs in a separate impact fee account. New or increased impact fees may not apply to current or pending permit applications submitted before the effective date of an ordinance imposing a new or increased impact fee.

The bill makes impact fee credits assignable and transferable from one development or parcel to another within the same impact fee jurisdiction for the same type of public facility to which the fee applies. Local governments must provide impact fee credits or other forms of compensation where a contribution is greater in value than the applicable impact fee.

The bill requires each county or municipality assessing impact fees to establish an impact fee review committee composed of seven members and three alternate members. The bill also provides committee duties and procedures for holding meetings and establishing quorums.

The bill is not expected to have a fiscal impact on the state and may have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Impact Fees

Impact fees are imposed by local governments[1] to fund local infrastructure needed to expand local services to meet the demands of population growth caused by development.[2] Impact fees must meet the following minimum criteria when adopted:

- The fee must be calculated using the most recent and localized data.
- The local government adopting the impact fee must account for and report fee collections and expenditures. If the fee is imposed for a specific infrastructure need, the local government must account for those revenues and expenditures in a separate accounting fund.
- Charges imposed for the collection of impact fees must be limited to the actual costs.
- All local governments must give notice of a new or increased impact fee at least 90 days before the new or increased fee takes effect. Counties and municipalities need not wait 90 days before decreasing, suspending, or eliminating an impact fee.[3]
- The local government may not require payment of the impact fee before the date of issuance of the building permit for the property that is subject to the fee.[4]
- The impact fee must be reasonably connected to, or have a rational nexus with the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.[5]
- The impact fee must be reasonably connected to, or have a rational nexus with, the expenditures of the revenues generated and the benefits accruing to the new residential or commercial construction.[6]
- The local government must specifically earmark revenues generated by the impact fee to acquire, construct, or improve capital facilities to benefit new users.[7]
- The local government may not use revenues generated by the impact fee to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with the increased impact generated by the new residential or commercial construction.[8]

The types of impact fees charged and the timing of the collection of such fees after issuance of the building permit are within the discretion of the local government authorities choosing to impose the fees.[9]

The amount of the impact fee must have a rational nexus both to the need for additional capital facilities and to the expenditures of funds collected and the benefits accruing to the new construction.[10] Meeting

[1] *See, e.g., Crocker v. Diland Corp*., 593 So. 2d 1096 (Fla. 5th DCA 1992); *Pro-Art Dental Lab, Inc. v. V-Strategic Group, LLC*, 986 So. 2d 1244 (Fla. 2008) (approving *Crocker*, 593 So. 2d 1096, and addressing the interplay between the Florida Rules of Civil Procedure and s. 51.011, F.S.).

[2] S. 163.31801, F.S., the impact fee statute, uses "local government" inclusively to refer to counties, municipalities, and special districts. The statute distinguishes school districts from other local governments. *See* s. 163.31801(4), F.S.

[3] S. 163.31801(3), F.S.

[4] S. 163.31801(3)(e), F.S.

[5] S. 163.31801(3)(f), F.S.

[6] S. 163.31801(3)(g), F.S.

[7] S. 163.31801(3)(h), F.S.

[8] S. 163.31801(3)(i), F.S.

[9] *See* s. 163.31801(2), F.S.

[10] *See* ch. 2019-106, Laws of Fla, codified as s. 163.31801(3)(f)-(i), F.S. (Under long-standing court decisions, impact fees must have a reasonable connection, or nexus, between the need for additional capital facilities and the population growth generated by the project, and expenditures of the funds collected from the impact fees and the benefits accruing to the subdivision or project. This is known as the dual rational nexus test. *See St. Johns County v. Northeast Florida Builders Association, Inc.*, 583 So. 2d 635, 637 (Fla.

this criterion requires the local government ordinance or resolution imposing the impact fee to earmark the funds collected for acquiring the new capital facilities necessary to benefit the new residents.

Some local governments impose impact fees specifically for local school facilities.[11] School districts have authority to impose ad valorem taxes within the district for school purposes[12] but are not general purpose governments with home rule power[13] and are not expressly authorized to impose impact fees.[14] Local governments imposing specific impact fees for education capital improvements typically collect the fees for deposit directly into a segregated account for those improvements.[15] Ordinances creating an impact fee must require the funds be used only for education capital improvement projects.[16] The credit for impact fees imposed for public educational facilities must be based on the total impact fee assessed and not limited to the impact fee imposed for a particular type of school.[17]

Local governments may not require payment of impact fees prior to the issuance of a development or building permit.[18] In general, a building permit must be obtained before the construction, erection, modification, repair, or demolition of any building.[19] A development permit pertains to any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.[20]

Concurrency

In the context of comprehensive planning, "concurrency" refers to the concept of timely providing additional public facilities necessary to achieve and maintain standards of service in the community in response to increased demand caused by development.[21] All local government comprehensive plans must provide for concurrency in providing public facilities and services for sanitary sewer, solid waste, drainage, and potable water, but local governments may extend concurrency requirements to other public facilities such as transportation and schools.[22] When concurrency is applied to other public facilities and services, the local comprehensive plan must provide sufficient principles, standards, and adopted levels of service to guide its implementation.[23]

A local government applying concurrency to transportation facilities must comply with certain requirements in order to achieve and maintain the level of service standard provided in the comprehensive plan.[24] A local government that later repeals transportation concurrency is encouraged to apply statutory criteria to an alternative mobility funding system. A mobility fee-based funding system adopted by a local government must comply with the dual rational nexus test applicable to impact fees.[25]

1991) (citing *Hollywood, Inc. v. Broward County*, 431 So. 2d 606, 611-612 (Fla. 4th DCA (1983), *rev. den*. 440 So. 2d 352 (Fla. 1983)).

[11] *See, e.g.*, Miami-Dade County Code of Ordinances ch. 33k, "Educational Facilities Impact Fee Ordinance," Orange County Code of Ordinances ch. 23, art. V, "School Impact Fees."

[12] Art. VII, s. 9(a), art. IX, s. 4(b), Fla. Const.; s. 1011.71, F.S. *See also St. Johns County*, *supra* at 583 So. 2d 642.

[13] *See* art. VIII, ss. 1(f)-(g) and (2), Fla. Const.

[14] S. 163.31801(2), F.S.

[15] In Miami-Dade County, the education facility impact fee is paid to the County Planning & Zoning Director, who must then deposit that amount into a specific trust fund maintained by the county. Miami-Dade County Code of Ordinances, ss. 33K-7(a), 33K-10(1). In Orange County, the school impact fee is paid to the county or municipality (if the land being developed is within a municipality), which then transfers the funds collected at least quarterly to the Orange County School District. The District is responsible for maintaining the trust into which the impact fee revenues are deposited. Orange County Code of Ordinances, ss. 23-142.

[16] *See* Miami-Dade County Code of Ordinances, s. 33K-11(a); Orange County Code of Ordinances, s. 23-143(b).

[17] S. 163.3180(6)(h)2.b., F.S.

[18] S. 163.31801(3)(e), F.S.

[19] S. 553.79, F.S.

[20] S. 163.3164(16), F.S.

[21] *See* s. 163.3180(5)(d), F.S. *See also* David M. Layman, "Concurrency and Moratoria," 71 Fla. Bar. J., No. 1 (January 1997).

[22] S. 163.3180(1), (5), and (6)F.S.

[23] S. 163.3180(1)(a), F.S.

[24] S. 163.3180(5), F.S.

[25] S. 163.3180(5)(i), F.S.

Local governments may also apply concurrency to public education facilities.[26] With certain exceptions, when establishing such concurrency requirements, the local government must enter into an interlocal agreement with the school district.[27] The interlocal agreement may authorize a contribution of land, construction, expansion, or payment for land acquisition, construction or expansion of a public school, or construction of a charter school, as proportionate-share mitigation. If so, the local government must credit such contribution towards any other impact fee or exaction on a dollar-for-dollar basis at fair market value.[28] The credit for impact fees imposed for public educational facilities must be based on the total impact fee assessed and not limited to the impact fee imposed for a particular type of school.[29]

Effect of the Bill

Impact Fee Formula

The bill requires counties, municipalities, and special districts that adopt, collect, or administer an impact fee to calculate the impact fee based on the most recent and localized data collected within the last 36 months and exclude any cost that does not meet the definition of "infrastructure." The bill defines the term "infrastructure" as any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities, excluding the costs of repair or maintenance, that have a life expectancy of five or more years; any related land acquisition, land improvement, design, engineering, and permitting costs; and all other related construction costs required to bring the public facilities into service.

The bill defines the term "public facilities" to include any facility as defined in s. 163.3164(39), F.S.,[30] and expressly includes fire and law enforcement facilities.

The bill limits the cost per student station established in school impact fee calculations to the statutory total maximum cost per student established in s. 1013.64(6), F.S.[31]

The bill requires the local government to segregate the revenues and expenditures of any impact fee that addresses the entity's infrastructure needs in a separate impact fee account.

Collection of Impact Fees

The bill provides that new or increased impact fees may not apply to current or pending permit applications submitted before the effective date of an ordinance or resolution imposing a new or increased impact fee.

Financial Statement Audits

Audits of financial statements required by statute[32] and filed with the Auditor General must include an affidavit signed by the chief financial officer of the local government or school board stating the reporting entity complied with the requirements of the impact fee statute. The bill also requires this affidavit to confirm the reporting entity complied with the spending period provision in the local ordinance.

Impact Fee Credits

The bill provides that impact fee credits are assignable and transferable at any time after establishment from one development or parcel to another within the same impact fee jurisdiction for the same type of public facility for which the impact fee is applicable. The bill requires local governments to provide

[26] S. 163.3180(6)(a), F.S.
[27] Ss. 163.31777(1) and 163.3180(6)(i), F.S.
[28] S. 163.3180(6)(h)2.b., F.S.
[29] S. 163.3180(6)(h)2.b., F.S.
[30] Section 163.3164(39), F.S., defines "public facilities" as major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks, and recreational facilities.
[31] Currently, the total maximum costs per student are: elementary schools: $17,952; middle schools: $19,386, high schools: $25,181.
[32] *See* s. 218.39, F.S.

impact fee credits or other forms of compensation where a contribution is greater in value than the applicable impact fee. Contributions relating to the transportation system are creditable against the combined total of all impact fees and exactions charged for mobility.

Impact Fee Review Committee

The bill requires each county or municipality assessing impact fees to establish an impact fee review committee composed of the following members appointed by the county or city commission:

- Two members employed by the local government;
- Two members representing the business community;
- Two members who are local licensed general or residential contractors; and
- One at-large member.

The county or city commission must appoint three alternate members, consisting of one representative from each of the categories described above, who must serve in the absence of their respective member.

Committee members must be qualified electors of the county for at least two years before their appointment and serve at the pleasure of the local government until replaced. The committee must have a quorum present before it may conduct a meeting (alternate members count toward the quorum when a regular member is absent). A member who fails to attend three consecutive meetings, or fails to attend two-thirds of the meetings within a calendar year, automatically forfeits the appointment and the county or city commissioners must promptly fill the vacancy. Committee members serve without compensation.

The committee must meet as needed to:

- Establish a policy and methodology for determining impact fees on new developments;
- Review the proposed impact fee on each new development before the fee becomes final;
- Submit recommendations to the county or city commission, as applicable, and present the recommendations at the meeting when the impact fee on the new development will be discussed and voted upon; and
- After an impact fee is adopted by the local government, review all proposed expenditures of that impact fee to ensure the fee is used for capital projects within the jurisdiction.

Each committee meeting must be duly noticed and open to the public as required by s. 286.011, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.31801, F.S., revising conditions that local governments must satisfy before imposing impact fees, providing timeframes for the collection of impact fees, amending the requirements for reporting impact fees, amending the conditions under which impact fees are assignable and transferable, providing definitions, and requiring certain counties and municipalities to establish impact fee review committees.

Section 2: Provides an effective date of July 1, 2020.

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 will have a negative indeterminate fiscal impact on local governments.

2. Expenditures:

The bill may have an impact on local government expenditures for staffing the impact fee review committee; however, such costs should be insignificant.

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:

The bill neither requires nor authorizes administrative rulemaking by executive agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 15, 2020, the Local, Federal & Veterans Affairs Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Revised the impact fee calculation to be based on localized data calculated within the last 36 months;
- Removed language relating to Capital Asset under Generally Accepted Accounting Principles (GAAP);
- Removed the requirement that local governments prepare and post an annual financial report for each impact fee trust fund;
- Provided a definition of “infrastructure” for the purposes of impact fees;
- Required local governments to provide impact fee credits or other forms of compensation where a contribution is greater in value than the applicable impact fee;
- Required contributions relating to the transportation system be creditable against the combined total of all impact fees and exactions charged for mobility;
- Removed the requirement that the impact fee review committee hire an impact fee consultant; and
- Required the committee rather than the impact fee consultant submit recommendations to the governing body of the local government.

On February 3, 2020, the Ways & Means Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Amended the definition of “infrastructure” for the purposes of impact fees;
- Specified that each committee meeting must be duly noticed and open to the public as required by s. 286.011, F.S.; and
- Provided other technical and clarifying changes.

This analysis is drafted to the committee substitute as approved by the Ways & Means Committee.

A bill to be entitled

An act relating to impact fees; amending s. 163.31801, F.S.; providing definitions; revising the conditions that counties, municipalities, and special districts must satisfy before enacting an impact fee by ordinance or passing an impact fee by resolution; providing timeframes for the collection of impact fees by local governments; providing that impact fee credits are assignable and transferrable under certain conditions; requiring certain counties and municipalities to establish impact fee review committees; providing for membership; providing procedures for holding meetings and establishing quorums; providing committee duties; providing an effective date.

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

Section 1. Section 163.31801, Florida Statutes, is amended to read:

163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges.—

(1) This section may be cited as the "Florida Impact Fee Act."

(2) The Legislature finds that impact fees are an

important source of revenue for a local government to use in funding the infrastructure necessitated by new growth. The Legislature further finds that impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction. Due to the growth of impact fee collections and local governments' reliance on impact fees, it is the intent of the Legislature to ensure that, when a county or municipality adopts, collects, or administers an impact fee by ordinance or a special district adopts, collects, or administers an impact fee by resolution, the governing authority complies with this section to ensure a consistent statewide process.

(3) For purposes of this section:

(a) The term "infrastructure" means any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of a public facility, excluding the cost of repairs or maintenance, that have a life expectancy of 5 or more years; any related land acquisition, land improvement, design, engineering, and permitting costs; and all other related construction costs required to bring the public facility into service.

(b) The term "public facility" means any facility as defined in s. 163.3164(39), and includes any fire and law enforcement facility.

(4) At a minimum, each county and municipality that

adopts, collects, or administers an impact fee by ordinance and each special district that adopts, collects, or administers an impact fee by resolution ~~an impact fee adopted by ordinance of a county or municipality or by resolution of a special district~~ must ~~satisfy all of the following conditions~~:

(a) Require that the calculation of the impact fee ~~must~~ be based on the most recent and localized data collected within the last 36 months and excludes any cost that does not meet the definition of infrastructure.

(b) Account for the revenues and expenditures of such impact fee in a separate impact fee account, if the local governmental entity imposes an impact fee to address its infrastructure needs. ~~The local government must provide for accounting and reporting of impact fee collections and expenditures. If a local governmental entity imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund.~~

(c) Limit administrative charges for the collection of impact fees ~~must be limited~~ to actual costs. The cost per student station established in school impact fee calculations may not exceed that statutory total maximum cost per student station calculated under s. 1013.64(6).

(d) ~~The local government must~~ Provide notice not less than 90 days before the effective date of an ordinance or resolution

imposing a new or increased impact fee. New or increased impact fees may not apply to current or pending permit applications submitted before the effective date of an ordinance or resolution imposing a new or increased impact fee. A county or municipality is not required to wait 90 days to decrease, suspend, or eliminate an impact fee.

~~(e) Collection of the impact fee may not be required to occur earlier than the date of issuance of the building permit for the property that is subject to the fee.~~

(e) ~~(f)~~ Ensure that the impact fee is ~~must be~~ proportional and reasonably connected to, or has ~~have~~ a rational nexus with, the need for additional infrastructure ~~capital facilities~~ and the increased impact generated by the new residential or commercial construction.

(f) ~~(g)~~ Ensure that the impact fee is ~~must be~~ proportional and reasonably connected to, or has ~~have~~ a rational nexus with, the expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction.

(g) ~~(h) The local government must~~ Specifically earmark funds collected under the impact fee for use in acquiring, constructing, or improving infrastructure ~~capital facilities~~ to benefit new users.

(5) Collection of the impact fee may not be required to occur earlier than the date of issuance of the building permit for the property that is subject to the fee.

(6)~~(i)~~ Revenues generated by the impact fee may not be used, in whole or in part, to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or nonresidential construction.

(7)~~(4)~~ The local government must credit against the collection of the impact fee any contribution, whether identified in a proportionate share agreement or other form of exaction, related to public education facilities, including land dedication, site planning and design, or construction. Any contribution must be applied to reduce any education-based impact fees on a dollar-for-dollar basis at fair market value.

(8)~~(5)~~ If a local government increases its impact fee rates, the holder of any impact fee credits, whether such credits are granted under s. 163.3180, s. 380.06, or otherwise, which were in existence before the increase, is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established. This subsection shall operate prospectively and not retrospectively.

(9)~~(6)~~ Audits of financial statements of local governmental entities and district school boards which are performed by a certified public accountant pursuant to s. 218.39 and submitted to the Auditor General must include an affidavit signed by the chief financial officer of the local governmental

entity or district school board stating that the local governmental entity or district school board has complied with this section and the spending period provision in the local ordinance or resolution.

(10) ~~(7)~~ In any action challenging an impact fee or the government's failure to provide required dollar-for-dollar credits for the payment of impact fees or for contributions made as provided in this chapter ~~s. 163.3180(6)(h)2.b.~~, the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee or credit meets the requirements of state legal precedent and this section. The court may not use a deferential standard for the benefit of the government.

(11) Impact fee credits are assignable and transferable at any time after establishment from one development or parcel to any other development or parcel within the same impact fee jurisdiction for the same type of public facility for which the impact fee applies.

(12) ~~(8)~~ A county, municipality, or special district may provide an exception or waiver for an impact fee for the development or construction of housing that is affordable, as defined in s. 420.9071. If a county, municipality, or special district provides such an exception or waiver, it is not required to use any revenues to offset the impact. To ensure impact fees or equivalent contributions are only collected once,

a local government shall provide impact fee credits or other forms of compensation if a contribution is greater in value than the applicable impact fee. Contributions related to the transportation system are creditable against the combined total of all impact fees and exactions charged for mobility. This subsection applies at the time any contribution is accepted, regardless of when the contributions were agreed upon or committed to.

(13)(a) Each county and municipality that assesses impact fees must establish an impact fee review committee.

(b)1. The committee shall be composed of the following members appointed by the county commission or the governing body of the municipality, as applicable:

a. Two members who are employed by the county or municipality.

b. Two members who represent the business community.

c. Two members who are local licensed general or residential contractors.

d. One at-large member.

2. The county commission or the governing body of the municipality, as applicable, shall appoint three alternate members, consisting of one representative from each of the categories described in sub-subparagraphs 1.a., b., and c., who shall serve in the absence of their respective member.

3. Members and alternate members must be qualified

electors of the county or municipality, as applicable, for at least 2 years before their appointment.

4. Committee members shall serve at the pleasure of the local government and shall serve until they are replaced.

(c)1. Each committee meeting must be duly noticed and open to the public as required by s. 286.011.

2. A meeting may not be held unless a quorum is present. A quorum consists of a majority of members of the committee, but an alternate member shall count toward the quorum when a regular member is absent.

3. A member who fails to attend three consecutive meetings or fails to attend two-thirds of the meetings within a calendar year automatically forfeits the appointment, and the county commissioners or members of the governing body of the municipality, as applicable, shall promptly fill the vacancy.

4. Members of the committee shall serve without compensation.

(d) The committee shall meet as needed to:

1. Establish a policy and methodology for determining impact fees on new developments.

2. Review the proposed impact fee on each new development before the fee becomes final.

3. Submit recommendations made by the impact fee committee to the county commission or governing body of the municipality, as applicable. The recommendations must be presented at the

meeting when the impact fee on the new development will be discussed and voted upon.

4. After each impact fee is adopted by the local government, review all proposed expenditures of that impact fee to ensure the fee is used for capital projects within the jurisdiction.

(14) ~~(9)~~ This section does not apply to water and sewer connection fees.

Section 2. This act shall take effect July 1, 2020.

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: State Affairs Committee
Representative DiCeglie offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (32) through (52) of section 163.3164, Florida Statutes, are renumbered as subsections (34) through (54) and subsections (32) and (33) are created to read:

(32) "Mobility fee" means a local government fee schedule established by ordinance and based on the projects included in the adopted mobility plan. The fee is designed to pay the costs of those multimodal transportation projects identified in a mobility plan that are attributable to the per person travel demand created by new development and redevelopment. The fee must include measurable standards for per person mobility and quantifiable per person capacity for the projects included in

the adopted mobility plan. The mobility fee shall be a one-time payment by the development or redevelopment project and cannot use recurring multimodal transportation costs in the formula. The payment from the development or redevelopment project may be used as a contribution to the operating expenses for autonomous vehicle shuttles or shared mobility programs and services identified in the mobility plan that results in an increase in per person capacity to offset the projected increase in per person travel demand from such projects.

(33) "Mobility plan" means an integrated land use and transportation plan adopted into a local government comprehensive plan that promotes compact, mixed-use, and interconnected development served by a multimodal transportation system. The plan shall include measurable standards for the movement of people and quantifying the per person capacity of multimodal transportation projects included in the plan. The projects shall include improvements, programs, and services to encourage the safe and efficient movement of people through means such as walking, bicycling, scooting, riding transit, autonomous transit shuttles, driving, and utilizing shared mobility and new mobility technologies. The plan shall serve as the basis for an adopted transportation mitigation improvement fee to fund projects for the movement of people through viable multimodal transportation options without sole reliance upon a motor vehicle for personal mobility.

Section 2. Section 163.31801, Florida Statutes, is amended to read:

163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges.—

(1) This section may be cited as the "Florida Impact Fee Act."

(2) The Legislature finds that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth. The Legislature further finds that impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction. Due to the growth of impact fee collections and local governments' reliance on impact fees, it is the intent of the Legislature to ensure that, when a county or municipality adopts, collects, and administers an impact fee by ordinance or a special district adopts, collects, and administers an impact fee by resolution, the governing authority complies with this section to ensure a consistent statewide process.

(3) For purposes of this section:

(a) The term "infrastructure" means any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of a public facility, excluding the cost of repairs or maintenance, that have a life expectancy of 5 or more years; any related land

acquisition, land improvement, design, engineering, and permitting costs; and all other related construction costs required to bring the public facility into service. For independent special fire control districts, the term "infrastructure" shall also include "new facilities" as defined in s. 191.009(4).

(b) The term "public facility" means any facility as defined in s. 163.3164(39), and includes public libraries, parks, emergency medical services, and any fire and law enforcement facility.

(4) At a minimum, each county and municipality that adopts, collects, and administers an impact fee by ordinance and each special district that adopts, collects, and administers an impact fee by resolution must ~~an impact fee adopted by ordinance of a county or municipality or by resolution of a special district~~ must ~~satisfy all of the following conditions~~:

(a) Require that the calculation of the impact fee ~~must~~ be based on the most recent and localized data collected within the last 36 months and excludes any cost that does not meet the definition of infrastructure.

(b) Account for the revenues and expenditures of such impact fee in a separate impact fee account, if the local governmental entity imposes an impact fee to address its infrastructure needs. ~~The local government must provide for accounting and reporting of impact fee collections and~~

~~expenditures. If a local governmental entity imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund.~~

(c) Limit administrative charges for the collection of impact fees ~~must be limited~~ to actual costs. The cost per student station established in school impact fee calculations may not exceed that statutory total maximum cost per student station calculated under s. 1013.64(6).

(d) ~~The local government must~~ Provide notice not less than 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee. Unless the result is to reduce the total mitigation costs or impact fees imposed on an applicant, new or increased impact fees may not apply to current or pending permit applications submitted before the effective date of an ordinance or resolution imposing a new or increased impact fee. A county or municipality is not required to wait 90 days to decrease, suspend, or eliminate an impact fee.

~~(e) Collection of the impact fee may not be required to occur earlier than the date of issuance of the building permit for the property that is subject to the fee.~~

(e)~~(f)~~ Ensure that the impact fee is ~~must be~~ proportional and reasonably connected to, or has ~~have~~ a rational nexus with, the need for additional infrastructure ~~capital facilities~~ and the increased impact generated by the new residential or

commercial construction.

(f) ~~(g)~~ Ensure that the impact fee is ~~must be~~ proportional and reasonably connected to, or has ~~have~~ a rational nexus with, the expenditures of the funds collected and the benefits accruing to the new residential or nonresidential construction.

(g) ~~(h) The local government must~~ Specifically earmark funds collected under the impact fee for use in acquiring, constructing, or improving infrastructure ~~capital facilities~~ to benefit new users.

(5) Collection of the impact fee may not be required to occur earlier than the date of issuance of the building permit for the property that is subject to the fee.

(6) ~~(i)~~ Revenues generated by the impact fee may not be used, in whole or in part, to pay existing debt or for previously approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or nonresidential construction.

(7) ~~(4)~~ The local government must credit against the collection of the impact fee any contribution, whether identified in a proportionate share agreement or other form of exaction, related to public education facilities, including land dedication, site planning and design, or construction. Any contribution must be applied to reduce any education-based impact fees on a dollar-for-dollar basis at fair market value.

(8)~~(5)~~ If a local government increases its impact fee rates, the holder of any impact fee credits, whether such credits are granted under s. 163.3180, s. 380.06, or otherwise, which were in existence before the increase, is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established. This subsection shall operate prospectively and not retrospectively.

(9)(a)~~(6)~~ No later than 9 months from the end of the fiscal year of the local governmental entity or the district school board, the chief financial officer of the local governmental entity or the district school board shall file an affidavit with the governing body for the applicable local governmental entity attesting under penalty of perjury that all impact fees were collected and expended by the local governmental entity, or were collected and expended on behalf of the district school board, in full compliance with this section.

1. The affidavit shall also attest that the local governmental entity or district school board has complied with this section and the spending period provision in the local ordinance or resolution, and that funds expended from each separate impact fee account were used only to acquire, construct, or improve public facilities to meet the specific infrastructure need for which the impact fee account was created.

2. The affidavit shall be posted on the website for the

local governmental entity or the district school board, as applicable, for at least 12 months from the date of its filing with the governing body.

(b) Audits of financial statements of local governmental entities and district school boards which are performed by a certified public accountant pursuant to s. 218.39 and submitted to the Auditor General must include the ~~an~~ affidavit signed by the chief financial officer required in paragraph (a) ~~of the local governmental entity or district school board stating that the local governmental entity or district school board has complied with this section~~.

(10) ~~(7)~~ In any action challenging an impact fee or the government's failure to provide required dollar-for-dollar credits for the payment of impact fees or for contributions made as provided in this chapter ~~s. 163.3180(6)(h)2.b.~~, the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee or credit meets the requirements of state legal precedent and this section. The court may not use a deferential standard for the benefit of the government.

(11) Impact fee credits are assignable and transferable at any time after establishment from one development or parcel to any other development or parcel within the jurisdiction of the local governmental entity that imposes the impact fee for the same type of public facility for which the impact fee applies.

(12)~~(8)~~ A county, municipality, or special district may provide an exception or waiver for an impact fee for the development or construction of housing that is affordable, as defined in s. 420.9071. If a county, municipality, or special district provides such an exception or waiver, it is not required to use any revenues to offset the impact.

(13) To ensure impact fees or equivalent contributions are not imposed more than once for the same impacts, a local government shall provide impact fee credits or other forms of compensation if a contribution is greater in value than the applicable impact fee. Contributions related to the transportation system are creditable against the combined total of all impact fees, mobility fees, or other forms of exactions charged to mitigate transportation impacts. This subsection applies at the time any contribution is accepted, regardless of when the agreement or commitment of the contribution was made.

(14)(a) Each local governmental entity that assesses impact fees must establish an impact fee review committee.

(b)1. The committee shall be composed of the following members appointed by the county commission or the governing body of the municipality, as applicable:

a. Two members who represent the business community who are neither elected officials nor employees of the local governmental entity.

b. Two members who are local licensed general or

residential contractors who are neither elected officials nor employees of the local governmental entity.

c. One at-large member who is neither an elected official nor an employee of the local governmental entity.

2. The county commission or the governing body of the municipality, as applicable, shall appoint three alternate members, consisting of one representative from each of the categories described in subparagraph 1. who shall serve in the absence of the respective member.

3. Members and alternate members must be qualified electors of the county or municipality, as applicable, for at least 2 years before their appointment.

4. Committee members shall serve at the pleasure of the local governmental entity and shall serve until they are replaced.

(c)1. Each committee meeting must be duly noticed and open to the public as required by s. 286.011.

2. A meeting may not be held unless a quorum is present. A quorum consists of a majority of members of the committee, but an alternate member shall count toward the quorum when a regular member is absent.

3. A member who fails to attend three consecutive meetings or fails to attend two-thirds of the meetings within a calendar year automatically forfeits the appointment, and the county commissioners or members of the governing body of the

municipality, as applicable, shall promptly fill the vacancy.

4. Members of the committee shall serve without compensation.

(d) The committee shall meet as needed to:

1. Establish a policy and methodology for determining impact fees on new developments.

2. Review the proposed impact fee on each new development before the fee becomes final.

3. Submit recommendations made by the impact fee committee to the county commission or governing body of the municipality, as applicable. The recommendations must be presented at the meeting when the impact fee on the new development will be discussed and voted upon.

4. After each impact fee is adopted by the local government, review all proposed expenditures of that impact fee to ensure the fee is used for capital projects within the jurisdiction.

(e) In lieu of the impact fee review committee provided herein, a local governmental entity that asseses an impact fee may utilize an existing committee which contains representation from the building or development community and reviews building or development projects.

(15)~~(9)~~ This section does not apply to water and sewer connection fees.

Section 3. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert:
An act relating to impact fees; amending s. 163.3164, F.S.; providing definitions; amending s. 163.31801, F.S.; providing definitions; revising the conditions that counties, municipalities, and special districts must satisfy before enacting an impact fee by ordinance or passing an impact fee by resolution; providing timeframes for the collection of impact fees by local governments; providing that impact fee credits are assignable and transferrable under certain conditions; requiring certain counties and municipalities to establish impact fee review committees; providing for membership; providing procedures for holding meetings and establishing quorums; providing committee duties; providing an effective date.

CS/HB 705

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 705 Emergency Sheltering of Persons with Pets
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee, Killebrew, Toledo and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 752

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	14 Y, 0 N, As CS	Villa	Smith
2) Health & Human Services Committee	17 Y, 0 N	Guzzo	Calamas
3) State Affairs Committee		Villa	Williamson

SUMMARY ANALYSIS

The federal Pets Evacuation and Transportation Standards (PETS) Act of 2006 requires state and local emergency preparedness authorities to plan for how they will accommodate the needs of persons with pets and service animals prior to, during, and following a major disaster or emergency. The PETS Act also authorizes the Federal Emergency Management Agency (FEMA) to provide rescue, care, shelter, and essential needs to persons with pets and service animals following a major disaster or emergency. Accordingly, FEMA authorizes state and local governments to seek reimbursement for pet rescue, shelter, and evacuation-support costs.

The Division of Emergency Management (division) within the Executive Office of the Governor addresses the sheltering of service animals and persons with pets in the State Comprehensive Emergency Management Basic Plan and the Statewide Emergency Shelter Plan (Plans). The Plans include information on the availability of shelters that accept pets and provides that a person who uses a service animal must be allowed to be accompanied by the service animal in all areas of the shelter.

The bill requires counties that maintain designated shelters to designate a shelter that can accommodate persons with pets. The shelter must be in compliance with applicable FEMA Disaster Assistance Policies and Procedures and with safety procedures regarding the sheltering of pets established in the shelter component of both local and state comprehensive emergency management plans.

The bill also requires the Department of Education to assist the division in determining strategies for the evacuation of persons with pets for the shelter component of the state comprehensive emergency management plan.

The bill may have an indeterminate fiscal impact on local governments and does not appear to have a fiscal impact on the state. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Pets Evacuation and Transportation Standards Act

On October 6, 2006, the federal Pets Evacuation and Transportation Standards (PETS) Act was signed into law amending the Robert T. Stafford Disaster Relief and Emergency Assistance Act.[1] The PETS Act requires state and local emergency preparedness authorities to plan for how they will accommodate the needs of individuals with household pets and service animals prior to, during, and following a major disaster or emergency when presenting their plans to the Federal Emergency Management Agency (FEMA). The PETS Act also authorizes FEMA to provide rescue, care, shelter, and essential needs for individuals with household pets and service animals, and to the household pets and animals themselves, following a major disaster or emergency.

FEMA's Disaster Assistance Policy

FEMA's Disaster Assistance Policy (DAP) authorizes state and local governments that receive evacuees from areas declared a major disaster or emergency to seek reimbursement for pet rescue, sheltering, and evacuation-support costs. Contractors and nonprofit organizations may be indirectly reimbursed through a state or local government for verified operations and expenses.[2]

DAP identifies reimbursable expenses related to state and local governments' emergency pet evacuation and sheltering activities. For household pet rescue, reimbursable expenses include overtime for regular full-time employees, regular and overtime for contract labor, and the use of owned or leased equipment. For congregated household pet sheltering, reimbursable expenses include facilities, supplies and commodities, labor, equipment, emergency veterinary services, shelter safety and security, and cleaning and restoration services.[3]

Division of Emergency Management

The Division of Emergency Management (division) within the Executive Office of the Governor is responsible for all professional, technical, and administrative support functions necessary to carry out the State's Emergency Management Act.[4,5] The division, with the assistance of the Department of Agriculture and Consumer Services, is required to address strategies for the evacuation of persons with pets and must include similar strategies in its standards and requirements for local comprehensive emergency management plans.[6]

The State Comprehensive Emergency Management Basic Plan and the Statewide Emergency Shelter Plan (the Plans) address the sheltering of service animals and persons with pets.[7] Specifically, the Plans include information on the availability of shelters that accept pets, and states that a person who uses a service animal must be allowed to bring the service animal into a shelter and be accompanied by the service animal in all areas of public accommodation. Additionally, the Plans provide that the following be taken into consideration when developing strategies for the sheltering of persons with pets:

- Locating pet-friendly shelters within buildings with restrooms, running water, and proper lighting;

[1] 42 U.S.C. 170b, 42 U.S.C. 5192; the Pets Evacuation and Transportation Standards Act of 2006, P.L. No. 109-308, § 4, 120 Stat. 1725 (2006); and 44 CFR §§ 206.223(a), 206.225(a).
[2] Federal Emergency Management Agency, *FEMA Disaster Assistance Policy 9523.19*, https://www.fema.gov/pdf/government/grant/pa/policy.pdf (last visited February 10, 2020).
[3] *Id.*
[4] Section 14.2016(1), F.S.
[5] Sections 252.31 – 252.63, F.S., are cited as the State Emergency Management Act. Section 252.31, F.S.
[6] Section 252.3568, F.S.
[7] Division of Emergency Management, *2018 Statewide Emergency Shelter Plan*, https://www.floridadisaster.org/globalassets/dem/response/sesp/2018/2018-sesp-a1-main-plan-text_final_1-30-18.pdf (last visited February 10, 2020); Division of Emergency Management, *2014 State of Florida Comprehensive Emergency Management Basic Plan*, https://www.floridadisaster.org/globalassets/importedpdfs/2014-state-cemp-basic-plan.pdf (last visited February 10, 2020).

- Allowing pet owners to interact with their animals and care for them; and
- Ensuring animals are properly cared for during the emergency.

Emergency Sheltering Facilities

Counties may initiate their own protective measures, such as ordering evacuations and activating public shelters, including pet-friendly shelters.[8] Public facilities, including schools, postsecondary education facilities, and other facilities owned or leased by the state or local governments, which are suitable for use as public evacuation centers must be made available at the request of the local emergency management agencies.[9] Agencies must coordinate with these entities to ensure that designated facilities are ready to activate prior to an emergency or disaster.[10] Hospitals, hospice care facilities, assisted living facilities, and nursing homes may not be designated as emergency sheltering facilities.[11]

Effect of the Bill

The bill requires counties that maintain designated shelters to designate a shelter that can accommodate persons with pets. The shelter must be in compliance with DAP and with safety procedures regarding the sheltering of pets established in the shelter component of both local and state comprehensive emergency management plans.

The bill requires the Department of Education (DOE) to assist the division in determining strategies for the evacuation of persons with pets for the shelter component of the state comprehensive emergency management plan.

B. SECTION DIRECTORY:

Section 1 amends s. 252.3568, F.S., relating to emergency sheltering of persons with pets.

Section 2 provides an effective date of July 1, 2020.

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:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

[8] Division of Emergency Management, *2014 State of Florida Comprehensive Emergency Management Basic Plan*, *supra* note 8.
[9] Section 252.385(4)(a), F.S.
[10] *Id.*
[11] *Id.*

The bill requires a county that maintains designated shelters to designate at least one shelter that can accommodate persons with pets. As such, the bill may have an indeterminate negative fiscal impact on counties that do not have a shelter designated to accommodate persons with pets. The bill provides that such shelters must be in compliance with applicable DAP and with safety procedures regarding the sheltering of pets established in the shelter component of both local and state comprehensive emergency management plans. The costs associated with designating appropriate facilities is indeterminate as each county would be responsible for determining its own standards.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18, of the Florida Constitution may apply because this bill may require counties to expend funds in order to designate shelters that can accommodate persons with pets. However, an exemption may apply because the costs associated with designating a shelter that can accommodate pets is likely insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DOE to assist the division with determining strategies regarding the evacuation of persons with pets in the shelter component of the state comprehensive emergency management plan. The bill does not include a grant of rulemaking as the division has sufficient rulemaking authority to adopt the plan.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Oversight, Transparency & Public Management Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment required counties that maintain designated shelters to designate a shelter that can accommodate persons with pets. The shelters must be in compliance with DAP and with safety procedures regarding the sheltering of pets established in the shelter component of both local and state comprehensive emergency management plans. The strike-all amendment also required DOE to assist the division in determining strategies for the evacuation of persons with pets.

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

A bill to be entitled

An act relating to emergency sheltering of persons with pets; amending s. 252.3568, F.S.; requiring the Department of Education to assist the Division of Emergency Management in determining strategies regarding the evacuation of persons with pets; requiring counties that maintain designated shelters to designate a shelter that can accommodate persons with pets; specifying requirements for such shelters; providing an effective date.

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

Section 1. Section 252.3568, Florida Statutes, is amended to read:

252.3568 Emergency sheltering of persons with pets.—

(1) In accordance with s. 252.35, the division shall address strategies for the evacuation of persons with pets in the shelter component of the state comprehensive emergency management plan and shall include the requirement for similar strategies in its standards and requirements for local comprehensive emergency management plans. The Department of Agriculture and Consumer Services and the Department of Education shall assist the division in determining strategies regarding this activity.

(2) If a county maintains designated shelters it must also designate a shelter that can accommodate persons with pets. The shelter must be in compliance with applicable FEMA Disaster Assistance Policies and Procedures and with safety procedures regarding the sheltering of pets established in the shelter component of both local and state comprehensive emergency management plans.

Section 2. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 729 Administrative Procedures
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee; Rodriguez, A. M.; Gregory and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	12 Y, 0 N, As CS	Toliver	Smith
2) State Affairs Committee		Toliver	Williamson

SUMMARY ANALYSIS

The Administrative Procedure Act (APA) sets forth a uniform set of procedures agencies must follow when exercising delegated rulemaking authority. A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms. Agencies do not have the discretion in and of themselves to engage in rulemaking. To adopt a rule, an agency must have a general grant of authority to implement a specific law.

The bill amends the APA to increase transparency in rulemaking and provide a mechanism to ensure agencies reduce unnecessary rules. Specifically, the bill:

- Requires each agency to review its rules for consistency with the powers and duties granted by the agency's enabling statutes. If, after reviewing a rule, the agency determines substantive changes to update a rule are not required, the agency must repromulgate the rule;
- Specifies the economic impacts and compliance costs an agency must consider in creating a statement of estimated regulatory costs (SERC). Each agency is required to have a website where each of its SERCs may be viewed in their entirety;
- Requires an agency, in all notices of rulemaking that include material incorporated by reference, to submit the incorporated material in the prescribed electronic format to DOS with the full text available for free public access through an electronic hyperlink;
- Requires changes to material incorporated by reference to be in a strike-through and underline format;
- Requires the annual regulatory plan to identify and describe each rule, by rule number or proposed rule number, which the agency expects to develop, adopt, or repeal for the 12-month period beginning October 1 and ending September 30. The bill also requires the annual regulatory plan to contain a declaration that the agency head and the general counsel understand that regulatory accountability is necessary to ensure public confidence in the integrity of state government and to that end the agency is diligently working toward lowering the total number of rules adopted;
- Specifies that an adverse impact on small business exists if certain specific criteria is met;
- Specifies that a lower cost regulatory alternative may be submitted after a notice of proposed rule *or* a notice of change;
- Defines the term "technical change" and requires technical changes to be documented in the history of the rule;
- Requires a period of at least seven days between the publication of a notice of rule development and a notice of proposed rule; and
- Requires the Joint Administrative Procedures Committee to review all existing rules.

The bill may have a negative fiscal impact on state government. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Rulemaking

Background

The Legislature, as the sole branch of government with the inherent power to create laws,[1] may delegate to agencies in the executive branch the quasi-legislative ability, or authority, to create rules.[2] The Administrative Procedure Act (APA)[3] sets forth a uniform set of procedures agencies must follow when exercising delegated rulemaking authority. A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency as well as certain types of forms.[4] Rulemaking authority is delegated by the Legislature through statute and authorizes agencies to "adopt, develop, establish, or otherwise create"[5] rules. Usually, the Legislature delegates rulemaking authority to a given agency because an agency has "expertise in a particular area for which they are charged with oversight."[6] Agencies do not have the discretion in and of themselves to engage in rulemaking.[7] To adopt a rule, an agency must have a general grant of authority to implement a specific law by rulemaking.[8] The grant of rulemaking authority itself need not be detailed. The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.[9]

An agency begins the formal rulemaking process[10] by filing a notice of rule development of proposed rules in the Florida Administrative Register (FAR) indicating the subject area to be addressed by the rule development and including a short, plain explanation of the purpose and effect of the rule.[11] The notice may include the preliminary text of the proposed rule, but it is not necessary. Such notice is required for all rulemaking, except for rule repeals. Next, an agency must file, upon approval of the agency head, a notice of proposed rule.[12] The notice of proposed rule is published by the Department of State (DOS) in the FAR[13] and must contain the full text of the proposed rule or amendment and a summary thereof.[14] Prior to 2012, the FAR was published weekly, resulting in a period of at least seven days between the publication of a notice of rule development and a notice of proposed rule.[15] In 2012, the Legislature passed HB 541 (2012) that changed the FAR from a weekly publication to a publication that is continuously revised and, as a result, eliminated the seven day period between the two notices.[16]

After publication of a notice of proposed rule, an agency must hold a hearing on the proposed rule if a person requests a hearing within 21 days.[17] If, after the hearing is held or after the time for requesting a hearing has expired, the agency does not change the rule, other than a technical change, the agency

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[1] Article III, s. 1, FLA. CONST.; *see also* art. II, s. 3, FLA. CONST.
[2] *See Whiley v. Scott*, 79 So. 3d 702, 710 (Fla. 2011), stating "[r]ulemaking is a derivative of lawmaking."
[3] Chapter 120, F.S.
[4] Section 120.52(16), F.S.
[5] Section 120.52(17), F.S.
[6] *Whiley v. Scott*, 79 So. 3d 702, 711 (Fla. 2011).
[7] Section 120.54(1)(a), F.S.
[8] Sections 120.52(8) and 120.536(1), F.S.
[9] *Sloban v. Fla. Bd. of Pharmacy,* 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Bd. of Trustees of the Internal Improvement Trust Fund v. Day Cruise Assoc., Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).
[10] Alternatively, a person regulated by an agency or having substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule. Section 120.54(7), F.S.
[11] Section 120.54(2), F.S.
[12] Section 120.54(3)(a)1., F.S.
[13] Section 120.55(1)(b), F.S.
[14] Section 120.54(3)(a)1., F.S.
[15] Chapter 2012-63, L.O.F.
[16] *Id.*
[17] Section 120.54(3)(c), F.S.

must file a notice stating no changes have been made to the rule with the Joint Administrative Procedures Committee (JAPC) at least seven days before filing the rule for adoption.[18] However, if a hearing is requested, the agency may, based upon the comments received at the hearing, publish a notice of change.[19]

As an alternative to the agency initiated process delineated above, a person regulated by the agency or having a substantial interest in an agency rule may petition the agency to adopt, amend, or repeal a rule.[20] The petitioner must specify the proposed rule and action requested.[21] The agency can either initiate rulemaking or decline to do so; however, if the agency chooses the latter it must issue a written statement of the reasons for the denial.[22]

Once an agency has completed the steps of rulemaking, the agency may file for rule adoption with DOS and the rule becomes effective 20 days later, unless a different date is indicated in the rule.[23] Most adopted rules are published in the Florida Administrative Code (FAC).[24]

The validity of a rule or a proposed rule may be challenged at the Division of Administrative Hearings (DOAH)[25] as an invalid delegation of legislative authority.[26] An invalid delegation of legislative authority is an action that goes beyond the powers, functions, and duties delegated by the Legislature.[27] A rule or proposed rule is an invalid delegation of legislative authority if:

- The agency has materially failed to follow the rulemaking procedures in the APA;
- The agency has exceeded its grant of rulemaking authority;
- The rule enlarges, modifies, or contravenes the specific provisions of the law implemented;
- The rule is vague, fails to establish adequate standards for agency decisions; or vests the agency with unbridled discretion;
- The rule is arbitrary or capricious; or
- The rule imposes regulatory costs on the regulated person, county, or municipality that could have been reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.[28]

An administrative law judge (ALJ) at DOAH hears the rule challenge in a de novo proceeding and, within 30 days of the hearing, makes a determination on the rule's validity based upon a preponderance of the evidence standard.[29] The ALJ's decision constitutes final agency action, which means an agency may not alter the decision after its issuance,[30] but an agency may appeal the decision to the District Court of Appeal where the agency maintains its headquarters.[31]

Effect of the Bill

The bill requires a notice of proposed rule to be filed within 12 months of a notice of rule development. If a notice of proposed rule is not filed within 12 months of the notice of rule development, the agency must withdraw the rule and give notice of the withdrawal in the next issue of the FAR. The bill also

[18] Section 120.54(3)(d)1., F.S.
[19] Section 120.54(3)(d)1., F.S.
[20] Section 120.54(7)(a), F.S.
[21] *Id.*
[22] *Id.*
[23] Section 120.54(3)(e)6., F.S.
[24] Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or a state university rules relating to internal personnel or business and finance are not published in the FAC. Forms are not published in the FAC. Section 120.55(1)(a), F.S. Emergency rules are also not published in the FAC.
[25] DOAH is an agency in the executive branch, administratively housed under the Department of Management Services but not subject to its control. DOAH employs ALJs who serve as neutral arbiters presiding over disputes arising under the APA. Section 120.65, F.S.
[26] Section 120.56(1), F.S.
[27] Section 120.52(8), F.S.
[28] Section 120.52(8)(a)-(f), F.S.
[29] Section 120.56(1)(e), F.S.
[30] *Id.*
[31] Section 120.68(2)(a), F.S.

reestablishes the mandatory seven day period between the publication of a notice of rule development and the publication of a notice of proposed rule in the FAR.

The bill further requires that a proposed rule be withdrawn if, *after issuing a notice of proposed rule*, the agency fails to adopt it within the prescribed timeframes in the APA. Once an agency has exceeded the timeframe to adopt the rule, the bill requires JAPC to notify the agency of the failure. If the agency has not withdrawn the rule within 30 days following the notice, JAPC must notify DOS that the date for adoption of the rule has expired. DOS must then publish a notice of withdrawal of the proposed rule.

The bill requires an agency to file a copy of a petition to initiate rulemaking with JAPC.

The bill defines the term "technical change" to mean a change limited to correcting grammatical, typographical, and similar errors not affecting the substance of the rule.

Joint Administrative Procedures Committee

Background
JAPC is a standing committee of the Legislature established by joint rule and created to maintain a continuous review of administrative rules, the statutory authority upon which those rules are based, and the administrative rulemaking process.[32] Specifically, JAPC may examine existing rules and must examine each proposed rule to determine whether:

- The rule is an invalid exercise of delegated legislative authority;
- The statutory authority for the rule has been repealed;
- The rule reiterates or paraphrases statutory material;
- The rule is in proper form;
- The notice given prior to adoption was sufficient;
- The rule is consistent with expressed legislative intent;
- The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law that the rule implements;
- The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule;
- The rule could be made less complex or more easily comprehensible to the general public;
- The rule's statement of estimated regulatory cost complies with the requirements of the APA and whether the rule does not impose regulatory costs on the regulated person, county, or municipality that could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives; or
- The rule will require additional appropriations.[33]

Effect of the Bill
The bill removes the permissive authority of JAPC to examine existing rules and makes such examination mandatory to align with JAPCs mandate to examine proposed rules.

Agency Review of Rules

Background
The APA requires each agency to annually review its rules.[34] Although an agency may amend or repeal the rule, rules generally do not expire or sunset and many agencies have adopted rules that have not been updated in years.

Effect of the Bill
The bill creates a process called "repromulgation," whereby each agency is required to review its rules for consistency with the powers and duties granted by the agency's enabling statutes. If, after reviewing the rule, the agency determines that substantive changes are not required, the agency must

[32] Fla. Leg. J. Rule 4.6; *see also* s. 120.545, F.S.
[33] Section 120.545(1), F.S.
[34] *See* s. 120.74, F.S.

repromulgate the rule to reflect the date of the review. The bill defines the term "repromulgated" to mean the publication and adoption of an existing rule following an agency's review of the rule for consistency with the power and duties granted by its enabling statute. Each agency must review its rules according to the following schedule:

- If the rule was adopted *before* January 1, 2012, within five years after July 1, 2020; or
- If the rule was adopted *after* January 1, 2012, within 10 years after the rule is adopted.

An agency, before repromulgation of a rule and upon approval of its agency head, must:

- Publish a notice of repromulgation in the FAR, which is not required to include the text of the rule; and
- File the rule with DOS. The rule may not be filed for repromulgation less than 28 days before or more than 90 days after the publication of the notice.

An agency must file a notice of repromulgation with JAPC at least 14 days before filing the rule with DOS. JAPC must certify at the time of filing whether the agency has responded to all of JAPC's material or written inquiries. The bill specifies that a repromulgated rule is not subject to the hearing requirements of the APA nor is it subject to challenge.

The bill requires each agency, upon approval of the agency head, to submit three certified copies of the repromulgated rule it proposes to adopt with DOS and one certified copy of any material incorporated by reference in the rule. The repromulgated rule is adopted upon its filing with DOS and becomes effective 20 days later. DOS must then update the history of the rule in the FAC to reflect the new effective date. The bill requires DOS to adopt rules to implement the bill's repromulgation provision by December 31, 2020.

If either an agency fails to meet the deadline to review the rule or the timeframe to file the rule for repromulgation, the rule is deemed repealed. After such a failure, JAPC notifies DOS that the agency has elected to repeal the rule. Thereafter DOS must publish a notice of the repeal in the next issue of the FAR and the rule is then stricken from the files of DOS and the agency.

