

# HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

<b>BILL #:</b>	CS/HB 7087	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SUBJECT/SHORT TITLE</b>	Taxation	93 Y's	12 N's
<b>SPONSOR(S):</b>	Appropriations Committee, Ways and Means Committee and Renner	<b>GOVERNOR'S ACTION:</b>	Approved
<b>COMPANION BILLS:</b>	HB 531, CS/HB 607, HB 803, HB 939, HB 1375, SB 60, SB 312, CS/CS/SB 620, SB 666, CS/SB 730, SB 1246, SB 1592, SB 1600 and CS/SB 1608		

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## SUMMARY ANALYSIS

The bill provides for a wide range of tax reductions designed to directly impact both families and businesses.

For sales tax purposes, the bill provides a tax rate reduction for tax on commercial property rentals; includes new, extended, or expanded sales tax exemptions for certain generators for nursing homes and assisted living facilities, for certain purchases of agriculture-related fencing materials and building materials for repair of damage from Hurricane Irma, and for certain equipment and electricity used in the production of aquaculture products. The bill provides for a three-day "back-to-school" holiday for clothing and school supplies; and a seven-day "disaster preparedness" holiday for specified disaster preparedness items.

For property tax purposes, the bill provides tax relief for certain property damaged by hurricanes or tropical storms; for certain citrus processing equipment idled due to citrus greening or Hurricane Irma; and for certain surviving spouses of disabled ex-servicemembers. The bill also updates the list of military operations for which deployed servicemembers may receive property tax relief; clarifies the tax exempt status of entities created under the Florida Interlocal Cooperation Act of 1969, and clarifies the tax treatment of multiple parcel buildings.

For corporate income tax purposes, the bill provides an additional \$8.5 million for tax credits for fiscal year 2018-19 for voluntary brownfields clean-up and an additional \$5 million for community contribution tax credits spread over the next two fiscal years (also may be taken against sales tax).

Further changes include: a 9% reduction in certain traffic fines if the driver attends a driver improvement course; exemptions from documentary stamp taxes for certain transfers of property between spouses and for certain loans made in connection with local housing finance authorities and certain disaster recovery related loans; reduction in the tax rate on certain aviation fuel uses; exemption from fuel taxes for certain purchases of fuel for export and agricultural related uses; a delay in the beginning date for a natural gas fuel tax; a provision that "marketplace contractors" are not considered employees under state and local law; a provision that "security funds" are a preempted imposition or levy in ch. 202, F.S.; an authorization of exemptions from local business taxes for certain veterans, active duty members, certain spouses and certain low-income persons, a clarification of the uses of local infrastructure sales surtax; a change to certain restricted agricultural license plate registrations; and a requirement for a performance audit of a school board or county program intended to be funded by a local option sales surtax be completed prior to a referendum to enact such surtax.

The total impact of the bill in fiscal year 2018-19 is -\$121.5 million (-\$73.8 million recurring). See FISCAL COMMENTS section for details.

The bill was approved by the Governor on March 23, 2018, ch. 2018-118, L.O.F., and will become effective July 1, 2018, except as otherwise provided.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7087z1.WMC

DATE: March 29, 2018

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Sales Tax**

Florida's sales and use tax is a six percent levy on retail sales of a wide array of tangible personal property, admissions, transient lodgings, and commercial real estate rentals,<sup>1</sup> unless expressly exempted. In addition, Florida authorizes several local option sales taxes that are levied at the county level on transactions that are subject to the state sales tax. Generally, the sales tax is added to the price of a taxable good and collected from the purchaser at the time of sale. Sales tax represents the majority of Florida's general revenue stream (77.1 percent for FY 2017-18)<sup>2</sup> and is administered by the Department of Revenue (DOR) under ch. 212, F.S.

#### **Sales Tax on Rental of Commercial Real Estate (Business Rent Tax)**

##### Current Situation

Since 1969, Florida has imposed a sales tax on the total rent charged under a commercial lease of real property.<sup>3</sup> Sales tax is due at the rate of 5.8 percent on the total rent paid for the right to use or occupy commercial real property and county sales surtax can also be levied on total rent.<sup>4</sup> If the tenant makes payments such as mortgage, ad valorem taxes, or insurance on behalf of the property owner, such payments are also classified as rent and are subject to the tax.

Commercial real property includes land, buildings, office or retail space, convention or meeting rooms, airport tie-downs, and parking and docking spaces. It may also involve the granting of a license to use real property for placement of vending, amusement, or newspaper machines. However, there are numerous commercial rentals that are not subject to sales tax, including:

- Rentals of real property assessed as agricultural;
- Rentals to nonprofit organizations that hold a Florida consumer's certificate of exemption;
- Rentals to federal, state, county, or city government agencies;
- Properties used exclusively as dwelling units; and
- Public streets or roads used for transportation purposes.

Florida is the only state to charge sales tax on commercial rentals of real property. The Office of Economic and Demographic Research reviewed and issued a report on the business rent tax in 2014.<sup>5</sup>

##### Effect of Proposed Changes

The bill reduces the state sales tax rate on rental of commercial real estate (business rent tax) from 5.8 percent to 5.7 percent, beginning January 1, 2019.

#### **Generators for Nursing Homes and Assisted Living Facilities**

##### Current Situation

In response to electrical outages caused by Hurricane Irma, the Agency for Health Care Administration (AHCA) and the Department of Elder Affairs (DOEA) published Emergency Rules in September 2017 to

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<sup>1</sup> The Legislature reduced the sales tax rate on commercial rentals to 5.8% effective January 1, 2018. See s. 21, ch. 2017-36, L.O.F.

<sup>2</sup> FLORIDA REVENUE ESTIMATING CONFERENCE (REC), 2018 FLORIDA TAX HANDBOOK (2018).