Statement of Estimated Regulatory Cost

Background

A statement of estimated regulatory cost (SERC) is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule.[35] Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule.[36] However, a SERC is required if the proposed rule will have an adverse impact on small businesses or increase regulatory costs by more than $200,000 in the aggregate within one year after implementation of the rule.[37] If the agency revises a rule before adoption and the revision increases the regulatory costs of the rule, the agency must revise the SERC to reflect that alteration.[38]

A SERC must include:

- A good faith estimate of the number of people and entities affected by the proposed rule;
- A good faith estimate of the cost to the agency and other governmental entities to implement the proposed rule;
- A good faith estimate of transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and municipalities.[39]

[35] Section 120.541(2), F.S.
[36] Section 120.54(3)(b)1., F.S.
[37] *Id.*
[38] Section 120.541(1)(c), F.S.
[39] Section 120.541(2)(b)-(e), F.S.

The SERC must also include an economic analysis on the likelihood that the proposed rule will have an adverse impact in excess of $1 million within the first five years of implementation on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness, productivity, or innovation; or
- Regulatory costs, including any transactional costs.[40]

If the economic analysis results in an adverse impact or regulatory costs in excess of $1 million within five years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.[41]

An agency's failure to prepare a SERC can be raised in a proceeding at DOAH to invalidate a rule as an invalid exercise of delegated legislative authority, if it is raised within one year of the effective date of the rule and is raised by a person whose substantial interests are affected by the regulatory costs of the rule.[42]

Effect of the Bill

The bill requires each agency to have a website where each of its SERCs may be viewed in their entirety. DOS must include on the FAR website the agency website addresses where the SERCs can be viewed. An agency must provide in its notice of intended action the agency website address where the SERC can be viewed. If an agency revises a SERC, it must provide a notice that a revision has been made and include an agency website address where the revision can be viewed for publication on the FAR website.

The bill clarifies the elements an agency must consider in a SERC when evaluating the economic impacts of the rule. Specifically, the bill requires agency estimates of economic, market, and small business impacts likely to result from compliance with the proposed rule to consider elements such as:

- Increased or decreased consumer prices or value of goods and services;
- Increased costs due to obtaining substitute or alternative products or services;
- The value of time expended by business owners and other business personnel to comply with the proposed rule;
- Capital costs incurred to comply with the proposed rule; and
- Other impacts suggested by the rules ombudsman, the agency head's appointing authority, or interested persons.

In addition, the bill replaces the term "transactional costs" with "compliance costs," requires agencies to consider all direct and indirect costs of compliance, and provides 18 specific types of compliance costs as examples for agencies to consider in their evaluation, including:

- Filing fees;
- Costs of obtaining a license;
- Costs to obtain, install, and maintain equipment necessary for compliance;
- Costs related to accounting, financial, and information management processes, as well as other administrative processes;
- Labor costs;
- Costs of education, training, and testing necessary for compliance; and
- Allocation of administrative and other overhead costs.

The bill allows agencies to survey individuals, businesses, business organizations, counties, and municipalities to collect data helpful to estimate and analyze the costs and impacts of the proposed rule. Each notice of proposed rule must also contain a summary of the SERC describing the regulatory impact of the rule in readable language. Additionally, if an agency holds a hearing on a proposed rule, the bill requires the agency to ensure that the person responsible for preparing the SERC be made available to respond to questions or comments.

[40] Section 120.541(2)(a), F.S.
[41] Section 120.541(3), F.S.
[42] Section 120.541(1)(f), F.S.

Lower Cost Regulatory Alternative

Background

A person substantially affected by a proposed rule may, within 21 days after publication of a notice of adoption, amendment, or repeal of a rule, submit a lower cost regulatory alternative (LCRA).[43] The LCRA must be a written proposal, made in good faith, that substantially accomplishes the objectives of the law being implemented.[44] A LCRA may recommend that a rule not be adopted at all, if it explains how the "lower costs and objectives of the law will be achieved by not adopting any rule."[45] If a LCRA is submitted to an agency, the agency must prepare a SERC if one has not been previously prepared, or revise its prior SERC, and either adopt the LCRA or provide a statement to explain the reasons for rejecting the LCRA.[46] Additionally, if a LCRA is submitted, the 90-day period for filing a rule is extended an additional 21 days.[47] At least 21 days before filing a rule for adoption, an agency that is required to revise a SERC in response to a LCRA must provide the SERC to the person who submitted the LCRA and to JAPC and must provide notice on the agency's website that it is available to the public.[48]

Just as in the case of an agency's failure to prepare a SERC, an agency's failure to respond to a LCRA may be raised in a proceeding at DOAH to invalidate a rule as an invalid delegation of legislative authority if its raised within one year of the effective date of the rule and is raised by a person whose substantial interests are affected by the regulatory costs of the rule.[49]

Effect of the Bill

The bill specifies that a LCRA may be submitted after a notice of proposed rule or a notice of change. If submitted after the latter, the LCRA is deemed to have been made in good faith only if the person reasonably believes, and the proposal states the reasons for believing, that the proposed rule *as changed by the notice of change* increases the regulatory costs or creates an adverse impact on small business.

The bill allows an agency receiving a LCRA to have the choice of modifying the proposed rule to substantially reduce regulatory costs in addition to either adopting the LCRA or stating its reasons for rejecting it in favor of the proposed rule. If the rule is modified, the agency must revise its SERC, if one has been prepared. If the agency rejects the LCRA or modifies the proposed rule, the agency must state its reasons for rejecting the LCRA in favor of the proposed or modified rule. When a SERC is revised because a change to a proposed rule increases the projected regulatory costs or the agency modified the rule in response to a LCRA, a summary of the revised SERC must be included in subsequent published rulemaking notices. Under the bill, the revised SERC must be provided to the rules ombudsman, the party submitting the LCRA, and JAPC, and must be published in the same manner as the original SERC.

The bill requires an agency to provide a copy of a LCRA to JAPC at least 21 days prior to filing the rule for adoption.

Emergency Rules

Background

Agencies are authorized to respond to immediate dangers to the public health, safety, or welfare by adopting emergency rules.[50] Emergency rules are not adopted using the same procedures required of other rules.[51] The notice of the emergency rule and the text of the rule is published in the first available

[43] Section 120.541(1)(a), F.S.
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] Section 120.541(1)(d), F.S.
[49] Section 120.541(1)(f), F.S.
[50] Section 120.54(4), F.S.
[51] Section 120.54(4)(a)1., F.S.

issue of the FAR, however, there is no requirement that an emergency rule be published in the FAC.[52] The agency must publish prior to, or contemporaneous with, the rule's promulgation the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare.[53] Emergency rules are effective immediately, or on a date less than 20 days after filing if specified in the rule,[54] but are only effective for a period of no longer than 90 days.[55] An emergency rule is not renewable, except when the agency has initiated rulemaking to adopt rules relating to the subject of the emergency rule and a challenge to the proposed rules has been filed and remains pending or the proposed rule is awaiting ratification by the Legislature.[56] The validity of an emergency rule may be challenged at DOAH subject to an expedited filing and hearing schedule.[57]

Effect of the Bill

The bill requires emergency rules to be published in the FAC. The bill also allows an agency to make technical changes to the emergency rule within the first seven days after adoption and prohibits an agency from superseding an emergency rule currently in effect. The bill clarifies that an emergency rule is not subject to the legislative ratification process.[58]

Small Business Impact in Rulemaking

Background

Each agency, before the adoption, amendment, or repeal of a rule, must consider the impact of the rule on small businesses.[59] If the agency determines that the proposed action will affect small businesses, the agency must send written notice to the rules ombudsman[60] in the Executive Office of the Governor at least 28 days before the intended action.[61] The agency must adopt the regulatory alternatives offered by the rules ombudsman if it finds the alternatives are feasible and consistent with the stated objectives of the proposed rule and would reduce the impact on small businesses.[62]

If the agency does not adopt the alternatives offered, before rule adoption or amendment, the agency must file a detailed written statement with JAPC explaining the reasons for failure to adopt such alternatives.[63]

Effect of the Bill

The bill requires an adverse impact on small business to be found if:

- An owner, officer, operator, or manager of a small business must complete any education, training, or testing to comply with the proposed rule;

[52] Section 120.54(4)(a)3., F.S.
[53] *Id.*
[54] Section 120.54(4)(d), F.S.
[55] Section 120.54(4)(c), F.S.;
[56] *Id.*
[57] *Id.*
[58] In 2011, the Legislature passed two bills, CS/CS/HB 993 (2011) and CS/CS/CS/HB 849 (2011) that contained conflicting provisions concerning the exemption of emergency rules from the legislative ratification process. In one bill, CS/CS/HB 993 (2011), the provision exempting emergency rules in s. 120.541(4), F.S., from the legislative ratification process was expressly included in the bill. In the other, CS/CS/CS/HB 849 (2011), the provision was erroneously deleted, leading to a statutory conflict. In 2013, the Legislature passed CS/CS/SB 1410 (2013), which amended s. 120.541(4), F.S., to correct a cross reference and in the process the bill erroneously continued the omission of the provision exempting emergency rules. This bill corrects those previous errors by reinstating the provision exempting emergency rules from the legislative ratification process.
[59] Section 120.54(3)(b)2., F.S.
[60] The Governor must appoint a rules ombudsman in the Executive Office of the Governor for purposes of considering the impact of agency rules on the state citizens and businesses. The rules ombudsman must carry out the duties related to rule adoption procedures with respect to small businesses; review agency rules that adversely or disproportionately impact businesses, particularly those relating to small and minority businesses; and make recommendations on any existing or proposed rules to alleviate unnecessary or disproportionate adverse effects to business. Each agency must cooperate fully with the rules ombudsman in identifying such rules, and take the necessary steps to waive, modify, or otherwise minimize the adverse effects of any such rules. Section 288.7015, F.S.
[61] Section 120.54(3)(b)2.b.(I), F.S.
[62] Section 120.54(3)(b)2.b.(II), F.S.
[63] Section 120.54(3)(b)2.b.(III), F.S.

- An owner, officer, operator, or manager of a small business is likely to expend 10 hours or purchase professional advice to understand and comply with the rule in the first year;
- Taxes or fees assessed on transactions are likely to increase by $500 or more in the aggregate in one year;
- Prices charged for goods and services are restricted or are likely to increase because of the rule;
- Specially trained, licensed, or tested employees will be required;
- Operating costs are expected to increase by at least $1,000 annually; or
- Capital expenditures in excess of $1,000 are necessary to comply with the rule.

If the rules ombudsman of the Executive Office of the Governor provides a regulatory alternative to the agency to lessen the impact of the rule on small businesses, the bill requires the agency to provide the regulatory alternative to JAPC at least 21 days before filing the rule for adoption.

Incorporation by Reference

Background

The APA allows an agency to incorporate material external to the text of the rule by reference.[64] The material to be incorporated must exist on the date the rule is adopted.[65] If after the rule has been adopted the agency wishes to alter the material incorporated by reference, the rule itself must be amended for the change to be effective.[66] However, an agency rule that incorporates another rule by reference automatically incorporates subsequent amendments to the referenced rule.[67] A rule cannot be amended by reference only.[68] An agency may not incorporate a rule by reference unless:

- The material has been submitted in the prescribed electronic format to DOS and the full text of the material can be made available for free public access through an electronic hyperlink from the rule making the reference in the FAC; or
- The agency has determined that posting the material publicly on the Internet would constitute a violation of federal copyright law, in which case a statement stating such, along with the address of locations at DOS and the agency at which the material is available for public inspection and examination, must be included in the notice.[69]

DOS has adopted a rule governing the requirements for materials incorporated by reference through an adopted rule.[70] The rule requires each agency incorporating material by reference in an administrative rule to certify that the materials incorporated have been filed with DOS electronically or, if the agency claims the posting of the material would constitute a violation of federal copyright law, the location where the public may view the material.[71]

Effect of the Bill

Beginning July 1, 2020, the bill requires an agency, in all notices of rulemaking, repromulgated rules, or rule modifications that include material incorporated by reference, to submit the incorporated material in the prescribed electronic format to DOS with the full text available for free public access through an electronic hyperlink. Alternatively, if an agency determines that posting the incorporated material on the internet would constitute a violation of federal copyright law, the agency must include in the notice a statement to that effect, along with the addresses of locations at DOS and the agency at which the material is available for public inspection and examination.

[64] Section 120.54(1)(i), F.S.; *see also* r. 1-1.013, F.A.C.
[65] Section 120.54(1)(i)1., F.S.
[66] *Id.*
[67] Section 120.54(1)(i)2., F.S.
[68] Section 120.54(1)(i)4., F.S.
[69] Section 120.54(1)(i)3., F.S.
[70] Rule. 1-1.013, F.A.C.
[71] Rule 1-1.013(5)(d), F.A.C.

The bill requires DOS to prescribe by rule that material incorporated by reference included in a notice of proposed rule and a notice of change be formatted in such a way that additions to the text appear underlined and deletions appear as text stricken through.

Annual Regulatory Review

Background
Annually, each agency must prepare a regulatory plan that includes a list of each law enacted during the previous 12 months, which creates or modifies the duties or authority of the agency, and state whether the agency must adopt rules to implement the newly adopted laws.[72] The plan must also include a list of each additional law not otherwise listed that the agency expects to implement by rulemaking before the following July 1, except emergency rules. The plan must include a certification by the agency head or, if the agency head is a collegial body, the presiding officer, and the individual acting as principal legal advisor to the agency verifying the persons have reviewed the plan, verifying the agency regularly reviews all of its rules, and identifying the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.[73] By October 1 of each year, the plan must be published on the agency's website or on another state website established for publication of administrative law records with a hyperlink to the plan. The agency must also deliver a copy of the certification to JAPC and publish a notice in the FAR identifying the date of publication of the agency's regulatory plan.[74]

Effect of the Bill
The bill replaces the requirement that the annual regulatory plan include a listing of each law it expects to implement with rulemaking with the requirement that the plan identify and describe each rule, by rule number or proposed rule number, that the agency expects to develop, adopt, or repeal for the 12 month period beginning October 1 and ending September 30. The annual regulatory plan must also identify any rules required to be repromulgated for the 12-month period.

The bill also requires that the annual regulatory plan contain a declaration that the agency head and the general counsel understand that regulatory accountability is necessary to ensure public confidence in the integrity of state government and to that end the agency is diligently working toward lowering the total number of rules adopted.

Florida Administrative Code

Background
The FAC is an electronic compilation of all rules adopted by each agency and maintained by DOS.[75] DOS retains the copyright over the FAC.[76]

Each rule in the FAC must cite the grant of rulemaking authority and the specific law implemented, as well as a history note detailing the initial promulgation of the rule and any subsequent changes.[77] Rules applicable to only one school district, community college district, or county or state university rules relating to internal personnel or business and finance are not required to be included in the FAC.[78] DOS is required to publish the following information at the beginning of each section of the code concerning an agency:

- The address and telephone number of the executive offices of the agency;
- The manner by which the agency indexes its rules; and
- A listing of all rules of that agency excluded from publication in the FAC and a statement as to where those rules may be inspected.[79]

[72] Section 120.74(1), F.S.
[73] Section 120.74(1)(d), F.S.
[74] Section 120.74(2), F.S.
[75] Section 120.55(1)a.1., F.S.
[76] *Id.*
[77] *Id.*
[78] Section 120.55(1)(a)2., F.S.
[79] Section 120.55(1)(a)3., F.S.

DOS is required to adopt rules allowing adopted rules and material incorporated by reference to be filed in electronic form.[80] Further, DOS is required to prescribe by rule the style and form required for rules, notices, and other materials submitted for filing in the FAC.[81] The rule DOS has adopted requires rules that are being amended to be coded by underlining new text and by striking through deleted text.[82]

Effect of the Bill

The bill requires the FAC be published once daily, by no later than 8 a.m. If, after publication, a rule is corrected and replaced, the FAC must indicate the rule has been republished and indicate DOS has corrected it. The bill also requires the history note appended to each rule include the date of any technical changes to the rule.

B. SECTION DIRECTORY:

Section 1 amends s. 120.52, F.S., relating to definitions applicable to the APA.

Section 2 amends s. 120.54, F.S., relating to rulemaking procedures.

Section 3 amends s. 120.541, F.S., relating to SERCs.

Section 4 creates s. 120.5435, F.S., relating to the repromulgation of rules.

Section 5 amends s. 120.545, F.S., relating to JAPC review of agency rules.

Section 6 amends s. 120.55, F.S., relating to publication requirements in the APA.

Section 7 amends s. 120.74, F.S., relating to agency annual rulemaking and regulatory plans.

Section 8 amends s. 120.80, F.S., relating to exemptions and special requirements.

Section 9 amends s. 120.81, F.S., relating to exceptions to the APA and special requirements.

Section 10 amends s. 420.9072, F.S., relating to the State Housing Initiatives Partnership Program.

Section 11 amends s. 420.9075, F.S., relating to local housing assistance plans.

Section 12 amends s. 443.091, F.S., relating to reemployment benefit eligibility conditions.

Section 13 provides an effective date of July 1, 2020.

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:

[80] Section 120.55(1)(a)5., F.S.
[81] Section 120.55(1)(c), F.S.
[82] Rule 1-1.015(5)(a), F.A.C. *referencing* r. 1-1.011(3)(c), F.A.C.

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires each agency to review and repromulgate its rules, which may require agencies to expend funds to institute this new process. While the review process the bill creates is neither intensive nor time-consuming, it would still require agencies to dedicate staff to review existing rules and engage in rulemaking to repromulgate the rules. It is unclear whether this new activity could be absorbed into each agency's current budget.

State agencies currently are required to comply with the notice, publication, and hearing requirements for rulemaking and the requirements for preparing SERCs. The bill adds to these requirements. Compliance with these additional requirements may require agencies to devote more resources to rulemaking. It is unclear whether these new requirements could be absorbed into each agency's current budget.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DOS to adopt rules to implement the provisions of the bill concerning repromulgation. The bill gives DOS until December 31, 2020, to adopt such rules. The bill's provisions regarding repromulgation provide DOS with sufficient direction to guide the department in the creation of the rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Oversight, Transparency & Public Management Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the bill in the following ways:

- Removed the creation of the Red Tape Reduction Advisory Council;
- Removed the provision requiring the establishment of a regulatory baseline by which agencies must abide;
- Required each agency to repromulgate its rules according to specified standards;
- Required that each SERC be available online;
- Specified the economic elements that an agency must consider before creating a rule;
- Required emergency rules to be published in the Florida Administrative Code;
- Required forms and material incorporated by reference to be available online sooner and to be coded the same way as legislation; and

- Revised the agency annual regulatory plan to require each agency to identify every rule the agency plans to amend, create, or repeal for the period beginning October 1 and ending September 30 of each year.

The analysis is drafted to the committee substitute as approved by the Oversight, Transparency & Public Management Subcommittee.

A bill to be entitled

An act relating to administrative procedures; amending s. 120.52, F.S.; defining terms; amending s. 120.54, F.S.; applying certain provisions applicable to all rules other than emergency rules to repromulgated rules; requiring a notice of rule development to include certain information; requiring a notice of withdrawal if a notice of proposed rule is not filed within a certain timeframe; requiring that certain persons be available at a workshop or public hearing to receive public input; requiring a notice of proposed rule to include certain information; requiring certain notices to be published within a specified timeframe; requiring that material proposed to be incorporated by reference be made available in a specified manner; authorizing electronic delivery of notices to persons who have requested advance notice of agency rulemaking proceedings; revising the circumstances under which a proposed rule's adverse impact on small businesses is considered to exist; requiring an agency to provide notice of a regulatory alternative to the Administrative Procedures Committee within a certain timeframe; requiring an agency to publish a notice of convening a separate proceeding in certain circumstances; providing that rulemaking

timelines are tolled during such separate proceedings; requiring a notice of change for certain changes to a statement of estimated regulatory costs; revising the requirements for the contents of a notice of change; requiring the committee to notify the Department of State that the date for an agency to adopt a rule has expired under certain circumstances; requiring the department to publish a notice of withdrawal under certain circumstances; requiring that certain information be available on the agency's website; requiring emergency rules to be published in the Florida Administrative Code; prohibiting agencies from making changes to emergency rules by superseding the rule; authorizing an agency to make technical changes to an emergency rule during a specified timeframe; requiring an agency to file a copy of a certain petition with the committee; amending s. 120.541, F.S.; requiring an agency to provide a copy of any proposal for a lower cost regulatory alternative to the committee within a certain timeframe; specifying the circumstances under which such a proposal is made in good faith; revising requirements for an agency's consideration of a lower cost regulatory alternative; providing for an agency's revision and publication of a revised statement of estimated regulatory costs in

response to certain circumstances; requiring that a revised statement of lower cost regulatory alternative be submitted to the rules ombudsman and published in a specified manner; revising the information required in a statement of estimated regulatory cost; deleting the definition of the term "transactional costs"; revising the applicability of specified provisions; providing additional requirements for the calculation of estimated regulatory costs; requiring the Department of State to include specified information on a website; requiring certain agencies to include certain information in a statement of estimated regulatory costs and on their websites; providing certain requirements for an agency that revises a statement of estimated regulatory costs; creating s. 120.5435, F.S.; providing legislative intent; requiring agency review of rules and repromulgation of rules that do not require substantive changes within a specified timeframe; requiring an agency to publish a notice of repromulgation in the Florida Administrative Register and file a rule for promulgation with the Department of State within a specified timeframe; requiring an agency to file a notice of repromulgation with the committee within a specified timeframe; providing requirements for the notice of repromulgation;

requiring withdrawal of a rule proposed for repromulgation if the rule is not filed within a specified timeframe; providing that a repromulgated rule is not subject to challenge as a proposed rule and that certain hearing requirements do not apply; requiring an agency to file a specified number of certified copies of a proposed repromulgated rule and any material incorporated by reference; providing that a repromulgated rule is adopted upon filing with the department and becomes effective after a specified time; requiring the department to update certain information in the Florida Administrative Code; requiring the department to adopt rules by a certain date; amending s. 120.545, F.S.; requiring the committee to examine existing rules; amending s. 120.55, F.S.; requiring the Florida Administrative Code to be published once daily; requiring materials incorporated by reference to be filed in a specified manner; requiring the department to include the date of a technical rule change in the Florida Administrative Code; providing that a technical change does not affect the effective date of a rule; requiring specified rulemaking; amending s. 120.74, F.S.; requiring an agency to list each rule it plans to develop, adopt, or repeal during the forthcoming

year in the agency's annual regulatory plan; requiring that an agency's annual regulatory plan identify any rules that are required to be repromulgated during the forthcoming year; requiring the agency to make certain declarations concerning the annual regulatory plan; amending ss. 120.80, 120.81, 420.9072, 420.9075, 443.091, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (16) through (19) and subsections (20) through (22) of section 120.52, Florida Statutes, are renumbered as subsections (17) through (20) and subsections (22) through (24), respectively, and new subsections (16) and (21) are added to that section, to read:

120.52 Definitions.—As used in this act:

(16) "Repromulgation" means the publication and adoption of an existing rule following an agency's review of the rule for consistency with the powers and duties granted by its enabling statute.

(21) "Technical change" means a change limited to correcting grammatical, typographical, and similar errors not affecting the substance of the rule.

Section 2. Paragraph (i) of subsection (1), subsections

(2) and (3), and paragraph (a) of subsection (7) of section 120.54, Florida Statutes, are amended, and paragraphs (e) and (f) are added to subsection (4) of that section, to read:

120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—

(i)1. A rule may incorporate material by reference but only as the material exists on the date the rule is adopted. For purposes of the rule, changes in the material are not effective unless the rule is amended to incorporate the changes.

2. An agency rule that incorporates by specific reference another rule of that agency automatically incorporates subsequent amendments to the referenced rule unless a contrary intent is clearly indicated in the referencing rule. A notice of amendments to a rule that has been incorporated by specific reference in other rules of that agency must explain the effect of those amendments on the referencing rules.

3. In rules adopted after December 31, 2010, and rules repromulgated on or after July 1, 2020, material may not be incorporated by reference unless:

a. The material has been submitted in the prescribed electronic format to the Department of State and the full text of the material can be made available for free public access through an electronic hyperlink from the rule making the reference in the Florida Administrative Code; or

b. The agency has determined that posting the material on the Internet for purposes of public examination and inspection would constitute a violation of federal copyright law, in which case a statement to that effect, along with the address of locations at the Department of State and the agency at which the material is available for public inspection and examination, must be included in the notice required by subparagraph (3)(a)1.

4. A rule may not be amended by reference only. Amendments must set out the amended rule in full in the same manner as required by the State Constitution for laws.

5. Notwithstanding any contrary provision in this section, when an adopted rule of the Department of Environmental Protection or a water management district is incorporated by reference in the other agency's rule to implement a provision of part IV of chapter 373, subsequent amendments to the rule are not effective as to the incorporating rule unless the agency incorporating by reference notifies the committee and the Department of State of its intent to adopt the subsequent amendment, publishes notice of such intent in the Florida Administrative Register, and files with the Department of State a copy of the amended rule incorporated by reference. Changes in the rule incorporated by reference are effective as to the other agency 20 days after the date of the published notice and filing with the Department of State. The Department of State shall amend the history note of the incorporating rule to show the

effective date of such change. Any substantially affected person may, within 14 days after the date of publication of the notice of intent in the Florida Administrative Register, file an objection to rulemaking with the agency. The objection shall specify the portions of the rule incorporated by reference to which the person objects and the reasons for the objection. The agency shall not have the authority under this subparagraph to adopt those portions of the rule specified in such objection. The agency shall publish notice of the objection and of its action in response in the next available issue of the Florida Administrative Register.

6. The Department of State may adopt by rule requirements for incorporating materials pursuant to this paragraph.

(2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—

(a)1. Except when the intended action is the repeal of a rule, agencies shall provide notice of the development of proposed rules by publication of a notice of rule development in the Florida Administrative Register before providing notice of a proposed rule as required by paragraph (3)(a). The notice of rule development must ~~shall~~ indicate the subject area to be addressed by rule development, provide a short, plain explanation of the purpose and effect of the proposed rule, cite the grant of rulemaking authority for the proposed rule and the law being implemented ~~specific legal authority for the proposed rule~~, and include the proposed rule number and the preliminary

text of the proposed rules, if available, or a statement of how a person may promptly obtain, without cost, a copy of any preliminary draft, when ~~if~~ available.

2. If a notice of a proposed rule is not filed within 12 months after the notice of rule development, the agency shall withdraw the rule and give notice of the withdrawal in the next available issue of the Florida Administrative Register.

(b) All rules should be drafted in readable language. The language is readable if:

1. It avoids the use of obscure words and unnecessarily long or complicated constructions; and

2. It avoids the use of unnecessary technical or specialized language that is understood only by members of particular trades or professions.

(c) An agency may hold public workshops for purposes of rule development. If requested in writing by any affected person, an agency must hold public workshops, including workshops in various regions of the state or the agency's service area, for purposes of rule development ~~if requested in writing by any affected person~~, unless the agency head explains in writing why a workshop is unnecessary. The explanation is not final agency action subject to review pursuant to ss. 120.569 and 120.57. The failure to provide the explanation when required may be a material error in procedure pursuant to s. 120.56(1)(c). When a workshop or public hearing is held, the

agency must ensure that the persons responsible for preparing the proposed rule are available to receive public input, to explain the agency's proposal, and to respond to questions or comments regarding the rule being developed. The workshop may be facilitated or mediated by a neutral third person, or the agency may employ other types of dispute resolution alternatives for the workshop that are appropriate for rule development. Notice of a workshop for rule development must ~~workshop shall~~ be by publication in the Florida Administrative Register not less than 14 days before ~~prior to~~ the date on which the workshop is scheduled to be held and must ~~shall~~ indicate the subject area that ~~which~~ will be addressed; the agency contact person; and the place, date, and time of the workshop.

(d)1. An agency may use negotiated rulemaking in developing and adopting rules. The agency should consider the use of negotiated rulemaking when complex rules are being drafted or strong opposition to the rules is anticipated. The agency should consider, but is not limited to considering, whether a balanced committee of interested persons who will negotiate in good faith can be assembled, whether the agency is willing to support the work of the negotiating committee, and whether the agency can use the group consensus as the basis for its proposed rule. Negotiated rulemaking uses a committee of designated representatives to draft a mutually acceptable proposed rule.

2. An agency that chooses to use the negotiated rulemaking process described in this paragraph shall publish in the Florida Administrative Register a notice of negotiated rulemaking that includes a listing of the representative groups that will be invited to participate in the negotiated rulemaking process. Any person who believes that his or her interest is not adequately represented may apply to participate within 30 days after publication of the notice. All meetings of the negotiating committee shall be noticed and open to the public pursuant to ~~the provisions of~~ this chapter. The negotiating committee shall be chaired by a neutral facilitator or mediator.

3. The agency's decision to use negotiated rulemaking, its selection of the representative groups, and approval or denial of an application to participate in the negotiated rulemaking process are not agency action. ~~Nothing in~~ This subparagraph is not intended to affect the rights of a substantially ~~an~~ affected person to challenge a proposed rule developed under this paragraph in accordance with s. 120.56(2).

(3) ADOPTION PROCEDURES.—

(a) Notices.—

1. Before ~~Prior to~~ the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action; the rule number and full text of

the proposed rule or amendment and a summary thereof; a reference to the grant of rulemaking authority pursuant to which the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented or interpreted. The notice must include a concise summary of the agency's statement of the estimated regulatory costs, if one has been prepared, based on the factors set forth in s. 120.541(2), which describes the regulatory impact of the rule in readable language; an agency website address where the statement of estimated regulatory costs can be viewed in its entirety, if one has been prepared; a statement that any person who wishes to provide the agency with information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by s. 120.541(1), must do so in writing within 21 days after publication of the notice; and a statement as to whether, based on the statement of the estimated regulatory costs or other information expressly relied upon and described by the agency if no statement of regulatory costs is required, the proposed rule is expected to require legislative ratification pursuant to s. 120.541(3). The notice must state the procedure for requesting a public hearing on the proposed rule. Except when the intended action is the repeal of a rule, the notice must include a reference both to the date on which and to the place where the notice of rule development that is required by subsection (2)

appeared.

2. The notice shall be published in the Florida Administrative Register at least 7 days after the publication of the notice of rule development and at least ~~not less than~~ 28 days before ~~prior to~~ the intended action. The proposed rule, including all materials proposed to be incorporated by reference and the statement of estimated regulatory costs, if one has been prepared, must ~~shall~~ be available for inspection and copying by the public at the time of the publication of notice. Material proposed to be incorporated by reference in the notice must be made available in the manner prescribed by sub-subparagraph (1)(i)3.a. or sub-subparagraph (1)(i)3.b.

3. The notice shall be mailed to all persons named in the proposed rule and mailed or delivered electronically to all persons who, at least 14 days before publication of the notice ~~prior to such mailing~~, have made requests of the agency for advance notice of its proceedings. The agency shall also give such notice as is prescribed by rule to those particular classes of persons to whom the intended action is directed.

4. The adopting agency shall file with the committee, at least 21 days before ~~prior to~~ the proposed adoption date, a copy of each rule it proposes to adopt; a copy of any material incorporated by reference in the rule; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of any statement of estimated regulatory costs that

has been prepared pursuant to s. 120.541; a statement of the extent to which the proposed rule relates to federal standards or rules on the same subject; and the notice required by subparagraph 1.

(b) Special matters to be considered in rule adoption.—

1. Statement of estimated regulatory costs.—Before the adoption , amendment, or repeal of any rule other than an emergency rule, an agency is encouraged to prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541. However, an agency must prepare a statement of estimated regulatory costs of the proposed rule, as provided by s. 120.541, if:

a. The proposed rule will have an adverse impact on small business; or

b. The proposed rule is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate in this state within 1 year after the implementation of the rule.

2. Small businesses, small counties, and small cities.—

a. For purposes of this subsection and s. 120.541(2), an adverse impact on small businesses, as defined in s. 288.703 or sub-subparagraph b., exists if, for any small business:

(I) An owner, officer, operator, or manager must complete any education, training, or testing to comply with the rule in the first year or is likely to spend at least 10 hours or

purchase professional advice to understand and comply with the rule in the first year;

(II) Taxes or fees assessed on transactions are likely to increase by $500 or more in the aggregate in 1 year;

(III) Prices charged for goods and services are restricted or are likely to increase because of the rule;

(IV) Specially trained, licensed, or tested employees will be required because of the rule;

(V) Operating costs are expected to increase by at least $1,000 annually because of the rule; or

(VI) Capital expenditures in excess of $1,000 are necessary to comply with the rule.

b. Each agency, before the adoption, amendment, or repeal of a rule, shall consider the impact of the rule on small businesses as defined in ~~by~~ s. 288.703 and the impact of the rule on small counties or small cities as defined in ~~by~~ s. 120.52. Whenever practicable, an agency shall tier its rules to reduce disproportionate impacts on small businesses, small counties, or small cities to avoid regulating small businesses, small counties, or small cities that do not contribute significantly to the problem the rule is designed to address. An agency may define "small business" to include businesses employing more than 200 persons, may define "small county" to include those with populations of more than 75,000, and may define "small city" to include those with populations of more

than 10,000, if it finds that such a definition is necessary to adapt a rule to the needs and problems of small businesses, small counties, or small cities. The agency shall consider each of the following methods for reducing the impact of the proposed rule on small businesses, small counties, and small cities, or any combination of these entities:

(I) Establishing less stringent compliance or reporting requirements in the rule.

(II) Establishing less stringent schedules or deadlines in the rule for compliance or reporting requirements.

(III) Consolidating or simplifying the rule's compliance or reporting requirements.

(IV) Establishing performance standards or best management practices to replace design or operational standards in the rule.

(V) Exempting small businesses, small counties, or small cities from any or all requirements of the rule.

c.(I)~~b.(I)~~ If the agency determines that the proposed action will affect small businesses as defined by the agency as provided in sub-subparagraph b. ~~a.~~, the agency shall send written notice of the rule to the rules ombudsman in the Executive Office of the Governor at least 28 days before the intended action.

(II) Each agency shall adopt those regulatory alternatives offered by the rules ombudsman in the Executive Office of the

Governor and provided to the agency no later than 21 days after the rules ombudsman's receipt of the written notice of the rule which it finds are feasible and consistent with the stated objectives of the proposed rule and which would reduce the impact on small businesses. When regulatory alternatives are offered by the rules ombudsman in the Executive Office of the Governor, the 90-day period for filing the rule in subparagraph (e)2. is extended for a period of 21 days. The agency shall provide notice to the committee of any regulatory alternative offered to the agency pursuant to this sub-subparagraph at least 21 days before filing the rule for adoption.

(III) If an agency does not adopt all alternatives offered pursuant to this sub-subparagraph, it shall, before rule adoption or amendment and pursuant to subparagraph (d)1., file a detailed written statement with the committee explaining the reasons for failure to adopt such alternatives. Within 3 working days after the filing of such notice, the agency shall send a copy of such notice to the rules ombudsman in the Executive Office of the Governor.

(c) Hearings.—

1. If the intended action concerns any rule other than one relating exclusively to procedure or practice, the agency shall, on the request of any affected person received within 21 days after the date of publication of the notice of intended agency action, give affected persons an opportunity to present evidence

and argument on all issues under consideration. The agency may schedule a public hearing on the proposed rule and, if requested by any affected person, shall schedule a public hearing on the proposed rule. When a public hearing is held, the agency must ensure that the persons responsible for preparing the proposed rule and the statement of estimated regulatory costs, if one has been prepared, ~~staff~~ are available to explain the agency's proposal and to respond to questions or comments regarding the proposed rule, the statement of estimated regulatory costs, if one has been prepared, and the agency's decision whether to adopt a lower cost regulatory alternative submitted pursuant to s. 120.541(1)(a). If the agency head is a board or other collegial body created under s. 20.165(4) or s. 20.43(3)(g), and one or more requested public hearings is scheduled, the board or other collegial body shall conduct at least one of the public hearings itself and may not delegate this responsibility without the consent of those persons requesting the public hearing. Any material pertinent to the issues under consideration submitted to the agency within 21 days after the date of publication of the notice or submitted to the agency between the date of publication of the notice and the end of the final public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

2. Rulemaking proceedings shall be governed solely by the provisions of this section unless a person timely asserts that

the person's substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that the rulemaking proceeding is not adequate to protect the person's interests, it shall suspend the rulemaking proceeding and convene a separate proceeding under the provisions of ss. 120.569 and 120.57. The agency shall publish notice of convening a separate proceeding in the Florida Administrative Register. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed. All timelines in this section are tolled during any suspension of the rulemaking proceeding under this subparagraph, beginning on the date the notice of convening a separate proceeding is published and resuming on the day after the conclusion of the separate proceeding.

(d) Modification or withdrawal of proposed rules.—

1. After the final public hearing on the proposed rule, or after the time for requesting a hearing has expired, if the proposed rule has not been changed from the proposed rule as previously filed with the committee, or contains only technical changes, the adopting agency shall file a notice to that effect with the committee at least 7 days before ~~prior to~~ filing the proposed rule for adoption. Any change, other than a technical

change ~~that does not affect the substance of the rule~~, must be supported by the record of public hearings held on the proposed rule, must be in response to written material submitted to the agency within 21 days after the date of publication of the notice of intended agency action or submitted to the agency between the date of publication of the notice and the end of the final public hearing, or must be in response to a proposed objection by the committee. Any change, other than a technical change, to a statement of estimated regulatory costs requires a notice of change. In addition, ~~when~~ any change, other than a technical change, to the text of ~~is made in~~ a proposed rule or any material incorporated by reference requires~~, other than a technical change,~~ the adopting agency to ~~shall~~ provide a copy of a notice of change by certified mail or actual delivery to any person who requests it in writing no later than 21 days after the notice required in paragraph (a). The agency shall file the notice of change with the committee, along with the reasons for the change, and provide the notice of change to persons requesting it, at least 21 days before ~~prior to~~ filing the proposed rule for adoption. The notice of change shall be published in the Florida Administrative Register at least 21 days before ~~prior to~~ filing the proposed rule for adoption. The notice of change must include a summary of any revision to a statement of estimated regulatory costs required by s. 120.541(1)(d). This subparagraph does not apply to emergency

rules adopted pursuant to subsection (4). Material proposed to be incorporated by reference in the notice required by this subparagraph must be made available in the manner prescribed by sub-subparagraph (1)(i)3.a. or sub-subparagraph (1)(i)3.b.

2. After the notice required by paragraph (a) and before ~~prior to~~ adoption, the agency may withdraw the proposed rule in whole or in part.

3. After the notice required by paragraph (a), the agency shall withdraw the proposed rule if the agency has failed to adopt it within the prescribed timeframes in this chapter. If, 30 days after notice by the committee that the agency has failed to adopt the proposed rule within the prescribed timeframes in this chapter, the agency has not given notice of the withdrawal of the rule, the committee shall notify the Department of State that the date for adoption of the rule has expired, and the Department of State shall publish a notice of withdrawal of the proposed rule.

4.~~3.~~ After adoption and before the rule becomes effective, a rule may be modified or withdrawn only in the following circumstances:

a. When the committee objects to the rule;

b. When a final order, which is not subject to further appeal, is entered in a rule challenge brought pursuant to s. 120.56 after the date of adoption but before the rule becomes effective pursuant to subparagraph (e)6.;

c. If the rule requires ratification, when more than 90 days have passed since the rule was filed for adoption without the Legislature ratifying the rule, in which case the rule may be withdrawn but may not be modified; or

d. When the committee notifies the agency that an objection to the rule is being considered, in which case the rule may be modified to extend the effective date by not more than 60 days.

5.~~4.~~ The agency shall give notice of its decision to withdraw or modify a rule in the first available issue of the publication in which the original notice of rulemaking was published, shall notify those persons described in subparagraph (a)3. in accordance with the requirements of that subparagraph, and shall notify the Department of State if the rule is required to be filed with the Department of State.

6.~~5.~~ After a rule has become effective, it may be repealed or amended only through the rulemaking procedures specified in this chapter.

(e) Filing for final adoption; effective date.—

1. If the adopting agency is required to publish its rules in the Florida Administrative Code, the agency, upon approval of the agency head, shall file with the Department of State three certified copies of the rule it proposes to adopt; one copy of any material incorporated by reference in the rule, certified by the agency; a summary of the rule; a summary of any hearings

held on the rule; and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required by this subparagraph, in the office of the agency head, and such rules shall be open to the public.

2. A rule may not be filed for adoption less than 28 days or more than 90 days after the notice required by paragraph (a), until 21 days after the notice of change required by paragraph (d), until 14 days after the final public hearing, until 21 days after a statement of estimated regulatory costs required under s. 120.541 has been provided to all persons who submitted a lower cost regulatory alternative and made available to the public at a readily accessible page on the agency's website, or until the administrative law judge has rendered a decision under s. 120.56(2), whichever applies. When a required notice of change is published before ~~prior to~~ the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published before ~~prior to~~ the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after

receipt of the transcript, if one is made, whichever is latest. The term "public hearing" includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under s. 120.56(2) is filed, the period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete.

3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been complied with, that all statutory rulemaking requirements have been met, and that there is no administrative determination pending on the rule.

4. At the time a rule is filed, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee. The Department of State shall reject any rule that is not filed within the prescribed time limits; that does not comply with all statutory rulemaking requirements and rules of the Department of State; upon which an agency has not responded in writing to all material and timely written inquiries or written comments; upon which an administrative determination is pending; or which does not include a statement of estimated regulatory costs, if required.

5. If a rule has not been adopted within the time limits

imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule shall withdraw the proposed rule and give notice of its action in the next available issue of the Florida Administrative Register.

6. The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the notice required by subparagraph (a)1., on a date required by statute, or upon ratification by the Legislature pursuant to s. 120.541(3). Rules not required to be filed with the Department of State shall become effective when adopted by the agency head, on a later date specified by rule or statute, or upon ratification by the Legislature pursuant to s. 120.541(3). If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

For the purposes of this paragraph, the term "administrative determination" does not include subsequent judicial review.

(4) EMERGENCY RULES.—

(e) Emergency rules shall be published in the Florida Administrative Code.

(f) An agency may not supersede an emergency rule currently in effect. Technical changes to an emergency rule may be made within the first 7 days after adoption of the rule.

(7) PETITION TO INITIATE RULEMAKING.—

(a) Any person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by this chapter. The petition shall specify the proposed rule and action requested. The agency shall file a copy of the petition with the committee. Not later than 30 calendar days following the date of filing a petition, the agency shall initiate rulemaking proceedings under this chapter, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

Section 3. Section 120.541, Florida Statutes, is amended to read:

120.541 Statement of estimated regulatory costs.—

(1)(a) Within 21 days after publication of the notice of a proposed rule or notice of change ~~required under s. 120.54(3)(a)~~, a substantially affected person may submit to an agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented. The agency shall

provide a copy of any proposal for a lower cost regulatory alternative to the committee at least 21 days before filing the rule for adoption. The proposal may include the alternative of not adopting any rule if the proposal explains how the lower costs and objectives of the law will be achieved by not adopting any rule. If submitted after a notice of change, a proposal for a lower cost regulatory alternative is deemed to be made in good faith only if the person reasonably believes, and the proposal states the person's reasons for believing, that the proposed rule as changed by the notice of change increases the regulatory costs or creates an adverse impact on small businesses that was not created by the previous proposed rule. If such a proposal is submitted, the 90-day period for filing the rule is extended 21 days. Upon the submission of the lower cost regulatory alternative, the agency shall prepare a statement of estimated regulatory costs as provided in subsection (2), or shall revise its prior statement of estimated regulatory costs, and either adopt the alternative proposal, reject the alternative proposal, or modify the proposed rule to reduce the regulatory costs. If the agency rejects the alternative proposal or modifies the proposed rule, the agency shall ~~or~~ provide a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(b) If a proposed rule will have an adverse impact on small business or if the proposed rule is likely to directly or

indirectly increase regulatory costs in excess of $200,000 in the aggregate within 1 year after the implementation of the rule, the agency shall prepare a statement of estimated regulatory costs as required by s. 120.54(3)(b).

(c) The agency shall revise a statement of estimated regulatory costs if any change to the rule made under s. 120.54(3)(d) increases the regulatory costs of the rule or if the rule is modified in response to the submission of a lower cost regulatory alternative. A summary of the revised statement must be included with any subsequent notice published under s. 120.54(3).

(d) At least 21 days before filing the proposed rule for adoption, an agency that is required to revise a statement of estimated regulatory costs shall provide the statement to the person who submitted the lower cost regulatory alternative, to the rules ombudsman in the Executive Office of the Governor, and to the committee. The revised statement shall be published and made available in the same manner as the original statement of estimated regulatory costs ~~and shall provide notice on the agency's website that it is available to the public~~.

(e) Notwithstanding s. 120.56(1)(c), the failure of the agency to prepare and publish a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative as provided in this subsection is a material failure to follow the applicable rulemaking procedures

or requirements set forth in this chapter.

(f) An agency's failure to prepare a statement of estimated regulatory costs or to respond to a written lower cost regulatory alternative may not be raised in a proceeding challenging the validity of a rule pursuant to s. 120.52(8)(a) unless:

1. Raised in a petition filed no later than 1 year after the effective date of the rule; and

2. Raised by a person whose substantial interests are affected by the rule's regulatory costs.

(g) A rule that is challenged pursuant to s. 120.52(8)(f) may not be declared invalid unless:

1. The issue is raised in an administrative proceeding within 1 year after the effective date of the rule;

2. The challenge is to the agency's rejection of a lower cost regulatory alternative offered under paragraph (a) or s. 120.54(3)(b)2.c. ~~s. 120.54(3)(b)2.b.~~; and

3. The substantial interests of the person challenging the rule are materially affected by the rejection.

(2) A statement of estimated regulatory costs must ~~shall~~ include:

(a) An economic analysis showing whether the rule directly or indirectly:

1. Is likely to have an adverse impact on economic growth, private sector job creation or employment, or private sector

investment in excess of $1 million in the aggregate within 5 years after the implementation of the rule;

2. Is likely to have an adverse impact on business competitiveness, including the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets, productivity, or innovation in excess of $1 million in the aggregate within 5 years after the implementation of the rule; or

3. Is likely to increase regulatory costs, including all ~~any transactional~~ costs and impacts estimated in the statement, in excess of $1 million in the aggregate within 5 years after the implementation of the rule.

(b) A good faith estimate of the number of individuals, small businesses, and other entities likely to be required to comply with the rule, together with a general description of the types of individuals likely to be affected by the rule.

(c) A good faith estimate of the cost to the agency, and to any other state and local government entities, of implementing and enforcing the proposed rule, and any anticipated effect on state or local revenues.

(d) A good faith estimate of the compliance ~~transactional~~ costs likely to be incurred by individuals and entities, including local government entities, required to comply with the requirements of the rule. ~~As used in this section, "transactional costs" are direct costs that are readily~~

~~ascertainable based upon standard business practices, and include filing fees, the cost of obtaining a license, the cost of equipment required to be installed or used or procedures required to be employed in complying with the rule, additional operating costs incurred, the cost of monitoring and reporting, and any other costs necessary to comply with the rule.~~

(e) An analysis of the impact on small businesses as defined by s. 288.703, and an analysis of the impact on small counties and small cities as defined in s. 120.52. The impact analysis for small businesses must include the basis for the agency's decision not to implement alternatives that would reduce adverse impacts on small businesses.

(f) Any additional information that the agency determines may be useful.

(g) In the statement or revised statement, whichever applies, a description of any regulatory alternatives submitted under paragraph (1)(a) and a statement adopting the alternative or a statement of the reasons for rejecting the alternative in favor of the proposed rule.

(3) If the adverse impact or regulatory costs of the rule exceed any of the criteria established in paragraph (2)(a), the rule shall be submitted to the President of the Senate and Speaker of the House of Representatives no later than 30 days before ~~prior to~~ the next regular legislative session, and the rule may not take effect until it is ratified by the

Legislature.

(4) Subsection (3) does not apply to the adoption of:

(a) Federal standards pursuant to s. 120.54(6).

(b) Triennial updates of and amendments to the Florida Building Code which are expressly authorized by s. 553.73.

(c) Triennial updates of and amendments to the Florida Fire Prevention Code which are expressly authorized by s. 633.202.

(d) Emergency rules adopted pursuant to s. 120.54(4).

(5) For purposes of subsections (2) and (3), adverse impacts and regulatory costs likely to occur within 5 years after implementation of the rule include adverse impacts and regulatory costs estimated to occur within 5 years after the effective date of the rule. However, if any provision of the rule is not fully implemented upon the effective date of the rule, the adverse impacts and regulatory costs associated with such provision must be adjusted to include any additional adverse impacts and regulatory costs estimated to occur within 5 years after implementation of such provision.

(6)(a) In evaluating the impacts described in paragraphs (2)(a) and (2)(e), an agency shall include good faith estimates of market impacts likely to result from compliance with the proposed rule, including:

1. Increased customer charges for goods or services.

2. Decreased market value of goods or services produced,

provided, or sold.

3. Increased costs resulting from the purchase of substitute or alternative goods or services.

4. The reasonable value of time to be spent by owners, officers, operators, and managers to understand and comply with the proposed rule, including, but not limited to, time to be spent to complete required education, training, or testing.

5. Capital costs.

6. Any other impacts suggested by the rules ombudsman in the Executive Office of the Governor or interested persons.

(b) In estimating and analyzing the information required in paragraphs (2)(b)-(e), the agency may use surveys of individuals, businesses, business organizations, counties, and municipalities to collect data helpful to estimate and analyze the costs and impacts.

(c) In estimating compliance costs under paragraph (2)(d), the agency shall consider, among other matters, all direct and indirect costs necessary to comply with the proposed rule that are readily ascertainable based upon standard business practices, including, but not limited to, costs related to:

1. Filing fees.

2. Expenses to obtain a license.

3. Necessary equipment.

4. Installation, utilities, and maintenance of necessary equipment.

5. Necessary operations and procedures.

6. Accounting, financial, information management, and other administrative processes.

7. Other processes.

8. Labor based on relevant rates of wages, salaries, and benefits.

9. Materials and supplies.

10. Capital expenditures, including financing costs.

11. Professional and technical services, including contracted services necessary to implement and maintain compliance.

12. Monitoring and reporting.

13. Qualifying and recurring education, training, and testing.

14. Travel.

15. Insurance and surety requirements.

16. A fair and reasonable allocation of administrative costs and other overhead.

17. Reduced sales or other revenues.

18. Other items suggested by the rules ombudsman in the Executive Office of the Governor or any interested person, business organization, or business representative.

(7)(a) The Department of State shall include on the Florida Administrative Register website the agency website addresses where statements of estimated regulatory costs can be

viewed in their entirety.

(b) An agency that prepares a statement of estimated regulatory costs must provide, as part of the notice required under s. 120.54(3)(a), the agency website address where the statement of estimated regulatory costs can be read in its entirety to the Department of State for publication in the Florida Administrative Register.

(c) If an agency revises its statement of estimated regulatory costs, the agency must provide notice that a revision has been made as provided in s. 120.54(3)(d). Such notice must include the agency website address where the revision can be viewed in its entirety.

Section 4. Section 120.5435, Florida Statutes, is created to read:

120.5435 Repromulgation of rules.—

(1) It is the intent of the Legislature that each agency periodically review its rules for consistency with the powers and duties granted by its enabling statutes.

(2) If an agency determines after review that substantive changes to update a rule are not required, such agency shall repromulgate the rule to reflect the date of the review. Each agency shall review its rules pursuant to this section either 5 years after July 1, 2020, if the rule was adopted before January 1, 2012, or 10 years after the rule was adopted, if the rule was adopted on or after January 1, 2012. Failure of an agency to

adhere to the deadlines imposed in this section constitutes repeal of any affected rule. In the event of such a failure, the committee shall notify the Department of State that the agency, by its failure to repromulgate the affected rule, has elected to repeal the rule. Upon receipt of the committee's notice, the Department of State shall publish a notice to that effect in the next available issue of the Florida Administrative Register. Upon publication of the notice, the rule shall be stricken from the files of the Department of State and the files of the agency.

(3) Before repromulgation of a rule, the agency must, upon approval by the agency head or his or her designee:

(a) Publish a notice of repromulgation in the Florida Administrative Register. A notice of repromulgation is not required to include the text of the rule being repromulgated.