<sup>3</sup> ch. 1969-222, Laws of Fla.

<sup>4</sup> s. 212.031, F.S., and Rule 12A-1.070, F.A.C.

<sup>5</sup> Office of Economic and Demographic Research, [Economic Impact: Sales Tax on the Rental of Real Property](#) (Nov. 15, 2014).

require nursing homes and assisted living facilities to comply with an emergency power plan.<sup>6</sup> The emergency rules require nursing homes and assisted living facilities to:

- Provide a detailed plan which includes the acquisition of a sufficient generator or generators that ensure ambient temperatures at facilities will be maintained at 80 degrees or less for a minimum of 96 hours in the event of a loss of power.
- Acquire and maintain sufficient fuel to ensure that in an emergency the generators can function as required.
- Acquire services necessary to install, maintain, and test the equipment to ensure the safe and sufficient operation of the generator system.

Facilities must have implemented their plan within 60 days of September 16, 2017. Additional Emergency Rules were subsequently published to provide for exceptions for the implementation timeline.<sup>7</sup> Under the Additional Emergency Rules, a nursing home or assisted living facility may qualify for an exception to the 60 day timeline if the facility requests a variance from AHCA, which demonstrates to AHCA that:

- The facility has made all feasible efforts to implement the detailed plan within the 60 day period,
- Circumstances beyond the control of the facility have made full and timely implementation impossible, and
- That satisfactory arrangements have been made to ensure the residents and patients will not be exposed to ambient temperature above 80 degrees Fahrenheit in the event the facility is without electric power.

AHCA may grant the variance of the 60 day period under the 'principles of fairness' standard in s. 120.542, F.S., for a period no longer than 180 days, subject to such conditions AHCA determines are appropriate under the circumstances.

The emergency rules will remain in effect until the permanent rulemaking process is complete; AHCA and DOEA initiated rulemaking to create permanent rules on November 14, 2017.<sup>8</sup> The proposed permanent rules are generally similar to the emergency rules, except the proposed permanent rules:

- Instead of requiring the acquisition of a generator, require facilities to have ready access to an alternative power source, such as a generator, in the event of a loss of power.
- Clarify that if there is a conflicting local ordinance restricting the maximum amount of fuel storage allowed, then the facility shall maintain the maximum amount allowable by the local ordinance or code.
- Clarify the area within the facility where the required temperatures are to be maintained.
- Clarifies that piped natural gas is an allowable fuel source under this rule.
- Requires that facilities notify families and legal representatives of patients once they submit their emergency plans to local emergency management agencies.<sup>9</sup>

According to AHCA, as of December 1, 2017:<sup>10</sup>

- 104 nursing homes have reported that they are now in compliance with the emergency generator rule;

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<sup>6</sup> Florida Emergency Rules 58AER17-1 and 59AER17-1.

<sup>7</sup> Florida Emergency Rules 58AER17-2 and 59AER17-2.

<sup>8</sup> See Florida Administrative Register, Volume 43, Number 220, November 14, 2017, pp. 5169-5174, available at: <https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2017/43220/43220doc.pdf> See also AHCA, *AHCA and DOEA Announce New Permanent Generator Rules Have Been Filed*, November 13, 2017, available at: [https://ahca.myflorida.com/Executive/Communications/Press\\_Releases/pdf/AHCAandDOEAAnnouncetheNewPermanentGeneratorRulesHaveBeenFiled.pdf](https://ahca.myflorida.com/Executive/Communications/Press_Releases/pdf/AHCAandDOEAAnnouncetheNewPermanentGeneratorRulesHaveBeenFiled.pdf)

<sup>9</sup> Proposed Rules 59A-4.1265 and 58A-5.036, F.A.C.

<sup>10</sup> AHCA, *104 Nursing Homes Have Reported Compliance with the Nursing Home Emergency Generator Rule*, December 1, 2017, available at: [http://ahca.myflorida.com/Executive/Communications/Press\\_Releases/pdf/AHCA\\_NHandALFrelease12.1.2017.pdf](http://ahca.myflorida.com/Executive/Communications/Press_Releases/pdf/AHCA_NHandALFrelease12.1.2017.pdf)

- 2,365 nursing homes and assisted living facilities have submitted plans or reported being in compliance, and
- 563 assisted living facilities have still not responded to the requirements in the rule, and will continue to be subject to fines following the November 15 deadline, unless granted a variance.

If a facility has not responded to the Governor's Emergency Rule in any form, AHCA's next step is to issue a Notice of Apparent Violation, informing the facility of the fines and possible license revocation. The notice will demand a response in 10 days. During this time, each facility not in compliance will continue to be fined \$1,000 per day.<sup>11</sup>

In February of 2018, AHCA filed Rule 59A-4.1265, F.A.C. (nursing homes) and Rule 58A-4.036, F.A.C. (assisted living facilities) with the Department of State for adoption. However, under the Administrative Procedure Act, any rule with an adverse economic impact exceeding \$1 million over the first five years the rule is in effect must be ratified by the Legislature to be effective.<sup>12</sup> AHCA developed statements of estimate regulatory costs for the proposed permanent rules,<sup>13</sup> and because the estimated adverse economic impacts exceed the statutory threshold, the ratification of the rules by the Legislature was required as part of the rulemaking process. The Legislature passed two separate bills in March of 2018 to ratify the effectiveness of the rules.<sup>14</sup>

There is currently no sales tax exemption for the purchase of generators for nursing homes or assisted living facilities.<sup>15</sup>

### Effect of Proposed Changes

The bill provides an exemption from the sales and use tax for the purchase of generators used to generate emergency electric energy at nursing homes or assisted living facilities. The exemption is available at the time of purchase or through a refund of previously paid taxes and applies to purchases made between July 1, 2017 and December 31, 2018. The exemption is limited to a maximum of \$15,000 in tax for the purchase of generators for any one facility.

A purchaser must provide an affidavit to a seller certifying that the equipment will only be used for the above purposes. A similar requirement is made when applying to DOR for a refund.

## **Fencing Materials used in Agriculture**

### Current Situation

Current law exempts from the sales and use tax certain items used for agricultural purposes and nets used by commercial fisheries.<sup>16</sup> The exemption is not allowed unless the purchaser or lessee signs a certificate stating that the item to be exempted is for the exclusive use designated in s. 212.08(5)(a), F.S.

Hurricane Irma's path coincided with some of Florida's most productive agricultural landscapes, and consequently it caused major losses to all segments of agriculture production, including crop losses and damaged infrastructure (such as destroyed fences, shade structures, and ground cover for row

<sup>11</sup> AHCA, *104 Nursing Homes Have Reported Compliance with the Nursing Home Emergency Generator Rule*, December 1, 2017, available at: [http://ahca.myflorida.com/Executive/Communications/Press\\_Releases/pdf/AHCA\\_NHandALFreelase12.1.2017.pdf](http://ahca.myflorida.com/Executive/Communications/Press_Releases/pdf/AHCA_NHandALFreelase12.1.2017.pdf)

<sup>12</sup> s. 120.541, F.S.

<sup>13</sup> AHCA, Revised Statement of Estimated Regulatory Costs (SERC) for Proposed Rule 59A-4.1265, F.A.C., January 11, 2018; Department of Elder Affairs, Revised Statement of Estimated Regulatory Costs for Proposed Rule 58A-5.036, F.A.C. The SERCs were revised in response to Notices of Change the agency issued after receiving a rule challenges.

<sup>14</sup> HB 7099 (2018) for nursing homes and SB 7028 (2018) for assisted living facilities.

<sup>15</sup> However, generators used farms are exempt. See s. 212.08(5)(a), F.S., and Rule 12A-1.087(6), F.A.C.

<sup>16</sup> s. 212.08(5)(a), F.S.

crops). Preliminary estimates for total losses (crops and infrastructure) reported by the Department of Agriculture and Consumer Services (DACS) to Florida's agricultural sectors are over \$2 billion.<sup>17</sup>

### Effect of Proposed Changes

The bill provides an exemption from the sales and use tax for the purchase of fencing materials used to repair agricultural fencing that was damaged as a direct result of Hurricane Irma. The exemption is available through a refund of previously paid taxes and applies to purchases made between September 10, 2017, and May 31, 2018.

To receive a refund, the owner of the fencing materials must apply to DOR by December 31, 2018 and include the following information:

- The name and address of the person claiming the refund.
- An address and assessment roll parcel number of the agricultural land where the fencing materials will be used.
- The sales invoice or other proof of purchase of the fencing materials, showing the amount of sales tax paid, the date of purchase, and the name and address of the sales tax dealer from whom the materials were purchased.
- An affidavit executed by the owner of the fencing materials including a statement that the fencing materials were or will be used to repair fencing damaged as a direct result of the impact of Hurricane Irma.

### **Building Materials for Nonresidential Farm Buildings**

#### Current Situation

Current law defines a "nonresidential farm building" as any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(10)(c) or that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, F.S., and is not intended to be used as a residential dwelling.<sup>18</sup> The term includes barns, greenhouses, shade houses, farm offices, storage buildings, and poultry houses.

Generally, sales and use tax are currently levied on the purchase of tangible personal property that is used in the construction or repair of buildings and other projects, unless specifically exempted under current law.<sup>19</sup> There is currently no general sales tax exemption for the purchase of tangible personal property used in the construction or repair of nonresidential farm buildings.

Similar to the discussion above regarding fencing materials used in agriculture, Hurricane Irma caused major losses to Florida's agricultural landscapes, and damage to nonresidential farm building is a part of the agricultural infrastructure losses.<sup>20</sup>

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<sup>17</sup> Florida Department of Agriculture and Consumer Services (DACS), *Hurricane Irma's Damage to Florida Agriculture*, October 7, 2017, available at:

<https://www.freshfromflorida.com/content/download/77515/2223098/FDACS+Irma+Agriculture+Assessment.pdf>

<sup>18</sup> s. 604.50, F.S.

<sup>19</sup> For example, s. 212.08(7)(r), F.S., exempts the sale of building materials that are used in new construction located in a rural area of opportunity.

<sup>20</sup> DACS, *Hurricane Irma's Damage to Florida Agriculture*, October 7, 2017, available at:

<https://www.freshfromflorida.com/content/download/77515/2223098/FDACS+Irma+Agriculture+Assessment.pdf>

## Effect of Proposed Changes

The bill provides an exemption from the sales and use tax for the purchase of certain building materials used to repair nonresidential farm buildings that were damaged as a direct result of Hurricane Irma. The exemption is available through a refund of previously paid taxes and applies to purchases made between September 10, 2017, and May 31, 2018. The exempt building materials are broadly defined as tangible personal property that becomes a component part of a nonresidential farm building.

To receive a refund, the owner of the building materials must apply to DOR by December 31, 2018 and include the following information:

- The name and address of the person claiming the refund.
- An address and assessment roll parcel number of the real property where the building materials will be used.
- The sales invoice or other proof of purchase of the building materials, showing the amount of sales tax paid, the date of purchase, and the name and address of the sales tax dealer from whom the materials were purchased.
- An affidavit executed by the owner of the building materials including a statement that the building materials were or will be used to repair the nonresidential farm building damaged as a direct result of the impact of Hurricane Irma.