(b) File the rule for repromulgation with the Department of State. A rule may not be filed for repromulgation fewer than 28 days, nor more than 90 days, after the date of publication of the notice required by paragraph (a).

(4) The agency must file a notice of repromulgation with the committee at least 14 days before filing the rule for repromulgation. At the time the rule is filed for repromulgation, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee.

(5) A repromulgated rule is not subject to challenge as a proposed rule pursuant to s. 120.56(2).

(6) The hearing requirements of s. 120.54 do not apply to repromulgation of a rule.

(7)(a) The agency, upon approval of the agency head or his or her designee, shall file with the Department of State three certified copies of the repromulgated rule it proposes to adopt and one certified copy of any material incorporated by reference in the rule.

(b) The repromulgated rule shall be adopted upon filing with the Department of State and becomes effective 20 days after the date it is filed.

(c) The Department of State shall update the history note of the rule in the Florida Administrative Code to reflect the effective date of the repromulgated rule.

(8) The Department of State shall adopt rules to implement this section by December 31, 2020.

Section 5. Subsection (1) of section 120.545, Florida Statutes, is amended to read:

120.545 Committee review of agency rules.—

(1) As a legislative check on legislatively created authority, the committee shall examine each existing rule and proposed rule, except for those proposed rules exempted by s. 120.81(1)(e) and (2), and its accompanying material, and each emergency rule, and may examine any existing rule, for the

purpose of determining whether:

(a) The rule is an invalid exercise of delegated legislative authority.

(b) The statutory authority for the rule has been repealed.

(c) The rule reiterates or paraphrases statutory material.

(d) The rule is in proper form.

(e) The notice given before ~~prior to~~ its adoption was sufficient to give adequate notice of the purpose and effect of the rule.

(f) The rule is consistent with expressed legislative intent pertaining to the specific provisions of law which the rule implements.

(g) The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law which the rule implements.

(h) The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule.

(i) The rule could be made less complex or more easily comprehensible to the general public.

(j) The rule's statement of estimated regulatory costs complies with the requirements of s. 120.541 and whether the rule does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less

costly alternatives that substantially accomplish the statutory objectives.

(k) The rule will require additional appropriations.

(l) If the rule is an emergency rule, there exists an emergency justifying the adoption of such rule, the agency is within its statutory authority, and the rule was adopted in compliance with the requirements and limitations of s. 120.54(4).

Section 6. Paragraphs (a) and (c) of subsection (1) of section 120.55, Florida Statutes, are amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision and publication system, compile and publish electronically, on a website managed by the department, the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(7), complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. The department may contract with a publishing firm for a printed publication;

however, the department shall retain responsibility for the code as provided in this section. The electronic publication shall be the official compilation of the administrative rules of this state. The Florida Administrative Code shall be published once daily by 8 a.m. If, after publication, a rule is corrected and replaced, the Florida Administrative Code shall indicate:

a. That the Florida Administrative Code has been republished.

b. The rule that has been corrected by the Department of State.

The Department of State shall retain the copyright over the Florida Administrative Code.

2. Not publish in the Florida Administrative Code rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance ~~shall not be published in the Florida Administrative Code~~. Exclusion from publication in the Florida Administrative Code does ~~shall~~ not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, ~~the department shall~~ publish the address and telephone number of the executive offices of each agency, the

manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Not publish forms ~~shall not be published~~ in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. Require all materials incorporated by reference in any part of an adopted rule and in any part of a repromulgated rule ~~The department shall allow adopted rules and material incorporated by reference~~ to be filed in the manner prescribed by s. 120.54(1)(i)3.a. or s. 120.54(1)(i)3.b. ~~electronic form as prescribed by department rule~~. When a rule is filed for adoption or repromulgation with incorporated material in electronic form,

the department's publication of the Florida Administrative Code on its website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

6. Include the date of any technical changes to a rule in the history note of the rule in the Florida Administrative Code. A technical change does not affect the effective date of the rule.

(c) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing, including a rule requiring documents created by an agency that are proposed to be incorporated by reference in notices published pursuant to s. 120.54(3)(a) and (d) to be coded in the same manner as notices published pursuant to s. 120.54(3)(a)1.

Section 7. Subsection (1) and paragraph (a) of subsection (2) of section 120.74, Florida Statutes, are amended to read:

120.74 Agency annual rulemaking and regulatory plans; reports.—

(1) REGULATORY PLAN.—By October 1 of each year, each agency shall prepare a regulatory plan.

(a) The plan must include a listing of each law enacted or

amended during the previous 12 months which creates or modifies the duties or authority of the agency. If the Governor or the Attorney General provides a letter to the committee stating that a law affects all or most agencies, the agency may exclude the law from its plan. For each law listed by an agency under this paragraph, the plan must state:

1. Whether the agency must adopt rules to implement the law.

2. If rulemaking is necessary to implement the law:

a. Whether a notice of rule development has been published and, if so, the citation to such notice in the Florida Administrative Register.

b. The date by which the agency expects to publish the notice of proposed rule under s. 120.54(3)(a).

3. If rulemaking is not necessary to implement the law, a concise written explanation of the reasons why the law may be implemented without rulemaking.

(b) The plan must also identify and describe each rule, including each rule number or proposed rule number, ~~include a listing of each law not otherwise listed pursuant to paragraph (a)~~ which the agency expects to develop, adopt, or repeal for the 12-month period beginning on October 1 and ending on September 30 ~~implement by rulemaking before the following July 1~~, excluding emergency rules ~~except emergency rulemaking~~. For each rule ~~law~~ listed under this paragraph, the plan must state

whether the rulemaking is intended to simplify, clarify, increase efficiency, improve coordination with other agencies, reduce regulatory costs, or delete obsolete, unnecessary, or redundant rules.

(c) The plan must include any desired update to the prior year's regulatory plan or supplement published pursuant to subsection (7). If, in a prior year, a law was identified under this paragraph or under subparagraph (a)1. as a law requiring rulemaking to implement but a notice of proposed rule has not been published:

1. The agency shall identify and again list such law, noting the applicable notice of rule development by citation to the Florida Administrative Register; or

2. If the agency has subsequently determined that rulemaking is not necessary to implement the law, the agency shall identify such law, reference the citation to the applicable notice of rule development in the Florida Administrative Register, and provide a concise written explanation of the reason why the law may be implemented without rulemaking.

(d) The plan must identify any rules that are required to be repromulgated pursuant to s. 120.5435 for the 12-month period beginning on October 1 and ending on September 30.

(e) ~~(d)~~ The plan must include a certification executed on behalf of the agency by both the agency head, or, if the agency

head is a collegial body, the presiding officer; and the individual acting as principal legal advisor to the agency head. The certification must declare:

1. ~~Verify~~ That the persons executing the certification have reviewed the plan.

2. ~~Verify~~ That the agency regularly reviews all of its rules and identify the period during which all rules have most recently been reviewed to determine if the rules remain consistent with the agency's rulemaking authority and the laws implemented.

3. That the agency understands that regulatory accountability is necessary to ensure public confidence in the integrity of state government and, to that end, the agency is diligently working toward lowering the total number of rules adopted.

4. The total number of rules adopted and repealed during the previous 12 months.

(2) PUBLICATION AND DELIVERY TO THE COMMITTEE.—

(a) By October 1 of each year, each agency shall:

1. Publish its regulatory plan on its website or on another state website established for publication of administrative law records. A clearly labeled hyperlink to the current plan must be included on the agency's primary website homepage.

2. Electronically deliver to the committee a copy of the

certification required in paragraph (1)(e) ~~(1)(d)~~.

3. Publish in the Florida Administrative Register a notice identifying the date of publication of the agency's regulatory plan. The notice must include a hyperlink or website address providing direct access to the published plan.

Section 8. Subsection (11) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.—

(11) NATIONAL GUARD.—Notwithstanding s. 120.52(17) ~~s. 120.52(16)~~, the enlistment, organization, administration, equipment, maintenance, training, and discipline of the militia, National Guard, organized militia, and unorganized militia, as provided by s. 2, Art. X of the State Constitution, are not rules as defined by this chapter.

Section 9. Paragraph (c) of subsection (1) of section 120.81, Florida Statutes, is amended to read:

120.81 Exceptions and special requirements; general areas.—

(1) EDUCATIONAL UNITS.—

(c) Notwithstanding s. 120.52(17) ~~s. 120.52(16)~~, any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 1003.4282, s. 1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

Section 10. Paragraph (a) of subsection (1) of section 420.9072, Florida Statutes, is amended to read:

420.9072 State Housing Initiatives Partnership Program.—The State Housing Initiatives Partnership Program is created for the purpose of providing funds to counties and eligible municipalities as an incentive for the creation of local housing partnerships, to expand production of and preserve affordable housing, to further the housing element of the local government comprehensive plan specific to affordable housing, and to increase housing-related employment.

(1)(a) In addition to the legislative findings set forth in s. 420.6015, the Legislature finds that affordable housing is most effectively provided by combining available public and private resources to conserve and improve existing housing and provide new housing for very-low-income households, low-income households, and moderate-income households. The Legislature intends to encourage partnerships in order to secure the benefits of cooperation by the public and private sectors and to reduce the cost of housing for the target group by effectively combining all available resources and cost-saving measures. The Legislature further intends that local governments achieve this combination of resources by encouraging active partnerships between government, lenders, builders and developers, real estate professionals, advocates for low-income persons, and community groups to produce affordable housing and provide

related services. Extending the partnership concept to encompass cooperative efforts among small counties as defined in s. 120.52(20) ~~s. 120.52(19)~~, and among counties and municipalities is specifically encouraged. Local governments are also intended to establish an affordable housing advisory committee to recommend monetary and nonmonetary incentives for affordable housing as provided in s. 420.9076.

Section 11. Subsection (7) of section 420.9075, Florida Statutes, is amended to read:

420.9075 Local housing assistance plans; partnerships.—

(7) The moneys deposited in the local housing assistance trust fund shall be used to administer and implement the local housing assistance plan. The cost of administering the plan may not exceed 5 percent of the local housing distribution moneys and program income deposited into the trust fund. A county or an eligible municipality may not exceed the 5-percent limitation on administrative costs, unless its governing body finds, by resolution, that 5 percent of the local housing distribution plus 5 percent of program income is insufficient to adequately pay the necessary costs of administering the local housing assistance plan. The cost of administering the program may not exceed 10 percent of the local housing distribution plus 5 percent of program income deposited into the trust fund, except that small counties, as defined in s. 120.52(20) ~~s. 120.52(19)~~, and eligible municipalities receiving a local housing

distribution of up to $350,000 may use up to 10 percent of program income for administrative costs.

Section 12. Paragraph (d) of subsection (1) of section 443.091, Florida Statutes, is amended to read:

443.091 Benefit eligibility conditions.—

(1) An unemployed individual is eligible to receive benefits for any week only if the Department of Economic Opportunity finds that:

(d) She or he is able to work and is available for work. In order to assess eligibility for a claimed week of unemployment, the department shall develop criteria to determine a claimant's ability to work and availability for work. A claimant must be actively seeking work in order to be considered available for work. This means engaging in systematic and sustained efforts to find work, including contacting at least five prospective employers for each week of unemployment claimed. The department may require the claimant to provide proof of such efforts to the one-stop career center as part of reemployment services. A claimant's proof of work search efforts may not include the same prospective employer at the same location in 3 consecutive weeks, unless the employer has indicated since the time of the initial contact that the employer is hiring. The department shall conduct random reviews of work search information provided by claimants. As an alternative to contacting at least five prospective employers

for any week of unemployment claimed, a claimant may, for that same week, report in person to a one-stop career center to meet with a representative of the center and access reemployment services of the center. The center shall keep a record of the services or information provided to the claimant and shall provide the records to the department upon request by the department. However:

1. Notwithstanding any other provision of this paragraph or paragraphs (b) and (e), an otherwise eligible individual may not be denied benefits for any week because she or he is in training with the approval of the department, or by reason of s. 443.101(2) relating to failure to apply for, or refusal to accept, suitable work. Training may be approved by the department in accordance with criteria prescribed by rule. A claimant's eligibility during approved training is contingent upon satisfying eligibility conditions prescribed by rule.

2. Notwithstanding any other provision of this chapter, an otherwise eligible individual who is in training approved under s. 236(a)(1) of the Trade Act of 1974, as amended, may not be determined ineligible or disqualified for benefits due to enrollment in such training or because of leaving work that is not suitable employment to enter such training. As used in this subparagraph, the term "suitable employment" means work of a substantially equal or higher skill level than the worker's past adversely affected employment, as defined for purposes of the

Trade Act of 1974, as amended, the wages for which are at least 80 percent of the worker's average weekly wage as determined for purposes of the Trade Act of 1974, as amended.

3. Notwithstanding any other provision of this section, an otherwise eligible individual may not be denied benefits for any week because she or he is before any state or federal court pursuant to a lawfully issued summons to appear for jury duty.

4. Union members who customarily obtain employment through a union hiring hall may satisfy the work search requirements of this paragraph by reporting daily to their union hall.

5. The work search requirements of this paragraph do not apply to persons who are unemployed as a result of a temporary layoff or who are claiming benefits under an approved short-time compensation plan as provided in s. 443.1116.

6. In small counties as defined in s. 120.52(20) ~~s. 120.52(19)~~, a claimant engaging in systematic and sustained efforts to find work must contact at least three prospective employers for each week of unemployment claimed.

7. The work search requirements of this paragraph do not apply to persons required to participate in reemployment services under paragraph (e).

Section 13. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 851 Community Development District Bond Financing
SPONSOR(S): Altman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1254

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	11 Y, 1 N	Rivera	Miller
2) Ways & Means Committee	15 Y, 0 N	Aldridge	Langston
3) State Affairs Committee		Rivera	Williamson

SUMMARY ANALYSIS

Community development districts (CDDs) are a type of special purpose local government intended to provide basic urban community services in a cost-effective manner. Counties or municipalities create CDDs that are less than 2,500 acres, with a few exceptions, and the Florida Land and Water Adjudicatory Commission creates CDDs that are 2,500 acres or more in size. CDDs are controlled by a five-member board of supervisors (board) authorized by statute to exercise general powers, including the power to issue bonds, and, unless prohibited, certain special powers over public improvements and facilities.

A CDD board may authorize general obligation, revenue, and benefit bonds by a majority vote of the board. General obligation bonds are payable from taxes levied by the CDD and may be authorized only to finance or refinance capital projects or refund outstanding bonds. General obligation bonds require a referendum unless they are refunding bonds. Revenue bonds are payable from sources other than tax revenues, may be authorized without limitation, and only require a referendum if they will be secured by the full faith and credit and taxing power of the CDD.

There are 709 active CDDs in Florida. Since January 1, 2017, 213 CDDs authorized 305 separate issues of revenue bonds. No CDD has issued general obligation bonds during the period.

The bill increases the number of votes required for a CDD board to authorize bonds from a majority vote of the board members to two-thirds vote of the board members beginning October 1, 2020.

The bill may have an indeterminate negative fiscal impact on CDDs. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Community Development Districts

Community development districts (CDDs) are a type of special-purpose local government intended to provide basic urban community services in a cost-effective manner. These independent special districts[1] are created pursuant to and governed by the Uniform Community Development District Act of 1980.[2] The Act lays out the exclusive and uniform procedures for establishing and operating a CDD.[3] CDDs provide a means to manage and finance the delivery of basic services and capital infrastructure to developing communities without overburdening other governments and their taxpayers.[4] Currently, there are 709 active CDDs in Florida.[5]

CDDs are created either by local ordinance or the Florida Land and Water Adjudicatory Commission (FLWAC).[6] CDDs of less than 2,500 acres are established by ordinance of the county having jurisdiction over the majority of the land in the area in which the CDD will be located, with certain exceptions.[7] CDDs that lie wholly within a municipality are created by municipal ordinance.[8] CDDs that are 2,500 acres or more are established by petitioning the FLWAC to adopt an administrative rule creating the district.[9] CDDs remain in existence unless dissolved pursuant to statute, merged with another district, or all authorized services are transferred to a general-purpose unit of local government.[10]

A CDD is controlled by a five-member board of supervisors (board) elected by the landowners of the district. Each landowner is entitled to one vote for each acre owned. A new board election, held among the qualified electors of the district, occurs when the board proposes to exercise its ad valorem taxing authority or six years after the formation of the district (10 years for districts exceeding 5,000 acres).[11]

The board is authorized to exercise general and special powers within the constraints of applicable comprehensive plans, ordinances, and regulations of the local general-purpose government.[12] General powers include the authority to assess and impose ad valorem taxes[13] within the district and to issue bonds.[14] In part, the special powers over public improvements and community facilities include, unless

[1] A "special district" is "a local unit of special purpose…government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet." S. 189.012(6), F.S. An "independent special district" is characterized by having a governing body the members of which are not identical in membership to, nor all appointed by, nor any removable at will by, the governing body of a single county or municipality, and the district budget cannot be affirmed or vetoed by the governing body of a single county or municipality. S. 189.012(3), F.S.
[2] S. 190.001, F.S.
[3] *See* ss. 190.004 and 190.005, F.S.
[4] S. 190.002(1)(a), F.S.
[5] Florida Department of Economic Opportunity (DEO), Division of Community Development, Special District Information Program, *Official List of Special Districts Online, Active Special District Function Totals as of December 5, 2019*, at http://specialdistrictreports.floridajobs.org/webreports/functiontotals.aspx (last visited Dec. 18, 2019).
[6] S. 380.07, F.S. The FLWAC consists of the Administration Commission, which is composed of the Governor and Cabinet.
[7] S. 190.005(2), F.S.
[8] S. 190.005(2)(e), F.S.
[9] S. 190.005(1), F.S.
[10] S. 190.046(2), F.S.
[11] *See* s. 190.006, F.S.
[12] *See* s. 190.004(3), F.S.
[13] DEO lists four CDDs with ad valorem taxes as a revenue source: Palms of Terra Ceia Bay CDD, Port Labelle CDD, Portofino Springs CDD, and Tampa Palms CDD. Only the Port Labelle CDD reported ad valorem revenue in 2018 in the amount of $507,518. *See* DEO, *Official List of Special Districts Online*, at http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx (last visited Dec. 17, 2019).
[14] S. 190.011, F.S.

prohibited elsewhere,[15] the power to finance, fund, plan, establish, acquire, construct, equip, operate, and maintain facilities and basic infrastructures for:

- Water management and control for the lands within the district;
- Water supply, sewer, and wastewater management, reclamation, and reuse;
- Bridges or culverts in certain instances; and
- District roads and road improvements.[16]

CDD Bond Financing

A CDD board may authorize general obligation, benefit, or revenue bonds by one or more resolutions approved by a majority of the members in office.[17] Bond resolutions authorize the terms, covenants, or conditions of bonds,[18] but cannot authorize bond proceeds to be used to fund the ongoing district operations,[19] bond interest rates that deviate from the statewide maximum,[20] or bonds that mature over a period of more than 40 years.[21] If bond proceeds are insufficient to complete an associated project, a board may authorize additional bonds in compliance with the original bond resolution or proceeding.[22] Finally, if a CDD defaults on bond payments, the default does not become a debt of the state or local general-purpose governments.[23]

Since January 1, 2017, 213 CDDs authorized 305 separate issues of revenue bonds. No CDD issued any general obligation or benefit bonds. Fifteen CDDs issued bonds categorized as a bank loan, line of credit, or other.[24]

General Obligation Bonds

General obligation bonds are secured by a pledge of the full faith and credit and taxing power of the CDD in addition to special tax levies and other sources provided or pledged to pay the bonds.[25] A CDD board may also unconditionally and irrevocably pledge to levy ad valorem taxes on all taxable property in the district, with no limit on tax rate or amount, to repay general obligation bonds.[26] A pledge of the full faith and credit and taxing power of the district provides a bondholder with a recourse against the district's general fund for payment.[27]

CDD boards may only authorize general obligation bonds to finance or refinance capital projects or refund outstanding bonds.[28] For bonds to be authorized, the total amount of outstanding bond principal for the district cannot exceed 35 percent of the assessed value of the taxable property within the district.[29] With the exception of refunding bonds, general obligation bonds must be approved at a referendum as prescribed by the State Constitution.[30]

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[15] S. 190.005(1)(f) and (2)(d), F.S.
[16] S. 190.012, F.S.
[17] S. 190.016(2), F.S. Although the statute allows boards to authorize benefit bonds, these bonds are not defined nor discussed any further in the chapter.
[18] S. 190.016(2), F.S.
[19] S. 190.016(13), F.S.
[20] S. 215.184, F.S.
[21] S. 190.016(2), F.S.
[22] S. 190.016(6), F.S.
[23] S. 190.016(15), F.S.
[24] *See* emails and email attachments from Sharon Williams, State Board of Administration of Florida, Division of Bond Finance, "Community Development Districts Since 2017" (Feb. 22. 2019 and Dec. 17, 2019) (on file with the Local, Federal & Veterans Affairs Subcommittee).
[25] S. 190.003(13), F.S.
[26] S. 190.016(9)(b), F.S.
[27] S. 190.003(13), F.S.
[28] S. 190.016(9)(a), F.S.
[29] S. 190.016(9)(a), F.S. Existing general obligation bonds are not included in the outstanding bond total if they are also secured by: 1) special assessments levied in an amount sufficient to pay bond principal and interest that have been equalized and confirmed as provided by s. 170.08, F.S.; 2) district revenues from water, sewer, or water and sewer user fees when the amount is sufficient to pay bond principal and interest; or 3) any combination of such assessments and revenues. S. 190.016(9)(d), F.S
[30] Art. VII, s. 12(a), Fla. Const.; s. 190.016(9)(a), F.S.

Revenue Bonds

Revenue bonds are payable from revenues derived from sources other than ad valorem taxes on real or tangible personal property and do not pledge the property, credit, or general tax revenue of the district.[31] Pledged sources include anticipated project revenues, end user rates or charges, special assessments, and other revenue generating district activities.[32] Revenue bonds are not counted as a debt of the CDD.[33]

CDD boards can authorize revenue bonds without restrictions on the amount or type of project to be financed.[34] A referendum is not required unless the revenue bond will be secured by the full faith and credit and taxing power of the district.[35]

Effect of Proposed Changes

Beginning October 1, 2020, the bill increases the vote threshold required to authorize bonds issued by a CDD board from a majority vote of the board members to a two-thirds vote of the board members. The bill also makes grammatical changes.

B. SECTION DIRECTORY:

Section 1. Amends s. 190.016, F.S., requiring CDD boards to authorize bonds by a two-thirds vote of the board beginning October 1, 2020.

Section 2. Provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

[31] S. 190.003(19), F.S.
[32] S. 190.016(8)(a), F.S.
[33] *Id.*
[34] *Id.*
[35] *Id.*

The revised voting requirement may reduce the number of CDD bond issuances compared to that which would occur under current law.

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 revenue in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to community development district bond financing; amending s. 190.016, F.S.; requiring district boards to authorize bonds by two-thirds vote of the members; providing an effective date.

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

Section 1. Subsection (2) of section 190.016, Florida Statutes, is amended to read:

190.016 Bonds.—

(2) AUTHORIZATION AND FORM OF BONDS.—Beginning October 1, 2020, any general obligation bonds, benefit bonds, or revenue bonds may be authorized by resolution or resolutions of the board which shall be adopted by a two-thirds vote ~~majority~~ of all the members ~~thereof~~ then in office. Such resolution or resolutions may be adopted at the same meeting at which they are introduced and need not be published or posted. The board may, by resolution, authorize the issuance of bonds and fix the aggregate amount of bonds to be issued; the purpose or purposes for which the moneys derived therefrom shall be expended, including, but not limited to, payment of costs as defined in s. 190.003(8); the rate or rates of interest, in compliance with s. 215.84; the denomination of the bonds; whether or not the bonds are to be issued in one or more series; the date or dates of

maturity, which shall not exceed 40 years from their respective dates of issuance; the medium of payment; the place or places within or without the state where payment shall be made; registration privileges; redemption terms and privileges, whether with or without premium; the manner of execution; the form of the bonds, including any interest coupons to be attached thereto; the manner of execution of bonds and coupons; and any and all other terms, covenants, and conditions thereof and the establishment of revenue or other funds. Such authorizing resolution or resolutions may further provide for the contracts authorized by s. 159.825(1)(f) and (g) regardless of the tax treatment of such bonds being authorized, subject to the finding by the board of a net saving to the district resulting by reason thereof. Such authorizing resolution may further provide that such bonds may be executed in accordance with the Registered Public Obligations Act, except that bonds not issued in registered form shall be valid if manually countersigned by an officer designated by appropriate resolution of the board. The seal of the district may be affixed, lithographed, engraved, or otherwise reproduced in facsimile on such bonds. In case any officer whose signature appears ~~shall appear~~ on any bonds or coupons ceases ~~shall cease~~ to be such officer before the delivery of such bonds, such signature or facsimile shall nevertheless be valid and sufficient for all purposes ~~the same~~ as if he or she had remained in office until such delivery.

Section 2. This act shall take effect October 1, 2020.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: State Affairs Committee
Representative Ingoglia offered the following:

Amendment (with title amendment)

Remove line 15 and insert:
board which shall be adopted by a majority of all the members then in office until such time as all members of the board are elected by the qualified electors of the district, after which such resolution or resolutions of the board shall be adopted by a two-thirds vote of

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

Remove line 4 and insert:
district boards to authorize bonds by majority vote of the members until all of the members are elected by qualified

electors of the district, after which bonds must be authorized by two-thirds vote

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 853 State Park Fee Waivers and Discounts
SPONSOR(S): Buchanan
TIED BILLS: **IDEN./SIM. BILLS:** SB 1104

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Melkun	Moore
2) Agriculture & Natural Resources Appropriations Subcommittee	10 Y, 0 N	White	Pigott
3) State Affairs Committee		Melkun	Williamson

SUMMARY ANALYSIS

The Division of Recreation and Parks (DRP) within the Department of Environmental Protection (DEP) manages 175 parks, trails, and historic sites covering approximately 800,000 acres, including 100 miles of beaches. The state established these areas for the protection and preservation of their natural features or historic significance and for public use and enjoyment. DRP may charge reasonable fees, rentals, or charges for the use or operation of facilities and concessions in state parks. These fees must be deposited in the State Park Trust Fund, and the funds must be used to administer, improve, maintain, acquire, and develop lands for state park purposes. Entrance fees and camping fees vary among the parks.

Members of the public may, in lieu of paying entrance fees, purchase an annual pass that allows entrance into the state parks for one year from the month of purchase. Individual annual passes, which provide entry for a single person, are sold at all park ranger stations and museums for $60, while family passes, which provide entry for up to eight people, are sold for $120.

The bill provides free annual passes and a 50 percent discount on base campsite fees for state parks to persons, corporations, or agencies operating a group home licensed by the Department of Children and Families as a residential child-caring agency and relatives and nonrelatives who provide children with out-of-home care.

The bill may have an indeterminate negative fiscal impact on revenues into the DEP State Park Trust Fund that would reduce the funds available for state park purposes, including repairs to state park facilities. There is also an indeterminate negative fiscal impact to the state from reduced sales tax collections.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida State Parks

The Division of Recreation and Parks (DRP) within the Department of Environmental Protection (DEP) manages 175 parks, trails, and historic sites covering approximately 800,000 acres, including 100 miles of beaches.[1] The state established these areas for the protection and preservation of their natural features or historic significance and for public use and enjoyment.[2]

DRP may charge reasonable fees, rentals, or charges for the use or operation of facilities and concessions in state parks.[3] These fees must be deposited in the State Park Trust Fund, and the funds must be used to administer, improve, maintain, acquire, and develop lands for state park purposes.[4]

Entrance fees and camping fees vary among the parks. The Director of DRP must recommend all park-related fees, taking into consideration user demand, location of the park, the cost of managing and operating the park, the types of facilities available, the season, and natural and resource values of the park.[5] User fees must be published in a statewide news release and, if requested, must be reviewed in a public hearing and approved in writing by the Secretary of DEP.[6]

DRP waives entrance fees for:

- Children under six years of age;
- Patients of mental institutions within the state, clients of the Department of Juvenile Justice and the Department of Children and Families (DCF), and patients or clients of other similar institutions that are fully government-funded when such patients or clients are part of an organized group or program under the sponsorship and supervision of their respective institutions or parent agencies;
- Florida school groups accompanied by one or more teachers and bearing a letter from the school principal, professor, or other appropriate official, certifying that the park visit is related to a specific school curriculum and is for educational purposes rather than a purely recreational outing; and
- DRP employees and families.[7]

Annual Passes

Members of the public may, in lieu of paying entrance fees, purchase an annual pass that allows entrance into the state parks for one year from the month of purchase.[8] Individual annual passes, which provide entry for a single person, are sold at all park ranger stations and museums for $60, while family passes, which provide entry for up to eight people, are sold for $120.[9]

Certain current and former military members and the spouses and parents of certain first responders and military members who die in the line of duty are entitled to receive discounts on state park fees if

[1] DEP, *Division of Recreation and Parks*, available at https://floridadep.gov/parks (last visited Jan. 8, 2020).
[2] Rule 62D-2.013(1), F.A.C.
[3] Section 258.014(1), F.S.
[4] *Id.*
[5] Rule 62D-2.014(2)(c), F.A.C.
[6] Rule 62D-2.014(2)(d), F.A.C.
[7] Rule 62D-2.014(2)(b)1. – 4., F.A.C.
[8] Florida State Parks, *Florida State Parks Annual Pass*, available at https://www.floridastateparks.org/index.php/learn/florida-state-parks-annual-pass (last visited Jan. 9, 2020).
[9] *Id.* Family annual passes cover the entrance of up to eight people in a group, except at Ellie Schiller Homosassa Springs Wildlife State Park, Weeki Wachee Springs State Park, and Skyway Fishing Pier State Park where the family pass is good for admission of up to two people.

such individuals present written documentation evidencing their eligibility for the discount.[10] Active duty members and honorably discharged veterans of the United States Armed Forces, National Guard, or their reserve components are entitled to a 25 percent discount on annual passes.[11] Honorably discharged veterans who have service-connected disabilities; surviving spouses and parents of deceased members of the U.S. Armed Forces, National Guard, or reserve components who have fallen in combat; and the surviving spouse and parents of a law enforcement officer or a firefighter who has died in the line of duty are entitled to lifetime family annual passes at no charge.[12]

Families that operate a licensed family foster home are eligible to receive a free family annual pass each year in which they remain licensed.[13] In addition, families who adopt a special needs child from DCF are eligible to receive a one-time family annual pass at no charge at the time of adoption.[14]

Camping Fees
A 50 percent discount on base camping fees is available to Florida citizens who are at least 65 years of age or Florida citizens possessing a current Social Security disability award certificate or a 100 percent disability award certificate from the federal government.[15] A 50 percent discount on base camping fees is also available to families operating a licensed family foster home.[16]

Out-of-home Care
Out-of-home care is a court-monitored process that encompasses the placements and services provided to children and families when children are removed from their home due to abuse or neglect. Before a decision is made to remove a child, child welfare staff must make reasonable efforts to safely maintain children with their families through family preservation or in-home services that are provided by child protective services staff, community providers, or both. If reasonable efforts have been made and yet safety concerns still exist, then the court may order that a child be removed from the home and placed into foster care.[17]

In Florida, when any child is removed from a home and placed into out-of-home care, a comprehensive placement assessment process is completed to determine the level of care needed by the child and to match the child with the most appropriate placement.[18] A child may be placed with a relative, non-relative, or a residential child-caring agency. DCF is statutorily responsible for the licensing of residential child caring agencies within the state. DCF-licensed residential child caring agencies, also referred to as residential group care or group homes, provide 24-hour staffed supervision and care to children who cannot safely remain in their own home.[19]

As of September 2019, there are approximately 23,687 children in the state in out-of-home care, of which 7,545 are placed in licensed family foster homes.[20]

[10] Section 258.0145, F.S.
[11] Section 258.0145(1), F.S.
[12] Sections 258.0145(2) through (4), F.S.
[13] Section 258.0142(1)(a), F.S.
[14] Section 258.0142(1)(b), F.S.
[15] Section 258.016, F.S.
[16] Section 258.0142(1)(a), F.S.
[17] United States Department of Health and Human Services, *Out-of-Home Care: Overview*, available at https://www.childwelfare.gov/topics/outofhome/overview/ (last visited Jan. 9, 2020).
[18] Section 39.523(2), F.S.
[19] Section 409.175(2)(l), F.S.; DCF, *Child Welfare,* available at https://www.myflfamilies.com/service-programs/child-welfare/residential-group-care-licensing/ (last visited Jan. 9, 2020).
[20] DCF, *Placement in Out-of-Home Care Data,* available at https://www.myflfamilies.com/programs/childwelfare/placement.shtml (last visited Jan. 9, 2020).

Effect of the Bill

The bill grants free annual passes and a 50 percent discount on base campsite fees for state parks to persons, corporations, or agencies operating a group home that is licensed by DCF as a residential child-caring agency and to relatives and nonrelatives who provide children with out-of-home care.

B. SECTION DIRECTORY:

Section 1. Amends s. 258.0142, F.S., to provide free annual passes and discounted campsite fees to state parks.

Section 2. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate negative fiscal impact on DEP revenues due to the free annual passes and discounted base campsite fees made available to certain eligible families. The Revenue Estimating Conference's impact analysis estimates a recurring impact of $200,000. This will reduce the amount of funds available for state park purposes, including repairs to state park facilities. In addition, there will be less revenues in the State Park Trust Fund subject to the 8 percent service charge to the General Revenue Fund.

According to the Revenue Estimating Conference, there is also an indeterminate negative fiscal impact on state government from reduced sales tax collections.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate positive fiscal impact on licensed residential child-caring agencies by granting annual passes at no charge and providing a 50 percent discount on base campsite fees.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

DRP, in consultation with DCF, must identify the types of documentation sufficient to establish eligibility for the waivers and discounts for state park fees and establish a procedure for providing the waivers and discounts. As such, the bill may require DRP to update its rules governing such discounts and waivers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to state park fee waivers and discounts; amending s. 258.0142, F.S.; requiring the Division of Recreation and Parks within the Department of Environmental Protection to provide a specified waiver and discount for state park fees to persons, corporations, or agencies that operate group homes and to relatives and nonrelatives who provide out-of-home care; making technical changes; providing an effective date.

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

Section 1. Section 258.0142, Florida Statutes, is amended to read:

258.0142 Foster family, ~~and~~ adoptive family, group home, and out-of-home care state park fee waivers and discounts.—

(1) To promote awareness of the contributions made by foster families, ~~and~~ adoptive families, group homes, and relatives and nonrelatives who provide children with out-of-home care to the vitality of the state, the Division of Recreation and Parks shall provide the following annual entrance pass fee waivers and discounts, as applicable, on state park fees to the following persons and entities who present the written documentation required by ~~satisfactory to~~ the division pursuant

to subsection (2) ~~which evidences their eligibility for the discounts~~:

(a) Families operating a licensed family foster home under s. 409.175. Such families shall be granted ~~receive family~~ annual entrance passes ~~at no charge~~ and a 50 percent discount on base campsite fees at state parks.

(b) Families who adopt a special needs child as described in s. 409.166(2)(a)2. from the Department of Children and Families. Such families shall be granted ~~receive~~ a one-time family annual entrance pass ~~at no charge~~ at the time of the adoption.

(c) Persons, corporations, or agencies operating a group home that is licensed as a residential child-caring agency under s. 409.175. Such persons, corporations, and agencies shall be granted annual entrance passes and a 50 percent discount on base campsite fees.

(d) Relatives and nonrelatives who provide children with out-of-home care pursuant to s. 39.523. Such caregivers shall be granted annual entrance passes and a 50 percent discount on base campsite fees.

(2) The division, in consultation with the Department of Children and Families, shall identify the types of documentation sufficient to establish eligibility for the waivers and discounts under this section and shall establish a procedure for providing the waivers and ~~obtaining the~~ discounts.

(3) The division shall continue its partnership with the Department of Children and Families to promote fostering and adoption of special needs children with events held each year during National Foster Care Month and National Adoption Month.

Section 2. This act shall take effect July 1, 2020.

HJR 877

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 877 Ad Valorem Tax Discount for Spouses of Certain Deceased Veterans Who Had Permanent, Combat-Related Disabilities
SPONSOR(S): Killebrew and others
TIED BILLS: HB 879, HB 881 **IDEN./SIM. BILLS:** SJR 1076

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	13 Y, 0 N	Renner	Miller
2) Ways & Means Committee	17 Y, 0 N	Curry	Langston
3) State Affairs Committee		Renner	Williamson

SUMMARY ANALYSIS

The Florida Constitution provides a discount from the amount of ad valorem tax otherwise owed on the homestead property of an honorably discharged veteran who is age 65 or older and is partially or totally and permanently disabled as a result of combat. The discount is equal to the percentage of the veteran's disability as determined by the United States Department of Veterans Affairs.

This joint resolution proposes an amendment to the Florida Constitution to allow the same ad valorem tax discount on homestead property for combat-disabled veterans age 65 or older to carry over to the surviving spouse of a veteran receiving the discount if the surviving spouse holds legal or beneficial title to the homestead and permanently resides thereon. The discount would apply to the property until the surviving spouse remarries, sells, or otherwise disposes of the property. If the surviving spouse sells the property, the discount may be transferred to the surviving spouse's new residence, not to exceed the dollar amount granted from the most recent ad valorem tax roll, as long as the residence is used as the surviving spouse's permanent residence and he or she does not remarry. If approved by the voters, the joint resolution will be effective January 1, 2021.

The Revenue Estimating Conference (REC) estimated the proposed constitutional amendment to have a zero or negative indeterminate impact on local government revenues due to the need for approval by the voters. If approved by the voters, and assuming current millage rates, the REC estimated the proposed constitutional amendment to have a negative impact on school tax revenues of $0.4 million in fiscal year (FY) 2021-22 with a recurring negative impact of $1.6 million. The negative impact on non-school property tax revenues is estimated to be $0.6 million in FY 2021-22 with a recurring negative impact of $2.4 million.

A joint resolution proposing an amendment to the Florida Constitution must be passed by three-fifths of the membership of each house of the Legislature.

The Constitution requires 60 percent voter approval for passage of a proposed constitutional amendment.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

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.[1] The ad valorem tax is an annual tax levied by counties, municipalities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.[2] The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,[3] and it provides for specified assessment limitations, property classifications, and exemptions.[4] After the property appraiser considers 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.[5]

Exemptions

Article VII, section 6 of the Florida Constitution provides that every person who owns real estate with legal and equitable title, and maintains their permanent residence or the permanent residence of their dependent upon such real estate, is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies including school district levies. An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding school district levies.

The Legislature may only grant property tax exemptions authorized in the Florida Constitution. Any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.[6]

Article VII, section 3 of the Florida Constitution provides for other specific exemptions from property taxes, including, but not limited to, exemptions for widows and widowers, blind persons, and persons who are totally and permanently disabled.

Veteran Exemptions

Article VII, section 6(e) of the Florida Constitution provides a discount on the amount of ad valorem tax otherwise owed on the homestead property of an honorably discharged veteran who is age 65 or older and is partially or totally and permanently disabled as a result of combat.[7] The discount is equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs.[8] The discount is limited to veterans with a combat related

[1] Art. VII, s. 1(a), Fla. Const.
[2] 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.
[3] Art. VII, s. 4, Fla. Const.
[4] Art. VII, ss. 3, 4, and 6, Fla. Const.
[5] S. 196.031, F.S.
[6] *Sebring Airport Auth. V. McIntyre,* 783, So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall,* 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp v. Kinney,* 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State,* 58 So. 2d 431, 432 (Fla. 1952).
[7] Section 196.082, F.S., implements this constitutional provision.
[8] The U.S. Department of Veterans Affairs (USDVA) assigns a percentage evaluation from 0 percent to 100 percent (in 10-percent increments) for the amount of disability the USDVA determines the veteran has sustained. The resulting disability percentage rating

disability. Furthermore, current law does not allow the spouse of a veteran receiving this discount to claim the benefit if he or she survives the veteran.

Effect of the Joint Resolution

This joint resolution proposes an amendment to Article VII, section 6(e) of the Florida Constitution to expand the discount on ad valorem taxes provided to an honorably discharged veteran who is age 65 or older and is partially or totally and permanently disabled as a result of combat to include surviving spouses. Specifically, the joint resolution would allow the same ad valorem tax discount on homestead property for combat-disabled veterans age 65 or older to carry over to the surviving spouse of a veteran receiving the discount if the surviving spouse holds the legal or beneficial title to the homestead, permanently resides thereon, and does not remarry.

The discount would apply to the property until the surviving spouse remarries, sells, or otherwise disposes of the property. If the spouse sells the property, a discount not to exceed the amount granted from the most recent ad valorem tax roll may be transferred to his or her new residence, as long as the residence is used as the surviving spouse's permanent residence and he or she does not remarry.

B. SECTION DIRECTORY:

Not applicable to joint resolutions.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Article XI, section 5(d) of the Florida Constitution requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the sixth week immediately preceding the week the election is held.

The statewide average cost for the Division of Elections (division) within the Department of State to advertise constitutional amendments, in English and Spanish,[9] in newspapers for the 2018 election cycle was $92.93 per English word of the originating document.[10]

Accurate cost estimates cannot be determined until the total number and length of amendments to be translated, printed, distributed, and advertised is known. The division estimates the publication costs for advertising the proposed amendment will be at least $58,174.18. This cost will likely be paid from non-recurring General Revenue funds.[11]

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determines the level of a veteran's monthly disability compensation. *See* United States Department of Veterans Affairs, Office of Public and Intergovernmental Affairs, Federal Benefits for Veterans, Dependents and Survivors, Chapter 2-Service-connected Disabilities, http://www.va.gov/opa/publications/benefits_book/benefits_chap02.asp (last visited Feb. 8, 2019).

[9] Section 203 of the Federal Voting Rights Act requires the Department of State (DOS) to publish a Spanish version of the amendment in addition to an English version. *See* Email from Brittany N. Dover, Legislative Affairs Director, Department of State, "RE: Information Requested - Amendment Costs for HJR 877 (HB 879)" (January 7, 2020) (on file with the Local, Federal & Veterans Affairs Subcommittee).

[10] *See* Email from Brittany N. Dover, Legislative Affairs Director, DOS, "RE: Information Requested - Amendment Costs for HJR 877 (HB 879)" (January 7, 2020) (on file with the Local, Federal & Veterans Affairs Subcommittee).

[11] *Id.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference (REC) estimated the proposed constitutional amendment to have a zero or negative indeterminate impact on local government revenue due to the need for approval by the voters. If approved by the voters, and assuming current millage rates, the REC estimated the proposed constitutional amendment to have a negative impact on school tax revenues of $0.4 million in fiscal year (FY) 2021-22 with a recurring negative impact of $1.6 million. The negative impact on non-school property tax revenues is estimated to be $0.6 million in FY 2021-22 with a recurring negative impact of $2.4 million.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the proposed amendment is approved by the electorate and implemented by the Legislature, certain surviving spouses of certain deceased veterans would be eligible to receive property tax relief.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable to joint resolutions.

2. Other:

The Legislature may propose an amendment to the state constitution by joint resolution approved by three-fifths of the membership of each house.[12] The amendment must be submitted to the electors at the next general election more than 90 days after the proposal has been filed with the Secretary of State's office, unless, pursuant to law enacted by a three-fourths vote of the membership of each house, and limited to a single amendment or revision, it is submitted at an earlier special election held more than 90 days after such filing.[13]

Article XI, section 5(e) of the Florida Constitution requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose. Without an effective date, the amendment becomes effective on the first Tuesday after the first Monday in January following the election, which will be January 5, 2021. However, the joint resolution provides an effective date of January 1, 2021.

B. RULE-MAKING AUTHORITY:

The House Joint Resolution neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[12] Art. XI, s. 1, Fla. Const.
[13] Art. XI, s. 5, Fla. Const.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

House Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VII and the creation of a new section in Article XII of the State Constitution to provide for the carryover of the homestead property tax discount for certain veterans with permanent combat-related disabilities to a veteran's surviving spouse if certain criteria are met, to authorize the transfer of the discount to a surviving spouse's new homestead property if certain criteria are met, and to provide an effective date.

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

That the following amendment to Section 6 of Article VII and the creation of a new section in Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 6. Homestead exemptions.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the

owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five thousand dollars and, for all levies other than school district levies, on the assessed valuation greater than fifty thousand dollars and up to seventy-five thousand dollars, upon establishment of right thereto in the manner prescribed by law. The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemption shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This exemption is repealed on the effective date of any amendment to this Article which provides for the assessment of homestead property at less than just value.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c) By general law and subject to conditions specified therein, the Legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(d) The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant either or both of the following additional homestead tax exemptions:

(1) An exemption not exceeding fifty thousand dollars to a person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, who has attained age sixty-five, and whose household income, as defined by general law, does not exceed twenty thousand dollars; or

(2) An exemption equal to the assessed value of the property to a person who has the legal or equitable title to real estate with a just value less than two hundred and fifty thousand dollars, as determined in the first tax year that the owner applies and is eligible for the exemption, and who has maintained thereon the permanent residence of the owner for not less than twenty-five years, who has attained age sixty-five, and whose household income does not exceed the income limitation prescribed in paragraph (1).

The general law must allow counties and municipalities to grant

these additional exemptions, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living.

(e)(1) Each veteran who is age 65 or older who is partially or totally permanently disabled shall receive a discount from the amount of the ad valorem tax otherwise owed on homestead property the veteran owns and resides in if the disability was combat related and the veteran was honorably discharged upon separation from military service. The discount shall be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs. To qualify for the discount granted by this paragraph ~~subsection~~, an applicant must submit to the county property appraiser, by March 1, an official letter from the United States Department of Veterans Affairs stating the percentage of the veteran's service-connected disability and such evidence that reasonably identifies the disability as combat related and a copy of the veteran's honorable discharge. If the property appraiser denies the request for a discount, the appraiser must notify the applicant in writing of the reasons for the denial, and the veteran may reapply. The Legislature may, by general law, waive the annual application requirement in subsequent years.

(2) If a veteran who receives the discount described in paragraph (1) predeceases his or her spouse, and if, upon the death of the veteran, the surviving spouse holds the legal or beneficial title to the homestead property and permanently resides thereon, the discount carries over to the surviving spouse until he or she remarries or sells or otherwise disposes of the homestead property. If the surviving spouse sells or otherwise disposes of the property, a discount not to exceed the dollar amount granted from the most recent ad valorem tax roll may be transferred to the surviving spouse's new homestead property, if used as his or her permanent residence and he or she has not remarried.

(3) This subsection is self-executing and does not require implementing legislation.

(f) By general law and subject to conditions and limitations specified therein, the Legislature may provide ad valorem tax relief equal to the total amount or a portion of the ad valorem tax otherwise owed on homestead property to:

(1) The surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces.

(2) The surviving spouse of a first responder who died in the line of duty.

(3) A first responder who is totally and permanently disabled as a result of an injury or injuries sustained in the

line of duty. Causal connection between a disability and service in the line of duty shall not be presumed but must be determined as provided by general law. For purposes of this paragraph, the term "disability" does not include a chronic condition or chronic disease, unless the injury sustained in the line of duty was the sole cause of the chronic condition or chronic disease.

As used in this subsection and as further defined by general law, the term "first responder" means a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic, and the term "in the line of duty" means arising out of and in the actual performance of duty required by employment as a first responder.

ARTICLE XII

SCHEDULE

Ad valorem tax discount for surviving spouses of certain permanently disabled veterans.—The amendment to Section 6 of Article VII, relating to the ad valorem tax discount for spouses of certain deceased veterans who had permanent, combat-related disabilities, and this section shall take effect January 1, 2021.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 6

ARTICLE XII

AD VALOREM TAX DISCOUNT FOR SPOUSES OF CERTAIN DECEASED VETERANS WHO HAD PERMANENT, COMBAT-RELATED DISABILITIES.—Provides that the homestead property tax discount for certain veterans with permanent combat-related disabilities carries over to such veteran's surviving spouse who holds legal or beneficial title to, and who permanently resides on, the homestead property, until he or she remarries or sells or otherwise disposes of the property. The discount may be transferred to a new homestead property of the surviving spouse under certain conditions. The amendment takes effect January 1, 2021.

HB 879

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 879 Surviving Spouse Ad Valorem Tax Reduction
SPONSOR(S): Killebrew and others
TIED BILLS: HJR 877 **IDEN./SIM. BILLS:** CS/SB 1074

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	14 Y, 0 N	Renner	Miller
2) Ways & Means Committee	17 Y, 0 N	Curry	Langston
3) State Affairs Committee		Renner	Williamson

SUMMARY ANALYSIS

The Florida Constitution provides a discount from the amount of ad valorem tax otherwise owed on the homestead property of an honorably discharged veteran who is age 65 or older and is partially or totally and permanently disabled as a result of combat. The discount is equal to the percentage of the veteran's disability as determined by the United States Department of Veterans Affairs.

HJR 877 (2020), which this bill is linked to, proposes an amendment to the Florida Constitution to allow the same ad valorem tax discount on homestead property for combat-disabled veterans age 65 or older to carry over to the surviving spouse of a veteran receiving the discount if certain requirements are met.

This bill implements HJR 877 if the voters approve the amendment. The bill allows the same ad valorem tax discount on homestead property for combat-disabled veterans age 65 or older to carry over to the surviving spouse of a veteran receiving the discount if the surviving spouse holds legal or beneficial title to the homestead and permanently resides thereon. The discount would apply to the property until the surviving spouse remarries, sells, or otherwise disposes of the property. If the surviving spouse sells the property, the discount may be transferred to the surviving spouse's new residence, not to exceed the amount granted from the most recent ad valorem tax roll, as long as the residence is used as the surviving spouse's permanent residence and he or she does not remarry.

A spouse who is qualified to receive the discount and who fails to file an application by March 1 may file the application for the discount and may file a petition with the value adjustment board requesting that the discount be granted.

The bill authorizes the Department of Revenue to adopt emergency rules and provides that such rules are effective for six months and may be renewed.

The Revenue Estimating Conference (REC) estimated the proposed constitutional amendment to have a zero or negative indeterminate impact on local government revenues due to the need for approval by the voters. If approved by the voters, and assuming current millage rates, the REC estimated the proposed constitutional amendment to have a negative impact on school tax revenues of $0.4 million in fiscal year (FY) 2021-22 with a recurring negative impact of $1.6 million. The negative impact on non-school property tax revenues is estimated to be $0.6 million in FY 2021-22 with a recurring negative impact of $2.4 million.

The bill takes effect on the same date that HJR 877, or a similar joint resolution, is approved by the electors at the general election to be held in November 2020 or at an earlier special election specifically authorized for that purpose. If approved by the voters, the joint resolution will become effective on January 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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.[1] The ad valorem tax is an annual tax levied by counties, municipalities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.[2] The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,[3] and it provides for specified assessment limitations, property classifications and exemptions.[4] After the property appraiser considers 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.[5]

Exemptions

Article VII, section 6 of the Florida Constitution provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies including school district levies. An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding school district levies.

The Legislature may only grant property tax exemptions authorized in the Florida Constitution. Any modifications to existing property tax exemptions must be consistent with the constitutional provision authorizing the exemption.[6]

Article VII, section 3 of the Florida Constitution provides for other specific exemptions from property taxes, including, but not limited to, exemptions for widows and widowers, blind persons, and persons who are totally and permanently disabled.