## **Aquaculture Sales Tax Exemptions**

### Current Situation

Current law exempts specified items from sales and use tax on account of the use of such item.<sup>21</sup> Of the exemptions on account of use, there are several exemptions related to agricultural uses. For example, gas used in farm equipment and electricity used in the production of agricultural products are exempt under certain conditions.<sup>22</sup>

Current law also exempts from sales and use tax aquaculture health products that are used by aquaculture producers, as defined in s. 597.0015, to prevent or treat fungi, bacteria, and parasitic diseases.<sup>23</sup> Chapter 597, the Florida Aquaculture Policy Act, defines “aquaculture” as the cultivation of aquatic organisms,<sup>24</sup> and defines “aquaculture producers” as those persons engaging in the production of aquaculture products and certified under s. 597.004.<sup>25</sup> Chapter 597 defines “aquaculture products” as aquatic organisms and any product derived from aquatic organisms that are owned and propagated, grown, or produced under controlled conditions.<sup>26</sup>

Chapter 212, F.S., includes aquaculture in the definition of “agricultural production” for purposes of sales and use tax.<sup>27</sup> In addition, the term “livestock” is defined to include all aquaculture products, as defined in s. 597.0015 and identified by the Department of Agriculture and Consumer Services pursuant to s. 597.003, which are raised for commercial purposes.<sup>28</sup>

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<sup>21</sup> s. 212.08(5), F.S.

<sup>22</sup> ss. 212.08(5)(e), F.S.

<sup>23</sup> s. 212.08(5)(a), F.S.

<sup>24</sup> s. 597.0015(1), F.S.

<sup>25</sup> s. 597.0015(2), F.S.

<sup>26</sup> s. 597.0015(3), F.S.

<sup>27</sup> s. 212.02(32), F.S.

<sup>28</sup> s. 212.02(29), F.S.

## Effect of Proposed Changes

The bill amends various sales and use tax exemptions in current law to clarify those exemptions apply to aquaculture. Specifically, the bill:

- Amends s. 212.08(5)(e)1., F.S., to provide a sales and use tax exemption for gas used in any tractor, vehicle, or other farm equipment that is used directly or indirectly for the production, packing, or processing of aquaculture products.
- Amends s. 212.08(5)(e)2., F.S., to provide a sales and use tax exemption for electricity used directly or indirectly for the raising of aquaculture products as defined in s. 597.0015, or used directly or indirectly in a packinghouse (which includes buildings used to prepare fish for market or shipment). The bill defines fish for purposes of this exemption as any of numerous cold-blooded aquatic vertebrates of the superclass Pisces, characteristically having fins, gills, and a streamlined body, which is raised through aquaculture.
- Amends 212.08(5), F.S., to create a sales and use tax exemption for certain machinery and equipment purchased for use in aquacultural activities at fixed locations.

## **Exemption for Electricity Used by Certain Recyclers**

### Current Situation

Section 212.08(7)(ff), F.S., exempts electricity or steam used to operate machinery and equipment at a fixed location in this state. Such machinery and equipment must be used to manufacture, process, compound, produce, or prepare for shipment items of tangible personal property for sale, or to operate pollution control equipment, recycling equipment, maintenance equipment, or monitoring or control equipment used in such operations. This exemption applies only to specific industries classified under the Standard Industrial Classification (SIC) Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President.

### Effect of Proposed Changes

The bill amends s. 212.08(7)(ff), F.S., to add “Recyclable Material Merchant Wholesalers” as classified under the North American Classification System code 423930 to the industries exempted from the tax on electricity or steam. Businesses under this NAICS code primarily engage in the merchant wholesale distribution of automotive scrap, industrial scrap, and other recyclable materials. Included in this industry are auto wreckers primarily engaged in dismantling motor vehicles for the purpose of wholesaling scrap.<sup>29</sup>

## **Exemption for Roll-off Containers Used by Certain Recyclers**

### Current Situation

Current law imposes sales and use tax on roll-off containers purchased and used by a business primarily engaged in the distribution of recycled materials.

### Effect of Proposed Changes

The bill creates s. 212.08(7)(ooo), F.S., to exempt roll-off containers purchased by a business classified under NAICS code 423930 and engages in the distribution of recycled materials. The roll-off containers must be used exclusively by the business for recycling purposes.

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<sup>29</sup> United State Census Bureau, *North American Industry Classification System, 2007 NAICS Definition*, available at: <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=423930&search=2007+NAICS+Search> (last visited Mar. 3, 2018).

## Discretionary Sales Surtaxes

### Current Situation

#### *Background*

There are nine discretionary sales surtaxes that serve as potential revenue sources for county and municipal governments and school districts.<sup>30</sup> They are:

- The charter county and regional transportation system surtax;<sup>31</sup>
- The local government infrastructure surtax;<sup>32</sup>
- The small county surtax;<sup>33</sup>
- The indigent care and trauma center surtax;<sup>34</sup>
- The county public hospital surtax;<sup>35</sup>
- The school capital outlay surtax;<sup>36</sup>
- The voter-approved indigent care surtax;<sup>37</sup>
- The emergency fire rescue services and facilities surtax;<sup>38</sup> and
- The pension liability surtax.<sup>39</sup>

#### *The Local Government Infrastructure Surtax*

A county may levy a discretionary sales surtax of 0.5 percent or one percent pursuant to ordinance enacted by a majority of the members of the county and approved by a majority of the electors of the county voting in a referendum on the surtax.<sup>40</sup> Surtax proceeds are distributed to the county and the municipalities within the county according to an interlocal agreement between the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population. If there is no interlocal agreement, the proceeds are distributed according to the formula in s. 218.62, F.S.<sup>41</sup>

The proceeds of the surtax and any accrued interest must be expended only to:

- Finance, plan, and construct infrastructure;
- Acquire land for public recreation, conservation, or protection of natural resources;
- Provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing the use is approved by referendum; or
- Finance the closure of county-owned or municipally owned solid waste landfills that are closed or are required to be closed by order of the Department of Environmental Protection.<sup>42</sup>

The term “infrastructure” includes any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of five or

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<sup>30</sup> s. 212.055, F.S.