Veteran Exemptions

Article VII, section 6(e) of the Florida Constitution provides a discount on the amount of ad valorem tax otherwise owed on the homestead property of an honorably discharged veteran who is age 65 or older and is partially or totally and permanently disabled as a result of combat.[7] The discount is equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs.[8] The discount is limited to veterans with a combat related

[1] Art. VII, s. 1(a), Fla. Const.
[2] 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.
[3] Art. VII, s. 4, Fla. Const.
[4] Art. VII, ss. 3, 4, and 6, Fla. Const.
[5] S. 196.031, F.S.
[6] *Sebring Airport Auth. V. McIntyre,* 783, So. 2d 238, 248 (Fla. 2001); *Archer v. Marshall,* 355 So. 2d 781, 784. (Fla. 1978); *Am Fi Inv. Corp v. Kinney,* 360 So. 2d 415 (Fla. 1978); *See also Sparkman v. State,* 58 So. 2d 431, 432 (Fla. 1952).
[7] Section 196.082, F.S., implements this constitutional provision.
[8] The U.S. Department of Veterans Affairs (USDVA) assigns a percentage evaluation from 0 percent to 100 percent (in 10-percent increments) for the amount of disability the USDVA determines the veteran has sustained. The resulting disability percentage rating determines the level of a veteran's monthly disability compensation. *See* United States Department of Veterans Affairs, Office of

disability. Furthermore, current law does not allow the spouse of a veteran receiving this discount to claim the benefit if he or she survives the veteran.

HJR 877 (2020)

HJR 877 (2020) proposes an amendment to the Florida Constitution to allow the same ad valorem tax discount on homestead property for combat-disabled veterans age 65 or older to carry over to the surviving spouse of a veteran receiving the discount if certain requirements are met. The amendment, if approved by the voters, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose. HJR 877provides an effective date of January 1, 2021.

Emergency Rulemaking

State agencies with rulemaking authority in a specific area generally may adopt emergency rules in that area if there is an immediate danger to the public health, safety, or welfare.[9] Emergency rules typically are effective only for 90 days and may not be renewed except in certain circumstances.[10]

Effect of the Bill

This bill, which is linked to the passage of HJR 877 (2020), implements HJR 877 if the voters approve the amendment.

The bill allows the same ad valorem tax discount on homestead property for combat-disabled veterans age 65 or older to carry over to the surviving spouse of a veteran receiving the discount if the surviving spouse holds the legal or beneficial title to the homestead, permanently resides thereon, and does not remarry. The discount would apply to the property until the surviving spouse remarries, sells or otherwise disposes of the property. If the spouse sells the property, a discount not to exceed the amount granted from the most recent ad valorem tax roll may be transferred to his or her new residence, as long as the residence is used as the surviving spouse's permanent residence and he or she does not remarry.

A surviving spouse who is qualified to receive the discount and who fails to file an application by March 1 may file the application for the discount and may file a petition with the value adjustment board requesting that the discount be granted.

The bill authorizes the Department of Revenue (DOR) to adopt emergency rules to administer the provisions of the bill.[11] The bill provides that such rules are effective for six months after adoption and may be renewed during the process of adopting permanent rules. The emergency rulemaking authority expires January 1, 2022.

B. SECTION DIRECTORY:

Section 1 amends s. 196.082, F.S., authorizing surviving spouses of deceased veterans to carry over certain discounts on ad valorem taxes on homestead properties under specified conditions.

Section 2 authorizes DOR to adopt emergency rules.

Public and Intergovernmental Affairs, Federal Benefits for Veterans, Dependents and Survivors, Chapter 2-Service-connected Disabilities, http://www.va.gov/opa/publications/benefits_book/benefits_chap02.asp (last visited Feb. 8, 2020).

[9] S. 120.54(4), F.S.

[10] S. 120.54(4)(c), F.S. Emergency rules typically may be renewed only if the agency has initiated rulemaking to adopt permanent rules on the same subject and either a challenge to those proposed rules is pending or the proposed rule is still pending legislative ratification. *Id.*

[11] DOR stated that if the bill becomes law, and voters approve the constitutional amendment, DOR would need to amend two forms. Specifically, DOR would need to amend the Original Application for Homestead and Related Tax Exemptions and the Application for Homestead Tax Discount. Therefore, DOR requests legislative authority to initiate emergency rulemaking. DOR, *2020 Agency Legislative Bill Analysis, HB 879 (2019),* on file with Local, Federal & Veterans Affairs Subcommittee.

Section 3 provides for a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have a fiscal impact on state government revenues.

2. Expenditures:

   The bill does not appear to have a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference (REC) estimated the proposed constitutional amendment to have a zero or negative indeterminate impact on local government revenues due to the need for approval by the voters. If approved by the voters, and assuming current millage rates, the REC estimated the proposed constitutional amendment to have a negative impact on school tax revenues of $0.4 million in fiscal year (FY) 2021-22 with a recurring negative impact of $1.6 million. The negative impact on non-school property tax revenues is estimated to be $0.6 million in FY 2021-22 with a recurring negative impact of $2.4 million.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If HJR 877 is approved by the voters and this bill passes, surviving spouses of certain veterans could receive property tax relief.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The mandates provision does not apply to constitutional amendments. This act simply conforms statutes to a new constitutional requirement.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DOR to adopt emergency rules and provides that the adopted emergency rules are effective for six months. The emergency rules may be renewed until DOR adopts permanent rules. The emergency rulemaking authority expires January 1, 2022.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to a surviving spouse ad valorem tax reduction; amending s. 196.082, F.S.; authorizing the surviving spouses of certain permanently disabled veterans to carry over a certain discount on ad valorem taxes on homestead property under specified conditions; authorizing the discount to be transferred to another permanent residence under specified conditions; providing a procedure by which an applicant may file an application after a specified date and request the discount; authorizing the Department of Revenue to adopt emergency rules; providing a contingent effective date.

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

Section 1. Subsections (3) through (6) of section 196.082, Florida Statutes, are redesignated as subsections (4) through (7), respectively, and a new subsection (3) is added to that section, to read:

196.082 Discounts for disabled veterans; surviving spouse carryover.—

(3) If the partially or totally and permanently disabled veteran predeceases his or her spouse and if, upon the death of the veteran, the spouse holds the legal or beneficial title to

the homestead and permanently resides thereon as specified in s. 196.031, the discount from ad valorem tax that the veteran received carries over to the benefit of the veteran's spouse until such time as he or she remarries or sells or otherwise disposes of the property. If the spouse sells or otherwise disposes of the property, a discount not to exceed the dollar amount granted from the most recent ad valorem tax roll may be transferred to his or her new residence, as long as it is used as his or her primary residence and he or she does not remarry. An applicant who is qualified to receive a discount under this section and who fails to file an application by March 1 may file an application for the discount and may file a petition pursuant to s. 194.011(3) with the value adjustment board requesting that the discount be granted. Such application and petition shall be subject to the same procedures as for exemptions set forth in s. 196.011(8).

Section 2. The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, to administer this act. Notwithstanding any other law, emergency rules adopted pursuant to this section are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules. This section expires January 1, 2022.

Section 3. This act shall take effect on the effective

date of the amendment to the State Constitution proposed by HJR 877, or a similar joint resolution having substantially the same specific intent and purpose, if such amendment is approved at the next general election or at an earlier special election specifically authorized by law for that purpose.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 971 Electric Bicycles
SPONSOR(S): Transportation & Infrastructure Subcommittee, Grant, M.
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1148

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	12 Y, 0 N, As CS	Roth	Vickers
2) Transportation & Tourism Appropriations Subcommittee	12 Y, 0 N	Hicks	Davis
3) State Affairs Committee		Roth	Williamson

SUMMARY ANALYSIS

In Florida, a bicycle means every vehicle propelled solely by human power, and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position or a scooter or similar device. Thus, the term includes both traditional bicycles and motorized or electric bicycles (e-bikes).

The bill removes e-bikes from the definition of the term “bicycle” and creates a new definition for e-bikes using a three-tiered classification system. Class 1 e-bikes are bicycles equipped with a motor that provides assistance only when the rider is pedaling, and that ceases to provide assistance when the e-bike reaches 20 mph. Class 2 e-bikes are bicycles equipped with a throttle-assisted motor that may be used exclusively to propel the bicycle and that ceases to provide assistance when the e-bike reaches 20 mph. Class 3 e-bikes are bicycles equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the e-bike reaches 28 mph.

The bill creates regulations governing the operation of e-bikes. An e-bike or an operator of an e-bike must be afforded all the rights and privileges, and be subject to all of the duties, of a bicycle or the operator of a bicycle. An e-bike is considered a vehicle to the same extent as a bicycle, and the bill authorizes an e-bike to operate where bicycles are allowed, including, but not limited to, streets, highways, roadways, shoulders, bicycle lanes, and bicycle or multiuse paths. However, local governments may regulate the operation of e-bikes on streets, highways, sidewalks, and sidewalk areas. Additionally, following notice and a public hearing, a municipality, county, or agency of the state having jurisdiction over a bicycle or multiuse path may restrict or prohibit the operation of an e-bike on the path if the entity determines that such a restriction is necessary in the interest of public safety or to comply with other laws or legal obligations.

The bill provides that an e-bike or an operator of an e-bike is not subject to the provisions of law relating to financial responsibility, driver or motor vehicle licenses, vehicle registration, title certificates, off-highway motorcycles, or off-highway vehicles.

The bill will likely have a negative, but insignificant, fiscal impact on state government revenues and no fiscal impact on local governments. *See* Fiscal Analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Bicycle Regulations
Section 316.003, F.S, defines a "bicycle" as:

> Every vehicle propelled solely by human power, and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to its highest position or a scooter or similar device. A person under the age of 16 may not operate or ride upon a motorized bicycle.[1]

Under state traffic control laws, bicyclists are considered vehicle operators and are generally required to obey the same rules of the road as other vehicle operators, including traffic signs, signals, and lane markings.[2] Section 316.2065, F.S., governs the operation of bicycles in Florida and provides for a number of bicycle-specific regulations, including:

- A bicycle rider or passenger who is under 16 years of age must wear a bicycle helmet.[3]
- A person may not knowingly rent or lease any bicycle to be ridden by a child who is under the age of 16 years unless the child possesses a bicycle helmet or the lessor provides a bicycle helmet for the child to wear.[4]
- Every bicycle in use between sunset and sunrise must be equipped with a lamp on the front exhibiting a white light visible from a distance of at least 500 feet to the front and a lamp and reflector on the rear each exhibiting a red light visible from a distance of 600 feet to the rear.[5]
- A person operating a bicycle on a sidewalk, or across a roadway on a crosswalk, must yield the right-of-way to any pedestrian and must give an audible signal before overtaking and passing the pedestrian.[6]

A person operating a bicycle on a roadway must ride in the bicycle lane, but if there is no bicycle lane, the bicycle operator must ride as close to the right-hand curb as practicable. However, a bicycle operator may move to the center of the lane when:

- Overtaking and passing another bicycle or vehicle proceeding in the same direction;
- Preparing for a left turn at an intersection or into a private road or driveway; or
- Reasonably necessary to avoid any condition or potential conflict, including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane,[7] which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane.[8]

[1] Section 316.003(4), F.S.
[2] Section 316.2065(1), F.S.
[3] Section 316.2065(3)(d), F.S.
[4] Section 316.2065(15)(a), F.S.
[5] Section 316.2065(7), F.S.
[6] Section 316.2065(10), F.S.
[7] A substandard width lane is any lane that is too narrow for a bicycle and another vehicle to travel safely side-by-side within the lane.
[8] Section 316.2065(5)(a), F.S.

Bicycle operators traveling on a one-way highway with two or more marked traffic lanes may ride as near to the left-hand curb as practicable[9] and bicycle operators may not ride more than two abreast on a roadway.[10]

For purposes of vehicle registration, s. 320.01, F.S., currently provides that a "motor vehicle" does not include bicycles. However, among other fees, s. 320.08, F.S., imposes a $5 flat fee for registration (or renewal of registration) of mopeds and motorized bicycles. In addition, a $2.50 motorcycle safety education fee is imposed on mopeds, which is deposited into the Highway Safety Operating Trust Fund.[11]

Local authorities, in the exercise of their police power, may regulate the operation of bicycles.[12] Additionally, local authorities may prohibit or regulate the use of heavily traveled streets by any class or kind of traffic found to be incompatible with the normal and safe movement of traffic.[13] As the definition of "bicycles" includes motorized bicycles, local authorities are authorized to regulate motorized or electric bicycles.

Electric Bicycles

In 2002, Congress amended the Consumer Product Safety Commission (CPSC) definition of electric bicycles (e-bikes).[14] The federal law defines an e-bike as a "two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph." The federal law permits e-bikes to be powered by the motor alone (a "throttle-assist" e-bike) or by a combination of motor and human power (a "pedal-assist" e-bike).[15]

Devices that meet the federal definition of an e-bike are regulated by the CPSC and must meet bicycle product safety standards; however, such product safety standards only specify the maximum speed that an e-bike can travel under motor power alone. It does not provide a maximum speed when the bicycle is being propelled by a combination of human and motor power. The law does distinguish e-bikes that can travel 20 mph or less under motor power alone from motorcycles, mopeds, and motor vehicles. The CPSC has clarified that the federal law does not prohibit e-bikes from traveling faster than 20 mph when using a combination of human and motor power.[16]

While the federal government regulates the maximum speed that an e-bike can travel under motor power alone, its operation on streets and bikeways remains within each state's control. Therefore, some states have enacted laws that categorize e-bikes with mopeds and other motorized vehicles, require licensure and registration, or prohibit their use in bike lanes or on multi-purpose trails.[17]

According to a 2018 bicycle industry analysis, e-bike sales increased 83 percent between May 2017 and May 2018, and e-bikes made up 10 percent of overall bike sales in the United States for that period. E-bikes cost on average $2,000 - $3,000, compared to $1,000 average investment for a mid-range traditional commuter bicycle.[18] As of June 2019, 22 states define e-bikes within a three-tiered classification system.[19]

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[9] Section 316.2065(5)(b), F.S.
[10] Section 316.2065(6), F.S.
[11] Section 320.08(1)(c), F.S. These funds may be used to fund a motorcycle driver improvement program, the Florida Motorcycle Safety Education Program, or the general operations of the Department of Highway Safety and Motor Vehicles.
[12] Section 316.008(1)(h), F.S.
[13] Section 316.008(1)(n), F.S.
[14] House Bill 727, available at https://www.congress.gov/bill/107th-congress/house-bill/727/text (last visited January 8, 2020).
[15] National Conference of State Legislatures, *State Electric Bicycle Laws: A Legislative Primer* (March 28, 2019), available at https://www.ncsl.org/research/transportation/state-electric-bicycle-laws-a-legislative-primer.aspx (last visited January 8, 2020).
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] People for Bikes, *22 States Now Follow the Three Class E-Bike System, Doubling Total in Six Months* (July 19, 2019), available at https://peopleforbikes.org/blog/22-states-now-follow-the-three-class-ebike-system/ (last visited January 8, 2020).

Effect of Proposed Changes

The bill removes the definition of "motorized bicycle" from within the definition of "bicycle" and creates a separate, three-tiered classification for the definition of "electric bicycle." The bill defines the term to mean a bicycle or tricycle equipped with fully operable pedals, a seat or saddle for the use of the rider, and an electric motor of less than 750 watts that meets the requirements of one of the following three classifications:

> "Class 1 electric bicycle" means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the electric bicycle reaches the speed of 20 miles per hour.
>
> "Class 2 electric bicycle" means an electric bicycle equipped with a motor that may be used exclusively to propel the electric bicycle and that ceases to provide assistance when the electric bicycle reaches the speed of 20 miles per hour.
>
> "Class 3 electric bicycle" means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the electric bicycle reaches the speed of 28 miles per hour.

The bill creates regulations governing the operation of e-bikes and provides that an e-bike or an operator of an e-bike must be afforded all the rights and privileges, and be subject to all of the duties, of a bicycle or the operator of a bicycle. An e-bike is considered a vehicle to the same extent as a bicycle, and the bill authorizes an e-bike to operate where bicycles are allowed, including, but not limited to, streets, highways, roadways, shoulders, bicycle lanes, and bicycle or multiuse paths. However, local governments may regulate the operation of e-bikes on streets, highways, sidewalks, and sidewalk areas. Additionally, following notice and a public hearing, a municipality, county, or agency of the state having jurisdiction over a bicycle or multiuse path may restrict or prohibit the operation of an e-bike on the path if the entity finds that such a restriction is necessary in the interest of public safety or to comply with other laws or legal obligations.

The bill provides that an e-bike or an operator of an e-bike is not subject to the provisions of law relating to financial responsibility requirements of a motor vehicle such as insurance premiums, driver or motor vehicle licenses, vehicle registration, title certificates, off-highway motorcycles, or off-highway vehicles. The bill requires an e-bike to function so that the electric motor is disengaged or ceases to function when the rider stops pedaling or when the brakes are applied.

The bill requires that, beginning January 1, 2021, manufacturers and distributors of e-bikes apply a label that is permanently affixed in a prominent location to each e-bike. The label must contain the classification number, top assisted speed, and motor wattage of the e-bike. The bill prohibits a person from tampering with or modifying an e-bike in order to change the motor-powered speed capability or engagement of an e-bike, unless the label indicating the classification number required is replaced after such modification.

The bill removes the registration fee requirement for "motorized bicycles" and makes conforming changes. The bill does not restrict the operation of an e-bike to persons of a specified age.

Lastly, the bill removes outdated bicycle helmet standards relating to helmets purchased before October 1, 2012, and eliminates the bicycle seat height requirement that prevents certain bicycles, such as recumbents,[20] from being insured.

B. SECTION DIRECTORY:

[20] Merriam-Webster defines "recumbent" with respect to a bicycle as "a bicycle with a wide seat that has a back support and is positioned so that the rider's legs are extended horizontally forward to the pedals and the body is reclined. Merriam-Webster, available at https://www.merriam-webster.com/dictionary/recumbent (last visited Feb. 10, 2020).

Section 1: Amends s. 261.03, F.S., relating to definitions.

Section 2: Amends s. 316.003, F.S., relating to definitions.

Section 3: Amends s. 316.008, F.S., relating to powers of local authorities.

Section 4: Amends s. 316.027, F.S., relating to crash involving death or personal injuries.

Section 5: Amends s. 316.083, F.S., relating to overtaking and passing a vehicle.

Section 6: Amends s. 316.1995, F.S., relating to driving upon sidewalk or bicycle path.

Section 7: Amends s. 316.2065, F.S., relating to bicycle regulations.

Section 8: Creates s. 316.20655, F.S., relating to electric bicycle regulations.

Section 9: Amends s. 316.613, F.S., relating to child restraint requirements.

Section 10: Amends s. 316.614, F.S., relating to safety belt usage.

Section 11: Amends s. 320.01, F.S., relating to definitions, general.

Section 12: Amends s. 322.01, F.S., relating to definitions.

Section 13: Amends s. 324.021, F.S., relating to definitions, minimum insurance required.

Section 14: Amends s. 403.717, F.S., relating to waste tire and lead-acid battery requirements.

Section 15: Amends s. 681.102, F.S., relating to definitions.

Section 16: Amends s. 320.08, F.S., relating to license taxes.

Section 17: Amends s. 316.306, F.S., relating to school and work zones; prohibition on the use of a wireless communications device in a handheld manner.

Section 18: Amends s. 655.960, F.S., relating to definitions.

Section 19: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   The bill will likely have no impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill will likely have no impact on local government revenues.

2. Expenditures:

The bill will likely have no impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill defines e-bikes and creates a three-tiered classification, specifically authorizing the use of class 2 and class 3 e-bikes. The bill also regulates the use of such e-bikes. As such, the bill may increase the sale of e-bikes in this state.

D. FISCAL COMMENTS:

In Fiscal Year 2018-2019, the Department of Highway Safety and Motor Vehicles (DHSMV) collected $14,633 for both moped and motorized bicycle registration fees.[21] Because the data is collected and stored together, it is estimated that 10 percent of the $14,633 is associated with motorized bicycle registration fees. The bill excludes an e-bike or an operator of an e-bike from the provisions of law relating to financial responsibility, driver or motor vehicle licenses, vehicle registration, title certificates, off-highway motorcycles, or off-highway vehicles. Based upon historical collections, DHSMV anticipates this exclusion will result in a negative, but insignificant, fiscal impact on the State Transportation Trust Fund and Highway Safety Operating Trust Fund revenues.

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 expenditure 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:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Local Regulation

The bill appears to contain inconsistent provisions relating to local government regulation of e-bikes. Section 316.008, F.S., authorizes local governments to regulate the use of e-bikes on sidewalks and sidewalk areas. Section 316.20655, F.S., authorizes local governments to exercise their power under s. 316.008, F.S., by governing the use of e-bikes on sidewalks, sidewalk areas, *streets*, and *highways*.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 28, 2020, the Transportation & Infrastructure Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed bicycle seat height requirements;
- Authorized local governments to regulate the operation of e-bikes; and
- Removed outdated bicycle helmet standards.

This analysis is drafted to the committee substitute as approved by the Transportation & Infrastructure Subcommittee.

[21] E-mail from Kevin Jacobs, Deputy Legislative Affairs Director, DHSMV, RE: HB 971 (January 9, 2020).

A bill to be entitled

An act relating to electric bicycles; amending s. 261.03, F.S.; revising the definition of the term "OHM" or "off-highway motorcycle"; amending s. 316.003, F.S.; revising definitions relating to the Florida Uniform Traffic Control Law; defining the term "electric bicycle"; amending s. 316.008, F.S.; authorizing local authorities to regulate the operation of electric bicycles; amending s. 316.027, F.S.; revising the definition of the term "vulnerable road user"; amending s. 316.083, F.S.; requiring the driver of a vehicle overtaking an electric bicycle to pass the electric bicycle at a certain distance; amending s. 316.1995, F.S.; expanding exceptions to a prohibition on persons driving certain vehicles on sidewalks and bicycle paths; amending s. 316.2065, F.S.; deleting obsolete language; creating s. 316.20655, F.S.; providing electric bicycle regulations; providing for rights and privileges of electric bicycles and operators of electric bicycles; providing that electric bicycles are vehicles to the same extent as bicycles; providing that electric bicycles and operators of electric bicycles are not subject to specified provisions; requiring manufacturers and distributers, beginning on a

specified date, to apply a label containing certain information to each electric bicycle; prohibiting persons from tampering with or modifying electric bicycles for certain purposes; providing an exception; requiring electric bicycles to comply with specified provisions of law; requiring electric bicycles to operate in a manner that meets certain requirements; authorizing operators to ride electric bicycles where bicycles are allowed; authorizing municipalities, counties, and agencies to regulate the use of electric bicycles on certain paths; amending ss. 316.613, 316.614, and 320.01, F.S.; revising the definition of the term "motor vehicle"; amending s. 322.01, F.S.; revising the definitions of the terms "motor vehicle" and "vehicle"; amending ss. 324.021, 403.717, and 681.102, F.S.; revising the definition of the term "motor vehicle"; amending s. 320.08, F.S.; conforming a provision to changes made by the act; amending ss. 316.306 and 655.960, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (4) of section 261.03, Florida Statutes, is amended to read:

261.03 Definitions.—As used in this chapter, the term:

(4) "OHM" or "off-highway motorcycle" means any motor vehicle used off the roads or highways of this state that has a seat or saddle for the use of the rider and is designed to travel with not more than two wheels in contact with the ground, but excludes a tractor, an electric bicycle, or a moped.

Section 2. Present subsections (22) through (104) of section 316.003, Florida Statutes, are redesignated as subsections (23) through (105), respectively, a new subsection (22) is added to that section, and subsection (4) and present subsections (41), (43), (44), (45), and (61) of that section are amended, to read:

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

(4) BICYCLE.—Every vehicle propelled solely by human power~~, and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride~~, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include ~~such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to~~

~~its highest position or~~ a scooter or similar device. ~~A person under the age of 16 may not operate or ride upon a motorized bicycle.~~

(22) ELECTRIC BICYCLE.—A bicycle or tricycle equipped with fully operable pedals, a seat or saddle for the use of the rider, and an electric motor of less than 750 watts which meets the requirements of one of the following three classifications:

(a) "Class 1 electric bicycle" means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the electric bicycle reaches the speed of 20 miles per hour.

(b) "Class 2 electric bicycle" means an electric bicycle equipped with a motor that may be used exclusively to propel the electric bicycle and that ceases to provide assistance when the electric bicycle reaches the speed of 20 miles per hour.

(c) "Class 3 electric bicycle" means an electric bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the electric bicycle reaches the speed of 28 miles per hour.

(42) ~~(41)~~ MOPED.—Any vehicle with pedals to permit propulsion by human power, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels, with a motor rated not in excess of 2 brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground and with a power-drive

system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed 50 cubic centimeters. The term does not include an electric bicycle.

(44) ~~(43)~~ MOTOR VEHICLE.—Except when used in s. 316.1001, a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, electric bicycle, motorized scooter, electric personal assistive mobility device, mobile carrier, personal delivery device, swamp buggy, or moped. For purposes of s. 316.1001, "motor vehicle" has the same meaning as provided in s. 320.01(1)(a).

(45) ~~(44)~~ MOTORCYCLE.—Any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground. The term includes an autocycle, but does not include a tractor, a moped, an electric bicycle, or any vehicle in which the operator is enclosed by a cabin unless it meets the requirements set forth by the National Highway Traffic Safety Administration for a motorcycle.

(46) ~~(45)~~ MOTORIZED SCOOTER.—Any vehicle or micromobility device that is powered by a motor with or without a seat or saddle for the use of the rider, which is designed to travel on not more than three wheels, and which is not capable of propelling the vehicle at a speed greater than 20 miles per hour

on level ground. The term does not include an electric bicycle.

(62)~~(61)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (84)(b) ~~(83)(b)~~, any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

Section 3. Paragraph (a) of subsection (7) of section 316.008, Florida Statutes, is amended to read:

316.008 Powers of local authorities.—

(7)(a) A county or municipality may enact an ordinance to permit, control, or regulate the operation of vehicles, golf carts, mopeds, motorized scooters, electric bicycles, and electric personal assistive mobility devices on sidewalks or sidewalk areas when such use is permissible under federal law. The ordinance must restrict such vehicles or devices to a maximum speed of 15 miles per hour in such areas.

Section 4. Paragraph (b) of subsection (1) of section 316.027, Florida Statutes, is amended to read:

316.027 Crash involving death or personal injuries.—

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

(b) "Vulnerable road user" means:

1. A pedestrian, including a person actually engaged in work upon a highway, or in work upon utility facilities along a highway, or engaged in the provision of emergency services within the right-of-way;

2. A person operating a bicycle, an electric bicycle, a motorcycle, a scooter, or a moped lawfully on the roadway;

3. A person riding an animal; or

4. A person lawfully operating on a public right-of-way, crosswalk, or shoulder of the roadway:

a. A farm tractor or similar vehicle designed primarily for farm use;

b. A skateboard, roller skates, or in-line skates;

c. A horse-drawn carriage;

d. An electric personal assistive mobility device; or

e. A wheelchair.

Section 5. Subsection (1) of section 316.083, Florida Statutes, is amended to read:

316.083 Overtaking and passing a vehicle.—The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions, and special rules hereinafter stated:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall give an appropriate signal as provided for in s. 316.156, shall pass to the left thereof at a safe distance, and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle. The driver of a vehicle overtaking a bicycle or other nonmotorized vehicle, or an electric bicycle, must pass the bicycle, ~~or~~ other nonmotorized vehicle, or electric bicycle at a

safe distance of not less than 3 feet between the vehicle and the bicycle, ~~or~~ other nonmotorized vehicle, or electric bicycle.

Section 6. Section 316.1995, Florida Statutes, is amended to read:

316.1995 Driving upon sidewalk or bicycle path.—

(1) Except as provided in s. 316.008, s. 316.20655, s. 316.212(8), or s. 316.2128, a person may not drive any vehicle other than by human power upon a bicycle path, sidewalk, or sidewalk area, except upon a permanent or duly authorized temporary driveway.

(2) A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

(3) This section does not apply to motorized wheelchairs.

Section 7. Paragraph (d) of subsection (3) of section 316.2065, Florida Statutes, is amended to read:

316.2065 Bicycle regulations.—

(3)

(d) A bicycle rider or passenger who is under 16 years of age must wear a bicycle helmet that is properly fitted and is fastened securely upon the passenger's head by a strap and that meets the federal safety standard for bicycle helmets, final rule, 16 C.F.R. part 1203. ~~A helmet purchased before October 1, 2012, which meets the standards of the American National Standards Institute (ANSI Z 90.4 Bicycle Helmet Standards), the~~

~~standards of the Snell Memorial Foundation (1984 Standard for Protective Headgear for Use in Bicycling), or any other nationally recognized standards for bicycle helmets adopted by the department may continue to be worn by a bicycle rider or passenger until January 1, 2016.~~ As used in this subsection, the term "passenger" includes a child who is riding in a trailer or semitrailer attached to a bicycle.

Section 8. Section 316.20655, Florida Statutes, is created to read:

316.20655 Electric bicycle regulations.—

(1) Except as otherwise provided in this section, an electric bicycle or an operator of an electric bicycle shall be afforded all the rights and privileges, and be subject to all of the duties, of a bicycle or the operator of a bicycle, including s. 316.2065. An electric bicycle is a vehicle to the same extent as a bicycle. However, this section may not be construed to prevent a local government, through the exercise of its powers under s. 316.008, from adopting an ordinance governing the operation of electric bicycles on streets, highways, sidewalks, and sidewalk areas under the local government's jurisdiction.

(2) An electric bicycle or an operator of an electric bicycle is not subject to the provisions of law relating to financial responsibility, driver or motor vehicle licenses, vehicle registration, title certificates, off-highway motorcycles, or off-highway vehicles.

(3) Beginning on January 1, 2021, manufacturers and distributors of electric bicycles shall apply a label that is permanently affixed in a prominent location to each electric bicycle. The label must contain the classification number, top assisted speed, and motor wattage of the electric bicycle.

(4) A person may not tamper with or modify an electric bicycle so as to change the motor-powered speed capability or engagement of an electric bicycle, unless the label indicating the classification number required in subsection (3) is replaced after such modification.

(5) An electric bicycle must comply with the equipment and manufacturing requirements for bicycles adopted by the United States Consumer Product Safety Commission under 16 C.F.R. part 1512.

(6) An electric bicycle must operate in a manner so that the electric motor is disengaged or ceases to function when the rider stops pedaling or when the brakes are applied.

(7)(a) An operator may ride an electric bicycle where bicycles are allowed, including, but not limited to, streets, highways, roadways, shoulders, bicycle lanes, and bicycle or multiuse paths.

(b) Following notice and a public hearing, a municipality, county, or agency of the state having jurisdiction over a bicycle or multiuse path may restrict or prohibit the operation of an electric bicycle on the path if the municipality, county,

or agency finds that such a restriction is necessary in the interest of public safety or to comply with other laws or legal obligations.

Section 9. Paragraph (e) of subsection (2) of section 316.613, Florida Statutes, is amended to read:

316.613 Child restraint requirements.—

(2) As used in this section, the term "motor vehicle" means a motor vehicle as defined in s. 316.003 that is operated on the roadways, streets, and highways of the state. The term does not include:

(e) A motorcycle, a moped, a ~~or~~ bicycle, or an electric bicycle.

Section 10. Paragraph (a) of subsection (3) of section 316.614, Florida Statutes, is amended to read:

316.614 Safety belt usage.—

(3) As used in this section:

(a) "Motor vehicle" means a motor vehicle as defined in s. 316.003 which is operated on the roadways, streets, and highways of this state. The term does not include:

1. A school bus.

2. A bus used for the transportation of persons for compensation.

3. A farm tractor or implement of husbandry.

4. A truck having a gross vehicle weight rating of more than 26,000 pounds.

5. A motorcycle, a moped, a ~~or~~ bicycle, or an electric bicycle.

Section 11. Paragraph (a) of subsection (1) of section 320.01, Florida Statutes, is amended to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(1) "Motor vehicle" means:

(a) An automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, motorized scooters, micromobility devices, personal delivery devices and mobile carriers as defined in s. 316.003, special mobile equipment as defined in s. 316.003, vehicles that run only upon a track, bicycles, electric bicycles, swamp buggies, or mopeds.

Section 12. Subsections (27) and (44) of section 322.01, Florida Statutes, are amended to read:

322.01 Definitions.—As used in this chapter:

(27) "Motor vehicle" means any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power, motorized wheelchairs, and electric ~~motorized~~ bicycles as defined in s. 316.003.

(44) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway or operated upon rails or guideway, except a bicycle, motorized wheelchair, or electric ~~motorized~~ bicycle.

Section 13. Subsection (1) of section 324.021, Florida Statutes, is amended to read:

324.021 Definitions; minimum insurance required.—The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) MOTOR VEHICLE.—Every self-propelled vehicle that is designed and required to be licensed for use upon a highway, including trailers and semitrailers designed for use with such vehicles, except traction engines, road rollers, farm tractors, power shovels, and well drillers, and every vehicle that is propelled by electric power obtained from overhead wires but not operated upon rails, but not including any personal delivery device or mobile carrier as defined in s. 316.003, bicycle, electric bicycle, or moped. However, the term "motor vehicle" does not include a motor vehicle as defined in s. 627.732(3) when the owner of such vehicle has complied with the requirements of ss. 627.730-627.7405, inclusive, unless the provisions of s. 324.051 apply; and, in such case, the applicable proof of insurance provisions of s. 320.02 apply.

Section 14. Paragraph (b) of subsection (1) of section 403.717, Florida Statutes, is amended to read:

403.717 Waste tire and lead-acid battery requirements.—

(1) For purposes of this section and ss. 403.718 and 403.7185:

(b) "Motor vehicle" means an automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated in this state, used to transport persons or property and propelled by power other than muscular power. The term does not include traction engines, road rollers, vehicles that run only upon a track, bicycles, electric bicycles, mopeds, or farm tractors and trailers.

Section 15. Subsection (14) of section 681.102, Florida Statutes, is amended to read:

681.102 Definitions.—As used in this chapter, the term:

(14) "Motor vehicle" means a new vehicle, propelled by power other than muscular power, which is sold in this state to transport persons or property, and includes a recreational vehicle or a vehicle used as a demonstrator or leased vehicle if a manufacturer's warranty was issued as a condition of sale, or the lessee is responsible for repairs, but does not include vehicles run only upon tracks, off-road vehicles, trucks over 10,000 pounds gross vehicle weight, motorcycles, mopeds, electric bicycles, or the living facilities of recreational vehicles. "Living facilities of recreational vehicles" are those

portions designed, used, or maintained primarily as living quarters and include, but are not limited to, the flooring, plumbing system and fixtures, roof air conditioner, furnace, generator, electrical systems other than automotive circuits, the side entrance door, exterior compartments, and windows other than the windshield and driver and front passenger windows.

Section 16. Section 320.08, Florida Statutes, is amended to read:

320.08 License taxes.—Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles, mopeds, ~~motorized bicycles as defined in s. 316.003(4),~~ tri-vehicles as defined in s. 316.003, and mobile homes as defined in s. 320.01, which shall be paid to and collected by the department or its agent upon the registration or renewal of registration of the following:

(1) MOTORCYCLES AND MOPEDS.—

(a) Any motorcycle: $10 flat.

(b) Any moped: $5 flat.

(c) Upon registration of a motorcycle, motor-driven cycle, or moped, in addition to the license taxes specified in this subsection, a nonrefundable motorcycle safety education fee in the amount of $2.50 shall be paid. The proceeds of such additional fee shall be deposited in the Highway Safety Operating Trust Fund to fund a motorcycle driver improvement program implemented pursuant to s. 322.025, the Florida

Motorcycle Safety Education Program established in s. 322.0255, or the general operations of the department.

(d) An ancient or antique motorcycle: $7.50 flat.

(2) AUTOMOBILES OR TRI-VEHICLES FOR PRIVATE USE.—

(a) An ancient or antique automobile, as defined in s. 320.086, or a street rod, as defined in s. 320.0863: $7.50 flat.

(b) Net weight of less than 2,500 pounds: $14.50 flat.

(c) Net weight of 2,500 pounds or more, but less than 3,500 pounds: $22.50 flat.

(d) Net weight of 3,500 pounds or more: $32.50 flat.

(3) TRUCKS.—

(a) Net weight of less than 2,000 pounds: $14.50 flat.

(b) Net weight of 2,000 pounds or more, but not more than 3,000 pounds: $22.50 flat.

(c) Net weight more than 3,000 pounds, but not more than 5,000 pounds: $32.50 flat.

(d) A truck defined as a "goat," or other vehicle if used in the field by a farmer or in the woods for the purpose of harvesting a crop, including naval stores, during such harvesting operations, and which is not principally operated upon the roads of the state: $7.50 flat. The term "goat" means a motor vehicle designed, constructed, and used principally for the transportation of citrus fruit within citrus groves or for the transportation of crops on farms, and which can also be used for hauling associated equipment or supplies, including required

sanitary equipment, and the towing of farm trailers.

(e) An ancient or antique truck, as defined in s. 320.086: $7.50 flat.

(4) HEAVY TRUCKS, TRUCK TRACTORS, FEES ACCORDING TO GROSS VEHICLE WEIGHT.—

(a) Gross vehicle weight of 5,001 pounds or more, but less than 6,000 pounds: $60.75 flat.

(b) Gross vehicle weight of 6,000 pounds or more, but less than 8,000 pounds: $87.75 flat.

(c) Gross vehicle weight of 8,000 pounds or more, but less than 10,000 pounds: $103 flat.

(d) Gross vehicle weight of 10,000 pounds or more, but less than 15,000 pounds: $118 flat.

(e) Gross vehicle weight of 15,000 pounds or more, but less than 20,000 pounds: $177 flat.

(f) Gross vehicle weight of 20,000 pounds or more, but less than 26,001 pounds: $251 flat.

(g) Gross vehicle weight of 26,001 pounds or more, but less than 35,000: $324 flat.

(h) Gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds: $405 flat.

(i) Gross vehicle weight of 44,000 pounds or more, but less than 55,000 pounds: $773 flat.

(j) Gross vehicle weight of 55,000 pounds or more, but less than 62,000 pounds: $916 flat.

(k) Gross vehicle weight of 62,000 pounds or more, but less than 72,000 pounds: $1,080 flat.

(l) Gross vehicle weight of 72,000 pounds or more: $1,322 flat.

(m) Notwithstanding the declared gross vehicle weight, a truck tractor used within the state or within a 150-mile radius of its home address is eligible for a license plate for a fee of $324 flat if:

1. The truck tractor is used exclusively for hauling forestry products; or

2. The truck tractor is used primarily for the hauling of forestry products, and is also used for the hauling of associated forestry harvesting equipment used by the owner of the truck tractor.

(n) A truck tractor or heavy truck, not operated as a for-hire vehicle and which is engaged exclusively in transporting raw, unprocessed, and nonmanufactured agricultural or horticultural products within the state or within a 150-mile radius of its home address is eligible for a restricted license plate for a fee of:

1. If such vehicle's declared gross vehicle weight is less than 44,000 pounds, $87.75 flat.

2. If such vehicle's declared gross vehicle weight is 44,000 pounds or more and such vehicle only transports from the point of production to the point of primary manufacture; to the

point of assembling the same; or to a shipping point of a rail, water, or motor transportation company, $324 flat.

Such not-for-hire truck tractors and heavy trucks used exclusively in transporting raw, unprocessed, and nonmanufactured agricultural or horticultural products may be incidentally used to haul farm implements and fertilizers delivered direct to the growers. The department may require any documentation deemed necessary to determine eligibility before issuance of this license plate. For the purpose of this paragraph, "not-for-hire" means the owner of the motor vehicle must also be the owner of the raw, unprocessed, and nonmanufactured agricultural or horticultural product, or the user of the farm implements and fertilizer being delivered.

(5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT; SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

(a)1. A semitrailer drawn by a GVW truck tractor by means of a fifth-wheel arrangement: $13.50 flat per registration year or any part thereof.

2. A semitrailer drawn by a GVW truck tractor by means of a fifth-wheel arrangement: $68 flat per permanent registration.

(b) A motor vehicle equipped with machinery and designed for the exclusive purpose of well drilling, excavation, construction, spraying, or similar activity, and which is not designed or used to transport loads other than the machinery

described above over public roads: $44 flat.

(c) A school bus used exclusively to transport pupils to and from school or school or church activities or functions within their own county: $41 flat.

(d) A wrecker, as defined in s. 320.01, which is used to tow a vessel as defined in s. 327.02, a disabled, abandoned, stolen-recovered, or impounded motor vehicle as defined in s. 320.01, or a replacement motor vehicle as defined in s. 320.01: $41 flat.

(e) A wrecker that is used to tow any nondisabled motor vehicle, a vessel, or any other cargo unless used as defined in paragraph (d), as follows:

1. Gross vehicle weight of 10,000 pounds or more, but less than 15,000 pounds: $118 flat.

2. Gross vehicle weight of 15,000 pounds or more, but less than 20,000 pounds: $177 flat.

3. Gross vehicle weight of 20,000 pounds or more, but less than 26,000 pounds: $251 flat.

4. Gross vehicle weight of 26,000 pounds or more, but less than 35,000 pounds: $324 flat.

5. Gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds: $405 flat.

6. Gross vehicle weight of 44,000 pounds or more, but less than 55,000 pounds: $772 flat.

7. Gross vehicle weight of 55,000 pounds or more, but less

than 62,000 pounds: $915 flat.

8. Gross vehicle weight of 62,000 pounds or more, but less than 72,000 pounds: $1,080 flat.

9. Gross vehicle weight of 72,000 pounds or more: $1,322 flat.

(f) A hearse or ambulance: $40.50 flat.

(6) MOTOR VEHICLES FOR HIRE.—

(a) Under nine passengers: $17 flat plus $1.50 per cwt.

(b) Nine passengers and over: $17 flat plus $2 per cwt.

(7) TRAILERS FOR PRIVATE USE.—

(a) Any trailer weighing 500 pounds or less: $6.75 flat per year or any part thereof.

(b) Net weight over 500 pounds: $3.50 flat plus $1 per cwt.

(8) TRAILERS FOR HIRE.—

(a) Net weight under 2,000 pounds: $3.50 flat plus $1.50 per cwt.

(b) Net weight 2,000 pounds or more: $13.50 flat plus $1.50 per cwt.

(9) RECREATIONAL VEHICLE-TYPE UNITS.—

(a) A travel trailer or fifth-wheel trailer, as defined by s. 320.01(1)(b), that does not exceed 35 feet in length: $27 flat.

(b) A camping trailer, as defined by s. 320.01(1)(b)2.: $13.50 flat.

(c) A motor home, as defined by s. 320.01(1)(b)4.:

1. Net weight of less than 4,500 pounds: $27 flat.

2. Net weight of 4,500 pounds or more: $47.25 flat.

(d) A truck camper as defined by s. 320.01(1)(b)3.:

1. Net weight of less than 4,500 pounds: $27 flat.

2. Net weight of 4,500 pounds or more: $47.25 flat.

(e) A private motor coach as defined by s. 320.01(1)(b)5.:

1. Net weight of less than 4,500 pounds: $27 flat.

2. Net weight of 4,500 pounds or more: $47.25 flat.

(10) PARK TRAILERS; TRAVEL TRAILERS; FIFTH-WHEEL TRAILERS; 35 FEET TO 40 FEET.—

(a) *Park trailers.*—Any park trailer, as defined in s. 320.01(1)(b)7.: $25 flat.

(b) *Travel trailers or fifth-wheel trailers.*—A travel trailer or fifth-wheel trailer, as defined in s. 320.01(1)(b), that exceeds 35 feet: $25 flat.

(11) MOBILE HOMES.—

(a) A mobile home not exceeding 35 feet in length: $20 flat.

(b) A mobile home over 35 feet in length, but not exceeding 40 feet: $25 flat.

(c) A mobile home over 40 feet in length, but not exceeding 45 feet: $30 flat.

(d) A mobile home over 45 feet in length, but not exceeding 50 feet: $35 flat.

(e) A mobile home over 50 feet in length, but not exceeding 55 feet: $40 flat.

(f) A mobile home over 55 feet in length, but not exceeding 60 feet: $45 flat.

(g) A mobile home over 60 feet in length, but not exceeding 65 feet: $50 flat.

(h) A mobile home over 65 feet in length: $80 flat.

(12) DEALER AND MANUFACTURER LICENSE PLATES.—A franchised motor vehicle dealer, independent motor vehicle dealer, marine boat trailer dealer, or mobile home dealer and manufacturer license plate: $17 flat.

(13) EXEMPT OR OFFICIAL LICENSE PLATES.—Any exempt or official license plate: $4 flat, except that the registration or renewal of a registration of a marine boat trailer exempt under s. 320.102 is not subject to any license tax.

(14) LOCALLY OPERATED MOTOR VEHICLES FOR HIRE.—A motor vehicle for hire operated wholly within a city or within 25 miles thereof: $17 flat plus $2 per cwt.

(15) TRANSPORTER.—Any transporter license plate issued to a transporter pursuant to s. 320.133: $101.25 flat.

Section 17. Paragraph (a) of subsection (3) of section 316.306, Florida Statutes, is amended to read:

316.306 School and work zones; prohibition on the use of a wireless communications device in a handheld manner.—

(3)(a)1. A person may not operate a motor vehicle while

using a wireless communications device in a handheld manner in a designated school crossing, school zone, or work zone area as defined in s. 316.003(105) ~~s. 316.003(104)~~. This subparagraph shall only be applicable to work zone areas if construction personnel are present or are operating equipment on the road or immediately adjacent to the work zone area. For the purposes of this paragraph, a motor vehicle that is stationary is not being operated and is not subject to the prohibition in this paragraph.

2.a. During the period from October 1, 2019, through December 31, 2019, a law enforcement officer may stop motor vehicles to issue verbal or written warnings to persons who are in violation of subparagraph 1. for the purposes of informing and educating such persons of this section. This sub-subparagraph shall stand repealed on October 1, 2020.

b. Effective January 1, 2020, a law enforcement officer may stop motor vehicles and issue citations to persons who are driving while using a wireless communications device in a handheld manner in violation of subparagraph 1.

Section 18. Subsection (1) of section 655.960, Florida Statutes, is amended to read:

655.960 Definitions; ss. 655.960-655.965.—As used in this section and ss. 655.961-655.965, unless the context otherwise requires:

(1) "Access area" means any paved walkway or sidewalk

which is within 50 feet of any automated teller machine. The term does not include any street or highway open to the use of the public, as defined in s. 316.003(84)(a) or (b) ~~s. 316.003(83)(a) or (b)~~, including any adjacent sidewalk, as defined in s. 316.003.

Section 19. This act shall take effect July 1, 2020.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: State Affairs Committee
Representative Grant, M. offered the following:

Amendment

Remove lines 220-253 and insert:

and sidewalk areas under the local government's jurisdiction; or prevent a municipality, county, or agency of the state having jurisdiction over a bicycle path, multiuse path, or trail network from restricting or prohibiting the operation of an electric bicycle on a bicycle path, multiuse path, or trail network.

(2) An electric bicycle or an operator of an electric bicycle is not subject to the provisions of law relating to financial responsibility, driver or motor vehicle licenses, vehicle registration, title certificates, off-highway motorcycles, or off-highway vehicles.

(3) Beginning January 1, 2021, manufacturers and distributors of electric bicycles shall apply a label that is permanently affixed in a prominent location to each electric bicycle. The label must contain the classification number, top assisted speed, and motor wattage of the electric bicycle.

(4) A person may not tamper with or modify an electric bicycle so as to change the motor-powered speed capability or engagement of an electric bicycle, unless the label indicating the classification number required in subsection (3) is replaced after such modification.

(5) An electric bicycle must comply with the equipment and manufacturing requirements for bicycles adopted by the United States Consumer Product Safety Commission under 16 C.F.R. part 1512.

(6) An electric bicycle must operate in a manner so that the electric motor is disengaged or ceases to function when the rider stops pedaling or when the brakes are applied.

(7) An operator may ride an electric bicycle where bicycles are allowed, including, but not limited to, streets, highways, roadways, shoulders, bicycle lanes, and bicycle or multiuse paths.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1005 Voting Systems
SPONSOR(S): Byrd and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1312

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	13 Y, 0 N	Toliver	Smith
2) Public Integrity & Ethics Committee	15 Y, 0 N	Poreda	Rubottom
3) State Affairs Committee		Toliver	Williamson

SUMMARY ANALYSIS

A “voting system” is a method of casting and processing votes that consists of electromechanical components and, in most instances, utilizes marksense ballots. The Division of Elections within the Department of State (DOS) must approve all voting systems used in Florida elections. The Florida Election Code prescribes the general standards for the approval of voting systems; DOS rules further detail the complex, technical certification requirements.

The preliminary results of a close election may warrant a machine recount and, depending on the margin of victory following the machine recount, may also warrant a manual recount. The recount occurs before the election results are certified. The purpose of the recount is to determine who won an election. If the first set of unofficial results indicate that the margin of victory in any race is one-half of one percent or less, each canvassing board must run the marksense ballots through the voting system’s automatic tabulating equipment to determine whether the returns correctly reflect the votes cast. If the machine recount results indicate a margin of victory of one-quarter of one percent or less, the county canvassing board generally must conduct a manual recount of the overvotes and undervotes.

Voting system audits must be conducted after the final canvassing board certifies the election results. The purpose of the audit is to confirm the accuracy of the voting system tabulation and to identify problems and recommend adjustments for future elections. The county canvassing board has the option to conduct either a manual audit or an automated, independent audit of the voting systems used in randomly selected precincts.

The bill allows county canvassing boards and supervisors of elections to use automated tabulating equipment that is not part of the voting system to conduct both machine and manual recounts. During the machine recount process, the ballots may be run through the automated tabulating equipment instead of the voting system’s tabulators that performed the original tally. While the machine recount is underway, overvotes and undervotes may be identified and sorted physically or digitally in preparation of a manual recount should one be warranted. To facilitate faster manual recounts of overvotes and undervotes, the bill specifically allows for the counting of the paper ballots or the digital image of the ballots. Lastly, the bill directs DOS to develop procedures relating to the certification and the use of automatic tabulating equipment that is not part of a voting system.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Voting Systems

A "voting system" is a method of casting and processing votes that consists of electromechanical components and, in most instances, utilizes marksense ballots.[1] The voting system may also include things like procedures, operating manuals, supplies, printouts, and other software necessary for the system's operation.[2]

The Division of Elections (division) within the Department of State (DOS) must approve all voting systems used in Florida elections.[3] The Electronic Voting Systems Act[4] in the Florida Election Code prescribes the general standards for the approval of voting systems; DOS rules further detail the complex, technical certification requirements.[5] The certification process tests the reliability of both the hardware and software components of the voting system to make sure it meets rigorous standards.

Recounts

The preliminary results of a close election may warrant a machine recount and, depending on the margin of victory following the machine recount, may also warrant a manual recount. If a recount is required, it occurs before the election results are certified.[6] The purpose of the recount is to determine who won an election. The State Elections Canvassing Commission, in the case of federal, state, and multicounty races, and the local county canvassing board in most other elections, must certify the results by the ninth day after a primary election and the 14th day after a general election.[7] All recounts are governed by complex procedures and requirements designed to protect the integrity of the process involving:

- Duplication of ballots;
- Security of ballots during the recount;
- Time and location of the recount;
- Opportunity for public observance;
- Objections to ballot determinations;
- Recordation of recount proceedings; and,
- Processes relating to affected candidates.[8]

Machine Recounts

If the first set of unofficial results[9] indicate the margin of victory in any race is one-half of one percent or less, each canvassing board must run the marksense ballots through the voting system's automatic tabulating equipment to determine whether the returns correctly reflect the votes cast.[10] During this

[1] Section 97.021(46), F.S.
[2] *Id.*
[3] Sections 101.5605 and 101.5606, F.S.
[4] Sections 101.5601 – 101.5614, F.S., are cited as the Electronic Voting Systems Act. Section 101.5601, F.S.
[5] *Id.*; *see* Florida Division of Elections, Bureau of Voting Systems Certification, Form DS-DE 101 (eff. Jan. 12, 2005) (incorporated by reference, Rule 1S-5.001, F.A.C.) (66-page *Florida Voting System Standards* document containing technical requirements for certification), available at http://dos.myflorida.com/media/693718/dsde101.pdf, (last visited Jan. 23, 2020).
[6] Section 102.141(7), F.S.
[7] Section 102.111(2), F.S. County canvassing boards must submit final returns to DOS for races certified by the Elections Canvassing Commission no later than 5:00 p.m. on the seventh day after a primary election and by noon on the 12th day after a general election. Section 102.112(1)-(2), F.S.
[8] Section 102.166(5)(b) and (d), F.S.; Rule 1S-2.031 (Recount Procedures).
[9] County canvassing boards must report the first set of unofficial results in federal, statewide, state, or multicounty office or ballot measure to DOS by noon of the third day after a primary election and noon of the fourth day after a general election. Section 102.141(5), F.S.
[10] Section 102.141(7), F.S. A losing candidate within one-half of one percent or less can waive the automatic recount in writing. *Id.*

machine recount process, the tabulators sort out the overvotes[11] and undervotes[12] in case the results are close enough to warrant a manual recount of overvotes and undervotes. There are also requirements for canvassing boards to perform logic and accuracy tests on the tabulation equipment prior to re-tabulation.[13]

The machine recount results comprise the second set of unofficial results.[14]

Manual Recounts
If the second set of unofficial results indicate a margin of victory of one-quarter of one percent or less, a manual recount of the overvotes and undervotes must be conducted.[15]

The majority of the manual recount process involves teams of two electors reviewing marksense paper ballots to determine whether there is a "clear indication on the ballot that the voter has made a definite choice."[16] If a team cannot agree, the ballot is sent to the county canvassing board for a final determination.[17]

Voting System Audits
Voting system audits must be conducted after the final canvassing board certifies the election results for the purposes of confirming the accuracy of the voting system tabulation and identifying problems and recommending adjustments for future elections.[18] The county canvassing board may conduct a manual audit or an automated, independent audit of the voting systems used in randomly selected precincts.[19]

Manual random audits consist of a public, hand tally of at least 1 percent of precincts but not more than 2 percent of precincts in a single race on the ballot.[20] The audit includes a tally of Election Day, vote-by-mail, early voting, provisional, and overseas ballots.[21] Automated, independent audits are much more extensive, tallying votes cast across every race that appears on the ballot.[22] The tally includes all

[11] The term "overvote" means that the elector marks or designates more names than there are persons to be elected to an office or designates more than one answer to a ballot question, and the tabulator records no vote for the office or question. Section 97.021(25), F.S.
[12] The term "undervote" means that the elector does not properly designate any choice for an office or ballot question, and the tabulator records no vote for the office or question. Section 97.021(40), F.S.
[13] Section 102.141(7)(a), F.S.
[14] County canvassing boards must report the second set of unofficial results in federal, statewide, state, or multicounty office or ballot measure to DOS by 3:00 p.m. of the fifth day after a primary election and 3:00 p.m. of the ninth day after a general election. Section 102.141(7)(c), F.S.
[15] Section 102.166(1), F.S. A manual recount is not required if the losing candidate waives the recount or if the number of overvotes and undervotes to be recounted is fewer than the number of votes needed to change the election outcome. *Id.*
[16] Section 102.166(4)(b), F.S. The division has a 14-page rule detailing which ballot markings constitute a valid vote in the context of how a voter filled out a particular ballot. Rule 1S-2.027, F.A.C.
[17] Section 102.166(5)(c), F.S.
[18] Section 101.591, F.S.
[19] *Id.*
[20] Section 101.591(2)(a), F.S.
[21] Section 101.591(2)(b), F.S.
[22] Section 101.591(2)(b), F.S. The division indicates that the *ClearAudit* digital imaging system from Clear Ballot Group of Boston, MA, was the only system approved to conduct automated audits for the 2016 and 2018 general election cycles. *See* Florida Division of Elections, Approvals and Technical Advisories (identifying Democracy Live, Inc.'s, *LiveBallot* electronic ballot delivery/duplication [non-audit] system as the only other system that the division "approved"), available at http://dos.myflorida.com/elections/voting-systems/approvals-and-technical-advisories/ (last visited Jan. 24, 2020); Maria Matthews, Director, Florida Division of Elections, *ClearAudit* 1.4.4. Approval Letter (July 27, 2018, available at https://dos.myflorida.com/media/699784/clearaudit-144-approval-7272018.pdf (approving *ClearAudit* as alternative to manual audit process provided in s. 101.591, F.S. for 2018 election cycle) (last accessed Jan. 24, 2020); Maria Matthews, Director, Florida Division of Elections, *ClearAudit* Interim Approval Extension Letter (Jan. 25, 2016) (approving *ClearAudit* as alternative to manual audit process provided in s. 101.591, F.S. for 2016 election cycle), available at http://dos.myflorida.com/media/695954/clearaudit-106-interim-approval-extension-1252016.pdf (last visited Jan. 24, 2020). Seven of Florida's 67 counties — *Bay, Broward, Columbia,, Leon, Nassau, Putnam, and St. Lucie* — used the Clear Ballot product to audit nearly 14 percent of the ballots cast in the Florida 2016 general election. Hillary Lincoln, Marketing and Communications Manager, Clear Ballot, *Clear Ballot's Audit of Florida's Presidential Election Results a Success* (Dec. 14, 2016) (press release), available at https://www.prnewswire.com/news-releases/clear-ballots-audit-of-floridas-presidential-election-results-a-success-300378422.html

election day, vote-by-mail, early voting, provisional, and overseas ballot in at least 20 percent of the precincts chosen at random by the canvassing board.[23]

The division approves the independent audit equipment pursuant to both statutory and rule standards.[24] The automated audit equipment must be:

- Completely independent of the voting system;
- Fast enough to produce audit results no later than midnight of the seventh day following election certification; and
- Capable of demonstrating that the audit system has accurately tallied the ballots.[25]

DOS rules contain additional approval requirements and procedures for independent audit equipment and voting system audits.[26] The canvassing board must complete the audit no later than midnight of the seventh day after it certifies the election results.[27] The canvassing board must provide a report to DOS by the 15th day after completing the audit that addresses:

- The overall accuracy of the audit;
- A description of any problems or discrepancies encountered;
- The likely cause of such problems or discrepancies; and
- Recommended corrective action with respect to avoiding or mitigating such circumstances in future elections.[28]

If a manual recount takes place, the affected canvassing board is not required to conduct an audit.[29]

Effect of the Bill

The bill allows county canvassing boards and supervisors of elections to use automated tabulating equipment that is not part of the voting system to conduct both machine and manual recounts.

During the machine recount process, the ballots may be run through the automatic tabulating equipment instead of the voting system's tabulators that performed the original tally. While the machine recount is underway, overvotes and undervotes may be identified and sorted physically or digitally in preparation of a manual recount, should one be warranted.

To facilitate faster manual recounts of overvotes and undervotes, the bill specifically allows for the counting of the actual paper ballots or the digital image of the ballots. Further, the bill directs DOS to adopt by rule "procedures relating to the certification and the use of automatic tabulating equipment that is not part of a voting system."

B. SECTION DIRECTORY:

Section 1 amends s. 97.3021, F.S., relating to definitions applicable to the Florida Election Code.

Section 2 amends s. 101.5614, F.S., relating to the canvass of returns.

Section 3 amends s. 102.141, F.S., relating the county canvassing boards.

Section 4 amends s. 102.166, F.S., relating to manual recounts.

(last visited Jan. 24, 2020); Since the 2018 election cycle, Hillsborough and Indian River Counties have joined the list of counties using the Clear Ballot product, bringing the total to nine counties. Mitch Perry, *Hillsborough County Adds Accountability Measure for Elections*, available at https://www.baynews9.com/fl/tampa/news/2019/11/25/hillsborough-county-adds-accountability-measures-for-elections (last visited Jan. 24, 2019).

[23] Section 101.591(2)(b), F.S.

[24] Section 101.591(2)(c), F.S.

[25] *Id.*

[26] Rule 1S-5.026, F.A.C. (Post-Election Certification Voting System Audit).

[27] Section 101.591(4), F.S.

[28] Section 101.591(5), F.S.

[29] Section 101.591(6), F.S.

Section 5 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in a positive fiscal impact to private sector companies that manufacture or sell automatic tabulating machines. As these machines become available for use as recount machines, counties would likely be incentivized to procure the machines to expedite the recount process. Currently, only one machine has been authorized to conduct independent automated audits in the state;[30] however, under the bill, the machine would need to be certified as a recount machine by DOS before being used for that purpose.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires DOS to adopt detailed rules prescribing additional procedures relating to the certification and the use of automatic tabulating equipment that is not part of a voting system for recounts. DOS has sufficient rulemaking authority in s. 97.012(1), F.S., to adopt the rules required by the bill.

[30] *Supra* note 22.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to voting systems; amending s. 97.021, F.S.; defining the term "automatic tabulating equipment" for purposes of the Florida Election Code; amending s. 101.5614, F.S.; revising procedures governing the canvassing of returns to specify usage of a voting system's automatic tabulating equipment; amending s. 102.141, F.S.; specifying the circumstances under which ballots must be processed through automatic tabulating equipment in a recount; amending s. 102.166, F.S.; specifying the manner by which a manual recount may be conducted; revising requirements for hardware or software used in a manual recount; authorizing overvotes and undervotes to be identified and sorted physically or digitally in a manual recount; revising minimum requirements for Department of State rules to require procedures regarding the certification and use of automatic tabulating equipment for manual recounts; providing an effective date.

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

Section 1. Present subsections (5) through (46) of section 97.021, Florida Statutes, are renumbered as subsections (6)

through (47), respectively, and a new subsection (5) is added to that section, to read:

97.021 Definitions.—For the purposes of this code, except where the context clearly indicates otherwise, the term:

(5) "Automatic tabulating equipment" means an apparatus that automatically examines, counts, and records votes.

Section 2. Paragraph (a) of subsection (4) and subsections (6) and (7) of section 101.5614, Florida Statutes, are amended to read:

101.5614 Canvass of returns.—

(4)(a) If any vote-by-mail ballot is physically damaged so that it cannot properly be counted by the voting system's automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. Likewise, a duplicate ballot shall be made of a vote-by-mail ballot containing an overvoted race or a marked vote-by-mail ballot in which every race is undervoted which shall include all valid votes as determined by the canvassing board based on rules adopted by the division pursuant to s. 102.166(4). Upon request, a physically present candidate, a political party official, a political committee official, or an authorized designee thereof, must be allowed to observe the duplication of ballots. All duplicate ballots shall be clearly labeled "duplicate," bear a serial number which shall be recorded on the defective ballot, and be counted in lieu of

the defective ballot. After a ballot has been duplicated, the defective ballot shall be placed in an envelope provided for that purpose, and the duplicate ballot shall be tallied with the other ballots for that precinct.

(6) Vote-by-mail ballots may be counted by the voting system's automatic tabulating equipment if they have been marked in a manner which will enable them to be properly counted by such equipment.

(7) The return printed by the voting system's automatic tabulating equipment, to which has been added the return of write-in, vote-by-mail, and manually counted votes and votes from provisional ballots, shall constitute the official return of the election upon certification by the canvassing board. Upon completion of the count, the returns shall be open to the public. A copy of the returns may be posted at the central counting place or at the office of the supervisor of elections in lieu of the posting of returns at individual precincts.

Section 3. Paragraph (a) of subsection (7) of section 102.141, Florida Statutes, is amended to read:

102.141 County canvassing board; duties.—

(7) If the unofficial returns reflect that a candidate for any office was defeated or eliminated by one-half of a percent or less of the votes cast for such office, that a candidate for retention to a judicial office was retained or not retained by one-half of a percent or less of the votes cast on the question

of retention, or that a measure appearing on the ballot was approved or rejected by one-half of a percent or less of the votes cast on such measure, a recount shall be ordered of the votes cast with respect to such office or measure. The Secretary of State is responsible for ordering recounts in federal, state, and multicounty races. The county canvassing board or the local board responsible for certifying the election is responsible for ordering recounts in all other races. A recount need not be ordered with respect to the returns for any office, however, if the candidate or candidates defeated or eliminated from contention for such office by one-half of a percent or less of the votes cast for such office request in writing that a recount not be made.

(a) Each canvassing board responsible for conducting a recount shall put each marksense ballot through automatic tabulating equipment and determine whether the returns correctly reflect the votes cast. If any marksense ballot is physically damaged so that it cannot be properly counted by the automatic tabulating equipment during the recount, a true duplicate shall be made of the damaged ballot pursuant to the procedures in s. 101.5614(4). Immediately before the start of the recount, a test of the tabulating equipment shall be conducted as provided in s. 101.5612. If the test indicates no error, the recount tabulation of the ballots cast shall be presumed correct and such votes shall be canvassed accordingly. If an error is detected, the

cause therefor shall be ascertained and corrected and the recount repeated, as necessary. The canvassing board shall immediately report the error, along with the cause of the error and the corrective measures being taken, to the Department of State. No later than 11 days after the election, the canvassing board shall file a separate incident report with the Department of State, detailing the resolution of the matter and identifying any measures that will avoid a future recurrence of the error. If the automatic tabulating equipment used in a recount is not part of the voting system and the ballots have already been processed through such equipment, the canvassing board is not required to put each ballot through any automatic tabulating equipment again.

Section 4. Subsections (1), (2), and (5) of section 102.166, Florida Statutes, are amended to read:

102.166 Manual recounts of overvotes and undervotes.—

(1) If the second set of unofficial returns pursuant to s. 102.141 indicates that a candidate for any office was defeated or eliminated by one-quarter of a percent or less of the votes cast for such office, that a candidate for retention to a judicial office was retained or not retained by one-quarter of a percent or less of the votes cast on the question of retention, or that a measure appearing on the ballot was approved or rejected by one-quarter of a percent or less of the votes cast on such measure, a manual recount of the overvotes and

undervotes cast in the entire geographic jurisdiction of such office or ballot measure shall be ordered unless:

(a) The candidate or candidates defeated or eliminated from contention by one-quarter of 1 percent or fewer of the votes cast for such office request in writing that a recount not be made; or

(b) The number of overvotes and undervotes is fewer than the number of votes needed to change the outcome of the election.

The Secretary of State is responsible for ordering a manual recount for federal, state, and multicounty races. The county canvassing board or local board responsible for certifying the election is responsible for ordering a manual recount for all other races. A manual recount consists of a recount of marksense ballots or of digital images of those ballots by a person.

(2) Any hardware or software used to identify and sort overvotes and undervotes for a given race or ballot measure must be certified by the Department of State ~~as part of the voting system pursuant to s. 101.015~~. Any such hardware or software must be capable of simultaneously identifying and sorting overvotes and undervotes in multiple races while simultaneously counting votes. Overvotes and undervotes must be identified and sorted while recounting ballots pursuant to s. 102.141. Overvotes and undervotes may be identified and sorted physically

or digitally.

(5) Procedures for a manual recount are as follows:

(a) The county canvassing board shall appoint as many counting teams of at least two electors as is necessary to manually recount the ballots. A counting team must have, when possible, members of at least two political parties. A candidate involved in the race shall not be a member of the counting team.

(b) Each duplicate ballot prepared pursuant to s. 101.5614(4) or s. 102.141(7) shall be compared with the original ballot to ensure the correctness of the duplicate.

(c) If a counting team is unable to determine whether the ballot contains a clear indication that the voter has made a definite choice, the ballot shall be presented to the county canvassing board for a determination.

(d) The Department of State shall adopt detailed rules prescribing additional recount procedures for each certified voting system which shall be uniform to the extent practicable. The rules shall address, at a minimum, the following areas:

1. Security of ballots during the recount process;

2. Time and place of recounts;

3. Public observance of recounts;

4. Objections to ballot determinations;

5. Record of recount proceedings; ~~and~~

6. Procedures relating to candidate and petitioner representatives; and

7. Procedures relating to the certification and the use of automatic tabulating equipment that is not part of a voting system.

Section 5. This act shall take effect July 1, 2020.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: State Affairs Committee
Representative Byrd offered the following:

Amendment (with directory and title amendments)

Remove line 179 and insert:

(6) Nothing in this section precludes a county canvassing board or local board involved in the recount from comparing a digital image of a ballot to the corresponding physical paper ballot during a manual recount.

Section 5. Effective upon becoming a law, subsection (2) of section 101.5612, Florida Statutes, is amended to read:

101.5612 Testing of tabulating equipment.—

(2) On any day not more than 25 ~~10~~ days before ~~prior to~~ the commencement of early voting as provided in s. 101.657, the supervisor of elections shall have the automatic tabulating equipment publicly tested to ascertain that the equipment will

correctly count the votes cast for all offices and on all measures. If the ballots to be used at the polling place on election day are not available at the time of the testing, the supervisor may conduct an additional test not more than 10 days before election day. Public notice of the time and place of the test shall be given at least 48 hours prior thereto by publication on the supervisor of elections' website and once in one or more newspapers of general circulation in the county or, if there is no newspaper of general circulation in the county, by posting the notice in at least four conspicuous places in the county. The supervisor or the municipal elections official may, at the time of qualifying, give written notice of the time and location of the public preelection test to each candidate qualifying with that office and obtain a signed receipt that the notice has been given. The Department of State shall give written notice to each statewide candidate at the time of qualifying, or immediately at the end of qualifying, that the voting equipment will be tested and advise each candidate to contact the county supervisor of elections as to the time and location of the public preelection test. The supervisor or the municipal elections official shall, at least 30 ~~15~~ days before ~~prior to~~ the commencement of early voting as provided in s. 101.657, send written notice by certified mail to the county party chair of each political party and to all candidates for other than statewide office whose names appear on the ballot in

the county and who did not receive written notification from the supervisor or municipal elections official at the time of qualifying, stating the time and location of the public preelection test of the automatic tabulating equipment. The canvassing board shall convene, and each member of the canvassing board shall certify to the accuracy of the test. For the test, the canvassing board may designate one member to represent it. The test shall be open to representatives of the political parties, the press, and the public. Each political party may designate one person with expertise in the computer field who shall be allowed in the central counting room when all tests are being conducted and when the official votes are being counted. The designee shall not interfere with the normal operation of the canvassing board.

Section 6. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon becoming a law, this act shall take effect January 1, 2021.

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

Remove line 115 and insert:

102.166, Florida Statutes, are amended, and subsection (6) is added to that section to read:

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

Remove lines 19-20 and insert:

tabulating equipment for manual recounts; providing construction; amending s. 101.5612, F.S.; revising the timeframes for conducting public preelection testing of automatic tabulating equipment; providing effective dates.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1039 Transportation Network Companies
SPONSOR(S): Transportation & Infrastructure Subcommittee; Rommel
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	12 Y, 0 N, As CS	Roth	Vickers
2) Insurance & Banking Subcommittee	11 Y, 0 N	Lloyd	Cooper
3) State Affairs Committee		Roth	Williamson

SUMMARY ANALYSIS

A transportation network company (TNC) is an entity that uses a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC vehicle is not a for-hire vehicle or a limousine. With certain exceptions, a "for-hire vehicle" means any motor vehicle used for transporting persons or goods for compensation, or let or rented to another for consideration. There are different regulatory and insurance requirements in place for TNCs and for-hire vehicles.

The bill allows a limousine and luxury for-hire vehicles to be operated as a TNC. The bill defines "luxury ground transportation network company" to mean a company that uses its digital network to connect riders exclusively to drivers who operate for-hire vehicles, including limousines and luxury sedans. The bill requires luxury ground TNCs to comply with all of the requirements applicable to a TNC, and requires maintenance of specific insurance coverage at all times.

The bill authorizes TNC drivers to contract for the installation of TNC digital advertising devices on the TNC vehicle. The bill defines "transportation network company digital advertising device" to mean a device no larger than 20 inches tall and 54 inches long that is fixed to the roof of a TNC vehicle that displays advertisements on a digital screen only while the TNC vehicle is turned on. The bill provides additional requirements for the use and display of a TNC digital advertising device.

The bill provides that a luxury ground TNC is not considered a for-hire vehicle and that the regulation of luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles is preempted to the state.

The bill may have an indeterminate negative fiscal impact on the state and local governments. *See* Fiscal Analysis section for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Transportation Network Companies

In 2017, the Legislature established a regulatory framework for transportation network companies (TNCs).[1] A TNC is an entity operating in this state that uses a digital network to connect a rider[2] to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract, and is not a taxicab association or for-hire vehicle owner. The term does not include entities arranging nonemergency medical transportation for individuals who qualify for Medicaid or Medicare pursuant to a contract with the state or a managed care organization.

A "TNC vehicle" is a vehicle that is used by a TNC driver to offer or provide a prearranged ride that is owned, leased, or otherwise authorized to be used by the TNC driver. A vehicle that is let or rented to another for consideration may be used as a TNC vehicle. The law specifies that a taxicab, jitney, limousine, or for-hire vehicle is not a TNC vehicle.

A "prearranged ride" is the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network[3] controlled by a TNC, continuing while the TNC driver transports the requesting rider, and ending when the last requesting rider departs from the TNC vehicle. The term does not include a taxicab, for-hire vehicle, or street hail[4] service and does not include ridesharing,[5] carpool,[6] or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride. TNC drivers are prohibited from soliciting or accepting street hails.

A "TNC driver" is an individual who receives connections to potential riders and related services from a TNC and in return for compensation, uses a TNC vehicle to offer or provide a prearranged ride to a rider upon connection through a digital network. The law specifies that a TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service. The law provides that a TNC driver is not required to register a TNC vehicle as a commercial motor vehicle or a for-hire vehicle. The TNC's digital network must display the TNC driver's photograph and the TNC vehicle's license plate number before the rider enters the TNC vehicle.

If a fare is collected from a rider, the TNC must disclose the fare or fare calculation method on its website or within the online-enabled technology application service before beginning the prearranged ride. If the fare is not disclosed, the rider must have the option to receive an estimated fare before beginning the prearranged ride. In addition, a TNC is required to transmit to the rider an electronic receipt within a reasonable period after the completion of a ride. The receipt must list the origin and destination of the ride, total time and distance of the ride, and total fare paid.

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[1] Section 627.748, F.S.

[2] "Rider" means an individual who uses a digital network to connect with a TNC driver in order to obtain a prearranged ride in the TNC driver's TNC vehicle between points chosen by the rider.

[3] The term "digital network" means any online-enabled technology application service, website, or system offered or used by a TNC that enables the prearrangement of riders with TNC drivers.

[4] The term "street hail" means an immediate arrangement on a street with a driver by a person using any method other than a digital network to seek immediate transportation.

[5] Section 341.031(9)(a), F.S., defines "ridesharing" as an "arrangement between persons with a common destination, or destinations, within the same proximity, to share the use of a motor vehicle on a recurring basis for round-trip transportation to and from their place of employment or other common destination. For purposes of ridesharing, employment shall be deemed to commence when an employee arrives at the employer's place of employment to report for work and shall be deemed to terminate when the employee leaves the employer's place of employment, excluding areas not under the control of the employer. However, an employee shall be deemed to be within the course of employment when the employee is engaged in the performance of duties assigned or directed by the employer, or acting in the furtherance of the business of the employer, irrespective of location."

[6] Section 450.28(3), F.S., defines "carpool" as "an arrangement made by the workers using one worker's own vehicle for transportation to and from work and for which the driver or owner of the vehicle is not paid by any third person other than the members of the carpool."

A TNC is required to designate and maintain an agent for service of process in this state.[7]

Because a TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service, a TNC driver is not required to register the TNC vehicle as a commercial motor vehicle or a for-hire vehicle.[8]

While a TNC driver is logged on to the digital network but is not engaged in a prearranged ride, the TNC or TNC driver must have automobile insurance that provides:[9]

- Primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage; and
- Personal injury protection benefits that meet the minimum coverage amounts required under the Florida Motor Vehicle No-Fault Law.[10]

When a TNC driver is engaged in a prearranged ride, the automobile insurance must provide:[11]

- Primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage; and
- Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under the Florida Motor Vehicle No-Fault Law.

The coverage requirements may be satisfied by automobile insurance maintained by the TNC driver, an automobile insurance policy maintained by the TNC, or a combination of automobile insurance policies maintained by the TNC driver and the TNC.[12]

The law preempts to the state the regulation of TNCs and specifies that a county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

- Impose a tax on or require a license for a TNC, TNC driver, or TNC vehicle if such tax or license relates to providing prearranged rides;
- Subject a TNC, TNC driver, or TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or
- Require a TNC or TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.[13]

However, an airport or seaport is not prohibited from charging reasonable pickup fees consistent with any pickup fees charged to taxicab companies at that airport or seaport for their use of the airport's or seaport's facilities or from designating locations for staging, pickup, and other similar operations at the airport or seaport.[14]

For-Hire Vehicles

With certain exceptions, offering for lease or rent any motor vehicle in the State of Florida qualifies the vehicle as a "for-hire vehicle." A "for-hire vehicle" is a motor vehicle used for transporting persons or goods for compensation. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is considered "for hire." The carriage of goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation "for hire."[15]

[7] Section 48.091, F.S., requires any corporation doing business in the state to have a registered agent and registered office in the state.
[8] Section 627.748(2), F.S.
[9] Section 627.748(7)(b), F.S.
[10] Sections 627.730-627.7405, F.S. The amount of insurance required is $10,000 for emergency medical disability, $2,500 non-emergency medical, and $5,000 for death.
[11] Section 627.748(7)(c), F.S.
[12] Section 627.748(7)(b) and (c), F.S.
[13] Section 627.748(15)(a), F.S.
[14] Section 627.748(15)(b), F.S.
[15] Section 320.01(15)(a), F.S.

Florida law establishes specific financial responsibility requirements applicable to for-hire vehicles. For-hire vehicles, such as taxis and limousines, must maintain a motor vehicle liability policy with minimum limits of $125,000 per person for bodily injury, $250,000 per incident for bodily injury, and $50,000 for property damage.[16] The owner or operator of a for-hire vehicle may also prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy issued by an insurance carrier, which is a member of the Florida Insurance Guaranty Association, or by providing a certificate of self-insurance.[17]

In general, a county may, to the extent not inconsistent with general or special law, license and regulate taxis, jitneys, limousines, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county.[18]

Digital Advertising Device

Certain companies allow taxi and TNC drivers to generate revenue through digital advertising via a digital smart screen on top of the taxi or TNC vehicle. The digital screen allows advertisers to run targeted, geofenced campaigns.[19] Digital advertising screens are installed on the roofs of motor vehicles owned or operated by individuals who commit to drive a minimum number of hours per week in certain urban markets. Drivers with digital advertising screens report earning an average of $300 a month, depending on how many hours are driven.[20]

There are currently digital advertising screens in use on vehicles in New York, Los Angeles, San Francisco, Chicago, and Dallas.[21]

Prohibition Against Certain Lights

A person may not drive any vehicle or equipment upon any highway in this state with any lamp or device thereon showing or displaying a red, red and white, or blue light visible from directly in front of the vehicle, except for certain exceptions, such as fire department vehicles and road maintenance equipment.[22] The law expressly prohibits any vehicle or equipment, except police vehicles, from showing or displaying blue lights, except for Department of Corrections vehicles or county correctional agency vehicles when responding to emergencies. Flashing lights are prohibited on vehicles except:

- As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway;
- When a motorist intermittently flashes his or her vehicle's headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so; and
- Flashing lamps authorized for bicycle riders and deceleration lighting systems on buses.

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) became law in 1973.[23] The purpose[24] of FDUTPA is to:

1) Simplify, clarify, and modernize the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices.
2) Protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.
3) Make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

[16] Section 324.032(1), F.S.
[17] Section 324.031, F.S.
[18] Section 125.01(1)(n), F.S.
[19] Anthony Ha, *Rideshare Advertising Startup Firefly Launches with $21.5M in Funding*, Techcrunch.com (December 6, 2018), available at https://techcrunch.com/2018/12/06/firefly-launch/ (last visited January 22, 2020).
[20] Sarah Holder, *Car-Mounted Ads Take a New Direction: Data Collection*, Citylab.com (November 20, 2019), available at https://www.citylab.com/transportation/2019/11/firefly-digital-advertising-driver-pay-uber-lyft-cars-data/602077/ (last visited January 22, 2020).
[21] *See* Firefly.com, available at https://fireflyon.com/ (last visited January 22, 2020).
[22] Section 316.2397, F.S.
[23] Chapter 73-124, Laws of Fla.; codified at part II of ch. 501, F.S.
[24] Section 501.202, F.S.

FDUTPA prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce."[25] The term "trade or commerce" is defined as "advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated," and the term includes "the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity."[26]

Effect of Proposed Changes

Luxury Ground Transportation Network Companies

The bill allows a limousine and luxury for-hire vehicle to be operated as a TNC. The bill defines a "luxury ground transportation network company" or "luxury ground TNC" as a company that uses a digital network to connect riders exclusively to drivers who operate for-hire vehicles, including limousines and luxury sedans and excluding taxicabs. An entity operating luxury sedans and limousines may elect, upon written notification to the Department of Financial Services (DFS), to be regulated as a luxury ground TNC. A luxury ground TNC must comply with all of the requirements applicable to a TNC, but is not required to comply with any requirements that prohibit the company from connecting riders to drivers who operate for-hire vehicles.

At all times, a luxury ground TNC must maintain insurance coverage at the levels at least equal to the greater of those required for TNCs and those required of for-hire vehicles, regardless of whether the driver is operating as a for-hire vehicle driver or luxury ground TNC driver. The bill changes the minimum insurance requirements applicable to a vehicle that is sometimes operated as a limousine or for-hire vehicle compared to periods when the vehicle is operated as a luxury ground TNC. The insurance differences are:

<table>
<tr><th rowspan="2">Insurance Coverage</th><th rowspan="2">Limousine or For-hire Vehicle</th><th colspan="2">Luxury Ground TNC</th><th rowspan="2">Result</th></tr>
<tr><th>Logged on/No rider</th><th>Connected to Rider</th></tr>
<tr><td>Personal Injury Protection</td><td>Not required</td><td>Not required</td><td>Not required</td><td>No change</td></tr>
<tr><td>Bodily Injury or Death</td><td>$125,000 per person
$250,000 per incident</td><td>$50,000 per person
$100,000 per incident</td><td rowspan="2">$1,000,000 combined for bodily injury, death, or property damage</td><td>Decrease when logged on/no rider</td></tr>
<tr><td>Property Damage</td><td>$50,000</td><td>$25,000</td><td>Increase when connected to rider</td></tr>
</table>

A limousine or luxury sedan that wishes to become a luxury ground TNC may continue to use self-insurance to satisfy the insurance requirements for a luxury ground TNC, as long as the self-insurance satisfies the minimum insurance requirements for luxury ground TNCs.

The bill adds TNC vehicle owners to the list of insureds whose coverage can be used to satisfy the insurance requirements for TNCs. The required coverage may be provided by the TNC, TNC driver, TNC owner, or any combination of the three. This allows the insurance maintained by the owner of a luxury ground TNC, who is not necessarily the driver, to satisfy the insurance requirements.

The bill preempts the regulation of luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles to the state.

Digital Advertising Devices

The bill authorizes TNC drivers to contract for the installation of TNC digital advertising devices on the TNC vehicle. The bill defines a "transportation network company digital advertising device" or "TNC digital advertising device" as a device no larger than 20 inches tall and 54 inches long that is fixed to

[25] Section 501.204(1), F.S.
[26] Section 501.203(8), F.S.

the roof of a TNC vehicle and that displays advertisements on a digital screen only while the TNC vehicle is turned on.

The bill provides the following requirements for a TNC digital advertising device:

- A TNC digital advertising device must follow the lighting requirements of s. 316.2397, F.S.
- No portion of the TNC digital advertising device may extend beyond the front or rear windshield of the vehicle, nor may it impact the TNC driver's vision.
- A TNC digital advertising device must display advertisements only on the sides of the device and not to the front or rear of the vehicle. Identification of the provider does not constitute advertising.
- A TNC digital advertising device must, at a minimum, meet the requirements of the MIL-STD-810G standard,[27] or other reasonable environmental and safety industry standard, as determined through independent safety and durability testing under the review of a licensed professional engineer, before being installed on a TNC vehicle.
- A TNC digital advertising device may not display advertisements for illegal products or services or advertisements that include nudity or violent images. All advertisements displayed on a TNC digital advertising device are subject to the FDUTPA.

The bill provides that a TNC driver is immune from liability for the display of an advertisement that violates s. 627.748, F.S., or the FDUTPA, unless the TNC driver is the advertiser. The owner or operator of a TNC digital advertising device is also immune from liability if the device displays an advertisement that violates s. 627.748, F.S., or the FDUTPA, unless the owner or operator is the advertiser.

The bill provides that the TNC advertising device is part of a TNC vehicle. Because of the inclusion of the TNC digital advertising device as part of a TNC vehicle, the regulation of such devices is preempted to the state.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.748, F.S., relating to TNCs.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill will likely have no impact on state government revenues.

2. Expenditures:

   The bill may have a fiscal impact on DFS, but the impact is unknown at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill preempts the regulation of luxury ground TNCs, luxury ground TNC drivers, luxury ground TNC vehicles, and TNC digital advertising devices to the state. To the extent local governments are imposing fees on luxury ground TNCs, luxury ground TNC drivers, luxury ground TNC vehicles, and TNC digital advertising devices, they will experience an indeterminate negative fiscal impact. The bill also authorizes limousines and other luxury for-hire vehicles to register as luxury ground TNCs. As such, the bill may have an insignificant negative fiscal impact to local government revenues to

[27] MIL-STD-810G is a U.S. military specification that guarantees a level of durability for a piece of technology. Specifically, it means the equipment has gone through a series of 29 tests, including shock tests, vibration tests, and more.

the extent that such vehicles elect to operate as luxury ground TNCs and no longer register as commercial motor vehicles or for-hire vehicles.

2. Expenditures:

The bill will likely have no impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes the use of TNC digital advertising devices, thus enabling TNC drivers to install the devices and earn additional monthly revenue. The bill also authorizes certain limousine and for-hire vehicle owners and drivers to begin operating as or with a luxury ground TNC, thus increasing competition within the TNC market and allowing them access to TNC customers.

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 expenditure 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:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments – Digital Advertising Device

The bill permits a TNC driver, or his or her designee, to contract for the installation of a TNC digital advertising device on the TNC vehicle. In some cases, the TNC driver may not own the TNC vehicle. If the intent of the bill is to authorize TNC vehicle owners to control the placement of the devices on the vehicle, then an amendment could clarify whether the TNC driver must have the consent of the TNC vehicle owner. In addition, the bill does not specify whether the TNC must approve the use of such devices.

The bill allows a TNC digital advertising device to display advertisements only when the device is turned on. If the intent of the bill is to only allow the display of advertising while the TNC driver is in the vehicle and engaged in TNC activity, then an amendment may be needed to clarify when the advertisements may be displayed.

The bill provides immunity from liability to a TNC driver and the owner or operator of a TNC digital advertising device for violations of s. 627.748, F.S., and the FDUTPA for certain advertisement-related violations. The bill does not provide the same immunity to the TNC vehicle owner, which may not be the same person as the driver, or to the TNC. As such, if the intent of the bill is to grant immunity to the TNC vehicle owner and the TNC, then an amendment may be needed.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 28, 2020, the Transportation & Infrastructure Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Authorized TNC vehicle owners, rather than just TNC drivers, to maintain insurance that satisfies the insurance requirements required for TNCs;
- Specified that a TNC digital advertising device may be enabled with cellular or Wi-Fi-enabled data transmission and equipped with GPS;
- Required that a TNC digital advertising device may only display advertisements when the vehicle is turned on;
- Removed the requirement that a TNC digital advertising device must allocate 10 percent of all advertisement inventory for government, not-for-profit, or charitable organizations at no cost;
- Provided that TNC digital advertising devices are subject to the FDUTPA;
- Provided the TNC driver protection from liability for the display of an advertisement that violates s. 627.748, F.S., or the FDUTPA, unless the driver is the advertiser; and
- Provided the owner or operator of a TNC digital advertising device immunity from liability when a displayed advertisement is in violation of s. 627.748, F.S., or the FDUTPA , if the advertisement was displayed in good faith and without knowledge, unless the owner or operator is the advertiser.

This analysis is drafted to the committee substitute as approved by the Transportation & Infrastructure Subcommittee.

A bill to be entitled

An act relating to transportation network companies; amending s. 627.748, F.S.; revising and providing definitions; deleting for-hire vehicles from the list of vehicles that are not considered TNC carriers or are not exempt from certain registration; revising automobile insurance coverage requirements for TNCs and TNC drivers; authorizing TNC drivers to contract for installment of TNC digital advertising devices; providing requirements for such devices; providing that TNC drivers and owners and operators of TNC digital advertising devices are immune from specified liabilities under certain circumstances; providing construction; authorizing entities to be regulated as luxury ground TNCs; providing requirements for luxury ground TNCs; providing that luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles are governed by state law; providing an effective date.

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

Section 1. Paragraphs (f) and (g) of subsection (1), subsections (11) through (14), and subsection (15) of section 627.748, Florida Statutes, are redesignated as paragraphs (g) and (h) of subsection (1), subsections (12) through (15), and

subsection (17), respectively, paragraphs (b) and (e) and present paragraph (g) of subsection (1), subsection (2), paragraphs (b) and (c) of subsection (7), and paragraph (a) of present subsection (15) are amended, a new paragraph (f) is added to subsection (1), and a new subsection (11) and subsection (16) are added to that section, to read:

627.748 Transportation network companies.—

(1) DEFINITIONS.—As used in this section, the term:

(b) "Prearranged ride" means the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network controlled by a transportation network company, continuing while the TNC driver transports the rider, and ending when the last rider exits from and is no longer occupying the TNC vehicle. The term does not include a taxicab~~, for-hire vehicle,~~ or street hail service and does not include ridesharing as defined in s. 341.031, carpool as defined in s. 450.28, or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.

(e) "Transportation network company" or "TNC" means an entity operating in this state pursuant to this section using a digital network to connect a rider to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written

contract, and is not a taxicab association ~~or for-hire vehicle owner~~. An individual, corporation, partnership, sole proprietorship, or other entity that arranges medical transportation for individuals qualifying for Medicaid or Medicare pursuant to a contract with the state or a managed care organization is not a TNC. This section does not prohibit a TNC from providing prearranged rides to individuals who qualify for Medicaid or Medicare if it meets the requirements of this section.

(f) "Transportation network company digital advertising device" or "TNC digital advertising device" means a device no larger than 20 inches tall and 54 inches long that is fixed to the roof of a TNC vehicle and that displays advertisements on a digital screen only when the TNC vehicle is turned on.

(h) ~~(g)~~ "Transportation network company vehicle" or "TNC vehicle" means a vehicle that is not a taxicab or~~,~~ jitney~~, limousine, or for-hire vehicle as defined in s. 320.01(15)~~ and that is:

1. Used by a TNC driver to offer or provide a prearranged ride; and

2. Owned, leased, or otherwise authorized to be used by the TNC driver.

Notwithstanding any other provision of law, a vehicle that is let or rented to another for consideration may be used as a TNC

vehicle.

(2) NOT OTHER CARRIERS.—A TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab ~~or for-hire vehicle~~ service. In addition, a TNC driver is not required to register the vehicle that the TNC driver uses to provide prearranged rides as a commercial motor vehicle ~~or a for-hire vehicle~~.

(7) TRANSPORTATION NETWORK COMPANY AND TNC DRIVER INSURANCE REQUIREMENTS.—

(b) The following automobile insurance requirements apply while a participating TNC driver is logged on to the digital network but is not engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $50,000 for death and bodily injury per person, $100,000 for death and bodily injury per incident, and $25,000 for property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or

the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(c) The following automobile insurance requirements apply while a TNC driver is engaged in a prearranged ride:

1. Automobile insurance that provides:

a. A primary automobile liability coverage of at least $1 million for death, bodily injury, and property damage;

b. Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under ss. 627.730-627.7405; and

c. Uninsured and underinsured vehicle coverage as required by s. 627.727.

2. The coverage requirements of this paragraph may be satisfied by any of the following:

a. Automobile insurance maintained by the TNC driver or the TNC vehicle owner;

b. Automobile insurance maintained by the TNC; or

c. A combination of sub-subparagraphs a. and b.

(11) TRANSPORTATION NETWORK COMPANY DIGITAL ADVERTISING DEVICE.—

(a) A TNC driver or his or her designee may contract with a company to install a TNC digital advertising device on a TNC vehicle.

(b) A TNC digital advertising device may be enabled with

cellular or WiFi-enabled data transmission and equipped with GPS.

(c) A TNC digital advertising device may display advertisements only when the TNC vehicle is turned on.

(d) A TNC digital advertising device must follow the lighting requirements of s. 316.2397.

(e) No portion of the TNC digital advertising device may extend beyond the front or rear windshield of the vehicle, nor may it impact the TNC driver's vision.

(f) A TNC digital advertising device must display advertisements only to the sides of the vehicle and not to the front or rear of the vehicle. Identification of the provider does not constitute advertising under this paragraph.

(g) A TNC digital advertising device must, at a minimum, meet the requirements of the MIL-STD-810G standard or other reasonable environmental and safety industry standard, as determined through independent safety and durability testing under the review of a licensed professional engineer, before being installed on a TNC vehicle.

(h) A TNC digital advertising device may not display advertisements for illegal products or services or advertisements that include nudity or violent images. All advertisements displayed on a TNC digital advertising device are subject to the Florida Deceptive and Unfair Trade Practices Act.

(i)1. A TNC driver is immune from liability for the

display of an advertisement that violates this section or the Florida Deceptive and Unfair Trade Practices Act unless the TNC driver is the advertiser.

2. The owner or operator of a TNC digital advertising device that displays an advertisement that is in violation of this section or the Florida Deceptive and Unfair Trade Practices Act is immune from liability under this section and the Florida Deceptive and Unfair Trade Practices Act for the violation if the advertisement was displayed in good faith and without actual knowledge of the violation, unless the advertiser is the same person as the owner or operator.

(j) For the purposes of this chapter, a TNC advertising device shall be deemed part of a TNC vehicle.

(16) LUXURY GROUND TRANSPORTATION NETWORK COMPANIES.—

(a) As used in this subsection, the term "luxury ground transportation network company" or "luxury ground TNC" means a company that:

1. Meets the requirements of paragraph (b).

2. Notwithstanding other provisions of this section, uses a digital network to connect riders exclusively to drivers who operate for-hire vehicles as defined in s. 320.01(15), including limousines and luxury sedans and excluding taxicabs.

(b) An entity may elect, upon written notification to the department, to be regulated as a luxury ground TNC. A luxury ground TNC must:

1. Comply with all of the requirements of this section applicable to a TNC, including subsection (17), that do not conflict with subparagraph 2. or that do not prohibit the company from connecting riders to drivers who operate for-hire vehicles as defined in 320.01(15), including limousines and luxury sedans and excluding taxicabs.

2. Maintain insurance coverage required in this section when the luxury ground TNC driver is logged on to a digital network or while the luxury ground TNC driver is engaged in a prearranged ride. However, a prospective luxury ground TNC that satisfies minimum financial responsibility at the time of written notification to the department through compliance with s. 324.032(2) by using self-insurance may continue to use self-insurance to satisfy the requirements of this subparagraph.

(17) ~~(15)~~ PREEMPTION.—

(a) It is the intent of the Legislature to provide for uniformity of laws governing TNCs, TNC drivers, ~~and~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles throughout the state. TNCs, TNC drivers, ~~and~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles are governed exclusively by state law, including in any locality or other jurisdiction that enacted a law or created rules governing TNCs, TNC drivers, ~~or~~ TNC vehicles, luxury ground TNCs, luxury ground TNC drivers, or luxury ground TNC vehicles before July 1, 2017. A county,

municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

1. Impose a tax on, or require a license for, a TNC, a TNC driver, ~~or~~ a TNC vehicle, a luxury ground TNC, a luxury ground TNC driver, or a luxury ground TNC vehicle if such tax or license relates to providing prearranged rides;

2. Subject a TNC, a TNC driver, ~~or~~ a TNC vehicle, a luxury ground TNC, a luxury ground TNC driver, or a luxury ground TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or

3. Require a TNC, ~~or~~ a TNC driver, a luxury ground TNC, or a luxury ground TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1047 Construction Materials Mining Activities
SPONSOR(S): Government Operations & Technology Appropriations Subcommittee, Avila
TIED BILLS: **IDEN./SIM. BILLS:** SB 1618

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	11 Y, 0 N	Melkun	Moore
2) Government Operations & Technology Appropriations Subcommittee	11 Y, 0 N, As CS	Helpling	Topp
3) State Affairs Committee		Melkun	Williamson

SUMMARY ANALYSIS

The Miami-Dade County Lake Belt Area (Lake Belt) encompasses 77.5 square miles of land at the western edge of the Miami-Dade County urban area. The Lake Belt provides the largest source of high quality limestone in Florida, supplying approximately 60 million tons of rock annually. The limestone mined from the Lake Belt provides the base material needed for concrete, asphalt, and road construction. The process of extracting limestone and sand suitable for producing construction materials is referred to as construction materials mining.

For hard rock formations, explosives may be used to break up the rock into sizes that may be more easily mined. The use of explosives in mining activities is regulated by the federal and state governments in order to limit the strength of explosions to ensure the explosions do not cause damage to nearby buildings or structures. In Florida, the State Fire Marshal, through the Division of State Fire Marshal (division) within the Department of Financial Services (DFS), has the sole and exclusive authority to regulate the use of explosives in conjunction with construction materials mining. Currently, mining companies are required to hire independent seismologists to monitor explosions and must provide a report reflecting the strength of each explosion to DFS upon request. DFS does not independently monitor blasts resulting from the use of explosives for construction materials mining activities.

The bill creates a monitoring and reporting pilot program for the use of explosives (pilot program) within the division to monitor and report each blast resulting from the use of explosives for construction materials mining activities in Miami-Dade County. The bill requires the State Fire Marshal to hire or contract with seismologists to monitor and report each blast and provides restrictions on who may be hired.

The bill requires a person or entity that engages in construction materials mining activities to provide written notice to the State Fire Marshal of the use of an explosive for such activities in Miami-Dade County before the detonation of the explosive.

For Fiscal Year 2020-21, the bill appropriates a recurring sum of $600,000, a nonrecurring sum of $440,000 from the General Revenue Fund, and a nonrecurring sum of $1,000,000 from the Insurance Regulatory Trust Fund to the State Fire Marshal to implement the pilot program.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Miami-Dade County Lake Belt Area

The Miami-Dade County Lake Belt Area (Lake Belt) encompasses 77.5 square miles of land at the western edge of the Miami-Dade County urban area.[1] Generally, the Lake Belt is bounded by the Ronald Reagan Turnpike to the east, the Miami-Dade-Broward County line to the north, Krome Avenue to the west, and Tamiami Trail to the south, and it also includes certain lands south of Tamiami Trail.[2] The Lake Belt provides the largest source of high quality limestone in Florida, supplying approximately 60 million tons of rock annually.[3] The limestone mined from the Lake Belt provides the base material needed for concrete, asphalt, and road construction.[4] The process of extracting limestone and sand suitable for producing construction materials is referred to as construction materials mining.[5]

The Lake Belt is an environmentally sensitive region, as the majority of the area consists of wetlands that were once part of the historical Everglades watershed. The area also overlays the Biscayne Aquifer, which is designated as a sole source aquifer by the Environmental Protection Agency (EPA).[6] In addition, the Miami-Dade Northwest Wellfield (NWWF) is located along the eastern edge of the Lake Belt and is comprised of 15 water supply wells that withdraw water from the Biscayne Aquifer. The NWWF is the major source of drinking water for Miami-Dade County, supplying approximately 40 percent of the county's water needs.[7]

Regulation of Explosives

For hard rock formations, explosives may be used to break up the rock into sizes that may be more easily mined.[8] The use of explosives in mining activities is regulated by the federal and state governments in order to limit the strength of explosions to ensure the explosions do not cause damage to nearby buildings or structures. On the federal level, Title 30 of the United States Code and its various implementing regulations establish the basic safety, health, certification, reporting, and environmental requirements for the use of explosives in mining operations.

In Florida, the State Fire Marshal, through the Division of State Fire Marshal (division) within the Department of Financial Services (DFS), has the sole and exclusive authority to promulgate standards, limits, and regulations regarding the use of explosives in conjunction with construction materials mining.[9] This authority includes the operation, handling, licensure, and permitting of explosives. The DFS rules establish limitations for ground vibration, frequency, intensity, blast pattern, and air blast as well as restrictions on when explosives may be used. The DFS rules also establish requirements for a

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[1] South Florida Water Management District, *Lake Belt Mitigation Committee*, available at https://www.sfwmd.gov/our-work/lake-belt-committee (last visited Jan. 9, 2020).
[2] Section 373.4149(3), F.S.
[3] White Rock Quarries, *Facts About the Florida and Miami-Dade Limestone Industry*, available at http://www.wrquarries.com/facts-about-the-florida-and-miami-dade-limestone-industry/ (last visited Jan. 10, 2020).
[4] Section 373.4149, F.S.
[5] Section 552.30(1), F.S.
[6] EPA, *Sole Source Aquifers*, available at https://epa.maps.arcgis.com/apps/webappviewer/index.html?id=9ebb047ba3ec41ada1877155fe31356b (last visited Jan. 10, 2020). "Sole source aquifer" means an aquifer that is needed to supply 50 percent or more of the drinking water for a given aquifer service area for which there are no reasonably available alternative sources should the aquifer become contaminated. EPA, *Overview of the Drinking Water Sole Source Aquifer Program*, available at https://www.epa.gov/dwssa/overview-drinking-water-sole-source-aquifer-program#What_Is_SSA (last visited Jan. 10, 2020).
[7] Miami-Dade County Department of Environmental Resources Management, *Northwest Wellfield Watershed Protection Plan* (2000), 1, available at https://www.sfwmd.gov/sites/default/files/documents/wlfldpln.pdf (last visited Jan. 10, 2020).
[8] Florida Department of Environmental Protection, *Limestone, Shell, Dolomite*, available at https://floridadep.gov/water/mining-mitigation/content/limestone-shell-dolomite (last visited Jan. 10, 2020).
[9] Section 552.30(1), F.S.

mining company to provide notice to local governments in which the entity will conduct mining activities.[10]

The State Fire Marshal has the authority to delegate the monitoring and enforcement of the use of explosives by mining companies to local governments. This authority includes allowing local governments to assess and collect reasonable fees for the purpose of monitoring and enforcing the current limits of explosions used for mining purposes.[11]

Currently, mining companies are required to hire independent seismologists[12] to monitor explosions and must provide a report reflecting the strength of each explosion to DFS upon request. DFS does not independently monitor blasts resulting from the use of explosives for construction materials mining activities. The State Fire Marshal may restrict the quantity and use of explosives at any location within the state if the State Fire Marshal determines the use of such explosives is likely to cause injury to life or property. In making such determination, the State Fire Marshal must consider the distance of blasting activity to structures, the use and occupancy of structures near blasting activity, the geology of the area, and the type of construction used in structures near blasting activities.[13]

According to DFS, 31 of the 90 construction materials mining permits issued in the state are within Miami-Dade County, making it the county with the highest number of such permits.[14]

2018 Mining Study

In 2017, the Legislature appropriated funds to require the State Fire Marshal to contract for a study to review whether the statewide ground vibration limits established in DFS rule for construction materials mining activities are still appropriate and to review any legitimate claims for damages caused by such mining activities.[15] The study was required to include a review of measured amplitudes and frequencies, structure responses, theoretical analyses of material strengths and strains, and assessments of home damages.[16]

The study was completed in 2018 and concluded that the mines were in compliance with both federal and state maximum blasting vibration limits, but recommended including frequency as part of the state vibration limits as well as conducting a follow-up study to evaluate minimum seismograph specifications.[17]

Effect of the Bill

The bill creates a monitoring and reporting pilot program for the use of explosives (pilot program) within the division to monitor and report each blast resulting from the use of explosives for construction materials mining activities in Miami-Dade County. The bill requires the State Fire Marshal to hire or contract with seismologists to monitor and report each blast, including, at a minimum, monitoring and reporting the ground vibration, frequency, intensity, air blast, and time and date of the blast. The bill further requires the State Fire Marshal to make the reports available to the public on the division's website.