<sup>31</sup> s. 212.055(1), F.S.

<sup>32</sup> s. 212.055(2), F.S.

<sup>33</sup> s. 212.055(3), F.S.

<sup>34</sup> s. 212.055(4), F.S.

<sup>35</sup> s. 212.055(5), F.S.

<sup>36</sup> s. 212.055(6), F.S.

<sup>37</sup> s. 212.055(7), F.S.

<sup>38</sup> s. 212.055(8), F.S.

<sup>39</sup> s. 212.055(9), F.S.

<sup>40</sup> s. 212.055(2)(a)1., F.S.

<sup>41</sup> s. 212.055(2)(c)1., F.S. The agreement may include a school district with the consent of the county governing authority and the governing bodies of the municipalities.

<sup>42</sup> s. 212.055(2)(d), F.S.



more years, any related land acquisition, land improvement, design, and engineering costs, and all other professional and related costs required to bring the public facilities into service<sup>43</sup>.

In 2016, the Legislature amended the local government infrastructure surtax by, among other things, establishing a definition of “public facilities,”<sup>44</sup> which was previously undefined in that section of law. The 2016 law change defined the term “public facilities” to mean facilities as defined in three other sections of law (ss. 163.3164(38), 163.3221(13), and 189.012(5), F.S.), regardless of whether the facilities are owned by the local taxing authority or another governmental entity. Generally, the three incorporated sections define “public facilities” as major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational facilities (two of the three sections also include health system facilities). However, under a narrow interpretation of the 2016 law change, the incorporation of the specific statutory definitions into the definition of “public facilities” may have the unintended consequence of limiting the authorized use of the surtax revenues to only the listed facilities.

### Effect of Proposed Changes

The bill amends s. 212.055(2), F.S., regarding the local government infrastructure surtax to clarify that the definition of “public facilities” means facilities that are necessary to carry out governmental purposes, including but not limited to fire stations, general governmental office buildings, animal shelters, or facilities defined in ss. 163.3164(38), 163.3221(13), and 189.012(5), F.S.

The bill also adds to the definition of “infrastructure” instructional technology used solely in a school district’s classrooms. Instructional technology is defined as an interactive device that assists a teacher in instructing as class or a group of students. The hardware and software necessary to operate the interactive device and a support system in which an interactive device may mount are also included as authorized expenditures.

For any referendum to adopt or amend a discretionary sales surtax which is held on or after the effective date of the bill, the bill requires an independent certified public accountant (CPA)<sup>45</sup> to conduct a performance audit of the county or school district program associated with the proposed surtax prior to holding the referendum. The CPA must be procured by the Office of Program Policy Analysis and Government Accountability (OPPAGA), which may use carryforward funds to procure and pay for the CPA’s services. The performance audit must be completed and the audit report, including any findings, recommendations, or other accompanying documents must be made available on the official website of the county or school district at least 60 days before the referendum is held. The audit report and accompanying documents must remain on the website for two years from the date it was posted.

The bill defines the term “performance audit” to mean an examination of the county or school district program associated with the proposed surtax conducted according to applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. At a minimum, a performance audit must include an examination of issues related to the following:

- The economy, efficiency, or effectiveness of the county or school district program;
- The structure or design of the program to accomplish its goals and objectives;
- Alternative methods of providing program services or products;
- Goals, objectives, and performance measures used by the county or school district to monitor and report program accomplishments;
- The accuracy or adequacy of public documents, reports, or requests prepared by the county or school district which relate to the program; and
- Compliance of the program with appropriate policies, rules, or laws.

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<sup>43</sup> s. 212.055(2)(d)1.a., F.S.

<sup>44</sup> ch. 2016-225, Laws of Fla (CS/CS/HB 447 (2016)).

<sup>45</sup> Certified public accountants are licensed pursuant to ch. 473, F.S.

## Sales Tax Holidays

### Current Situation

Since 1998, the Legislature has enacted 22 temporary periods (commonly called “sales tax holidays”) during which certain household items, household appliances, clothing, footwear, books, and/or school supply items were exempted from the state sales tax and county discretionary sales surtaxes.

*Back-to-School Holidays*--Florida has enacted a “back to school” sales tax holiday sixteen times since 1998. The length of the exemption periods has varied from three to 10 days. The type and value of exempt items has also varied. Clothing and footwear have always been exempted at various thresholds, most recently \$60. Books valued at \$50 or less were exempted in six periods. School supplies have been included starting in 2001, with the value threshold increasing from \$10 to \$15. In 2013 and 2017, personal computers and related accessories purchased for noncommercial home or personal use with a sales price of \$750 or less were exempted. In 2014 and 2015, the first \$750 of the sales price of personal computers and related accessories purchased for noncommercial home or personal use were exempted. The following table describes the history of back-to-school sales tax holidays in Florida.

Dates	Length	TAX EXEMPTION THRESHOLDS				
		Clothing/ Footwear	Wallets/ Bags	Books	Computers	School Supplies
August 15-21, 1998	7 days	\$50 or less	N/A	N/A	N/A	N/A
July 31-August 8, 1999	9 days	\$100 or less	\$100 or less	N/A	N/A	N/A
July 29-August 6, 2000	9 days	\$100 or less	\$100 or less	N/A	N/A	N/A
July 28-August 5, 2001	9 days	\$50 or less	\$50 or less	N/A	N/A	\$10 or less
July 24-August 1, 2004	9 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
July 23-31, 2005	9 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
July 22-30, 2006	9 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
August 4-13, 2007	10 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
August 13-15, 2010	3 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
August 12-14, 2011	3 days	\$75 or less	\$75 or less	N/A	N/A	\$15 or less
August 3-5, 2012	3 days	\$75 or less	\$75 or less	N/A	N/A	\$15 or less
August 2-4, 2013	3 days	\$75 or less	\$75 or less	N/A	\$750 or less	\$15 or less
August 1-3, 2014	3 days	\$100 or less	\$100 or less	N/A	First \$750 of the sales price	\$15 or less
August 7-16, 2015	10 days	\$100 or less	\$100 or less	N/A	First \$750 of the sales price	\$15 or less
August 5-7, 2016	3 days	\$60 or less	\$60 or less	N/A	N/A	\$15 or less
August 4-6, 2017	3 days	\$60 or less	\$60 or less	N/A	\$750 or less	\$15 or less

For the 2017-18 school year, 41 (61 percent) of Florida school districts held their opening day for students during the first week of August (Aug. 7 – 11). Another 23 districts (34 percent) had opening days during the second week of August.

*Hurricanes and Disasters in Florida*--In 2017, the Florida Office of Insurance Regulation estimated a gross probable loss of over \$7 billion due to Hurricane Irma in 2017, \$1 billion due to hurricanes Hermine and Mathew in 2016,<sup>46</sup> \$25 billion due to four hurricanes in 2004, and \$10.8 billion due to four hurricanes in 2005.<sup>47</sup> Tropical Storm Fay was estimated to have resulted in \$242 million of damage in 2008.<sup>48</sup> The Florida Division of Emergency Management recommends having a disaster supply kit with items such as a battery operated radio, flashlight, batteries, and first-aid kit.<sup>49</sup>

### Effect of Proposed Changes

The bill establishes temporary disaster preparedness and back-to-school sales tax holidays in 2018.

*Back-to-School Holiday*--The bill provides for a 3-day sales tax holiday from August 3, 2018, through August 5, 2018. During the holiday, the following items that cost \$60 or less are exempt from the state sales tax and county discretionary sales surtaxes:

- Clothing (defined as an “article of wearing apparel intended to be worn on or about the human body,” but excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs);
- Footwear (excluding skis, swim fins, roller blades, and skates);
- Wallets; and
- Bags (including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags).

The bill also exempts “school supplies” that cost \$15 or less per item during the holiday.

*Disaster Preparedness Sales Tax Holiday*-- The bill provides for a seven-day sales tax holiday from June 1, 2018, through June 7, 2018 for specified items related to disaster preparedness. During the holiday, the following items are exempt from the state sales tax and county discretionary sales surtaxes:

- A portable self-powered light source selling for \$20 or less;
- A portable self-powered radio, two-way radio, or weather band radio selling for \$50 or less;
- A tarpaulin or other flexible waterproof sheeting selling for \$50 or less;
- A ground anchor system or tie-down kit selling for \$50 or less;
- A gas or diesel fuel tank selling for \$25 or less;
- A package of AA-cell, AAA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less;
- A nonelectric food storage cooler selling for \$30 or less;
- A portable generator that is used to provide light or communications or preserve food in the event of a power outage selling for \$750 or less; and
- Reusable ice selling for \$10 or less.

The sales tax holidays in the bill do not apply to the following sales:

- Sales within a theme park or entertainment complex, as defined in s. 509.013(9), F.S.;
- Sales within a public lodging establishment, as defined in s. 509.013(4), F.S.; and
- Sales within an airport, as defined in s. 330.27(2), F.S.

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<sup>46</sup> Florida Office of Insurance Regulation, Catastrophe Report, available at:

<https://www.florir.com/Office/HurricaneSeason/HurricaneIrmaClaimsData.aspx> (last visited Feb. 15, 2018).

<sup>47</sup> Florida Office of Insurance Regulation, *Florida Office of Insurance Regulation Hurricane Summary Data*, available at: <http://www.florir.com/siteDocuments/HurricaneSummary20042005.pdf>

<sup>48</sup> Florida Office of Insurance Regulation, *Florida Office of Insurance Regulation Hurricane Summary Data*, available at: <http://www.florir.com/siteDocuments/HurricaneSummary2008.pdf>.

<sup>49</sup> Florida Division of Emergency Management, *Disaster Supply Kit*, <https://www.floridadisaster.org/plan--prepare/disaster-supply-kit/> (last visited Feb. 15, 2018).

The bill allows the “back to school” sales tax holiday to apply at the option of the dealer if less than five percent of the dealer’s gross sales of tangible personal property in the prior calendar year are comprised of items that would be exempt under the holiday. If a qualifying dealer chooses not to participate in the tax holiday, by August 1, 2018, the dealer must notify DOR in writing of its election to collect sales tax during the holiday and must post a copy of that notice in a conspicuous location at its place of business. The bill authorizes DOR to adopt emergency rules to implement the provisions of the holidays.

## **Sales Tax Distribution Reporting**

### Current Situation

Section 212.20, F.S., provides for the distribution of all tax or fee revenue collected or received by DOR under ch. 212, F.S., as well as certain communication service taxes and gross receipt taxes. Depending on the specific tax or fee source, distributions are made first to various state trust funds, then to the local government in which the tax or fee was collected, and then any remaining distributions are made to certain applicants that qualify under economic development programs created by the Legislature. For example, after the distributions under ss. 212.20(6)(a)-(d)6.a., F.S., are made, the remaining tax and fee revenues are distributed as follows:

- \$166,667 monthly to professional sports franchise facilities certified pursuant to s. 288.1162, F.S., and \$41,667 monthly to spring training franchise facilities certified pursuant to s. 288.11621, F.S.<sup>50</sup>
- \$166,667 monthly to the professional golf hall of fame certified pursuant to s. 288.1168, F.S.<sup>51</sup>
- \$83,333 monthly to certain spring training franchise facilities certified pursuant to s. 288.11631, F.S.<sup>52</sup>
- Monthly distributions of an amount to be determined by DEO to each local government that is certified pursuant to s. 288.11625, F.S., for the public purpose of constructing, reconstructing, renovating, or improving a sports facility.<sup>53</sup>

While DEO must certify the persons that receive a distribution described above prior to receiving the distributions, current law does not require annual reporting of the manner in which the distributions are spent or whether, and to what extent, the distributions are pledged for debt service.