[10] Rule 69A-2.024, F.A.C.; *see also*, Florida Department of Environmental Protection, *Limestone, Shell, Dolomite*, available at https://floridadep.gov/water/mining-mitigation/content/limestone-shell-dolomite (last visited Jan. 10, 2020).
[11] Section 552.30(2), F.S.
[12] "Independent seismologist" means an individual whose function includes vibration and air overpressure measurement and the analysis and evaluation of their effects upon structures. A seismologist is not considered independent if he or she is an employee of the mining permit holder, blaster, or user; or any entity subject to regulation under s. 552.30, F.S. Rule 69A-2.024(2)(b), F.A.C.
[13] Section 552.211(3), F.S.; r. 69A-2.024(13), F.A.C.
[14] Email from Meredith Stanfield, Director of Legislative and Cabinet Affairs, Department of Financial Services, Re: Construction Mine Blasting, (Dec. 10, 2019) (on file with the Agriculture & Natural Resources Subcommittee).
[15] Chapter 2017-70, Laws of Fla.; s. 552.30(3), F.S.
[16] Section 552.30(3), F.S.
[17] RESPEC, *Construction Materials Mining Activities Consultation and Study Preparation Services* (July 2018), 90, available at https://www.myfloridacfo.com/Division/SFM/BFP/documents/MineBlastingStudy.pdf (last visited Jan. 17, 2020).

The bill prohibits the State Fire Marshal from hiring or contracting with a seismologist for the pilot program who:

- Is an employee of or under contract with a person or entity that engages in or contracts for construction materials mining activities; or
- Has engaged in dishonest practices relating to the collection or analysis of data or information regarding the use of explosives in construction materials mining activities.

The bill requires a person or entity that engages in construction materials mining activities to provide written notice to the State Fire Marshal of the use of an explosive for such activities in Miami-Dade County before the detonation of the explosive.

The bill requires the State Fire Marshal to adopt rules to implement and enforce the pilot program.

B. SECTION DIRECTORY:

Section 1. Amends s. 552.30, F.S., to create the pilot program.

Section 2. Provides appropriations.

Section 3. Provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill appropriates funds for the purpose of implementing the pilot program. For Fiscal Year 2020-21, the bill appropriates a recurring sum of $600,000, a nonrecurring sum of $440,000 from the General Revenue Fund, and a nonrecurring sum of $1,000,000 from the Insurance Regulatory Trust Fund to the State Fire Marshal to implement the pilot program.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the division to adopt rules to implement the pilot program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 11, 2020, the Government Operations & Technology Appropriations Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment provided an additional appropriation of $1,000,000 from the Insurance Regulatory Trust Fund to the State Fire Marshal to implement the pilot program.

This analysis is drafted to the committee substitute as approved by the Government Operations & Technology Appropriations Subcommittee.

A bill to be entitled

An act relating to construction materials mining activities; amending s. 552.30, F.S.; providing legislative findings; creating a monitoring and reporting pilot program within the Division of the State Fire Marshal for the use of explosives in Miami-Dade County; requiring the State Fire Marshal to hire or contract with seismologists to monitor and report blasts used for construction materials mining activities in Miami-Dade County and to post the reports on the website of the Division of State Fire Marshal; providing requirements for such seismologists; requiring a person who uses explosives for construction materials mining activities in Miami-Dade County to submit certain written notice to the State Fire Marshal; requiring the State Fire Marshal to adopt rules; providing an appropriation; providing an effective date.

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

Section 1. Section 552.30, Florida Statutes, is amended to read:

552.30 Construction materials mining activities.—

(1) Notwithstanding the provisions of s. 552.25, the State

Fire Marshal shall have the sole and exclusive authority to adopt ~~promulgate~~ standards, limits, and regulations regarding the use of explosives used for ~~in conjunction with~~ construction materials mining activities. Such authority to regulate use shall include, directly or indirectly, the operation, handling, licensure, or permitting of explosives and setting standards or limits, including, but not limited to, ground vibration, frequency, intensity, blast pattern, air blast and time, date, occurrence, and notice restrictions. As used in this section, the term "construction materials mining activities" means the extraction of limestone and sand suitable for production of construction aggregates, sand, cement, and road base materials for shipment offsite by any person or company primarily engaged in the commercial mining of any such natural resources.

(2) The State Fire Marshal shall establish statewide ground vibration limits for construction materials mining activities which conform to those limits established in the United States Bureau of Mines, Report of Investigations 8507, Appendix B - Alternative Blasting Level Criteria (Figure B-1). The State Fire Marshal may, at his or her sole discretion, by rule or formal agreement, delegate to the applicable municipality or county, the monitoring and enforcement components of regulations governing the use of explosives, as recognized in this section, by construction materials mining activities. Such delegation may include the assessment and

collection of reasonable fees by the municipality or county for the purpose of carrying out the delegated activities.

(3) The State Fire Marshal is directed to conduct or contract for a study to review whether the established statewide ground vibration limits for construction materials mining activities are still appropriate and to review any legitimate claims paid for damages caused by such mining activities. The study must include a review of measured vibration amplitudes and frequencies, structure responses, theoretical analyses of material strength and strains, and assessments of home damages.

(a) The study shall be funded using the specified portion of revenues received from the water treatment plant upgrade fee pursuant to s. 373.41492.

(b) The State Fire Marshal shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1, 2016, which contains the findings of the study and any recommendations.

(4)(a) The Legislature finds that construction materials mining activities require the use of explosives to fracture the material before excavation. The use of explosives results in physical ground vibrations and air blasts that may affect other property owners in the vicinity of the mining site. It is in the best interest of the public to ensure that blasts resulting from the use of explosives for construction materials mining activities are accurately monitored and reported to ensure the

blasts do not exceed physical ground vibration and air blast limits. The Legislature further finds that more permits for construction materials mining activities have been issued to entities operating in Miami-Dade County than any other county in the state.

(b) A monitoring and reporting pilot program for the use of explosives is created within the Division of the State Fire Marshal to monitor and report each blast resulting from the use of explosives for construction materials mining activities in Miami-Dade County.

(c) The State Fire Marshal shall hire or contract with seismologists to monitor and report each blast resulting from the use of explosives for construction materials mining activities in Miami-Dade County, including, at a minimum, monitoring and reporting the ground vibration, frequency, intensity, air blast, and time and date of the blast. The State Fire Marshal shall post the reports on the division's website to be available to the public.

(d) A seismologist hired or contracted by the State Fire Marshal as required by this subsection may not:

1. Be an employee of or under contract with a person who engages in or contracts for construction materials mining activities.

2. Have engaged in dishonest practices relating to the collection or analysis of data or information regarding the use

of explosives in construction materials mining activities.

(e) A person who engages in construction materials mining activities shall provide written notice to the State Fire Marshal of the use of an explosive for construction materials mining activities in Miami-Dade County before the detonation of the explosive.

(f) The State Fire Marshal shall adopt rules to implement and enforce this subsection.

Section 2. For fiscal year 2020-2021, the recurring sum of $600,000 and the nonrecurring sum of $440,000 from the General Revenue Fund and the nonrecurring sum of $1 million from the Insurance Regulatory Trust Fund are appropriated to the Division of State Fire Marshal within the Department of Financial Services for the purpose of implementing the monitoring and reporting pilot program for the use of explosives in Miami-Dade County pursuant to s. 552.30(4), Florida Statutes.

Section 3. This act shall take effect October 1, 2020.

HJR 1325

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1325 Repeal of Public Campaign Financing Requirement
SPONSOR(S): Aloupis
TIED BILLS: HB 1327 **IDEN./SIM. BILLS:** SJR 1110

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	15 Y, 0 N	Toliver	Smith
2) Public Integrity & Ethics Committee	18 Y, 0 N	Kiner	Rubottom
3) State Affairs Committee		Toliver	Williamson

SUMMARY ANALYSIS

In 1998, the Florida electorate approved an amendment to the Florida Constitution requiring the establishment of a method of public financing for campaigns for statewide office. The amendment was incorporated into the Florida Constitution as Article VI, s. 7, the public campaign financing amendment. The amendment requires the Legislature to establish in law a method of public financing for campaigns for statewide office. The amendment further requires spending limits be created for any candidate who chooses to use the public financing option.

The joint resolution proposes an amendment to the Florida Constitution that repeals the public campaign financing amendment. If passed, the joint resolution will be considered by the electorate at the next general election on November 3, 2020.

The joint resolution, if passed in conjunction with HB 1327 (2020), will likely have a positive fiscal impact on the state. HB 1327, which is linked to the passage of the joint resolution, repeals the Florida Election Campaign Public Financing Act that contains the statutory framework for the public financing of statewide campaigns.

Article XI, s. 1 of the Florida Constitution requires a three-fifths vote of the members present and voting for final passage of a joint resolution proposing an amendment to the Florida Constitution. This joint resolution proposes a constitutional amendment, thus it requires a three-fifths vote for final passage.

Article XI, s. 5 of the Florida Constitution requires 60 percent voter approval for adoption of a proposed constitutional amendment.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Campaign Financing Amendment

In 1998, the Constitution Revision Commission,[1] a body that meets every 20 years to consider amendments to the Florida Constitution, placed an amendment on the general election ballot requiring the establishment of a method of public financing for candidates for statewide office. The amendment was approved by the electorate, garnering 64.1 percent of the vote.[2] The constitutional provision is presently found in Article VI, s. 7 of the Florida Constitution and provides that "[i]t is the policy of this state to provide for state-wide elections in which all qualified candidates may compete effectively."[3] The provision requires the Legislature to establish in law a method of public financing for campaigns for statewide office.[4] The provision further requires spending limits be created for any candidate who chooses to use the public financing option.[5]

In 2009, the Legislature passed HJR 81 (2009), which proposed a constitutional amendment to repeal the public campaign financing amendment. The proposed amendment was placed on the ballot at the 2010 general election. The amendment failed to pass the required 60 percent threshold, garnering 52.5 percent of the vote, and therefore was not incorporated into the Florida Constitution.[6]

The Florida Election Campaign Financing Act

In 1986,[7] the Legislature, concerned that the costs of running a campaign for statewide office limited the persons who would run to only those who were independently wealthy or those supported by special interests,[8] created the Florida Election Campaign Financing Act (the Act).[9] The Act created a framework for the public financing of statewide campaigns, setting eligibility requirements and expenditure limitations for participating candidates, and establishing a supporting trust fund.[10]

Only candidates for the offices of Governor (Governor and Lieutenant Governor candidates are considered a 'single' candidate for public financing purposes) or Cabinet are eligible for funding.[11] A candidate for one of those offices seeking to receive public funding under the Act must:

- File a request with the Division of Elections (division) within the Department of State upon qualifying for office;[12]
- Agree to abide by the Act's expenditure limits;[13]
- Raise a certain amount of contributions;[14]

[1] Article XI, s. 2, FLA. CONST.
[2] Department of State, *1998 Election Results*, https://results.elections.myflorida.com/?ElectionDate=11/3/1998&DATAMODE= (last visited Jan. 29, 2020).
[3] Article VI, s. 7, FLA. CONST.
[4] *Id*.
[5] *Id.*
[6] Department of State, *2010 Election Results*, https://results.elections.myflorida.com/Index.asp?ElectionDate=11/2/2010&DATAMODE= (last visited Jan. 29, 2020).
[7] Chapter 86-276, L.O.F.
[8] Section 106.31, F.S.
[9] Section 106.30, F.S., states that ss. 106.30-106.36, F.S., may be cited as the "Florida Election Campaign Financing Act."
[10] On November 4, 1996, the trust fund expired by operation of Art. III, s. 19(f)(2), Fla. Const. *See note* in s. 106.32, F.S. All balances and income from the defunct fund was deposited in the state General Revenue Fund. Art. III, s. 19(f)(4), FLA. CONST.
[11] Section 106.33, F.S.
[12] *Id.; see also* Fla. Admin. R. 1S-2.047.
[13] Section 106.33(1), F.S.; *see also* s. 106.34, F.S.
[14] Section 106.33(2), F.S. A candidate for Governor must raise at least $150,000 and a candidate for a cabinet office must raise at least $100,000.

- Limit loans or contributions from the candidate's personal funds to $25,000 and contributions from national, state, and county executive committees of a political party to $250,000 in the aggregate;[15] and
- Submit to a postelection audit of the campaign account by the division.[16]

Gubernatorial candidates and candidates for cabinet officer must limit their expenditures[17] according to the following schedule: $2.00 for each Florida-registered voter[18] for Governor and Lieutenant Governor or $1.00 for each Florida-registered voter for cabinet officer. The expenditure limits for the 2018 election cycle were as follows:

- Governor and Lieutenant Governor: $27,091,462.00 ($2.00 for each Florida-registered voter); and
- Cabinet Officer: $13,545,731.00 ($1.00 for each Florida-registered voter).[19]

If a candidate who is not receiving public campaign funds exceeds the expenditure limitations set forth in the Act, then a participating candidate is released from abiding by the expenditure limits.[20] The division reviews each request for public contributions and certifies whether the candidate is eligible before distribution.[21] If certified, the candidate receives qualifying matching contributions on a two-to-one basis for contributions making up the amount of funds needed to initially become eligible for public financing and on a one-to-one basis thereafter.[22] The one-to-one match only applies to contributions of $250 or less per individual; any amount contributed by an individual in excess of $250 will only be matched up to $250.[23] Additionally, for the match to occur, the individual from whom the contributions are received must be a resident of the state.[24] The funds are distributed from the general revenue fund.[25] Total distributions for the 2010, 2014, and 2018 election cycles were as follows:

Election Cycle Distributions			
Office	**2010 Election Cycle[26]**	**2014 Election Cycle[27]**	**2018 Election Cycle[28]**
Governor (Lt. Gov.)	$1,816,014.47	$2,830,194.03	$8,151,124.58
Attorney General	$2,176,956.17	$628,440.64	$933,187.02
Chief Financial Officer	$1,204,321.09	$418,396.06	$334,604.00
Commissioner of Agriculture	$868,264.38	$459,009.31	$433,690.16
Total	$6,065,556.11	$4,336,040.04	$9,852,605.76

The purpose of the constitutional provision is that all qualified candidates "may compete effectively."[29] This purpose has been questioned by at least one court.[30]

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[15] Section 106.33(3), F.S.
[16] Section 106.33(4), F.S.
[17] *See* s. 106.011(10)(a), F.S.
[18] The Act defines the term "Florida-registered voter" as a voter who is registered to vote in Florida as of June 30 of each odd-numbered year. The division must certify the total number of Florida-registered voters no later than July 31 of each odd-numbered year. Section 106.34(3), F.S.
[19] Department of State, *2018 Public Campaign Financing Handbook*, https://dos.myflorida.com/media/698987/public-campaign-financing-2018.pdf (last visited Jan. 29, 2020).
[20] Section 106.355, F.S.
[21] Section 106.35(1), F.S.
[22] Section 106.35(2)(a), F.S.
[23] Section 106.35(2)(b), F.S.
[24] *Id.*
[25] On November 4, 1996, the trust fund expired by operation of Art. III, s. 19(f)(2), FLA. CONST. *See* note in s. 106.32, F.S. All balances and income from the defunct fund were deposited into the state General Revenue Fund. Art. III, s. 19(f)(4), FLA. CONST.
[26] Department of State, *Public Campaign Finance 2010*, http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2010/ (last visited Jan. 29, 2020).
[27] Department of State, *Public Campaign Finance 2014*, http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2014/ (last visited Jan. 29, 2020).
[28] Department of State, *Public Campaign Finance 2018*, https://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2018/ (last visited Jan. 29, 2020).
[29] Article VI, s. 7, FLA. CONST.
[30] *Scott v. Roberts*, 612 F.3d 1279, 1293 (11th Cir. 2010) ("the system levels the electoral playing filed, and that purpose is constitutionally problematic").

A participating candidate who exceeds the expenditure limit or falsely reports qualifying matching contributions and thereby receives contributions to which the candidate was not entitled is fined an amount equal to three times the amount at issue.[31]

Effect of the Joint Resolution

The joint resolution repeals Article VI, s. 7 of the Florida Constitution, the public campaign financing amendment.

The joint resolution must pass each chamber with a three-fifths vote before it may be placed on the ballot. If passed, the joint resolution will be considered by the electorate at the next general election on November 3, 2020. The proposed amendment must then be approved by 60 percent of the electors voting. If approved, the amendment will take effect January 5, 2021.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Article XI, s. 5(d) of the Florida Constitution requires publication of a proposed amendment in a newspaper of general circulation in each county. The division is required to advertise the full text of a proposed constitutional amendment twice in a newspaper of general circulation in each county before the election. The division is also required to provide each supervisor of elections with either booklets or posters displaying the full text of a proposed amendment. The statewide average cost to advertise constitutional amendments, in English and Spanish, in newspapers for the 2018 election cycle was $92.93 per English word of the originating document. The division estimates the publication costs for advertising the proposed amendment will be at least $4,367.71.[32]

[31] Section 106.36, F.S.

[32] Email from Brittany Dover, Legislative Affairs Director, Department of State, RE: Information Requested - Amendment Costs for HJR 1325, February 17, 2020 (on file with the Oversight, Transparency & Public Management Subcommittee).

If passed in conjunction with HB 1327 (2020), the resolution will likely have a positive fiscal impact on the state. HB 1327, which is linked to the passage of the joint resolution, repeals the Act that contains the statutory framework for the public financing of statewide campaigns. Elimination of the public campaign financing amendment and the Act in chapter 106, F.S., would allow the funds currently expended for those purposes to be diverted elsewhere. The Department of State asserts that $9,852,605.76 was spent on the public financing of campaigns in 2018,[33] $4,336,040.04 in 2014,[34] and $6,065,556.11 in 2010.[35] As the original trust fund for the public campaign financing program expired in 1996, these funds are currently distributed from general revenue.[36]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The joint resolution neither requires nor authorizes administrative rulemaking by executive agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[33] Department of State, *Public Campaign Finance 2018*, https://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2018/ (last visited Jan. 29, 2020).
[34] Department of State, *Public Campaign Finance 2014*, http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2014/ (last visited Jan. 29, 2020).
[35] Department of State, *Public Campaign Finance 2010*, http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2010/ (last visited Jan. 29, 2020).
[36] On November 4, 1996, the trust fund expired by operation of Art. III, s. 19(f)(2), FLA. CONST. *See* note in s. 106.32, F.S. All balances and income from the defunct fund were deposited into the state General Revenue Fund. Art. III, s. 19(f)(4), FLA. CONST.

House Joint Resolution

A joint resolution proposing the repeal of Section 7 of Article VI of the State Constitution, relating to public financing of campaigns of candidates for elective statewide office who agree to campaign spending limits.

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

That the repeal of Section 7 of Article VI of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VI, SECTION 7

REPEAL OF PUBLIC CAMPAIGN FINANCING REQUIREMENT.—Proposing the repeal of the provision in the State Constitution which requires public financing of campaigns of candidates for elective statewide office who agree to campaign spending limits.

HB 1327

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1327 Campaign Finance
SPONSOR(S): Aloupis
TIED BILLS: HJR 1325 **IDEN./SIM. BILLS:** SB 1108

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Oversight, Transparency & Public Management Subcommittee	15 Y, 0 N	Toliver	Smith
2) Public Integrity & Ethics Committee	18 Y, 0 N	Kiner	Rubottom
3) State Affairs Committee		Toliver	Williamson

SUMMARY ANALYSIS

In 1986, the Legislature created the Florida Election Campaign Financing Act (Act) for the public financing of statewide candidates. The Act created a framework for the public financing of statewide campaigns, set eligibility requirements and expenditure limitations for participating candidates, established a supporting trust fund, and created a distribution formula for public contributions to candidates. Only candidates for the offices of Governor (Governor and Lieutenant Governor candidates are considered a single candidate for public financing purposes) or Cabinet are eligible for funding under the Act.

In 1998, the Florida electorate approved amendment 10 to the Florida Constitution that required the establishment of a method of public financing for campaigns for statewide office. The amendment was incorporated in the Florida Constitution as art. VI, s. 7.

HJR 1325 (2020) repeals art. VI, s. 7. of the Florida Constitution, the public campaign financing amendment. If the joint resolution passes each chamber with a three-fifths vote, it will be placed on the general election ballot in 2020. If the electorate approves the amendment with at least 60 percent of electors voting in favor of its passage, it will repeal the public financing amendment.

This bill, which is linked to the passage of HJR 1325, repeals the Act in its entirety along with any references thereto. The bill will only become law if the HJR 1325 passes the Legislature and is approved by the electorate.

The bill, if passed in conjunction with HJR 1325, will likely have a positive fiscal impact on the state.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Florida Election Campaign Financing Act

In 1986,[1] the Legislature, concerned that the costs of running a campaign for statewide office limited the persons who would run to only those who were independently wealthy or those supported by special interests,[2] created the Florida Election Campaign Financing Act (the Act).[3] The Act created a framework for the public financing of statewide campaigns, setting eligibility requirements and expenditure limitations for participating candidates, and establishing a supporting trust fund.[4]

Only candidates for the offices of Governor (Governor and Lieutenant Governor candidates are considered a 'single' candidate for public financing purposes) or Cabinet are eligible for funding.[5] A candidate for one of those offices seeking to receive public funding under the Act must:

- File a request with the Division of Elections (division) within the Department of State upon qualifying for office;[6]
- Agree to abide by the Act's expenditure limits;[7]
- Raise a certain amount of contributions;[8]
- Limit loans or contributions from the candidate's personal funds to $25,000 and contributions from national, state, and county executive committees of a political party to $250,000 in the aggregate;[9] and
- Submit to a postelection audit of the campaign account by the division.[10]

Gubernatorial candidates and candidates for cabinet member must limit their expenditures[11] according to the following schedule: $2.00 for each Florida-registered voter[12] for Governor and Lieutenant Governor or $1.00 for each Florida-registered voter for cabinet officer. The expenditure limits for the 2018 election cycle were as follows:

- Governor and Lieutenant Governor: $27,091,462.00 ($2.00 for each Florida-registered voter); and
- Cabinet Officer: $13,545,731.00 ($1.00 for each Florida-registered voter).[13]

If a candidate who is not receiving public campaign funds exceeds the expenditure limitations set forth in the Act, then a participating candidate is released from abiding by the expenditure limits.[14] The division reviews each request for public contributions and certifies whether the candidate is eligible before distribution.[15] If certified, the candidate receives qualifying matching contributions on a two-to-one basis for contributions making up the amount of funds needed to initially become eligible for public

[1] Chapter 86-276, L.O.F.
[2] Section 106.31, F.S.
[3] Section 106.30, F.S., states that ss. 106.30-106.36, F.S., may be cited as the "Florida Election Campaign Financing Act."
[4] On November 4, 1996, the trust fund expired by operation of Art. III, s. 19(f)(2), FLA. CONST. *See* note in s. 106.32, F.S. All balances and income from the defunct fund were deposited into the state General Revenue Fund. Art. III, s. 19(f)(4), FLA. CONST.
[5] Section 106.33, F.S.
[6] *Id.; see also* Fla. Admin. R. 1S-2.047.
[7] Section 106.33(1), F.S.; *see also* s. 106.34, F.S.
[8] Section 106.33(2), F.S. A candidate for Governor must raise at least $150,000 and a candidate for a cabinet office must raise at least $100,000.
[9] Section 106.33(3), F.S.
[10] Section 106.33(4), F.S.
[11] *See* s. 106.011(10)(a), F.S.
[12] The Florida Election Campaign Financing Act defines the term "Florida-registered voter" as a voter who is registered to vote in Florida as of June 30 of each odd-numbered year. The division must certify the total number of Florida-registered voters no later than July 31 of each odd-numbered year. Section 106.34(3), F.S.
[13] Department of State, *2018 Public Campaign Financing Handbook*, https://dos.myflorida.com/media/698987/public-campaign-financing-2018.pdf (last visited Jan. 29, 2020).
[14] Section 106.355, F.S.
[15] Section 106.35(1), F.S.

financing and on a one-to-one basis thereafter.[16] The one-to-one match only applies to contributions of $250 or less per individual; any amount contributed by an individual in excess of $250 will only be matched up to $250.[17] Additionally, for the match to occur, the individual from whom the contributions are received must be a resident of the state.[18] The funds are distributed from the general revenue fund.[19] Total distributions for the 2010, 2014, and 2018 election cycles were as follows:

Election Cycle Distributions			
Office	**2010 Election Cycle[20]**	**2014 Election Cycle[21]**	**2018 Election Cycle[22]**
Governor (Lt. Gov.)	$1,816,014.47	$2,830,194.03	$8,151,124.58
Attorney General	$2,176,956.17	$628,440.64	$933,187.02
Chief Financial Officer	$1,204,321.09	$418,396.06	$334,604.00
Commissioner of Agriculture	$868,264.38	$459,009.31	$433,690.16
Total	$6,065,556.11	$4,336,040.04	$9,852,605.76

The purpose of the constitutional provision is that all qualified candidates "may compete effectively."[23] This purpose has been questioned by at least one court.[24]

A participating candidate who exceeds the expenditure limit or falsely reports qualifying matching contributions and thereby receives contributions to which the candidate was not entitled is fined an amount equal to three times the amount at issue.[25]

Public Campaign Financing Amendment

In 1998, the Constitution Revision Commission,[26] a body that meets every 20 years to consider amendments to the Florida Constitution, placed an amendment on the general election ballot requiring the establishment of a method of public financing for candidates for statewide office. The amendment was approved by the electorate, garnering 64.1 percent of the vote.[27] The constitutional provision is presently found in Article VI, s. 7 of the Florida Constitution and provides that "[i]t is the policy of this state to provide for statewide elections in which all qualified candidates may compete effectively."[28] The provision requires the Legislature to establish in law a method of public financing for campaigns for statewide office.[29] The provision further requires spending limits be created for any candidate who chooses to use the public financing option.[30]

In 2009, the Legislature passed HJR 81 (2009), which proposed a constitutional amendment to repeal the public campaign financing amendment. The proposed amendment was placed on the ballot at the

[16] Section 106.35(2)(a), F.S.
[17] Section 106.35(2)(b), F.S.
[18] *Id.*
[19] On November 4, 1996, the trust fund expired by operation of Art. III, s. 19(f)(2), FLA. CONST. *See* note in s. 106.32, F.S. All balances and income from the defunct fund were deposited into the state General Revenue Fund. Art. III, s. 19(f)(4), FLA. CONST.
[20] Department of State, *Public Campaign Finance 2010*, http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2010/ (last visited Jan. 29, 2020).
[21] Department of State, *Public Campaign Finance 2014*, http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2014/ (last visited Jan. 29, 2020).
[22] Department of State, *Public Campaign Finance 2018*, https://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2018/ (last visited Jan. 29, 2020).
[23] Article VI, s. 7, FLA. CONST.
[24] *Scott v. Roberts*, 612 F.3d 1279, 1293 (11th Cir. 2010) ("the system levels the electoral playing filed, and that purpose is constitutionally problematic").
[25] Section 106.36, F.S.
[26] Article XI, s. 2, FLA. CONST.
[27] Department of State, *1998 Election Results*, https://results.elections.myflorida.com/?ElectionDate=11/3/1998&DATAMODE= (last visited Jan. 29, 2020).
[28] Article VI, s. 7, FLA. CONST.
[29] *Id*.
[30] *Id.*

2010 general election. The amendment failed to pass the required 60 percent threshold, garnering 52.5 percent of the vote, and therefore was not incorporated into the Florida Constitution.[31]

HJR 1325 (2020)

HJR 1325 (2020) repeals art. VI, s. 7. of the Florida Constitution, the public campaign financing amendment. If the joint resolution passes each chamber with a three-fifths vote it will be placed on the general election ballot in 2020. If the electorate approves the amendment with at least 60 percent of electors voting in favor of its passage,[32] it will repeal the public financing amendment.

B. SECTION DIRECTORY:

Section 1 repeals ss. 106.30, 106.31, 106.32, 106.33, 106.34, 106.35, 106.353, 106.355, and 106.36, F.S., relating to the Act.

Section 2 amends s. 106.021, F.S., relating to campaign treasurers and depositories.

Section 3 amends s. 106.141, F.S., relating to the disposition of surplus funds by candidates.

Section 4 amends s. 106.22, F.S., relating to duties of the division.

Section 5 amends s. 328.72, F.S., relating to vessel classification and registration.

Section 6 provides an effective date that is contingent upon the passage of HJR 1325 and its approval by the voters.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

If passed in conjunction with HJR 1325 (2020), the resolution will likely have a positive fiscal impact on the state. The bill repeals the Act that contains the statutory framework for the public financing of statewide campaigns. Elimination of the public campaign financing amendment and the Act in chapter

[31] Department of State, *2010 Election Results*, https://results.elections.myflorida.com/Index.asp?ElectionDate=11/2/2010&DATAMODE= (last visited Jan. 29, 2020).
[32] Article XI, s. 5, FLA. CONST.

106, F.S., will allow the funds currently expended for those purposes to be diverted elsewhere. The Department of State asserts that $9,852,605.76 was spent on the public financing of campaigns in 2018,[33] $4,336,040.04 in 2014,[34] and $6,065,556.11 in 2010.[35] As the original trust fund for the public campaign financing program expired in 1996, these funds are currently distributed from general revenue.[36]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not confer rulemaking authority nor require the promulgation of rules. However, its passage will result in the repeal of the rule implementing the Florida Election Campaign Financing Act.[37]

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

[33] Department of State, *Public Campaign Finance 2018*, https://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2018/ (last visited Jan. 29, 2020).
[34] Department of State, *Public Campaign Finance 2014*, http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2014/ (last visited Jan. 29, 2020).
[35] Department of State, *Public Campaign Finance 2010*, http://dos.myflorida.com/elections/candidates-committees/campaign-finance/public-campaign-finance-2010/ (last visited Jan. 29, 2020).
[36] On November 4, 1996, the trust fund expired by operation of Art. III, s. 19(f)(2), FLA. CONST. *See* note in s. 106.32, F.S. All balances and income from the defunct fund were deposited into the state General Revenue Fund. Art. III, s. 19(f)(4), FLA. CONST.
[37] *See* Fla. Admin. R. 1S-2.047.

A bill to be entitled

An act relating to campaign finance; repealing ss. 106.30, 106.31, 106.32, 106.33, 106.34, 106.35, 106.353, 106.355, and 106.36, F.S., relating to the Florida Election Campaign Financing Act; deleting provisions governing the public funding of campaigns for candidates for statewide office who agree to certain expenditure limits; amending ss. 106.021, 106.141, 106.22, and 328.72, F.S.; conforming cross-references and provisions to changes made by the act; providing a contingent effective date.

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

Section 1. Sections 106.30, 106.31, 106.32, 106.33, 106.34, 106.35, 106.353, 106.355, and 106.36, Florida Statutes, are repealed.

Section 2. Paragraph (a) of subsection (1) of section 106.021, Florida Statutes, is amended to read:

106.021 Campaign treasurers; deputies; primary and secondary depositories.—

(1)(a) Each candidate for nomination or election to office and each political committee shall appoint a campaign treasurer. Each person who seeks to qualify for nomination or election to, or retention in, office shall appoint a campaign treasurer and

designate a primary campaign depository before qualifying for office. Any person who seeks to qualify for election or nomination to any office by means of the petitioning process shall appoint a treasurer and designate a primary depository on or before the date he or she obtains the petitions. At the same time a candidate designates a campaign depository and appoints a treasurer, the candidate shall also designate the office for which he or she is a candidate. If the candidate is running for an office that will be grouped on the ballot with two or more similar offices to be filled at the same election, the candidate must indicate for which group or district office he or she is running. This subsection does not prohibit a candidate, at a later date, from changing the designation of the office for which he or she is a candidate. However, if a candidate changes the designated office for which he or she is a candidate, the candidate must notify all contributors in writing of the intent to seek a different office and offer to return pro rata, upon their request, those contributions given in support of the original office sought. This notification shall be given within 15 days after the filing of the change of designation and shall include a standard form developed by the Division of Elections for requesting the return of contributions. The notice requirement does not apply to any change in a numerical designation resulting solely from redistricting. If, within 30 days after being notified by the candidate of the intent to seek

a different office, the contributor notifies the candidate in writing that the contributor wishes his or her contribution to be returned, the candidate shall return the contribution, on a pro rata basis, calculated as of the date the change of designation is filed. Up to a maximum of the contribution limits specified in s. 106.08, a candidate who runs for an office other than the office originally designated may use any contribution that a donor does not request be returned within the 30-day period for the newly designated office, provided the candidate disposes of any amount exceeding the contribution limit pursuant to the options in s. 106.11(5)(b) and (c) or s. 106.141(4)(a), (b), or (d) ~~s. 106.141(4)(a)1., 2., or 4.~~; notwithstanding, the full amount of the contribution for the original office shall count toward the contribution limits specified in s. 106.08 for the newly designated office. A person may not accept any contribution or make any expenditure with a view to bringing about his or her nomination, election, or retention in public office, or authorize another to accept such contributions or make such expenditure on the person's behalf, unless such person has appointed a campaign treasurer and designated a primary campaign depository. A candidate for an office voted upon statewide may appoint not more than 15 deputy campaign treasurers, and any other candidate or political committee may appoint not more than 3 deputy campaign treasurers. The names and addresses of the campaign treasurer and deputy campaign

treasurers so appointed shall be filed with the officer before whom such candidate is required to qualify or with whom such political committee is required to register pursuant to s. 106.03.

Section 3. Subsection (4) of section 106.141, Florida Statutes, is amended to read:

106.141 Disposition of surplus funds by candidates.—

(4) ~~(a) Except as provided in paragraph (b),~~ Any candidate required to dispose of funds pursuant to this section shall, at the option of the candidate, dispose of such funds by any of the following means, or any combination thereof:

(a) ~~1.~~ Return pro rata to each contributor the funds that have not been spent or obligated.

(b) ~~2.~~ Donate the funds that have not been spent or obligated to a charitable organization or organizations that meet the qualifications of s. 501(c)(3) of the Internal Revenue Code.

(c) ~~3.~~ Give not more than $25,000 of the funds that have not been spent or obligated to the affiliated party committee or political party of which such candidate is a member.

(d) ~~4.~~ Give the funds that have not been spent or obligated:

1. ~~a.~~ In the case of a candidate for state office, to the state, to be deposited in ~~either the Election Campaign Financing Trust Fund or~~ the General Revenue Fund~~, as designated by the~~

~~candidate~~; or

2.~~b.~~ In the case of a candidate for an office of a political subdivision, to such political subdivision, to be deposited in the general fund thereof.

~~(b) Any candidate required to dispose of funds pursuant to this section who has received contributions pursuant to the Florida Election Campaign Financing Act shall, after all monetary commitments pursuant to s. 106.11(5)(b) and (c) have been met, return all surplus campaign funds to the General Revenue Fund.~~

Section 4. Subsection (6) of section 106.22, Florida Statutes, is amended to read:

106.22 Duties of the Division of Elections.—It is the duty of the Division of Elections to:

(6) Make, from time to time, audits and field investigations with respect to reports and statements filed under the provisions of this chapter and with respect to alleged failures to file any report or statement required under the provisions of this chapter. ~~The division shall conduct a postelection audit of the campaign accounts of all candidates receiving contributions from the Election Campaign Financing Trust Fund.~~

Section 5. Subsection (11) of section 328.72, Florida Statutes, is amended to read:

328.72 Classification; registration; fees and charges;

surcharge; disposition of fees; fines; marine turtle stickers.—

(11) VOLUNTARY CONTRIBUTIONS.—The application form for boat registration shall include a provision to allow each applicant to indicate a desire to pay an additional voluntary contribution to the Save the Manatee Trust Fund to be used for the purposes specified in s. 379.2431(4). This contribution shall be in addition to all other fees and charges. The amount of the request for a voluntary contribution solicited shall be $2 or $5 per registrant. A registrant who provides a voluntary contribution of $5 or more shall be given a sticker or emblem by the tax collector to display, which signifies support for the Save the Manatee Trust Fund. All voluntary contributions shall be deposited in the Save the Manatee Trust Fund and shall be used for the purposes specified in s. 379.2431(4). ~~The form shall also include language permitting a voluntary contribution of $5 per applicant, which contribution shall be transferred into the Election Campaign Financing Trust Fund. A statement providing an explanation of the purpose of the trust fund shall also be included.~~

Section 6. This act shall take effect on the effective date of HJR 1325, or a similar joint resolution having substantially the same specific intent and purpose, if that joint resolution is approved by the electors at the general election to be held in November 2020, or at an earlier special election specifically authorized by law for that purpose.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1371 Traffic and Pedestrian Safety
SPONSOR(S): Transportation & Tourism Appropriations Subcommittee, Transportation & Infrastructure Subcommittee, Fine, Caruso and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1000

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	13 Y, 0 N, As CS	Roth	Vickers
2) Transportation & Tourism Appropriations Subcommittee	11 Y, 0 N, As CS	Hicks	Davis
3) State Affairs Committee		Roth	Williamson

SUMMARY ANALYSIS

Florida law provides the driver of a vehicle must stop for a pedestrian who is walking in the crosswalk at the instruction of a traffic control signal or where signage indicates the driver must stop. If there are no traffic control signals or signage in place at a crosswalk, the driver of a vehicle must yield to a pedestrian who is on the half of the roadway on which the vehicle is traveling. If traffic control signals are in operation, pedestrians may not cross at any place except in a marked crosswalk. If there is no crosswalk, pedestrians crossing a roadway must yield to vehicles.

The Department of Transportation (DOT) and local governments utilize various types of equipment or signals to indicate when pedestrians may safely cross midblock crosswalks (crosswalks that are not at an intersection). One type of signal commonly used is a rectangular rapid flash beacon (RRFB). The RRFB consists of two rapidly and alternately flashing yellow rectangular LED lights that function as a warning beacon. Pedestrians press the call button to activate the yellow flashing lights, but should wait for motorists to stop before they cross.

The bill provides that only a pedestrian crosswalk that is located on a public highway, street, or road that has no more than two lanes with a speed limit of 35 miles per hour or less may be controlled by yellow RRFB traffic control devices. The bill further requires the Legislature to request that the federal government allow existing yellow RRFB traffic control devices at crosswalks on certain public highways, streets, or roads to be replaced by red RRFB traffic control devices. If the federal government grants the request, the conversion to red RRFB traffic control devices must be completed within 12 months. If the federal government does not grant the request, the entity with jurisdiction over a public highway, street, or road that has more than two lanes with a speed limit greater than 35 miles per hour must remove any RRFB by October 1, 2024. The entity with jurisdiction may choose to completely remove the crosswalk or retrofit the crosswalk with legally acceptable equipment.

The bill provides a statement that the Legislature finds that this bill fulfills an important state interest.

The bill will likely have a significant, negative fiscal impact to state and local governments. *See* Fiscal Analysis for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Unless directed otherwise by a law enforcement officer, pedestrians are required to obey the instructions of official traffic control devices that are specifically applicable to pedestrians.[1] If a sidewalk is provided, and no circumstances prevent a pedestrian's use of the sidewalk, a pedestrian is prohibited from walking on a roadway that is paved for vehicular traffic.[2] If a sidewalk is not provided, a pedestrian, when practicable, must walk only on the shoulder on the left side of the roadway in relation to the pedestrian's direction of travel, facing traffic that may approach from the opposite direction.[3]

The driver of a vehicle must stop for a pedestrian who is walking in the crosswalk at the instruction of a traffic control signal or where signage indicates the driver to stop. If there are no traffic control signals or signage in place at a crosswalk, the driver of a vehicle must yield to a pedestrian who is on the half of the roadway on which the vehicle is traveling.[4] If traffic control signals are in operation, pedestrians cannot cross at any place except in a marked crosswalk.[5] If there are no crosswalks, pedestrians crossing a roadway must yield to vehicles.[6]

When pedestrian traffic control signals or signage is installed, such indicators must conform to the requirements of the most recent Manual on Uniform Traffic Control Devices (MUTCD).[7] The MUTCD defines the standards used by road managers nationwide to install and maintain traffic control devices on all public streets, highways, bikeways, and private roads open to public travel. The Federal Highway Administration (FHWA) maintains the MUTCD.[8]

The Department of Transportation (DOT) and local governments utilize various types of MUTCD approved signals to indicate when pedestrians may safely cross midblock crosswalks.[9] Two types of signals commonly used by DOT and local governments are a rectangular rapid flash beacon (RRFB) and a pedestrian hybrid beacon.[10] The RRFB consists of two rapidly and alternately flashing yellow rectangular LED lights that function as a warning beacon.[11] Pedestrians press the call button to activate the flashing lights, but should wait for motorists to stop before they cross.[12] The pedestrian hybrid beacon consists of three signal sections with a circular yellow signal indication centered below two horizontally aligned circular red signal indications.[13] The pedestrian hybrid beacon is not illuminated until a pedestrian activates it and triggers the warning flashing yellow lens facing the street.[14] After a set amount of time, the indication changes to a solid yellow light to inform drivers to prepare to stop.[15] The beacon then displays a dual solid red light to drivers on the street and a walking person symbol to pedestrians on the crosswalk.[16] At the conclusion of the walk phase, the beacon displays an alternating

[1] Section 316.130(1), F.S.
[2] Section 316.130(3), F.S.
[3] Section 316.130(4), F.S.
[4] Section 316.130(7), F.S.
[5] Section 316.130(11), F.S.
[6] Section 316.130(10), F.S.
[7] Section 316.0755, F.S.
[8] U.S. Department of Transportation, *Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD)*, (updated December 11, 2019), available at https://mutcd.fhwa.dot.gov/ (last visited January 23, 2020).
[9] DOT, *Pedestrian Facilities*, available at https://www.fdot.gov/roadway/bikeped/bikepedpf.shtm (last visited January 23, 2020).
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] U.S. Department of Transportation, *Safety Effectiveness of the HAWK Pedestrian Crossing Treatment* (July 2010), available at https://www.fhwa.dot.gov/publications/research/safety/10045/index.cfm (last visited January 23, 2020).
[14] *Id.*
[15] *Id.*
[16] *Id.*

flashing red light, and pedestrians are shown an upraised hand symbol with a countdown display informing them of the time remaining to cross the street.[17]

In July 2008, the MUTCD was updated to provide interim approval via a memorandum[18] to RRFBs for optional use in limited circumstances. The interim approval allows for the usage of RRFBs as a warning beacon to supplement standard pedestrian crossing warning signs and markings at either a pedestrian or school crossing.[19] The cost is approximately $10,000 to $15,000 for purchase and installation of two RRFB units (one on either side of a street).[20] The FHWA will grant interim approval for the optional use of the RRFB as a warning beacon in addition to standard pedestrian crossing or school crossing signs at crosswalks to any jurisdiction that submits a written request to the Office of Transportation Operations.[21] A state may request interim approval for all jurisdictions in that state.[22]

As of October 2019, DOT reported approximately 191 midblock crosswalks with RRFBs on the state highway system.[23] Of the 191 midblock crosswalks, 113 crosswalks are on roads with more than two lanes and with speed limits of 35 miles per hour or greater and 78 crosswalks are on roads with two lanes or less and speed limits of 35 miles per hour or less.[24] It is unknown how many midblock crosswalks with RRFBs are in use statewide on county and city roads.[25]

Pedestrians who cross the street at midblock crosswalks are more susceptible to injury from contact with a motor vehicle than crosswalks at an intersection. The table below displays the number of pedestrians and bicyclists that were struck at midblock crossings during the past three years.

Injury or Death to Non-Motorists at Midblock Crossings[26]

Injury Level	2017	2018	2019
Midblock - Marked Crosswalk	**263**	**262**	**247**
Pedestrian	**164**	**157**	**157**
Fatal (within 30 days)	12	6	5
Incapacitating	30	22	16
Non-incapacitating	61	57	78
Possible	56	65	50
None	5	7	8
Bicyclist	**99**	**105**	**90**
Fatal (within 30 days)	0	2	0
Incapacitating	15	12	9
Non-incapacitating	33	44	40
Possible	45	39	36
None	6	8	5
As of 01/24/2020. 2019 statistics is preliminary and may change.			

Effect of Proposed Changes

[17] *Id.*
[18] *See Memorandum of Interim Approval for Optional Use of Rectangular Rapid Flashing Beacons (IA-11)* (July 16, 2008), available at https://mutcd.fhwa.dot.gov/resources/interim_approval/ia11/fhwamemo.htm (last visited January 23, 2020).
[19] U.S. Department of Transportation, *Rectangular Rapid Flash Beacon (RRFB)*, available at https://safety.fhwa.dot.gov/intersection/conventional/unsignalized/tech_sum/fhwasa09009/ (last visited January 23, 2020).
[20] *Id.*
[21] Memorandum of Interim Approval for Optional Use of Rectangular Rapid Flashing Beacons (IA-11), *supra*, at FN 18.
[22] *Id.*
[23] DOT, Agency Analysis of 2020 House Bill 1371, p.5 (January 30, 2020).
[24] Email from John Kotyk, Deputy Legislative Affairs Director, DOT, RE: Updated Fiscal, (February 10, 2020).
[25] Email from Amanda Marsh, Legislative Specialist, DOT, RE: Midblock crosswalks, (October 18, 2019).
[26] Email from Kevin Jacobs, Deputy Legislative Affairs Director, Department of Highway Safety and Motor Vehicles, RE: non/motorists/midblock crosswalk stats, (January 24, 2020).

The bill provides that only a pedestrian crosswalk that is located on a public highway, street, or road that has no more than two lanes with a speed limit of 35 miles per hour or less may be controlled by yellow RRFB traffic control devices.

The bill requires the Legislature to request that the federal government allow existing yellow RRFB traffic control devices at a crosswalk on a public highway, street, or road that has no more than two lanes with a speed limit of 35 miles per hour or less to be replaced by red RRFB traffic control devices. If the federal government grants the request, all yellow RRFB traffic control devices at each such crosswalk must be replaced by red RRFB traffic control devices within 12 months.

In the event the federal government does not grant the request, the entity with jurisdiction over a public highway, street, or road that has more than two lanes with a speed limit greater than 35 miles per hour must remove any RRFB by October 1, 2024. Alternatively, the entity with jurisdiction may completely remove the crosswalk or retrofit the crosswalk with legally acceptable equipment.

Lastly, the bill provides that the Legislature finds and declares that this act fulfills an important state interest.

B. SECTION DIRECTORY:

Section 1: Creates s. 316.0756, F.S., relating to traffic control devices at crosswalks.

Section 2: Provides a declaration of important state interest.

Section 3: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill will likely have no impact on state government revenues.

2. Expenditures:

   On the state highway system, DOT has identified 191 midblock crosswalks equipped with RRFBs, 78 of the RRFBs are on highways, streets, or roads that have two lanes or less and speed limits of 35 miles per hour or less.[27] Should the federal government grant the state's request to replace these 78 yellow RRFBs with red RRFBs, the cost would be indeterminate, but likely insignificant and could be absorbed within existing resources.

   However, DOT has identified 113 midblock crosswalks with RRFBs located on the state highway system that have more than two lanes and where the speed limit is greater than 35 miles per hour. DOT reports a significant, negative fiscal impact of $7.5 million to retrofit the 113 midblock crosswalks with legally acceptable equipment or to remove the crosswalk completely. An annual cost of $74,000 is estimated for the maintenance of the additional required traffic signals and pedestrian hybrid beacons. DOT efforts would be limited to midblock crosswalks located on the state highway system.[28]

   In developing the estimated cost, the department assumes 20 percent of the RRFB locations will warrant a traffic signal or pedestrian hybrid beacon and 80 percent of the crosswalks will be removed. The cost to add a traffic signal or pedestrian hybrid beacon at a midblock crosswalk is

DOT Agency Analysis, *supra* at FN 23.

[28] Email from John Kotyk, Deputy Legislative Affairs Director, DOT, RE: Updated Fiscal, (February 10, 2020).

approximately $300,000 per location, and the cost to remove a midblock crosswalk is approximately $7,000. If a traffic signal is installed, the annual maintenance cost is approximately $3,200.[29]

The fiscal impact is contained within the confines of the DOT Work Program. Due to the fluid and dynamic nature of the Work Program, the fiscal impact may be partially mitigated by normal changes that may occur with projects throughout the year. The bill also specifies a full implementation date of October 1, 2024. This would effectively spread the fiscal impact over a four-year period before required compliance.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill will likely have no impact on local government revenues.

2. Expenditures:

The fiscal impact to cities and counties is indeterminate, but is likely significant. It is unknown how many midblock crosswalks are in use statewide on county and city roads.[30] The cost to add a traffic signal or pedestrian hybrid beacon at a midblock crosswalk is approximately $300,000, and the cost to remove a midblock crosswalk is approximately $7,000. If a traffic signal or pedestrian hybrid beacon is installed, the annual maintenance cost is approximately $3,200.[31]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will likely have no fiscal impact on the private sector.

D. FISCAL COMMENTS:

According to DOT, because existing RRFBs were likely installed as a safety improvement using federal funds, their removal may result in non-compliance with MUTCD standards and impact federal funding eligibility.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill requires counties and municipalities to spend funds relating to specified traffic and pedestrian signals; however, an exception may apply because similarly situated persons are all required to comply and the bill includes a Legislative determination that it fulfills an important state interest.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Request to Federal Government
The bill requires the Legislature to request that the federal government allow existing yellow RRFB traffic control devices at crosswalks on certain public highways, streets, or roads be replaced by red

[29] *Id.*
[30] Email from Amanda Marsh, Legislative Specialist, DOT, RE: Midblock crosswalks, (October 18, 2019).
[31] Email from John Kotyk, *supra* at FN 28.

RRFB traffic control devices. The sponsor may want to consider specifying that DOT is the state entity responsible for making the request to the federal government.

Other Comments: Red Rapid Flashing Beacon Traffic Control Devices

The bill provides that all yellow RRFBs must be replaced by red RRFBs if the federal government approves the use of red RRFBs. It appears that the intent is to replace the yellow RRFBs with red RRFBs at midblock crossings on highways, streets, or roads that have two lanes or less where the speed limit is 35 miles per hour or less.

The bill, however, provides that if the federal government does not grant the request to use red RRFBs, then the entity with jurisdiction over the crosswalks that may not use yellow RRFBs must remove such devices by October 1, 2024. It is unclear why the removal of the unauthorized devices is linked to the federal government not approving the use of the red devices unless the intent was to also allow for the continued use of the midblock RRFBs on roads that have more than two lands and speed limits greater than 35 miles per hour if the federal government authorizes the use of red RRFBs.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 28, 2020, the Transportation & Infrastructure Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Specified that traffic control signal devices and pedestrian control signals must conform to the requirements provided in chapters 4D and 4E of the Manual on Uniform Traffic Control Devices.
- Provided that the Legislature finds and declares that the installation of specified traffic and pedestrian signals on roadways fulfills an important state interest.

On February 10, 2020, the Transportation & Tourism Appropriations Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Removed the provisions from the bill providing that an entity with jurisdiction over a public highway, street, or road must install pedestrian hybrid beacons at any midblock crosswalks or must remove the midblock crosswalk in its entirety by October 1, 2024.
- Added provisions to allow RRFBs under certain conditions, required the Legislature to request that the federal government allow red RRFBs at certain crosswalks, and required the entity with jurisdiction over a public highway, street, or road with a crosswalk that does not meet the requirements of s. 316.0756, F.S., to replace RRFB traffic control devices with legally acceptable equipment by October 1, 2024 or alternatively remove the crosswalk completely.

This analysis is drafted to the committee substitute as approved by the Transportation & Tourism Appropriations Subcommittee.

A bill to be entitled

An act relating to traffic and pedestrian safety; creating s. 316.0756, F.S.; specifying pedestrian crosswalks that may be controlled by yellow rectangular rapid flashing beacon traffic control devices; requiring the Legislature to request that the Federal Government allow replacement of yellow rectangular rapid flashing beacon traffic control devices with red rectangular rapid flashing beacon traffic control devices; providing requirements for replacement or removal of rectangular rapid flashing beacon traffic control devices based on the decision of the Federal Government regarding such request; providing a declaration of important state interest; providing an effective date.