### Effect of Proposed Changes

The bill creates reporting requirements for persons that receive a distribution pursuant to ss. 212.20(6)(d)6.b.-f., F.S. By March 15 of each year, such persons receiving distributions in the prior calendar year shall report to the Office of Economic and Demographic Research the following information:

- An itemized accounting of all expenditures of the funds distributed in the prior calendar, including amounts spent on debt service.
- A statement indicating what portion of the distributed funds have been pledged for debt service.
- The original principal amount, and current debt service schedule of any bonds or other borrowing for which the distributed funds have been pledged for debt service.

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<sup>50</sup> s. 212.20(6)(d)6.b., F.S.

<sup>51</sup> s. 212.20(6)(d)6.c., F.S.

<sup>52</sup> s. 212.20(6)(d)6.e., F.S.

<sup>53</sup> s. 212.20(6)(d)6.f., F.S.

## **Corporate Income Tax**

Florida levies corporate income tax on corporations of 5.5 percent for income earned in Florida.<sup>54</sup> The calculation of Florida corporate income tax starts with a corporation's federal taxable income.<sup>55</sup> After certain addbacks and subtractions to federal taxable income required by ch. 220, F.S., the amount of adjusted federal income attributable to Florida is determined by the application of an apportionment formula.<sup>56</sup> The Florida corporate income tax uses a three-factor apportionment formula consisting of property, payroll, and sales (which is double-weighted) to measure the portion of a multistate corporation's business activities attributable to Florida.<sup>57</sup> Income that is apportioned to Florida using this formula is then subject to the Florida income tax. The first \$50,000 of net income is exempt.<sup>58</sup>

## **Sales/Corporate/Ins. Premiums Tax - Community Contribution Tax Credit Program**

### **Current Situation**

In 1980, the Legislature established the Community Contribution Tax Credit Program ("CCTCP") to encourage private sector participation in community revitalization and housing projects.<sup>59</sup> Broadly, the CCTCP offers tax credits to businesses or persons ("taxpayers") anywhere in Florida that contribute<sup>60</sup> to certain projects undertaken by approved CCTCP sponsors.<sup>61</sup>

Eligible sponsors under the CCTCP include a wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards.<sup>62</sup> As of February 2018, the CCTCP had 124 approved sponsors.<sup>63</sup>

Eligible projects include activities undertaken by an eligible sponsor that are designed to accomplish one of the following purposes:

- To construct, improve, or substantially rehabilitate housing that is affordable to low-income households or very-low-income households as those terms are defined in s. 420.9071;
- To provide commercial, industrial, or public resources and facilities; or
- To improve entrepreneurial and job-development opportunities for low-income persons.<sup>64</sup>

In addition, eligible projects must be located in an area that was designated as an enterprise zone as of May 1, 2015<sup>65</sup> or a Front Porch Florida Community, with two exceptions. First, any project designed to construct or rehabilitate housing for low-income households or very-low-income households as those terms are defined in s. 420.9071, F.S., is exempt from the area requirement. Second, any project designed to provide increased access to high-speed broadband capabilities that includes coverage in a rural community that had an enterprise zone designation as of May 1, 2015, may locate the project's infrastructure in any area of a rural county (inside or outside of the zone).

The Department of Economic Opportunity (DEO) administers the CCTCP, and its responsibilities include reviewing sponsor project proposals and tax credit applications, periodically monitoring projects, and marketing the CCTCP in consultation with the Florida Housing Finance Corporation and other

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<sup>54</sup> s. 220.11, F.S.

<sup>55</sup> s. 220.12, F.S.

<sup>56</sup> s. 220.15, F.S.

<sup>57</sup> s. 220.15, F.S.

<sup>58</sup> s. 220.14, F.S.

<sup>59</sup> ch. 80-249, Laws of Fla. The CCTCP is one of the state incentives available under the Florida Enterprise Zone Act, which was partially repealed on December 31, 2015. Sections 290.007(3) and 290.016, F.S.

<sup>60</sup> ss. 212.08(5)(p)2.a., 220.183(2)(a), and 624.5105(5)(a), F.S., require community contributions to be in the form of cash or other liquid assets, real property, goods or inventory, or other physical resources.

<sup>61</sup> See ss. 212.08(5)(p); 220.183; and 624.5105, F.S.

<sup>62</sup> See ss. 212.08(5)(p)2.c.; 220.183(2)(c); and 624.5105(2)(c), F.S.

<sup>63</sup> Email correspondence with DEO staff, Feb. 8, 2018, on file with the House Ways & Means Committee.

<sup>64</sup> ss. 212.08(5)(p)2.b.; 220.183(2)(d); 624.5105(2)(b); and 220.03(1)(t), F.S.

<sup>65</sup> The Florida Enterprise Zone Act was partially repealed as of December 31, 2015- see ch. 2015-221, Laws of Fla.; s. 290.016, F.S.

statewide and regional housing and financial intermediaries.<sup>66</sup> Once approved by the DEO, the taxpayer must claim the community contribution tax credit from the DOR.