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

Section 1. Section 316.0756, Florida Statutes, is created to read:

316.0756 Traffic control devices at crosswalks.—

(1) Notwithstanding any law to the contrary, only a pedestrian crosswalk that is located on a public highway, street, or road that has no more than two lanes and for which the speed limit is 35 miles per hour or less may be controlled

by yellow rectangular rapid flashing beacon traffic control devices.

(2) The Legislature shall request that the Federal Government allow existing yellow rectangular rapid flashing beacon traffic control devices at each crosswalk described in subsection (1) to be replaced by red rectangular rapid flashing beacon traffic control devices. If the Federal Government grants such request, all yellow rectangular rapid flashing beacon traffic control devices at each such crosswalk shall be replaced by red rectangular rapid flashing beacon traffic control devices within 12 months. If the Federal Government does not grant such request, the entity with jurisdiction over a public highway, street, or road with a crosswalk that does not meet the requirements of subsection (1) which is in existence on July 1, 2020, shall ensure that, by October 1, 2024, all rectangular rapid flashing beacon traffic control devices are removed from such crosswalk. The entity with jurisdiction may alternatively completely remove such crosswalk or retrofit the crosswalk with legally acceptable equipment.

Section 2. The Legislature finds and declares that this act fulfills an important state interest.

Section 3. This act shall take effect July 1, 2020.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: State Affairs Committee
Representative Fine offered the following:

Amendment (with title amendment)

Between lines 18 and 19, insert:

Section 1. This act may be cited as the "Sophia Nelson Pedestrian Safety Act."

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

Remove line 3 and insert:

providing a short title; creating s. 316.0756, F.S.; specifying pedestrian

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: State Affairs Committee
Representative Fine offered the following:

Amendment (with title amendment)

Remove lines 28-44 and insert:

(2) Yellow rectangular rapid flashing beacon traffic control devices that are located on a pedestrian crosswalk on a public highway, street, or road that does not meet the requirements of subsection (1) must be removed from such crosswalk by October 1, 2024, and the entity with jurisdiction over such crosswalk must remove the crosswalk or retrofit the crosswalk with legally acceptable equipment.

(3)(a) The Department of Transportation, no later than October 1, 2020, must submit to the Federal Government a request for authorization to allow yellow rectangular rapid flashing

beacon traffic control devices be replaced by red rectangular rapid flashing beacon traffic control devices.

(b) If the Federal Government grants such request:

1. All yellow rectangular rapid flashing beacon traffic control devices at each crosswalk described in subsection (1) must be replaced by red rectangular rapid flashing beacon traffic control devices within 12 months of the date of federal authorization.

2. All yellow rectangular rapid flashing beacon traffic control devices at each crosswalk described in subsection (2) must be replaced with red rectangular rapid flashing beacon traffic control devices within 12 months of the date of federal authorization, retrofitted with legally acceptable equipment, or the crosswalk must be removed.

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

Remove line 6 and insert:

devices; requiring the Department of Transportation to request that the

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1465 Hardee County Economic Development Authority, Hardee County
SPONSOR(S): Bell
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration Subcommittee	10 Y, 0 N	Rivera	Miller
2) Transportation & Tourism Appropriations Subcommittee	11 Y, 0 N	Cobb	Davis
3) State Affairs Committee		Rivera	Williamson

SUMMARY ANALYSIS

The state levies an excise tax on the removal of phosphate rock from Florida soil or water for commercial use, and distributes a portion of the revenue generated to the counties from which the phosphate is removed. The proceeds must be used for phosphate-related expenses unless the county is designated as a rural area of opportunity. The proceeds are paid directly to the county unless a local authority has been created to receive the proceeds and promote and direct the economic development of the county.

The Hardee County Economic Development Authority (Authority) is an independent special district created in 2004 to solicit, rank, and fund projects that provide economic development opportunities or infrastructure and maximize the use of federal, local, and private resources within Hardee County. The Authority can appropriate the phosphate tax revenue received from the state but has no taxing authority. The Authority also has the power to approve time and cost sheets for the county employees it uses for Authority business, but cannot approve an annual operating budget.

The bill authorizes the Authority to approve an annual operating budget including the ability to directly appropriate funds for the Authority outside of the grant program operated by the Authority.

The Economic Impact Statement submitted by the Authority indicates the bill will have no fiscal impact on the Authority and will not impact present governmental services.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Special Districts

A "special district" is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.[1] A special district may be created by general law, special act, local ordinance, or rule of the Governor and Cabinet.[2] A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter.[3] Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.[4]

A "dependent special district" is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district's governing body are removable at will by the governing body of a single county or municipality, or the district's budget is subject to the approval of the governing body of a single county or municipality.[5] An "independent special district" is any district that is not a dependent special district.[6]

The governing body of each special district must annually adopt a budget by resolution. At a minimum, the adopted budget must show the level of detail required for the annual financial report to the Department of Financial Services.[7] The adopted budget must regulate expenditures of the special district, and an officer of a special district may not expend or contract for expenditures in any fiscal year except pursuant to the adopted budget.[8] The proposed budget of a dependent special district must be contained within the general budget of the local governing authority to which it is dependent and be clearly stated as the budget of the dependent district.

The governing body of each special district may amend its budget at any time within a fiscal year or within 60 days following the end of the fiscal year as permitted by statute.[9] An amended budget must be posted on the district's official website within five days after adoption and must remain on the website for at least two years.[10]

A local general-purpose government may review the budget or tax levy of any special district located solely within its boundaries.[11]

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[1] S. 189.012(6), F.S. The Legislature adopted ch. 189, F.S., in 1989, to provide uniform statutes for the definition, creation, and operation of special districts. *See* s. 189.011(1), F.S.
[2] S. 189.012(6), F.S.
[3] *See* ss. 189.02(4)-(5) and 189.031(3), F.S. Counties and municipalities have "home rule" powers allowing them to enact ordinances not inconsistent with general or special law for governmental, corporate, or proprietary purposes. Special districts do not possess home rule powers and are permitted to impose only those taxes, assessments, or fees authorized by special or general law. *See* art. VIII, ss. 1(f) and (g), 2(b), s. 6(e), Fla. Const. and ss. 166.021 and 125.01, F.S. *See also 2018 – 2020 Local Gov't Formation Manual*, p. 64, at https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2020&DocumentType=General Publications&FileName=2018-2020 Local Government Formation Manual.pdf (last visited January 23, 2020)(hereinafter Local Government Manual).
[4] Local Government Manual, p. 64.
[5] S. 189.012(2), F.S.
[6] S. 189.012(3), F.S.
[7] *See* s. 218.32(1), F.S.
[8] S. 189.016(3), F.S.
[9] S. 189.016(6), F.S.
[10] S. 189.016(7), F.S.
[11] S. 189.016(8), F.S.

All special districts must comply with the statutory financial reporting requirements for local government entities.[12] A special district must comply with a local general-purpose government's request for the district's financial information if the district is located solely within its boundaries and the request is to satisfy the local general-purpose government's statutory reporting requirements.[13]

Rural Economic Development Initiative

The Legislature created the Rural Economic Development Initiative (REDI) to encourage and facilitate the location and expansion of major economic development projects in rural communities and regions.[14] A "rural area of opportunity" is a rural community,[15] or a region composed of rural communities, designated by the Governor, which has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster, or that presents a unique economic development opportunity of regional impact.[16] The Governor may designate up to three rural areas of opportunity as priority assignment areas for REDI by executive order, allowing the Governor, acting through REDI, to waive criteria, requirements, or similar provisions of any economic development incentive.[17]

Phosphate Rock Severance Tax

The state levies an excise tax on those severing phosphate rock from Florida soils or waters for commercial use, which tax is collected, administered, and enforced by the Department of Revenue.[18] Each county designated as a rural area of opportunity receives payments from the revenues generated by the tax equal to 8.9 percent of the county's proportionate share of statewide phosphate mining.[19] These payments are made to the local authority designated to promote and direct the economic development of the county, if the Legislature has established one, or alternatively to the county directly.[20]

Hardee County Economic Development Authority

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[12] *See* ss. 218.32 and 218.39, F.S.
[13] S. 189.016(9), F.S.
[14] S. 288.0656(1)(a)-(b), F.S. REDI is within the Department of Economic Opportunity (DEO) and state and regional agencies are authorized to participate. REDI is responsible for coordinating and focusing the efforts and resources of state and regional agencies on the problems that affect the fiscal, economic, and community viability of Florida's economically distressed rural communities to find ways to balance environmental and growth management issues with local needs. S. 288.0656(3), F.S.
[15] S. 288.0656(2)(e), F.S. A "rural community" is:
1. A county, or a municipality within a county, with a population of 75,000 or fewer;
2. A county, or a municipality within a county, with a population of 125,000 or fewer which is contiguous to a county with a population of 75,000 or fewer; or
3. An unincorporated federal enterprise community or an incorporated rural city with a population of 25,000 or fewer and an employment base focused on traditional agricultural or resource-based industries, located in a county not defined as rural, which has at least three or more of the economic distress factors identified and verified by DEO.
"Economic distress" means conditions affecting the fiscal and economic viability of a rural community, including such factors as low per capita income, low per capita taxable values, high unemployment, high underemployment, low weekly earned wages compared to the state average, low housing values compared to the state average, high percentages of the population receiving public assistance, high poverty levels compared to the state average, and a lack of year-round stable employment opportunities. S. 288.0656(2)(c), F.S.
[16] S. 288.0656(2)(d), F.S.
[17] S. 288.0656(7)(a), F.S. REDI may recommend up to three rural areas of opportunity to the Governor. Designation as a rural area of opportunity under this subsection is contingent upon the execution of a memorandum of agreement among DEO; the governing body of the county; and the governing bodies of any municipalities to be included within a rural area of opportunity. S. 288.0656(7)(b), F.S.
[18] S. 211.3103(1), F.S. The tax is in addition to any ad valorem taxes levied upon the separately assessed mineral interest in land the rock was located, or any other tax, permit, or license fee imposed by the state or counties. S. 211.3103(4), F.S.
[19] S. 211.3103(6)(b), F.S. After December 31, 2022, the percentage will increase to 10 percent. S. 211.3103(6)(a), F.S.
[20] Section 211.3103(6)(a)4., F.S.

Hardee County has been designated a rural area of opportunity.[21] The Hardee Economic Development Authority (Authority) is an independent special district created by special act in 2004 to solicit, rank, and fund projects that provide economic development opportunities or infrastructure and maximize the use of federal, local, and private resources within Hardee County.[22]

The Authority must adopt administrative rules and hold public meetings pursuant to general law, establish procedures for soliciting and awarding grants, direct the county clerk to expend funds upon proper authorization, and create a standardized application form for the award of grants by the Authority. The Authority's discretionary power includes the power to conduct business and receive funds on behalf of the Authority, approve or amend time and cost sheets submitted by county employees appointed to work for the Authority, and any other acts reasonable and necessary to implement and enforce the charter and rules adopted in accordance with the charter.

The Authority may appropriate funds paid to the clerk[23] by the state's chief financial officer in distributing the county's portion of the state's excise tax on the severance of phosphate rock, but cannot levy taxes or impose fees within the county.[24] The Authority does not have the authority to create an annual budget for its operating expenses.

The Authority has a governing body composed of nine members serving staggered terms.[25] The Hardee County Board of County Commissioners (BOCC) serves as five members. The remaining four members are the President of the Heartland Workforce Investment Board, Inc., in Hardee County, and three members appointed by the governing bodies of the three municipalities within the county (the City of Bowling Green, City of Wauchula, and Town of Zolfo Springs).[26]

Appointed members serve four-year terms and the commissioner members serve terms that run concurrent with their commission terms.[27] Members are not compensated and may serve successive terms.[28] The chair of the BOCC serves as interim chair to call the first meeting of the Authority and the Authority may elect any sitting member to serve as chair. Each member is entitled to one vote and a majority of the members constitutes a quorum.[29]

Effect of Proposed Changes

The bill authorizes the Authority to approve an annual operating budget that directly appropriates funds for the Authority exclusive of the grant program operated by the Authority. The budget approval process is subject to the accountability program regulating special districts, which is overseen by the Department of Economic Opportunity. The Economic Impact Statement submitted by the Authority indicates the bill will have no fiscal impact on the Authority and will not impact present governmental services. The bill will lead to increased efficiency.[30]

B. SECTION DIRECTORY:

Section 1. Amends chapter 2004-394, Laws of Florida, as amended; authorizing the Authority to approve an operating budget for specified purposes under certain circumstances.

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[21] Fla. Exec. Order No. 16-150 (June 27, 2016), at https://www.flgov.com/wp-content/uploads/orders/2016/EO_16-150.pdf (last visited February 11, 2020).
[22] Ch. 2004-394, Laws of Fla., as amended by chs. 2006-349, 2010-271, and 2018-185Laws of Fla., and ss. 211.3103(6)(a)4. and (6)(b)4., F.S.
[23] The clerk of court acting in the capacity of chief financial officer for Hardee County. *See* ch. 2004-394, s. 2(2), Laws of Fla.; art. VIII, s. 1(d). Fla. Const.
[24] *See* Ch. 2004-394, s. 4, Laws of Fla.
[25] Ch. 2004-394, s. 3, Laws of Fla., as amended by ch. 2018-185, s. 3(1) of s. 1, Laws of Fla.
[26] *Id.*
[27] Ch. 2004-394, s. 3, Laws of Fla., as amended by ch. 2018-185, s. 3(2) of s. 1, Laws of Fla.
[28] Ch. 2004-394, s. 3, Laws of Fla., as amended by ch. 2018-185, s. 3(4) of s. 1, Laws of Fla
[29] Ch. 2004-394, s. 3, Laws of Fla., as amended by ch. 2018-185, s. 3(3) of s. 1, Laws of Fla.
[30] Hardee County Economic Development Authority, *2020 Economic Impact Statement Form*, available at https://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=EconomicImpactStatement.pdf&DocumentType=localbilldocuments&Session=2020&BillNumber=1465 (last visited February 14, 2020).

Section 2. Provides the bill takes effect upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? December 19, 2019

WHERE? *The Herald-Advocate*, Wauchula, Hardee County, Florida

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to Hardee County Economic Development Authority, Hardee County; amending chapter 2004-394, Laws of Florida, as amended; authorizing the Hardee County Economic Development Authority to approve an operating budget for specified purposes under certain circumstances; providing an effective date.

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

Section 1. Subsection (2) of section 4 of chapter 2004-394, Laws of Florida, as amended, is amended to read:

Section 4. Authority powers; mandatory and discretionary.—

(2) The authority may:

(a) Appropriate funds that have been paid by the state Chief Financial Officer, the first such payment to occur in calendar year 2006, to the clerk, in the distribution of the tax on severance of phosphate rock pursuant to section 211.3103, Florida Statutes, as amended from time to time, for the administrative costs, including payroll costs and other expenses as provided by this act, of the authority and for economic development and infrastructure projects in the county.

(b) Conduct the business of the authority and receive funds on its behalf, including those transferred by the state Chief Financial Officer and any others that may have been made

by loan, gift, or grant.

(c) Sue and be sued.

(d) Approve an annual operating budget in accordance with the Special District Accountability Program of the Department of Economic Opportunity, including direct appropriations exclusive of the grant process for economic development and infrastructure needs within the geographical boundaries of the county.

(e) ~~(d)~~ Approve or amend and approve time and costs sheets submitted by specified county employees for payment as well as travel and per diem expenses submitted by a member of the authority as further provided by this act.

(f) ~~(e)~~ Establish written bylaws for its internal governance, including the signatures required for the expenditure of funds from any of its authorized accounts.

(g) ~~(f)~~ Enter into contracts, interlocal agreements, and other written documents necessary to conduct the business of the authority.

(h) ~~(g)~~ Perform any other acts reasonable and necessary to implement and enforce the provisions of this act and any rules adopted in accordance with this act.

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

PCS for HB 609

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 609 Environmental Contamination
SPONSOR(S): State Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 702

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Moore	Williamson

SUMMARY ANALYSIS

Petroleum Restoration Program

The Petroleum Restoration Program within the Department of Environmental Protection (DEP) establishes the requirements and procedures for cleaning up petroleum-contaminated land, as well as the circumstances under which the state will pay for the cleanup.

The bill allows an applicant for the Petroleum Cleanup Participation Program to provide a 25 percent cost savings by using a co-payment by the owner, operator, or responsible party or by demonstrating a cost savings to DEP through reduced rates by the proposed agency term contractor or the difference in cost associated with the site closure. The bill also removes the provision that allows applicants to reduce or eliminate costs associated with the limited contamination assessment report and the copayment costs if the applicant demonstrates an inability to pay.

The bill requires an applicant for the Advanced Cleanup Program to submit an agreement to continue to participate in the program upon the completion of the limited contamination assessment and finalization of the proposed course of action. The bill requires DEP to pay for the limited contamination assessment up to a certain amount.

The bill authorizes DEP to use funds from the Inland Protection Trust Fund (IPTF) for payments to the Department of Transportation (DOT) for repairing damage to a transportation facility caused by discharge of petroleum products. The bill specifies that the indemnification requirements in an agreement between DEP and DOT do not apply when the payments are made to DOT from the IPTF.

Renewable Fuel

In 2008, the Legislature passed the Florida Renewable Fuel Standard Act (act), which required that, beginning December 31, 2010, all gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler must be blended gasoline, defined as a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol or other alternative fuel, by volume. In 2013, the act was repealed.

The bill requires DEP to pay up to $10 million each fiscal year for the costs of labor and equipment to repair or replace petroleum storage systems that may have been damaged due to the storage of fuels blended with ethanol or biodiesel, or for preventive measures to reduce the potential for such damage. The bill prohibits a petroleum storage system owner or operator from receiving more than $200,000 annually for equipment replacement, repair, or preventive measures at any single facility it owns or operates, or $500,000 annually in aggregate for all facilities owned or operated by the owner or operator.

Damages for Pollutant Discharges

Current law provides that a person can bring a cause of action in court for all damages resulting from specified discharges or other conditions of pollution if the discharge was not authorized pursuant to DEP regulations.

For a cause of action brought for damages resulting from a discharge or other condition of pollution, the bill specifies that such damages may include damages to real or personal property directly resulting from the pollution rather than *all* damages resulting from the pollution.

Fiscal Impact

The bill may have an indeterminate fiscal impact on the state and the private sector.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Petroleum Restoration Program

Background

Petroleum is stored in thousands of underground and aboveground storage tank systems throughout Florida. Releases of petroleum into the environment may occur as a result of accidental spills, storage tank system leaks, or poor maintenance practices. These discharges pose a significant threat to groundwater quality,[1] the source of 90 percent of Florida's drinking water.[2] The identification and cleanup of petroleum contamination is particularly challenging due to Florida's diverse geology, diverse water systems, and the complex dynamics between contaminants and the environment.

In 1983, Florida began enacting legislation to regulate underground and aboveground storage tank systems in an effort to protect Florida's groundwater from past and future petroleum releases.[3] The Department of Environmental Protection (DEP) regulates these storage tank systems.[4] Further, DEP may establish criteria for the prioritization, assessment and cleanup, and reimbursement for cleanup of areas contaminated by leaking underground petroleum storage tanks.[5] The Petroleum Restoration Program establishes the requirements and procedures for cleaning up contaminated land, as well as the circumstances under which the state will pay for the cleanup.[6]

To fund the cleanup of contaminated petroleum sites, the Legislature created the Inland Protection Trust Fund (IPTF).[7] The state levies an excise tax on each barrel of petroleum and petroleum products produced in or imported into the state to fund the IPTF.[8] The state determines the amount of the excise tax for each barrel based on a formula that is dependent upon the unobligated balance of the IPTF.[9] Each year, the Legislature deposits over $200 million from the excise tax into the IPTF.[10]

The owner of contaminated land or the person who caused the discharge is responsible for rehabilitating the land, unless the site owner can show that the contamination resulted from the activities of a previous owner or other third party (responsible party), who is then responsible.[11] Over the years, DEP has implemented different programs to provide state financial assistance to certain eligible site owners and responsible parties for site rehabilitation.[12] To receive rehabilitation funding assistance, a site must qualify for one of the following Petroleum Cleanup Eligibility Programs:

- Abandoned Tank Restoration Program (ATRP), s. 376.305(6), F.S.
    - Innocent Victim Petroleum Storage System Restoration Program (IVPSSRP), s. 376.30715, F.S.
    - Indigent ATRP, s. 376.305(6), F.S.
- Early Detection Incentive Program (EDI), s. 376.3071(10), F.S.

[1] U.S. Environmental Protection Agency, *Underground Storage Tanks (USTs)*, available at https://www.epa.gov/ust (last visited Dec. 20, 2019).
[2] South Florida Water Management District, *Groundwater Modeling*, available at https://www.sfwmd.gov/science-data/gw-modeling (last visited Dec. 20, 2019).
[3] Chapter 83-310, Laws of Fla.
[4] Sections 376.30(3) and 376.303, F.S.
[5] Section 376.3071(5), F.S.
[6] DEP, *Petroleum Restoration Program*, available at https://floridadep.gov/Waste/Petroleum-Restoration (last visited Dec. 12, 2019).
[7] Section 376.3071(3)-(4), F.S.
[8] Sections 206.9935(3) and 376.3071(7), F.S.
[9] The amount of the excise tax per barrel is based on the following formula: 30 cents if the unobligated balance is between $100 million and $150 million; 60 cents if the unobligated balance is above $50 million, but below $100 million; and 80 cents if the unobligated balance is $50 million or less. Section 206.9935(3), F.S.
[10] DEP, *SOP – 1. Introduction*, available at https://floridadep.gov/waste/petroleum-restoration/content/sop-1-introduction (last visited Dec. 19, 2019).
[11] Section 376.308, F.S.
[12] Section 376.3071(12)(a), F.S.

- Petroleum Liability and Restoration Insurance Program (PLRIP), s. 376.3072, F.S.
- Petroleum Cleanup Participation Program (PCPP), s. 376.3071, F.S.

The ultimate goal for any contaminated site is for DEP to issue it a "No Further Action" (NFA) order. Upon discovery of a contaminant, DEP must be notified.[13] Once a responsible party completes a site assessment, it has three Risk Management Options (RMOs) available to perform site rehabilitation to achieve a NFA order.[14] Under the RMO options, the responsible party must either rehabilitate the site to the default cleanup target levels (CTLs)[15] or to alternative CTLs established through a risk assessment.

Under RMO I, DEP will issue a NFA order without institutional controls or without institutional and engineering controls if the exposure point concentration for all detected chemicals does not exceed the less stringent of their corresponding default residential CTLs, the background concentration, or the best achievable detection limits.[16] Under RMO II and RMO III, DEP will grant a NFA order, subject to institutional controls,[17] and if appropriate, engineering controls,[18] if the exposure point concentrations for all detected chemicals do not exceed default commercial/industrial CTLs or alternative CTLs adjusted for site-specific geologic or hydrogeologic conditions.[19] NFA orders usually result in reduced remediation costs and allow for contaminated site closures when remediation efforts have reached a diminishing return.

Petroleum Cleanup Participation Program

In 1996, the Legislature created PCPP to implement a cost-sharing cleanup program to provide rehabilitation funding assistance for all property contaminated by discharges of petroleum or petroleum products from a petroleum storage system that occurred before January 1, 1995. Petroleum discharges from sources other than a petroleum storage system cannot receive funding under PCPP.[20] Further, the following sites are not eligible for PCPP:

- Sites where DEP has been denied access;
- Sites owned or operated by the federal government;
- Sites identified by the United States Environmental Protection Agency to be on, or which qualify for listing on, the National Priorities List under Superfund; and
- Sites that are eligible under ATRP, EDI, or PLRIP.[21]

DEP ranks PCPP sites based on human health and safety risks.[22] When funds become available, DEP will notify the owner, operator, or person otherwise responsible for site rehabilitation (owner or responsible party) in writing, based on that priority ranking.[23] The owner or responsible party must then prepare and provide DEP with a limited contamination assessment report sufficient to determine the extent of the contamination and cleanup.[24] After approval from DEP, the owner or responsible party must enter into a PCPP agreement with DEP. The owner or responsible party may recommend a department term contractor to clean up the PCPP eligible discharge, but is not required to do so. Sites qualifying for the program are eligible for up to $400,000 of site rehabilitation funding.[25] DEP may approve supplemental funding of up to $100,000 for additional remediation and monitoring at PCPP sites if such remediation and monitoring is necessary to achieve a NFA order.[26] The owner or

[13] Rule 62-780.210(1), F.A.C.
[14] Rule 62-780.680(1)-(3), F.A.C.
[15] Chapter 62-777, F.A.C.
[16] Rule 62-780.680(1), F.A.C.
[17] Institutional controls include restrictive covenants. For example, the closure may provide that the groundwater on the site may not be used.
[18] Engineering controls include requirements such as paving over an area with contaminated soil.
[19] Rule 62-780.680(2), F.A.C.
[20] Section 376.3071(13), F.S.
[21] Section 376.3071(13)(h), F.S.
[22] Rule 62-771.100(1), F.A.C.
[23] DEP, *Petroleum Cleanup Participation Program (PCPP),* available at https://floridadep.gov/waste/petroleum-restoration/content/petroleum-cleanup-participation-program-pcpp (last visited Dec. 13, 2019).
[24] Section 376.3071(13)(d), F.S.
[25] Section 376.3071(13)(b), F.S.
[26] Section 376.3071(13)(c), F.S.

responsible party must agree to pay a 25 percent copayment.[27] The copayment percentage may be reduced or eliminated if the owner or responsible party demonstrates an inability to pay.[28]

Advanced Cleanup
The Legislature created the Advanced Cleanup Program (Advanced Cleanup) in 1996 to allow eligible sites to receive state rehabilitation funding in advance of the site's priority ranking to encourage redevelopment and facilitate property transactions or public works projects.[29] To participate in Advanced Cleanup, a site must be eligible for restoration funding under EDI, PLRIP, ATRP, IVPSSRP, or PCPP.[30]

Applications for Advanced Cleanup must include a cost-sharing commitment in addition to the 25-percent-copayment requirement.[31] An applicant may demonstrate his or her cost-sharing commitment by proposing either a commitment to pay, a demonstrated cost savings to DEP, or both. The application must be accompanied by a $250 nonrefundable review fee, a limited contamination assessment report, a proposed course of action, and a site access agreement. The limited contamination assessment report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. Costs incurred related to conducting the limited contamination assessment report are not refundable from the IPTF.

DEP ranks the applications for Advanced Cleanup based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant who proposes the highest percentage of cost sharing.

Discharges to Transportation Facilities
In 2014, DEP entered into a Memorandum of Understanding (MOU) with the Department of Transportation (DOT) to address discharges of petroleum pollutants from off-site source properties to state transportation facilities.[32] The MOU states that in instances where a petroleum pollutant discharge to a transportation facility has occurred and the discharger cannot readily access or remediate the pollutants, such discharger must petition DEP to request a note on the DOT right-of-way[33] map showing the location of the petroleum pollutants in the transportation facility.[34]

Further, DOT and any third party that voluntarily contains or removes the pollutants from the transportation facility are immune from liability in rendering such assistance unless they demonstrate gross negligence or willful misconduct.[35]

Effect of the Bill

PCPP
The bill requires the limited contamination assessment report, which must be submitted with the application for PCPP participation, to be sufficient to support the proposed course of action and estimate the cost of the proposed course of action.

[27] Section 376.3071(13)(d), F.S.
[28] *Id*.
[29] Section 376.30713(1)(a), F.S.
[30] Section 376.3071(1)(d), F.S.
[31] *Id*.
[32] DEP, *Memorandum of Understanding*, available at https://floridadep.gov/sites/default/files/Attachment%2032-%20DEP%20DOT%20MOU%20Petroleum-061614.pdf (last visited Feb. 13, 2020).
[33] Section 334.03(21), F.S., defines the term "right-of-way" as land in which the state, DOT, a county, or a municipality owns the fee or has an easement devoted to or required for use as a transportation facility.
[34] DEP, *Memorandum of Understanding*, available at https://floridadep.gov/sites/default/files/Attachment%2032-%20DEP%20DOT%20MOU%20Petroleum-061614.pdf (last visited Feb. 13, 2020).
[35] Section 376.305(4), F.S.; *see* DEP, *Memorandum of Understanding*, available at https://floridadep.gov/sites/default/files/Attachment%2032-%20DEP%20DOT%20MOU%20Petroleum-061614.pdf (last visited Feb. 13, 2020).

The bill specifies that the site rehabilitation agreement between DEP and the owner or responsible party must include a 25 percent cost savings. This requirement may be met by a copayment by the owner or responsible party or a demonstrated cost savings to DEP through reduced rates by the proposed agency term contractor or the difference in cost associated with RMO I[36] closure versus RMO II[37] conditional closure, or both.

The bill also eliminates the ability for the owner or responsible party to reduce or eliminate the copayment as well as costs associated with the limited contamination report if such party can demonstrate that they are financially unable to comply with the cost-share requirements.

Advanced Cleanup
The bill revises the requirements for participation in Advanced Cleanup by removing the requirement that the property owner or responsible party submit a limited contamination assessment report as part of the application. Instead, the applicant must submit an agreement to continue to participate in Advanced Cleanup, if selected, upon the completion of the limited contamination assessment and finalization of the proposed course of action. Upon acceptance of an application, the property owner or responsible party's selected agency term contractor must submit a scope of work for the limited contamination assessment to DEP. Once the scope of work is agreed to by DEP and the parties involved, DEP must issue a purchase order(s) for the limited contamination assessment for no more than $35,000 per purchase order.

Transportation Facility Damage
The bill authorizes DEP to use funds from the IPTF for payments to DOT for repairing damage to a transportation facility caused by discharge of petroleum products from an offsite facility for which DEP has issued a site rehabilitation completion order with conditions. The bill requires DEP to establish procedures to process and pay such funding requests.

The bill specifies that the indemnification requirements in any agreements between DEP and DOT concerning risk-based corrective action closures do not apply when payments are made to DOT from the IPTF.

Disbursement of Funds
The bill requires, rather than allows, DEP to disburse funds from the IPTF to the Fish and Wildlife Conservation Commission for the purpose of enforcement of the regulations governing pollution of ground and surface waters.

Renewable Fuel Regulations

Background

Federal Renewable Fuel Standards
Under the Energy Policy Act of 2005, the Environmental Protection Agency (EPA) is required to develop and implement regulations to ensure that transportation fuel sold in the U.S. contains a minimum volume of renewable fuel, through a Renewable Fuel Standard (RFS).[38] The RFS program requires the EPA to annually set the volumes of renewable fuel that will be used to replace or reduce

[36] This option is used when concentrations of contaminants in soil, groundwater, and surface water are equal to or less than the residential CTLs and free product is not present. Concentrations of contaminants in soil must be less than leachability-based soil CTLs, or direct leachability testing results demonstrate that leachate concentrations do not exceed the appropriate groundwater CTLs. DEP, *SOP Site Manager Closure Guide*, available at https://floridadep.gov/waste/petroleum-restoration/content/sop-site-manager-closure-guide (last visited Dec. 18, 2019).
[37] Allows the use of alternative CTLs, which are higher than the residential CTLs. Institutional and, if necessary, engineering controls are required to ensure that contamination at the site poses no risk to people or the environment. An engineering control that prevents human exposure may be implemented, in which case the contaminant concentrations in the soil below the permanent cover or two or more feet below land surface may exceed the direct exposure soil CTLs. RMO II was developed specifically to streamline closures for small areas of contamination (less than ¼ acre). *Id.*
[38] 42 U.S.C. § 13201 (2005).

the quantity of petroleum-based transportation fuel, heating oil, or jet fuel.[39] The RFS program requirements apply to refiners and importers of gasoline or diesel fuel. To achieve compliance, refiners and importers must provide blended fuels, which mix renewable fuels with transportation fuel, or must obtain credits, called Renewable Identification Numbers, to meet an EPA-specified Renewable Volume Obligation.[40]

Originally, the RFS program required 7.5 billion gallons of renewable fuel to be blended into gasoline by 2012.[41] However, the federal Energy Independence and Security Act of 2007 increased the renewable fuel standard minimum annual goal for renewable fuel use to 36 billion gallons by 2022.[42]

Florida Renewable Fuel Standard Act
In 2008, the Legislature passed the Florida Renewable Fuel Standard Act (act), which required that, beginning December 31, 2010, *all* gasoline sold or offered for sale in Florida by a terminal supplier, importer, blender, or wholesaler must be blended gasoline, defined as a mixture of 90 to 91 percent gasoline and 9 to 10 percent fuel ethanol or other alternative fuel, by volume.[43] However, in 2013, the Legislature repealed the act.[44]

Compatibility Requirements for Storing Renewable Fuels
The EPA's underground storage tank (UST) regulations require petroleum tank systems to be compatible with the substances stored in them.[45] In an UST system, the regulated substances stored must not interact with the materials comprising the system in any way that would cause the system's performance to change. In the 2015 UST regulations, the EPA clarified those compatibility requirements, and owners storing or intending to store certain fuels were required to meet certain additional requirements, including demonstrating compatibility of the UST system.[46]

Each renewable fuel blend has unique chemical characteristics different from purely petroleum derived gasoline or diesel fuel. Those chemical characteristics may affect how the fuel interacts with UST systems. USTs contain many components made of different materials. If any of these materials are incompatible with the regulated substance stored and even temporarily lose their manufactured properties such as shape or flexibility, the UST system may fail to contain the regulated substance. This could result in a release to the environment and possibly a failure to detect the release. Incompatibility between fuels stored and UST system materials can result in equipment or components such as tanks, piping, gaskets, or seals becoming brittle, elongated, thinner, or swollen when compared with their condition when first installed.[47]

Effect of the Bill
The bill authorizes DEP to use funds from the IPTF for payments for the repair or replacement of, or other preventative measures for, storage tanks, piping, or system components. The bill specifies such costs may include equipment, excavation, electrical work, and site restoration.

The bill requires DEP to pay up to $10 million each fiscal year from the IPTF for the costs of labor and equipment to repair or replace petroleum storage systems that may have been damaged due to the storage of fuels blended with ethanol or biodiesel, or for preventive measures to reduce the potential for such damage.

[39] EPA, *Overview for Renewable Fuel Standard*, available at https://www.epa.gov/renewable-fuel-standard-program/overview-renewable-fuel-standard (last visited Feb. 13, 2020).
[40] *Id*.
[41] *Id*.
[42] 42 U.S.C. § 17001 (2007).
[43] Chapter 2008-227, Laws of Fla.
[44] Chapter 2013-103, Laws of Fla.
[45] EPA, *Emerging Fuels and Underground Storage Tanks*, available at https://www.epa.gov/ust/emerging-fuels-and-underground-storage-tanks-usts (last visited Feb. 17, 2020).
[46] *Id.*
[47] *Id.*

The bill specifies that a petroleum storage system owner or operator may request payment from DEP for the repair or replacement of petroleum storage tanks, integral piping, or ancillary equipment that may have been damaged, or is subject to damage, by the storage of fuels blended with ethanol or biodiesel or for other preventive measures to ensure compatibility with ethanol or biodiesel.

The bill requires the request to include an affidavit from a petroleum storage system specialty contractor attesting to an opinion that the petroleum storage system may have been damaged as a result of the storage of fuel blended with ethanol or biodiesel or may not be compatible with fuels containing ethanol or biodiesel, or a combination of both. The affidavit must include a proposal from the specialty contractor for repair or replacement of the equipment, or for the implementation of other preventive measures to reduce the probability of damage. The bill further specifies that the affidavit must include the reasons that repair or other preventive measures are not technically or economically feasible or practical if the specialty contractor proposes replacement of any equipment.

The bill also requires the request to include copies of any inspection reports, including photographs, prepared by the specialty contractor or department or local program inspectors documenting the damage or potential for damage to the petroleum storage system; and a proposal from the specialty contractor showing the proposed scope of the repair, replacement, or other preventive measures, including a detailed list of labor, equipment, and other associated costs. The proposal must also include provisions for any preventive measures needed to prevent a recurrence of the damage and the adoption of a maintenance plan.

For proposals to replace storage tanks or piping, the bill further requires the request to include a statement from a certified public accountant indicating the depreciated value of the tanks or piping proposed for replacement. The bill specifies that applications for such proposals must also include documentation of the age of the storage tank or piping. The bill further specifies that the depreciated value must be the maximum allowable replacement cost for the storage tank and piping, exclusive of labor costs, and tanks that are 20 years old or older are deemed to be fully depreciated and have no replacement value.

The bill requires DEP to review applications for completeness, accuracy, and the reasonableness of costs and scope of work. The bill further requires DEP to approve or deny the application, propose modification to the application, or request additional information within 30 days after receipt of an application.

If an application is approved, the bill requires DEP to issue a purchase order to the petroleum storage system owner or operator. The purchase order must:

- Reflect a payment due to the owner for the cost of the scope of work approved by DEP, less a deductible of 25 percent;
- State that a payment is not due to the owner pursuant to the purchase order until the scope of work authorized by DEP has been completed in substantial conformity with the purchase order; and
- Except for preventative maintenance contracts, specify that the work authorized in the purchase order must be substantially completed and paid for by the petroleum storage system owner or operator within 180 days after the date of the purchase order, or the purchase order is void.

The bill requires DEP, for preventative maintenance contracts, to develop a maintenance completion and payment schedule for approved applicants. The bill specifies that the failure of an owner or operator to meet scheduled payments invalidates the purchase order for all future payments due pursuant to the order.

The bill specifies that, with the exception of maintenance contracts, the applicant may request that DEP make payment following completion of the work authorized by DEP, in accordance with the terms of the purchase order. The request must include a sufficient demonstration that the work has been completed in substantial compliance with the purchase order and that the costs have been fully paid. Upon such a showing, DEP must issue the payment pursuant to the terms of the purchase order. For maintenance contracts, DEP must make periodic payments pursuant to the schedule specified in the purchase order

upon satisfactory showing that maintenance work has been completed and costs have been paid by the owner or operator.

The bill authorizes DEP to develop forms to be used for application and payment procedures and allows DEP to request the assistance of the Department of Management Services or a third-party administrator to assist in the administration of the application and payment process. The bill specifies that any costs associated with the administration must be paid from the $10 million in IPTF funds required by the bill.

The bill specifies that facility owners or operators or petroleum storage system owners or operators must continue to comply with DEP rules regarding the maintenance, replacement, and repair of petroleum storage systems in order to prevent a release or discharge of pollutants.

The bill prohibits payments for proposal costs or costs related to preparation of the application and required documentation; certified public accountant costs; any costs in excess of the amount approved by DEP or which are not in substantial compliance with the purchase order; costs associated with storage tanks, piping, or ancillary equipment that has previously been repaired or replaced for which costs have already been paid; facilities that are not in compliance with DEP storage tank rules, until the noncompliance issues have been resolved; or costs associated with damage to petroleum storage systems caused in whole or in part by causes other than the storage of fuels blended with ethanol or biodiesel.

The bill specifies that applications may be submitted on a first-come, first-served basis and DEP may not issue purchase orders unless funds remain for the current fiscal year.

The bill prohibits a petroleum storage system owner or operator from receiving more than $200,000 annually for equipment replacement, repair, or preventive measures at any single facility it owns or operates, or $500,000 annually in aggregate for all facilities owned or operated by the owner or operator.

The bill authorizes owners or operators that have incurred costs for repair, replacement, or other preventive measures during the period of July 1, 2015, through June 30, 2019, to apply to request payment for such costs from DEP. However, the bill prohibits DEP from disbursing payment for approved applications for such work until all purchase orders for previously approved applications have been paid and unless funds remain available for the fiscal year.

For new petroleum requirement registrations after July 1, 2020, the bill provides that DEP may only register equipment that meets applicable standards for compatibility for ethanol blends, biodiesel blends, and other alternative fuels that are likely to be stored in such systems.

Damages for Pollutant Discharges

Background

Section 376.313, F.S., provides that a person can bring a cause of action in court for all damages resulting from a discharge or other condition of pollution covered by ss. 376.30-376.317, F.S. (relating to various types of pollution, such as discharges caused by petroleum storage, drycleaning facilities, or wholesale supply facilities), if the discharge was not authorized pursuant to DEP regulations.

To state a plausible claim under s. 376.313, F.S., a person is only required to allege damages and that a prohibited discharge or other pollutive condition occurred.[48] In many cases, it is not necessary for such person to allege that negligence has occurred. In the case of a discharge of petroleum, petroleum products, or drycleaning solvents, the owner of the facility is liable for any discharges unless the owner can establish that he or she acquired title to property contaminated by the activities of a previous owner

[48] Section 376.313(3), F.S.

or operator or other third party, that he or she did not cause or contribute to the discharge, and that he or she did not know of the polluting condition at the time the owner acquired title.[49]

Effect of the Bill

For a cause of action brought under s. 376.313, F.S., for damages resulting from a discharge or other condition of pollution, the bill specifies that such damages may include damages to real or personal property directly resulting from the pollution rather than *all* damages resulting from the pollution.

B. SECTION DIRECTORY:

Section 1. Amends s. 376.3071, F.S., relating to the IPTF.

Section 2. Amends s. 376.30713, F.S., relating to the Advanced Cleanup applications.

Section 3. Amends s. 376.313, F.S., relating to causes of action for damages.

Section 4. Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have an indeterminate positive fiscal impact on the state because the bill removes the provision that allowed a PCPP applicant to reduce or eliminate costs associated with the limited contamination assessment report and the copayment costs if the applicant demonstrated that he or she could not financially comply.

2. Expenditures:

The bill may have an indeterminate negative fiscal impact on DEP because the bill requires DEP to pay for the limited contamination assessment for Advanced Cleanup applicants and for the repair or replacement of storage tanks, piping, or system components that could be affected by blended fuels. The IPTF receives an appropriation of over $100 million in the Petroleum Tanks Cleanup appropriation category each fiscal year. The fiscal impact of the bill can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate negative fiscal impact on the private sector because the bill provides flexibility to PCPP participants as such applicants can provide a cost savings to DEP by either providing a copayment or demonstrating a cost savings in the form of reduced rates. The bill, however, removes the provision that allowed such applicants to reduce or eliminate costs associated with the limited contamination assessment report and the copayment costs if the applicant demonstrated that he or she could not financially comply. The bill will also reduce the amount of funds available for uses other than the repair or replacement of storage tanks, piping, or system components because the bill requires DEP to pay up to $10 million for such purpose each fiscal year.

[49] Section 376.308(1)(c), F.S.

The bill may have an indeterminate positive fiscal impact on participants in Advanced Cleanup as the bill requires DEP to pay for the limited contamination assessment. The bill may also have a positive fiscal impact on owners or operators who may now apply for the repair or replacement of storage tanks, piping, or system components.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DEP to develop forms for application and payment procedures relating to the repair or replacement of, or other preventative measures for, storage tanks, piping, or system components. DEP appears to have sufficient rulemaking authority to implement this requirement.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to environmental contamination; amending s. 376.3071, F.S.; providing legislative findings, declarations, and intent; authorizing the Department of Environmental Protection to use funds from the Inland Protection Trust Fund to pay for specified activities related to removal and replacement of petroleum storage systems; authorizing the Department of Environmental Protection to use funds from the Inland Protection Trust Fund to pay the Department of Transportation for repairing damages caused by discharges from certain facilities; providing applicability; requiring limited contamination assessment reports and Petroleum Cleanup Participation Program site rehabilitation agreements to include certain cost savings; removing requirements for demonstration and determination of financial ability to comply with certain copayment and assessment report requirements; providing for petroleum storage system repair or replacement due to damage caused by ethanol or biodiesel and for preventive measures to reduce the potential for such damage; providing requirements for requesting and receiving payments for such repair, replacement, and measures; providing construction; prohibiting payments

for certain costs; limiting the payment amount a petroleum storage system owner or operator is eligible to receive annually; requiring the department, after a specified date, to only register storage system equipment that meets certain fuel standards; amending s. 376.30713, F.S.; requiring advanced cleanup applications to include certain agreements for continued program participation and conceptual proposed courses of action; removing provisions prohibiting the refund of certain contamination assessment report costs from the Inland Protection Trust Fund; requiring selected agency term contractors to submit scopes of work for limited contamination assessments to the Department of Environmental Protection; directing the department, upon agreement of such scopes of work, to issue specified purchase orders; conforming cross-references; amending s. 376.313, F.S.; specifying strict liability exceptions for individual causes of action for damages to real and personal property resulting from certain discharges and conditions of pollution; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2), subsection (4), and paragraph (d) of subsection (13) of section 376.3071, Florida Statutes, are amended, and paragraph (h) is added to subsection (1) and subsection (15) is added to that section, to read:

376.3071 Inland Protection Trust Fund; creation; purposes; funding.—

(1) FINDINGS.—In addition to the legislative findings set forth in s. 376.30, the Legislature finds and declares:

(h) That Congress enacted the Energy Policy Act of 2005, amending the Clean Water Act, and that the state enacted the Renewable Fuels Standard, to establish a renewable fuel standard requiring the use of ethanol as an oxygenate additive for gasoline and biodiesel as an additive for ultra-low sulfur diesel fuel. An unintended consequence of the inclusion of ethanol in gasoline and biodiesel in diesel fuel has been to cause, and potentially cause, significant corrosion and other damage to storage tanks, piping, and storage tank system components regulated under this chapter. The Legislature further finds that storage tanks, piping, and storage tank system components have been found by the department in its equipment approval process to meet compatibility standards, however, these standards may have subsequently changed due to the introduction of ethanol and biodiesel. The state enacted secondary containment requirements before the mandated introduction of

ethanol into gasoline and biodiesel into ultra-low sulfur diesel fuel. Therefore, owners and operators of petroleum storage facilities in the state that complied with the state's secondary containment requirements and installed approved equipment that may not have been evaluated for compatibility with ethanol and biodiesel, cross-contamination due to the storage of gasoline and diesel fuel, and the effects of condensation and minimal amounts of water in storage tanks are at a particular risk for having to repair or replace equipment or take other preventive measures in advance of the equipment's expected useful life in order to prevent releases or discharges of pollutants.

(2) INTENT AND PURPOSE.—

(a) It is the intent of the Legislature to establish the Inland Protection Trust Fund to serve as a repository for funds which will enable the department to respond without delay to incidents of inland contamination, and damage or potential damage to storage tank systems caused by ethanol or biodiesel as described in subsection (15) which may result in such incidents, related to the storage of petroleum and petroleum products in order to protect the public health, safety, and welfare and to minimize environmental damage.

(4) USES.—Whenever, in its determination, incidents of inland contamination, or potential incidents as provided in subsection (15), related to the storage of petroleum or petroleum products may pose a threat to the public health,

safety, or welfare, water resources, or the environment, the department shall obligate moneys available in the fund to provide for:

(a) Prompt investigation and assessment of contamination sites.

(b) Expeditious restoration or replacement of potable water supplies as provided in s. 376.30(3)(c)1.

(c) Rehabilitation of contamination sites, which shall consist of cleanup of affected soil, groundwater, and inland surface waters, using the most cost-effective alternative that is technologically feasible and reliable and that provides adequate protection of the public health, safety, and welfare, and water resources, and that minimizes environmental damage, pursuant to the site selection and cleanup criteria established by the department under subsection (5), except that this paragraph does not authorize the department to obligate funds for payment of costs which may be associated with, but are not integral to, site rehabilitation, such as the cost for retrofitting or replacing petroleum storage systems.

(d) Maintenance and monitoring of contamination sites.

(e) Inspection and supervision of activities described in this subsection.

(f) Payment of expenses incurred by the department in its efforts to obtain from responsible parties the payment or recovery of reasonable costs resulting from the activities

described in this subsection.

(g) Payment of any other reasonable costs of administration, including those administrative costs incurred by the Department of Health in providing field and laboratory services, toxicological risk assessment, and other assistance to the department in the investigation of drinking water contamination complaints and costs associated with public information and education activities.

(h) Establishment and implementation of the compliance verification program as authorized in s. 376.303(1)(a), including contracting with local governments or state agencies to provide for the administration of such program through locally administered programs, to minimize the potential for further contamination sites.

(i) Funding of the provisions of ss. 376.305(6) and 376.3072.

(j) Activities related to removal and replacement of petroleum storage systems, if repair, replacement, or other preventive measures are authorized under subsection (15), or exclusive of costs of any tank, piping, dispensing unit, or related hardware, if soil removal is approved as a component of site rehabilitation and requires removal of the tank where remediation is conducted under this section, or if such activities were justified in an approved remedial action plan.

(k) Reasonable costs of restoring property as nearly as

practicable to the conditions which existed before activities associated with contamination assessment or remedial action taken under s. 376.303(4).

(l) Repayment of loans to the fund.

(m) Expenditure of sums from the fund to cover ineligible sites or costs as set forth in subsection (13), if the department in its discretion deems it necessary to do so. In such cases, the department may seek recovery and reimbursement of costs in the same manner and pursuant to the same procedures established for recovery and reimbursement of sums otherwise owed to or expended from the fund.

(n) Payment of amounts payable under any service contract entered into by the department pursuant to s. 376.3075, subject to annual appropriation by the Legislature.

(o) Petroleum remediation pursuant to this section throughout a state fiscal year. The department shall establish a process to uniformly encumber appropriated funds throughout a state fiscal year and shall allow for emergencies and imminent threats to public health, safety, and welfare, water resources, and the environment as provided in paragraph (5)(a). This paragraph does not apply to appropriations associated with the free product recovery initiative provided in paragraph (5)(c) or the advanced cleanup program provided in s. 376.30713.

(p) Enforcement of this section and ss. 376.30-376.317 by the Fish and Wildlife Conservation Commission and the Department

of Environmental Protection. The department shall ~~may~~ disburse moneys to the commission for such purpose.

(q) Payments for program deductibles, copayments, and limited contamination assessment reports that otherwise would be paid by another state agency for state-funded petroleum contamination site rehabilitation.

(r) Payments for the repair or replacement of, or other preventive measures for, storage tanks, piping, or system components as provided in subsection (15). Such costs may include equipment, excavation, electrical work, and site restoration.

(s) Payments to the Department of Transportation for repairing damage to a transportation facility caused by a discharge of petroleum products from an offsite facility for which the department has issued a site rehabilitation completion order with conditions. The department shall establish procedures to process and pay such funding requests. This paragraph applies in lieu of the indemnification requirements in any agreements between the department and Department of Transportation concerning risk-based corrective action closures.

The issuance of a site rehabilitation completion order pursuant to subsection (5) or paragraph (12)(b) for contamination eligible for programs funded by this section does not alter the project's eligibility for state-funded remediation if the

department determines that site conditions are not protective of human health under actual or proposed circumstances of exposure under subsection (5). The Inland Protection Trust Fund may be used only to fund the activities in ss. 376.30-376.317 except ss. 376.3078 and 376.3079. Amounts on deposit in the fund in each fiscal year must first be applied or allocated for the payment of amounts payable by the department pursuant to paragraph (n) under a service contract entered into by the department pursuant to s. 376.3075 and appropriated in each year by the Legislature before making or providing for other disbursements from the fund. This subsection does not authorize the use of the fund for cleanup of contamination caused primarily by a discharge of solvents as defined in s. 206.9925(6), or polychlorinated biphenyls when their presence causes them to be hazardous wastes, except solvent contamination which is the result of chemical or physical breakdown of petroleum products and is otherwise eligible. Facilities used primarily for the storage of motor or diesel fuels as defined in ss. 206.01 and 206.86 are not excluded from eligibility pursuant to this section.

(13) PETROLEUM CLEANUP PARTICIPATION PROGRAM.—To encourage detection, reporting, and cleanup of contamination caused by discharges of petroleum or petroleum products, the department shall, within the guidelines established in this subsection, implement a cost-sharing cleanup program to provide

rehabilitation funding assistance for all property contaminated by discharges of petroleum or petroleum products from a petroleum storage system occurring before January 1, 1995, subject to a copayment provided for in a Petroleum Cleanup Participation Program site rehabilitation agreement. Eligibility is subject to an annual appropriation from the fund. Additionally, funding for eligible sites is contingent upon annual appropriation in subsequent years. Such continued state funding is not an entitlement or a vested right under this subsection. Eligibility shall be determined in the program, notwithstanding any other provision of law, consent order, order, judgment, or ordinance to the contrary.

(d) Upon notification by the department that rehabilitation funding assistance is available for the site pursuant to subsections (5) and (6), the property owner, operator, or person otherwise responsible for site rehabilitation shall provide the department with a limited contamination assessment report and shall enter into a Petroleum Cleanup Participation Program site rehabilitation agreement with the department. The limited contamination assessment report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. The agreement must provide for a 25-percent cost savings and may use a copayment by the owner, operator, or person otherwise responsible for conducting site rehabilitation or a demonstrated

cost savings to the department in the form of reduced rates by the proposed agency term contractor or the difference in cost associated with a Risk Management Options Level I closure versus a Risk Management Options Level II conditional closure, or both, to meet the requirement. ~~The owner, operator, or person otherwise responsible for conducting site rehabilitation shall adequately demonstrate the ability to meet the copayment obligation. The limited contamination assessment report and the copayment costs may be reduced or eliminated if the owner and all operators responsible for restoration under s. 376.308 demonstrate that they cannot financially comply with the copayment and limited contamination assessment report requirements. The department shall take into consideration the owner's and operator's net worth in making the determination of financial ability. In the event the department and the owner, operator, or person otherwise responsible for site rehabilitation cannot complete negotiation of the cost-sharing agreement within 120 days after beginning negotiations, the department shall terminate negotiations and the site shall be ineligible for state funding under this subsection and all liability protections provided for in this subsection shall be revoked.~~

(15) ETHANOL OR BIODIESEL DAMAGE; PREVENTIVE MEASURES.—The department shall pay, pursuant to this subsection, up to $10 million each fiscal year from the fund for the costs of labor

and equipment to repair or replace petroleum storage systems that may have been damaged due to the storage of fuels blended with ethanol or biodiesel, or for preventive measures to reduce the potential for such damage.

(a) A petroleum storage system owner or operator may request payment from the department for the repair or replacement of petroleum storage tanks, integral piping, or ancillary equipment that may have been damaged, or is subject to damage, by the storage of fuels blended with ethanol or biodiesel or for other preventive measures to ensure compatibility with ethanol or biodiesel in accordance with the following procedures:

1. The petroleum storage system owner or operator may submit a request for payment to the department along with the following information:

a. An affidavit from a petroleum storage system specialty contractor attesting to an opinion that the petroleum storage system may have been damaged as a result of the storage of fuel blended with ethanol or biodiesel or may not be compatible with fuels containing ethanol or biodiesel, or a combination of both. The affidavit must also include a proposal from the specialty contractor for repair or replacement of the equipment, or for the implementation of other preventive measures to reduce the probability of damage. If the specialty contractor proposes replacement of any equipment, the affidavit must include the

reasons that repair or other preventive measures are not technically or economically feasible or practical.

b. Copies of any inspection reports, including photographs, prepared by the specialty contractor or department or local program inspectors documenting the damage or potential for damage to the petroleum storage system.

c. A proposal from the specialty contractor showing the proposed scope of the repair, replacement, or other preventive measures, including a detailed list of labor, equipment, and other associated costs. In the case of replacement or repair, the proposal must also include provisions for any preventive measures needed to prevent a recurrence of the damage, such as the use of corrosion inhibitors, the application of coatings compatible with ethanol or biodiesel, as appropriate, and the adoption of a maintenance plan.

d. For proposals to replace storage tanks or piping, a statement from a certified public accountant indicating the depreciated value of the tanks or piping proposed for replacement. Applications for such proposals must also include documentation of the age of the storage tank or piping. Historical tank registration records may be used to determine the age of the storage tank and piping. The depreciated value shall be the maximum allowable replacement cost for the storage tank and piping, exclusive of labor costs. For the purposes of this paragraph, tanks that are 20 years old or older are deemed

to be fully depreciated and have no replacement value.

2. The department shall review applications for completeness, accuracy, and the reasonableness of costs and scope of work. Within 30 days after receipt of an application, the department must approve or deny the application, propose modification to the application, or request additional information.

(b) If an application is approved, the department shall issue a purchase order to the petroleum storage system owner or operator. The purchase order shall:

1. Reflect a payment due to the owner for the cost of the scope of work approved by the department, less a deductible of 25 percent.

2. State that a payment is not due to the owner pursuant to the purchase order until the scope of work authorized by the department has been completed in substantial conformity with the purchase order.

3. Except for preventive maintenance contracts, specify that the work authorized in the purchase order must be substantially completed and paid for by the petroleum storage system owner or operator within 180 days after the date of the purchase order. After such time, the purchase order is void.

4. For preventive maintenance contracts, the department shall develop a maintenance completion and payment schedule for approved applicants. The failure of an owner or operator to meet

scheduled payments shall invalidate the purchase order for all future payments due pursuant to the order.

(c)1. Except for maintenance contracts, the applicant may request that the department make payment following completion of the work authorized by the department, in accordance with the terms of the purchase order. The request must include a sufficient demonstration that the work has been completed in substantial compliance with the purchase order and that the costs have been fully paid. Upon such a showing, the department must issue the payment pursuant to the terms of the purchase order.

2. For maintenance contracts, the department must make periodic payments pursuant to the schedule specified in the purchase order upon satisfactory showing that maintenance work has been completed and costs have been paid by the owner or operator as specified in the purchase order.

(d) The department may develop forms to be used for application and payment procedures. Until such forms are developed, an applicant may submit the required information in any format, as long as the documentation is complete.

(e) The department may request the assistance of the Department of Management Services or a third-party administrator to assist in the administration of the application and payment process. Any costs associated with this administration shall be paid from the funds identified in this section.

(f) This subsection does not affect the obligations of facility owners or operators or petroleum storage system owners or operators to timely comply with department rules regarding the maintenance, replacement, and repair of petroleum storage systems in order to prevent a release or discharge of pollutants.

(g) Payments may not be made for the following:

1. Proposal costs or costs related to preparation of the application and required documentation;

2. Certified public accountant costs;

3. Except as provided in subsection (k), any costs in excess of the amount approved by the department under paragraph (b) or which are not in substantial compliance with the purchase order;

4. Costs associated with storage tanks, piping, or ancillary equipment that has previously been repaired or replaced for which costs have been paid under this section;

5. Facilities that are not in compliance with department storage tank rules, until the noncompliance issues have been resolved; or

6. Costs associated with damage to petroleum storage systems caused in whole or in part by causes other than the storage of fuels blended with ethanol or biodiesel.

(h) Applications may be submitted on a first-come, first-served basis. However, the department may not issue purchase

orders unless funds remain for the current fiscal year.

(i) A petroleum storage system owner or operator may not receive more than $200,000 annually for equipment replacement, repair, or preventive measures at any single facility, or $500,000 annually in aggregate for all facilities owned or operated by the owner or operator it owns or operates.

(j) Owners or operators that have incurred costs for repair, replacement, or other preventive measures as described in this subsection during the period of July 1, 2015, through June 30, 2019, may apply to request payment for such costs from the department using the procedure in paragraphs (b), (c), and (d). The department may not disburse payment for approved applications for such work until all purchase orders for previously approved applications have been paid and unless funds remain available for the fiscal year. Such payment is subject to a deductible of 25 percent of the cost of the scope of work approved by the department under this paragraph.

(k) For new petroleum requirement registrations after July 1, 2020, the department shall only register equipment that meets applicable standards for compatibility for ethanol blends, biodiesel blends, and other alternative fuels that are likely to be stored in such systems.

Section 2. Subsections (2) and (4) of section 376.30713, Florida Statutes, are amended to read:

376.30713 Advanced cleanup.—

(2) The department may approve an application for advanced cleanup at eligible sites, including applications submitted pursuant to paragraph (d) ~~(c)~~, notwithstanding the site's priority ranking established pursuant to s. 376.3071(5)(a), pursuant to this section. Only the facility owner or operator or the person otherwise responsible for site rehabilitation qualifies as an applicant under this section.

(a) Advanced cleanup applications may be submitted between May 1 and June 30 and between November 1 and December 31 of each fiscal year. Applications submitted between May 1 and June 30 shall be for the fiscal year beginning July 1. An application must consist of:

1. A commitment to pay 25 percent or more of the total cleanup cost deemed recoverable under this section along with proof of the ability to pay the cost share. The department shall determine whether the cost savings demonstration is acceptable. Such determination is not subject to chapter 120.

a. Applications for the aggregate cleanup of five or more sites may be submitted in one of two formats to meet the cost-share requirement:

(I) For an aggregate application proposing that the department enter into a performance-based contract, the applicant may use a commitment to pay, a demonstrated cost savings to the department, or both to meet the requirement.

(II) For an aggregate application relying on a

demonstrated cost savings to the department, the applicant shall, in conjunction with the proposed agency term contractor, establish and provide in the application the percentage of cost savings in the aggregate that is being provided to the department for cleanup of the sites under the application compared to the cost of cleanup of those same sites using the current rates provided to the department by the proposed agency term contractor.

b. Applications for the cleanup of individual sites may be submitted in one of two formats to meet the cost-share requirement:

(I) For an individual application proposing that the department enter into a performance-based contract, the applicant may use a commitment to pay, a demonstrated cost savings to the department, or both to meet the requirement.

(II) For an individual application relying on a demonstrated cost savings to the department, the applicant shall, in conjunction with the proposed agency term contractor, establish and provide in the application a 25-percent cost savings to the department for cleanup of the site under the application compared to the cost of cleanup of the same site using the current rates provided to the department by the proposed agency term contractor.

2. A nonrefundable review fee of $250 to cover the administrative costs associated with the department's review of

the application.

3. A property owner or responsible party agreement in which the property owner or responsible party commits to continue to participate in the advanced cleanup program upon completion of the limited contamination assessment and finalization of the proposed course of action ~~report~~.

4. A conceptual proposed course of action.

5. A department site access agreement, or similar agreements approved by the department that do not violate state law, entered into with the property owner or owners, as applicable, and evidence of authorization from such owner or owners for petroleum site rehabilitation program tasks consistent with the proposed course of action where the applicant is not the property owner for any of the sites contained in the application.

~~The limited contamination assessment report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. Costs incurred related to conducting the limited contamination assessment report are not refundable from the Inland Protection Trust Fund.~~ Site eligibility under this subsection or any other provision of this section is not an entitlement to advanced cleanup or continued restoration funding. The applicant shall certify to the department that the applicant has the prerequisite authority to

enter into an advanced cleanup contract with the department. The certification must be submitted with the application.

(b) The department shall rank the applications based on the percentage of cost-sharing commitment proposed by the applicant, with the highest ranking given to the applicant who proposes the highest percentage of cost sharing. If the department receives applications that propose identical cost-sharing commitments and that exceed the funds available to commit to all such proposals during the advanced cleanup application period, the department shall proceed to rerank those applicants. Those applicants submitting identical cost-sharing proposals that exceed funding availability must be so notified by the department and offered the opportunity to raise their individual cost-share commitments, in a period specified in the notice. At the close of the period, the department shall proceed to rerank the applications pursuant to this paragraph.

(c) Upon acceptance of an application, the applicant's selected agency term contractor must submit a scope of work for the limited contamination assessment to the department. Once the scope of work is negotiated and agreed upon, the department must issue a purchase order or purchase orders for the limited contamination assessment in an amount not to exceed $35,000 per purchase order. The limited contamination assessment must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action.

(d) ~~(c)~~ Applications for the advanced cleanup of individual sites scheduled for redevelopment are not subject to the application period limitations or the requirement to pay 25 percent of the total cleanup cost specified in paragraph (a) or to the cost-sharing commitment specified in paragraph (1)(d). Applications must be accepted on a first-come, first-served basis and are not subject to the ranking provisions of paragraph (b). Applications for the advanced cleanup of individual sites scheduled for redevelopment must include:

1. A nonrefundable review fee of $250 to cover the administrative costs associated with the department's review of the application.

2. A limited contamination assessment report. The report must be sufficient to support the proposed course of action and to estimate the cost of the proposed course of action. Costs incurred related to conducting and preparing the report are not refundable from the Inland Protection Trust Fund.

3. A proposed course of action for cleanup of the site.

4. If the applicant is not the property owner for any of the sites contained in the application, a department site access agreement, or a similar agreement approved by the department and not in violation of state law, entered into with the property owner or owners, as applicable, and evidence of authorization from such owner or owners for petroleum site rehabilitation program tasks consistent with the proposed course of action.

5. A certification to the department stating that the applicant has the prerequisite authority to enter into an advanced cleanup contract with the department. The advanced cleanup contract must include redevelopment and site rehabilitation milestones.

6. Documentation, in the form of a letter from the local government having jurisdiction over the area where the site is located, which states that the local government is in agreement with or approves the proposed redevelopment and that the proposed redevelopment complies with applicable law and requirements for such redevelopment.

7. A demonstrated reasonable assurance that the applicant has sufficient financial resources to implement and complete the redevelopment project.

Site eligibility under this section is not an entitlement to advanced cleanup funding or continued restoration funding.

(4) The department may enter into contracts for a total of up to $30 million of advanced cleanup work in each fiscal year. Up to $5 million of these funds may be designated by the department for advanced cleanup of individual sites scheduled for redevelopment under paragraph (2)(d) ~~(2)(c)~~.

(a) A facility or an applicant who bundles multiple sites as specified in subparagraph (2)(a)1. may not be approved for more than $5 million of cleanup activity in each fiscal year.

(b) A facility or an applicant applying for advanced cleanup of individual sites scheduled for redevelopment pursuant to paragraph (2)(d) ~~(2)(c)~~ may not be approved for more than $1 million of cleanup activity in any one fiscal year.

(c) A property owner or responsible party may enter into a voluntary cost-share agreement in which the property owner or responsible party commits to bundle multiple sites and lists the facilities that will be included in those future bundles. The facilities listed are not subject to agency term contractor assignment pursuant to department rule. The department must reserve the right to terminate or amend the voluntary cost-share agreement for any identified site under the voluntary cost-share agreement if the property owner or responsible party fails to submit an application to bundle any site, not already covered by an advance cleanup contract, under such voluntary cost-share agreement within three subsequent open application periods or 18 months, whichever period is shorter, during which it is eligible to participate. The property owner or responsible party must agree to conduct limited site assessments on the identified sites within 12 months after the execution of the voluntary cost-share agreement. For the purposes of this section, the term "facility" includes, but is not limited to, multiple site facilities such as airports, port facilities, and terminal facilities even though such enterprises may be treated as separate facilities for other purposes under this chapter.

Section 3. Subsection (3) of section 376.313, Florida Statutes, is amended to read:

376.313 Nonexclusiveness of remedies and individual cause of action for damages under ss. 376.30-376.317.—

(3) Except as provided in s. 376.3078(3) and (11), ~~nothing contained in~~ ss. 376.30-376.317 do not prohibit a ~~prohibits any~~ person from bringing a cause of action in a court of competent jurisdiction for all damages to real or personal property directly resulting from a discharge or other condition of pollution covered by ss. 376.30-376.317 ~~and~~ which was not authorized by a governmental permit or approval ~~pursuant to chapter 403~~. ~~Nothing in~~ This chapter does not ~~shall~~ prohibit or diminish a party's right to contribution from other parties jointly or severally liable for a prohibited discharge of pollutants or hazardous substances or other pollution conditions. Except as otherwise provided in subsection (4) or subsection (5), in any such suit, it is not necessary for such person to plead or prove negligence in any form or manner. Such person need only plead and prove the fact of the prohibited discharge or other pollutive condition and that it has occurred. The only strict liability exceptions ~~defenses~~ to such cause of action shall be those specified in s. 376.308.

Section 4. This act shall take effect July 1, 2020.

PCB SAC 20-05

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SAC 20-05 State Advisory Bodies
SPONSOR(S): State Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Darden	Williamson

SUMMARY ANALYSIS

A task force is an advisory body created without specific statutory enactment for a time not to exceed one year, or created by specific statutory enactment for a time not to exceed three years, and appointed to study a specific problem and recommend a solution or policy alternative related to that problem.

The bill creates the Local Government Efficiency Task Force (Efficiency Task Force) within the Legislature and the Urban Core Crime and Violence Task Force (Urban Core Task Force) within the Department of Law Enforcement. The Governor, the President of the Senate, and the Speaker of the House of Representatives must appoint the members of each task force.

The bill requires the Efficiency Task Force to review the structure and function of local governments and determine whether any changes are necessary to make such governments more efficient. The bill requires the Efficiency Task Force to begin meeting by November 15, 2020, and, thereafter, authorizes the task force to meet as often as necessary to fulfill its responsibilities. Meetings may be conducted in person or via teleconference or other electronic means.

The bill requires the Urban Core Task Force to review system failures and the causes of high crime rates and violence in urban core neighborhoods and communities and to develop recommendations for improved interagency communications between local and state government agencies to reduce crime and violence in such neighborhoods and communities. Meetings of the Urban Core Task Force occur at the call of its chair, at a time and location selected by the chair, and may not be conducted via teleconference or other electronic means.

The bill requires each task force to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by a specified date and provides an expiration date for each task force.

The bill has an indeterminate fiscal impact on the state and does not appear to have a fiscal impact on local governments. *See* Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Task Force

A task force is an advisory body created without specific statutory enactment for a time not to exceed one year, or created by specific statutory enactment for a time not to exceed three years, and appointed to study a specific problem and recommend a solution or policy alternative related to that problem.[1] The existence of a task force terminates upon the completion of its assignment.[2]

An advisory body may be created only when it is found to be necessary and beneficial to the furtherance of a public purpose.[3] Each advisory body must inform the Legislature and the public of the body's purposes, memberships, activities, and expenses.[4] All meetings of an advisory body are public meetings and each advisory body must maintain minutes for each meeting, including a record of all votes cast.[5]

If an advisory body that is adjunct to an executive agency is abolished, the executive agency must appropriately store the records of the advisory body within 30 days of the date of abolition and reclaim any property assigned to the advisory body.[6] An advisory body may not perform any activities after the effective date of its abolition.

Members of an advisory body serve without compensation, unless compensation is expressly permitted by statute.[7] Members are authorized to receive reimbursement for per diem and travel expenses.

Local Governments

The Florida Constitution provides for three types of local government: counties, municipalities, and special districts.[8]

Counties

The Florida Constitution requires the state be divided into counties, which may be created, abolished, or changed by general law.[9] Each county may adopt a charter, pursuant to general or special law and subject to approval by the electors of the county.[10] A "county" is the largest territorial division for local government within a state.[11]

Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[12] The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. In the event of a conflict between county and municipal ordinances, the charter provides which provision will prevail.

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[1] S. 20.03(8), F.S.
[2] *Id.*
[3] S. 20.052(1), F.S.
[4] S. 20.052(3), F.S.
[5] S. 20.052(5)(c), F.S.
[6] S. 20.052(5)(d), F.S.
[7] S. 20.052(4)(d), F.S.
[8] *See* Art. VIII, s. 4, Fla. Const. (authorizing counties, municipalities, or special districts to transfer or contract with one another to exercise powers or functions by law or resolution of the affected governing bodies).
[9] Art. VIII, s. 1(a), Fla. Const.
[10] Art. VIII, s. 1(c), Fla. Const.
[11] Black's Law Dictionary (11th ed. 2019).
[12] Art. VIII, s. 1(g), Fla. Const.

Non-charter county governments may exercise those powers of self-government that are provided by general or special law.[13] The governing body of the county not operating under a charter may enact, in a manner prescribed by general law, ordinances not inconsistent with general or special law.[14] County ordinances in non-charter counties that are in conflict with a municipal ordinance are not effective within the municipality to the extent of the conflict.[15]

Municipalities

A "municipality" is a city, town, or other similar local political entity with the powers of self-government.[16] The Florida Constitution provides that municipalities may be established or abolished pursuant to general or special law.[17] Municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide services, and exercise any power for municipal purposes except when expressly prohibited by law.[18] Those powers generally include any subject matter upon which the Legislature may act, excluding annexation, merger, exercise of extraterritorial power, or subjects prohibited or preempted by the Federal or State Constitutions, county charter, or statute.[19]

Special Districts

A "special district" is a unit of local government created for a particular purpose with jurisdiction to operate within a limited geographic boundary. Special districts may be created by general law,[20] special act,[21] local ordinance,[22] or rule of the Governor and Cabinet.[23] A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.[24]

A "dependent special district" is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district's governing body are removable at will by the governing body of a single county or municipality, or the district's budget is subject to the approval of the governing body of a single county or municipality.[25] An "independent special district" is any district that is not a dependent special district.[26]

Urban Core

An "urban core" is the baseline unit for determining the existence of an urban area.[27] Urban areas must exhibit a pattern of continuous development out from a central core. A place is included in an urban area if it has a "qualifying core." A qualifying core is any area with a population density of at least 1,000 people per square mile that contains at least 50 percent of the place's total population density and is contiguous with other qualifying urbanized territories that also meet the population density criterion.

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[13] Art. VIII, s. 1(f), Fla. Const.
[14] *Id*. *See also* s. 125.01(1), F.S.
[15] Art. VIII, s. 1(f), Fla. Const.
[16] Black's Law Dictionary (11th ed. 2019).
[17] Art. VIII, s. 2(a), Fla. Const.
[18] Art. VIII, s. 2(b), Fla. Const. A "municipal purpose" is any activity or power that may be exercised by the state or its political subdivisions. S. 166.021(2), F.S.
[19] S. 166.021(3), F.S.
[20] S. 189.031(3), F.S.
[21] *Id.*
[22] S. 189.02(1), F.S.
[23] S. 190.005(1), F.S.; *see* generally, s. 189.012(6), F.S.
[24] *2018 – 2020 Local Gov't Formation Manual* at p. 64, available at https://www.myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=3074 (last visited Feb. 14, 2020).
[25] S. 189.012(2), F.S.
[26] S. 189.012(3), F.S.
[27] United State Census Bureau, *Geographic Areas Reference Manual* 12-7 (May 16, 2018), https://www2.census.gov/geo/pdfs/reference/GARM/Ch12GARM.pdf (last visited Feb. 14, 2020).

Neighborhoods within urban cores are often older and follow a traditional development pattern with a gridded street network.[28]

Urban areas generally experience higher rates of violent crime compared to more sparsely populated areas.[29] However, the violent crime rate may vary significantly between similarly situated municipalities both within a given year and over time.[30]

Effect of Proposed Changes

Local Government Efficiency Task Force

The bill creates the Local Government Efficiency Task Force (Efficiency Task Force) within the Legislature. The Efficiency Task Force consists of the following members:

- Two members appointed by the Governor;
- Two members appointed by the President of the Senate; and
- Two members appointed by the Speaker of the House of Representatives.

Members of the Efficiency Task Force must be appointed no later than September 1, 2020.

The Efficiency Task Force is responsible for selecting a chair from among its members. If a vacancy occurs on the Efficiency Task Force, the position is filled for the unexpired term in the same manner as the original appointment. Members of the Efficiency Task Force serve without compensation, but are entitled to reimbursement for per diem and travel expenses.

The bill requires the Efficiency Task Force to review the structure and function of local governments and determine whether any changes are necessary to make such governments more efficient.

The bill requires the Efficiency Task Force to begin meeting by November 15, 2020, and, thereafter, authorizes the task force to meet as often as necessary to fulfill its responsibilities. Meetings may be conducted in person or via teleconference or other electronic means.

By June 1, 2022, the Efficiency Task Force must submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The bill provides for expiration of the Efficiency Task Force on June 30, 2022.

Urban Core Crime and Violence Task Force

The bill creates the Urban Core Crime and Violence Task Force (Urban Core Task Force) within the Department of Law Enforcement (FDLE) to:

- Review system failures and the causes of high crime rates and violence in urban core neighborhoods and communities; and
- Develop recommendations for solutions, programs, services, and strategies for improved interagency communications between local and state government agencies to help reduce crime and violence in urban core neighborhoods and communities.

The Urban Core Task Force is comprised of nine members:

- Three members appointed by the Governor;
- Three members appointed by the President of the Senate; and
- Three members appointed by the Speaker of the House of Representatives.

[28] *See e.g. The Urban Core And Downtown: Some Definitions*, The Jaxson, https://www.thejaxsonmag.com/article/the-urban-core-and-downtown-some-definitions/ (last visited Feb. 14, 2020).
[29] *See generally* Nathan James, *Recent Violent Crime Trends in the United States*, Congressional Research Service, https://fas.org/sgp/crs/misc/R45236.pdf (last visited Feb. 14, 2020).
[30] *See Id*. at 8-9 (comparing 48 largest U.S. cities from 2014-2015 and showing most violent crime rate variance came from changes in 10 or fewer cities).

Members of the Urban Core Task Force must be appointed by August 1, 2020. Members serve at the pleasure of the officer who appointed them and those respective officers must appoint a member to serve any unexpired term if a vacancy occurs. The Governor must appoint the chair from among the nine members. Members of the Urban Core Task Force serve without compensation, but are entitled to reimbursement for per diem and travel expenses.

Meetings of the Urban Core Task Force occur upon the call of the chair at a time and location designated by the chair. The Urban Core Task Force may not conduct its meetings through teleconference or other electronic means.

The bill requires FDLE to provide staffing and administrative assistance to the Urban Core Task Force to aid in the performance of its duties. The Urban Core Task Force may also request professional assistance from other state agencies as appropriate. The bill requires those state agencies to provide any requested assistance in a timely manner.

The bill specifies that the Urban Core Task Force may request, and must be provided with, access to any information or records that pertain to crime and violent incidents in the state's urban core neighborhoods and communities. Information or records obtained by the Urban Core Task Force that are otherwise exempt or confidential and exempt retain such status and may not be disclosed.

By June 1, 2021, the Urban Core Task Force must submit a report on its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The bill provides for expiration of the Urban Core Task Force on June 30, 2021.

B. SECTION DIRECTORY:

Section 1: Creates an undesignated section of law creating the Local Government Efficiency Task Force.

Section 2: Creates an undesignated section of law creating the Urban Core Crime and Violence Task Force.

Section 3: Provides that the bill takes effect July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill creates two task forces and allows for reimbursement for travel and per diem. As such, the fiscal impact to the state will depend on the nature and extent of the travel conducted by the task force members. The bill also requires FDLE to staff and provide administrative assistance to the Urban Core Task Force and requires state agencies to provide such professional assistance as may be needed. Dependent upon the nature of the assistance requested, the bill might have an indeterminate negative fiscal impact on state agencies.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill neither authorizes nor requires administrative rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to state advisory bodies; creating the Local Government Efficiency Task Force within the Legislature; providing for duties, membership, and meetings of the task force; requiring the task force to submit a report to the Governor and Legislature by a date certain; providing for expiration of the task force; creating the Urban Core Crime and Violence Task Force within the Department of Law Enforcement; providing for duties, membership, and meetings of the task force; requiring state agencies to provide assistance when requested; authorizing the task force to receive exempt or confidential and exempt information and specifying that the information maintains such status; requiring the task force to submit a report to the Governor and Legislature by a date certain; providing for expiration of the task force; providing an effective date.

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

Section 1. Local Government Efficiency Task Force.—

(1) The Local Government Efficiency Task Force, a task force as defined in s. 20.03, Florida Statutes, is established within the Legislature.

(2)(a) The task force shall consist of six members with the Governor, the President of the Senate, and the Speaker of the House of Representatives each appointing two members. Members must be appointed no later than September 1, 2020.

(b) A vacancy on the task force shall be filled in the same manner as the original appointment for the unexpired term.

(c) The task force shall elect a chair from among its members.

(3) Members of the task force shall serve without compensation, but are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061, Florida Statutes. The task force shall convene its first meeting by November 15, 2020, and shall meet as often as necessary to fulfill its responsibilities under this section. Meetings may be conducted in person, by teleconference, or by other electronic means.

(4) The task force shall review the governance structure and function of local governments and whether any changes are necessary to make such governments more efficient.

(5) The task force shall submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by June 1, 2022.

(6) This section expires June 30, 2022.

Section 2. Urban Core Crime and Violence Task Force.—

(1) The Urban Core Crime and Violence Task Force, a task force as defined in s. 20.03, Florida Statutes, is created

within the Department of Law Enforcement. Except as otherwise provided in this section, the task force shall comply with the requirements of s. 20.052, Florida Statutes.

(2)(a) The task force shall consist of nine members with the Governor, the President of the Senate, and the Speaker of the House of Representatives each appointing three members. Members must be appointed no later than August 1, 2020. Members serve at the pleasure of the officer who appointed them and a vacancy on the task force must be filled in the same manner as the original appointment. Members of the task force shall serve without compensation, but are entitled to reimbursement for per diem and travel expenses pursuant to s. 112.061, Florida Statutes.

(b) The Governor shall appoint a chair from among the members.

(c) The task force shall meet at the call of the chair at a time and location in the state designated by the chair. The task force may not conduct its meetings by teleconference or other electronic means.

(3) The task force shall review system failures and the causes of high crime rates and violence in urban core neighborhoods and communities. In addition, the task force shall develop recommendations for solutions, programs, services, and strategies for improved interagency communications between local and state governmental agencies to help facilitate the reduction

of crime and violence in urban core neighborhoods and communities.

(4) The Department of Law Enforcement shall provide staffing and administrative assistance to the task force in performing its duties. The task force may call upon other state agencies for such professional assistance as may be needed in the discharge of its duties, and such agencies shall provide such assistance in a timely manner.

(5) Notwithstanding any other law to the contrary, the task force may request and shall be provided with access to any information or records that pertain to crime or violent incidents in the state's urban core neighborhoods and communities. Information or records obtained by the task force which are otherwise exempt or confidential and exempt shall retain such exempt or confidential and exempt status, and the task force may not disclose any such information or records.

(6) The task force shall submit a report on its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by June 1, 2021.

(7) This section expires June 30, 2021.

Section 3. This act shall take effect July 1, 2020.

PCB SAC 20-06

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SAC 20-06 Essential State Infrastructure
SPONSOR(S): State Affairs Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 7018

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Johnson	Williamson

SUMMARY ANALYSIS

Utility Right-of-Way Permits

Authorities, defined as the Department of Transportation (DOT) and local governmental entities, may prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining of utilities across, on, or within their right-of-way limits. An authority may grant the use of its right-of-way for the utility in accordance with its adopted rules or regulations.

The bill requires counties and municipalities to issue or deny permits for utilities in rights-of-way in accordance with specified periods, including issuing a notification of completeness within 14 days and approving or denying a permit within 60 days of receiving the application.

Electric Vehicle Charging Station Master Plan

Electric vehicles (EVs) offer a cleaner fuel source and interest in EV use has been driven in part by their potential for reduction in greenhouse gas emissions. However, their relative high cost compared to conventional fuel-powered vehicles and their relative limited range have restricted the commercial viability of EVs. EV charging times vary depending on the depletion level of the battery, how much energy the battery holds, the type of battery, and the type of supply equipment. The Department of Agriculture and Consumer Services website contains addresses by city and county for EV charging station locations in Florida.

The bill requires DOT, in coordination with other entities, to develop and adopt a master plan for EV charging stations on the state highway system by July 1, 2020. The bill provides goals and objectives for the master plan and requires DOT to update its master plan annually.

Conservation Easements

Current law defines a conservation easement as a right or interest in real property which is appropriate for retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses.

The bill specifies that, for any land used for agriculture and subject to a conservation easement, the owner of the land is not limited from voluntarily negotiating the use of the land for any public or private linear facility, right of access, and related appurtenances.

Fiscal Impact

The bill has a fiscal impact on state government and may have a fiscal impact on local governments. *See* Fiscal Analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Utility Right-of-Way Permits

Present Situation

Section 337.401, F.S., provides that the use of the right-of-way for utilities is subject to regulation. Authorities, defined as the Department of Transportation (DOT) and local governmental entities,[1] may prescribe and enforce reasonable rules or regulations regarding the placing and maintaining of utilities within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions.[2,3]

An authority may grant to any person who is a Florida resident, or to any corporation organized under Florida law or licensed to do business within Florida, the use of a right-of-way for the utility in accordance with the authority's adopted rules or regulations. However, a utility may not be installed, located, or relocated unless authorized by a written permit issued by the authority. For roads or rail corridors under DOT's jurisdiction, a utility relocation schedule and relocation agreement may be executed in lieu of a written permit.[4]

The Advance Wireless Infrastructure Deployment Act

The Advanced Wireless Infrastructure Deployment Act (act)[5] authorizes the deployment of certain wireless facilities in the public right-of-way. The act permits a local government[6] to require a registration process and permit fees and provides requirements for processing and issuing such permits.[7]

Under the act, an authority must, within 14 days after receiving an application, determine and notify the applicant, by electronic mail, as to whether the application is complete. If it determines the application is incomplete, the authority must specifically identify the missing information. An application is deemed complete if the authority fails to notify the applicant within 14 days.[8]

A complete application is deemed approved if an authority fails to approve or deny the application within 60 days after receipt of the application. If an authority does not use a 30-day negotiation period,[9] the parties may mutually agree to extend the 60-day application review period. The authority must grant or deny the application at the end of the extended review period.[10]

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[1] Section 334.03(13), F.S., defines the term "local governmental entity" as a unit of government with less than statewide jurisdiction, or any officially designated public agency or authority of such a unit of government, that has the responsibility for planning, construction, operation, or maintenance of, or jurisdiction over, a transportation facility; the term includes, but is not limited to, a county, an incorporated municipality, a metropolitan planning organization, an expressway or transportation authority, a road and bridge district, a special road and bridge district, and a regional governmental unit.

[2] Section 337.401(1)(a), F.S., defines the term "utility" as electric transmission, voice, telegraph, data, or other communications services lines or wireless facilities; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures.

[3] Section 337.401(1)(a), F.S.

[4] Section 337.401(2), F.S.

[5] Section 337.401(7), F.S.

[6] For purposes of this provision, s. 337.401(7)(b)5., F.S., provides that the term "authority" means a county or municipality having jurisdiction and control of the rights-of-way of any public road. The term does not include DOT. Rights-of-way under the jurisdiction and control of DOT are excluded from subsection (7).

[7] Section 337.401(7)(d), F.S.

[8] Section 337.401(7)(d)7., F.S.

[9] The 30-day negotiation period is provided for in s. 337.401(7)(d)4., F.S.

[10] Section 337.401(7)(d)8., F.S. This subparagraph also requires applications to be processed on a nondiscriminatory basis.

The authority must notify the applicant of approval or denial by electronic mail.[11] An authority must approve a complete application unless it does not meet the authority's applicable codes.[12] If the application is denied, the authority must specify in writing the basis for denial, including the specific code provisions on which the denial was based, and send the documentation to the applicant by electronic mail on the day the authority denies the application.[13] The applicant may cure the identified deficiencies and resubmit the application within 30 days after notice of the denial is sent to the applicant. The authority must approve or deny the revised application within 30 days after receipt or the application is deemed approved.[14]

The review of a revised application is limited to the deficiencies cited in the denial. If an authority provides for administrative review of the denial of an application, the review must be complete and a written decision issued within 45 days after a written request for review is made. A denial must identify the specific code provisions on which the denial is based. If the administrative review is not complete within 45 days, the authority waives any claim regarding failure to exhaust administrative remedies in any judicial review of the denial of an application.[15]

Effect of the Bill

The bill provides that a permit application relating to the use of the right-of-way for utilities required by a county or municipality under s. 337.401, F.S., must be acted on within the timeframes provided in the act. Specifically, the bill requires the authority to determine whether an application is complete within 14 days after receiving the application and requires an application to be approved or denied within 60 days of receipt of the application. The bill also requires requests for reviews of denials of applications to be completed within 45 days of the request being made.

Electric Vehicle Charging Station Master Plan

Present Situation

Electric vehicles (EVs) offer a cleaner fuel source and interest in EV use has been driven in part by their potential for reduction in greenhouse gas emissions. However, their relative high cost compared to conventional fuel-powered vehicles and their relative limited range have restricted the commercial viability of EVs.[16] While advancements in EV-related technology are continuing, EV manufacturing is rising, and EV prices have been dropping, representatives in both the government and the private sectors acknowledge that successful adoption of EV use is heavily dependent on the accessibility of charging stations.[17]

Electric Vehicle Charging Equipment

EV charging equipment is generally classified based on the rate at which the equipment charges the EV batteries. Charging times vary depending on the depletion level of the battery, how much energy the battery holds, the type of battery, and the type of supply equipment. According to the Alternative Fuels Data Center (AFDC), charging times can range from less than 20 minutes to 20 hours or more. Potential driving distance ranges from:

- Two to five miles of range per one hour of charging for AC Level 1 supply equipment;
- Ten to 20 miles per one hour of charging for AC Level 2 supply equipment; and

[11] Section 337.401(7)(d)9., F.S.

[12] Section 337.401(7)(b)2., F.S., defines the term "applicable codes" as uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, and includes the National Electric Safety Code and the 2017 edition of the Florida Department of Transportation Utility Accommodation Manual.

[13] Section 337.401(7)(d)9., F.S.

[14] *Id.*

[15] Section 337.401(7)(d)9., F.S.

[16] *See* the Federal Highway Administration's *FHWA NHTS Brief, Electric Vehicle Feasibility*, July 2016, pp. 1-2, available at https://nhts.ornl.gov/briefs/EVFeasibility20160701.pdf (last visited Jan. 6, 2020).

[17] *Id.* at p. 2. *See also* CBS Chicago, *Electric Vehicle Sales on the Rise, But More Charging Stations Needed To Keep the Trend Going*, September 19, 2019, available at https://chicago.cbslocal.com/2019/09/19/electric-vehicles-super-fast-charging-stations/ (last visited Jan. 6, 2020).

- Sixty to 80 miles per 20 minutes of charging for DC fast charging supply equipment.[18]

According to AFDC, EV charging occurs at home or at fleet facilities for most drivers.[19]

Level 1 (home) charging cords come as standard equipment on new EVs, only require a standard 120-volt outlet, and can add about 50 miles of range in an overnight charge. Level 1 charging is sufficient for low- and medium-range EV drivers with relatively low daily driving.[20]

Level 2 (home and public) charging commonly requires a 240-volt circuit, with the charging rate dependent on the rate at which a vehicle can accept a charge and the maximum current available. An eight-hour charge adds about 180 miles of range with a typical 30-amp circuit. This method may require the purchase of a home charging unit and modifications to a home electric system, but charges from two to eight times faster than a Level 1, depending on the amperage and the vehicle. These chargers are most commonly found at public charging places like offices, grocery stores, and parking garages.[21]

DC Fast Chargers (public charging) can typically add 50 to 90 miles in 30 minutes, depending on the charging station's power capacity and the make of the EV. These chargers are best used for longer travel distances; vehicles used the major portion of a day, such as taxis; and for vehicles whose drivers have limited access to home charging.[22]

Electric Vehicle Charging in Florida
Under Florida law, the provision of EV charging to the public by a nonutility is not considered the retail sale of electricity and is not subject to regulation as a public utility.[23] Additionally, the Department of Agriculture and Consumer Services (DACS) must adopt rules to provide definitions, methods of sale, labeling requirements, and price-posting requirements for electric vehicle charging stations to allow for consistency for consumers and the industry.[24]

DACS' website contains addresses by city and county for EV charging station locations in Florida. The website identifies 930 charging station locations by specific address.[25]

Clean Cities Coalitions
Established in 1993 as part of the United States Department of Energy's Vehicle Technologies Office, the Clean Cities Coalitions have funded hundreds of transportation projects nationwide in furtherance of their mission to foster the nation's economic, environmental, and energy security by working locally to advance affordable, domestic transportation fuels, energy efficient mobility systems, and other fuel-saving technologies and practices.[26] There are four Florida Clean Cities Coalitions: North Florida, Central Florida, Tampa, and Southeast Florida.[27]

Office of Energy, Department of Agriculture and Consumer Services
The Office of Energy is established within DACS and is responsible for administering and enforcing parts II and III of ch. 377, F.S., which relate to energy resources planning and development, renewable energy, and green government programs.

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[18] *See* the AFDC's website available at https://www.afdc.energy.gov/vehicles/electric.html. (Last visited Jan. 6, 2020).
[19] AFDC, *Developing Infrastructure to Charge Electric Plug-In Vehicles*, available at https://afdc.energy.gov/fuels/electricity_infrastructure.html (last visited Jan. 6, 2020).
[20] UCSUSA, *Electric Vehicle Charging, Types, Time, Cost and Savings*, (March 2018) available at https://www.ucsusa.org/resources/electric-vehicle-charging-types-time-cost-and-savings (last visited Jan. 6, 2020).
[21] *Id.*
[22] *Id.*
[23] Section 366.94(1), F.S.
[24] Section 366.94(2), F.S. DACS has incorporated into its rules, by reference, various sections of the National Institute of Standards and Technology (NIST), Handbook 130, Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality, 2017 Edition, regarding the sale of various fuels. *See* Rule 5J-22.003, F.A.C.
[25] *See* DACS website, select *Electricity*, available at https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Transportation (last visited Jan. 6, 2020); s. 377.815, F.S., authorizes DACS to post information on its website relating to alternative fueling stations, including EV charging stations, available for public use.
[26] Clean Cities Coalition, *available at* https://cleancities.energy.gov/, (last visited Jan. 10, 2020).
[27] DACS, Agency Analysis of 2020 Senate Bill 452, p.2. (Oct. 9, 2019).

The Office of Energy is currently working on an EV Roadmap with the goals of:

- Identifying EV charging infrastructure impacts on the electric grid;
- Identifying solutions for any negative impacts;
- Locating areas that lack EV charging infrastructure;
- Identifying best practices for siting EV charging stations; and
- Identifying technical or regulatory barriers to expansion of EV charging infrastructure.[28]

Effect of the Bill

The bill requires DOT, in coordination with the Office of Energy and the Florida Clean Cities Coalitions, or other appropriate public or private entities, to develop and adopt a master plan for EV charging stations on the state highway system (SHS) by July 1, 2021, and to update it annually by July 1.

The master plan's goals and objectives include, but are not limited to:

- Identifying optimal locations on the SHS for the development of EV charging stations as a means of facilitating EV short-range and long-range travel and adequately serving evacuation routes;
- Identifying locations that would serve existing EVs or encourage the expansion of EV use;
- Evaluating and comparing the types of EV charging stations available at present and in the future, including the technology and infrastructure incorporated in such stations, for the purpose of identifying any advantages to developing a particular type of station;
- Evaluating the economic potential for EV charging stations and considering strategies to develop that potential, including methods for building partnerships with local governments, other state and federal entities, electric utilities, the business community, and the public in support of EV charging stations; and
- Identifying specific projects that will accomplish the above goals and objectives.

Conservation Easements

Present Situation

Current law defines a conservation easement as a right or interest in real property, which is appropriate for:

- Retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition;
- Retaining such areas as suitable habitat for fish, plants, or wildlife;
- Retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or
- Maintaining existing land uses.[29]

A conservation easement must prohibit or limit any or all of the following:

- Construction or placing of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- Dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;
- Removal or destruction of trees, shrubs, or other vegetation;
- Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance in such manner as to affect the surface;
- Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;
- Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;
- Acts or uses detrimental to such retention of land or water areas; or

[28] *Id.*

[29] Section 704.06(1), F.S.

- Acts or uses detrimental to the preservation of the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance.[30]

Notwithstanding the restrictions imposed by conservation easements, the owner of the land, or the owner of the conservation easement over the land, may voluntarily negotiate the sale or utilization of such lands or easement for the construction and operation of linear facilities (e.g., public transportation corridors and electric, telecommunication, or pipeline transmission lines and distribution facilities).[31]

Conservation easements are acquired in the same manner as other property interests, with the exception of condemnation or eminent domain proceedings.[32] Conservation easements may be acquired by any governmental body or agency or by a charitable corporation or trust whose purposes include protecting natural, scenic, or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources; maintaining or enhancing air or water quality; or preserving sites or properties of historical, architectural, archaeological, or cultural significance.[33]

Conservation easements are perpetual, undivided interests in property that are created or stated in a restriction, easement, covenant, or condition in any deed, will, or other instrument executed by or on behalf of the property owner, or in any order of taking.[34] They must be recorded and indexed in the same manner as any other instrument affecting the title to real property.[35]

Land Used for Agriculture
DACS, on behalf of the Board of Trustees of the Internal Improvement Trust Fund, may allocate money to enter into agreements in order to promote and improve wildlife habitat; protect and enhance water bodies, aquifer recharge areas, wetlands, and watersheds; perpetuate open space on lands with significant natural areas; and protect agricultural[36] lands threatened by conversion to other uses.[37] To achieve these purposes, DACS may accept applications for project proposals that purchase conservation easements.[38]

Effect of the Bill
The bill specifies that, for any land that has traditionally been used for agriculture and is subject to a conservation easement, the conservation easement laws do not limit the owner of the land from voluntarily negotiating the use of the land for any public or private linear facility, right of access, and related appurtenances.

The bill specifies that the only remedy to the owner of the conservation easement for the construction and operation of any public or private linear facilities and related access and appurtenances is reasonable compensation based on diminution of value of its interest in the conservation easement.

The bill specifies that it does not preclude the applicability of any environmental permitting requirements applicable to a linear facility under state law or agency rules.

B. SECTION DIRECTORY:

Section 1 amends s. 337.401, F.S., providing that the use of right-of-way for utilities is subject to regulation.

[30] *Id.*
[31] Section 704.06(11), F.S.
[32] Section 704.06(2), F.S.
[33] Section 704.06(3), F.S.
[34] Section 704.06(2), F.S.
[35] Section 704.06(5), F.S.
[36] Section 570.02(1), F.S., defines the term "agriculture" as the production of plants and animals useful to humans, including aquaculture, horticulture, floriculture, viticulture, forestry, dairy, livestock, poultry, bees, and any and all forms of farm products and farm production.
[37] Section 570.71(1), F.S.
[38] Section 570.71(2)(a), F.S.

Section 2 creates s. 339.287, F.S., relating to EV charging station master plan requirements.

Section 3 amends s. 704.06, F.S., relating to conservation easements.

Section 4 provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   The bill has an indeterminate negative fiscal impact to DOT associated with the development of the master plan. DACS may incur a negative fiscal impact associated with assisting DOT in preparing the master plan. The departments should be able to absorb the impacts within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

   Counties and municipalities may incur expenditures associated with complying with the specified timeframes to approve permits for utilities within their rights-of-way. However, the expenditures may be insignificant.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Requiring specified timeframes for approving permits for utilities on rights-of-way may reduce costs for companies wishing to place utilities in such rights-of-way. The bill allows the owner of land that has traditionally been used for agriculture and is subject to a conservation easement to voluntarily negotiate the use of the land for any public or private linear facility, right of access, and related appurtenances. This provision may result in a positive fiscal impact to the private sector for those individuals who negotiate for the additional use of such easements.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because the bill requires counties and municipalities to act on applications for permits relating to the use of rights-of-way for utilities within a specified timeframe. However, an exemption may apply if the provisions are found to have an insignificant fiscal impact. In addition, an exception may apply if the bill is approved by a two-thirds vote of the membership of each house because it includes a finding that the bill fulfills an important state interest.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to essential state infrastructure; amending s. 337.401, F.S.; specifying permit application timeframes required for the installation, location, or relocation of utilities within rights-of-way; creating s. 339.287, F.S.; defining the term "master plan for electric vehicle charging stations" or "master plan"; requiring the Department of Transportation, in coordination with the Office of Energy within the Department of Agriculture and Consumer Services and the Florida Clean Cities Coalitions, or other appropriate entities, to develop and adopt by a specified date a master plan for electric vehicle charging stations on the state highway system; specifying goals and objectives of the master plan; requiring the master plan to be updated annually by a specified date; amending s. 704.06, F.S.; providing construction relating to the rights of an owner of land that has been traditionally used for agriculture and is subject to a conservation easement; providing construction relating to applicability of certain permit requirements; providing a declaration of important state interest; providing an effective date.

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

Section 1. Subsection (2) of section 337.401, Florida Statutes, is amended to read:

337.401 Use of right-of-way for utilities subject to regulation; permit; fees.—

(2) The authority may grant to any person who is a resident of this state, or to any corporation that ~~which~~ is organized under the laws of this state or licensed to do business within this state, the use of a right-of-way for the utility in accordance with such rules or regulations as the authority may adopt. A ~~No~~ utility may not ~~shall~~ be installed, located, or relocated unless authorized by a written permit issued by the authority. However, for public roads or publicly owned rail corridors under the jurisdiction of the department, a utility relocation schedule and relocation agreement may be executed in lieu of a written permit. The permit must ~~shall~~ require the permitholder to be responsible for any damage resulting from the issuance of such permit. The authority may initiate injunctive proceedings as provided in s. 120.69 to enforce provisions of this subsection or any rule or order issued or entered into pursuant thereto. A permit application required under this subsection by a county or municipality having jurisdiction and control of the right-of-way of any public road must be processed and acted upon in accordance with

the timeframes provided in subparagraphs (7)(d)7., 8., and 9.

Section 2. Section 339.287, Florida Statutes, is created to read:

339.287 Electric vehicle charging stations; master plan requirements.—

(1) As used in this section, the term "master plan for electric vehicle charging stations" or "master plan" means a comprehensive plan of the department which describes current and future plans for the development of electric vehicle charging stations on the state highway system.

(2) The department, in coordination with the Office of Energy within the Department of Agriculture and Consumer Services and the Florida Clean Cities Coalitions designated by the United States Department of Energy, or other appropriate public or private entities, shall develop and adopt a master plan for electric vehicle charging stations on the state highway system by July 1, 2021.

(3) The goals and objectives of the master plan include, but are not limited to, all of the following:

(a) Identifying optimal locations on the state highway system for the development of electric vehicle charging stations as a means of facilitating electric vehicle short-range and long-range travel and adequately serving evacuation routes in this state.

(b) Identifying locations that would serve existing

electric vehicles or encourage the expansion of electric vehicle use in this state.

(c) Evaluating and comparing the types of electric vehicle charging stations available at present and in the future, including the technology and infrastructure incorporated in such stations, for the purpose of identifying any advantages to developing a particular type of station.

(d) Evaluating the economic potential for electric vehicle charging stations in this state and considering strategies to develop that potential, including, but not limited to, methods of building partnerships with local governments, other state and federal entities, electric utilities, the business community, and the public in support of electric vehicle charging stations.

(e) Identifying specific projects that will accomplish the goals and objectives of this section.

(4) After its adoption, the master plan shall be updated annually by July 1.

Section 3. Subsection (11) of section 704.06, Florida Statutes, is amended to read:

704.06 Conservation easements; creation; acquisition; enforcement.—

(11)(a) ~~Nothing in~~ This section or other provisions of law do not ~~shall be construed to~~ prohibit or limit the owner of land, or the owner of a conservation easement over land, to voluntarily negotiate the sale or use ~~utilization~~ of such lands

or easement for the construction and operation of linear facilities, including electric transmission and distribution facilities, telecommunications transmission and distribution facilities, pipeline transmission and distribution facilities, public transportation corridors, and related appurtenances, nor does ~~shall~~ this section prohibit the use of eminent domain for said purposes as established by law. In any legal proceeding to condemn land for the purpose of construction and operation of a linear facility as described above, the court shall consider the public benefit provided by the conservation easement and linear facilities in determining which lands may be taken and the compensation paid.

(b) For any land that has traditionally been used for agriculture, as that term is defined in s. 570.02, and is subject to a conservation easement entered into at any time pursuant to s. 570.71, this section or s. 570.71 does not limit the owner of the land to voluntarily negotiating the use of the land for any public or private linear facility, right of access, and related appurtenances, and reasonable compensation based on diminution in value of its interest in the conservation easement shall be the only remedy to the owner of the conservation easement for the construction and operation of any public or private linear facilities and related access and appurtenances.

(c) This section does not preclude the applicability of any environmental permitting requirements applicable to a linear

facility pursuant to chapters 369-380 or chapter 403 or any agency rules adopted pursuant to those chapters.

Section 4. The Legislature finds and declares that this act fulfills an important state interest.

Section 5. This act shall take effect July 1, 2020.