The credit is calculated as 50 percent of the taxpayer's annual contribution, but a taxpayer may not receive more than \$200,000 in credits in any one year.<sup>67</sup> The taxpayer may use the credit against corporate income tax, insurance premiums tax, or as a refund against sales tax.<sup>68</sup> Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years.<sup>69</sup> Unused credits against sales taxes may be carried forward for three years.<sup>70</sup>

DOR may approve \$10.5 million in annual funding for projects that provide homeownership opportunities for low-income and very-low-income households or housing opportunities for persons with special needs and \$3.5 million for all other projects. "Persons with special needs" is defined in current statute to include adults requiring independent living services, young adults formerly in foster care, survivors of domestic violence, and people receiving Social Security Disability Insurance, Supplemental Security Income, or veterans' disability benefits.<sup>71</sup> During FY 2016-2017, DEO approved 444 tax credit applications submitted by 63 eligible sponsors for eligible projects located in 34 counties. For fiscal year 2017-18, as of February 8, 2018, DEO has approved 358 tax credit applications.<sup>72</sup>

The Legislature extended the CCTCP in 1984, 1994, 2005, 2014, and 2015,<sup>73</sup> and made the program permanent in 2017.<sup>74</sup> It has also amended the annual tax credit allocation of the CCTCP on numerous occasions.<sup>75</sup> The CCTCP cap, which started at \$3 million annually, is currently set at \$21.4 million for fiscal year 2017-18; for fiscal years after 2017-18, the cap is set at \$14 million. The cap has been reached every year since fiscal year 2001-02, except for a few years when 95.9 percent (fiscal year 2014-15) and 99.9 percent of the cap was reached (fiscal years 2011-12, 2012-13, and 2016-17).<sup>76</sup>

### Effect of Proposed Changes

The bill provides a one-time additional tax credit authorization of \$2.0 million for FY 2018-19 and \$3.0 million for FY 2019-20 for projects that provide homeownership opportunities for low-income and very-low-income households or housing opportunities for persons with special needs. The annual credit authorization for all other projects will remain at \$3.5 million.

## **Voluntary Cleanup Tax Credit Program - Brownfields Tax Credit**

### Current Situation

In 1998, the Legislature provided the Department of Environmental Protection (DEP) the direction and authority to issue tax credits as an additional incentive to encourage site rehabilitation in brownfield areas and to encourage voluntary cleanup of certain other types of contaminated sites. This corporate income tax credit may be taken in the amount of 50 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites:

- A site eligible for state-funded cleanup under the Drycleaning Solvent Cleanup Program;<sup>77</sup>

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<sup>66</sup> ss. 212.08(5)(p)4.; 220.183(4); and 624.5105(4), F.S.

<sup>67</sup> ss. 212.08(5)(p)1.; 220.183 (1)(a) and (b); and 624.5105(1), F.S.

<sup>68</sup> See ss. 212.08(5)(p); 220.183; and 624.5105, F.S.

<sup>69</sup> ss. 220.183(1)(e) and (g); and 624.5105, F.S.

<sup>70</sup> ss. 212.08(5)(p)1.b. and f., F.S.

<sup>71</sup> s. 420.0004(13), F.S.

<sup>72</sup> Email correspondence with DEO staff, March 22, 2017, on file with House Ways & Means Committee.

<sup>73</sup> chs. 84-356, 94-136, 2005-282, 2014-38, and 2015-221, Laws of Fla.

<sup>74</sup> ch. 2017-36, Laws of Fla.

<sup>75</sup> See Chs. 94-136, 98-219, 99-265, 2005-282, 2006-78, 2008-153, 2015-221, and 2017-36, Laws of Fla.

<sup>76</sup> Email correspondence with DEO staff, Feb. 8, 2018, on file with House Ways & Means Committee.

<sup>77</sup> s. 376.30781, F.S.

- A drycleaning solvent contaminated site at which the real property owner undertakes voluntary cleanup, provided that the real property owner has never been the owner or operator of the drycleaning facility; or
- A brownfield site in a designated brownfield area.<sup>78</sup>

Eligible tax credit applicants may receive up to \$500,000 per site per year in tax credits. Due to concern that some participants in a voluntary cleanup might only conduct enough work to eliminate or minimize their exposure to third party lawsuits, current law also provides a completion incentive in the form of an additional 25 percent supplemental tax credit for those applicants that completed site rehabilitation and received a Site Rehabilitation Completion Order from the DEP. This additional supplemental credit has a \$500,000 cap. Businesses are also allowed a one-time application for an additional 25 percent of the total site rehabilitation costs, up to \$500,000, for brownfield sites at which the land use is restricted to affordable housing. They may also submit a one-time application claiming 50 percent of the costs, up to \$500,000, for removal, transportation and disposal of solid waste at a brownfield site.

Site rehabilitation tax credit applications must be complete and submitted by January 31 of each year. The total amount of tax credits for all sites that may be granted by DEP is \$10 million annually. In the event that approved tax credit applications exceed the \$10 million annual authorization, the statute provides for remaining applications to roll over into the next FY to receive tax credits in first come, first served order from the next year's authorization. These tax credits may be applied toward corporate income tax in Florida. The tax credits may be transferred one time, although they may succeed to a surviving or acquiring entity after merger or acquisition.

Since 1998, the VCTC Program has approved \$81.7 million in VCTCs<sup>79</sup>. Total requests for tax credits have met or exceeded the annual authorization since 2007.<sup>80</sup> Since 2012, the approved tax credits have averaged more than \$8.3 million per year. In 2015, the Legislature approved a one-time tax credit authorization of \$21.6 million, which allowed the DEP to issue certificates for all tax credits that were approved but had not received funding. In 2016, DEP received 99 tax credit applications and approved \$10.8 million in VCTCs for site rehabilitation work completed in 2015. As of July 1, 2016, there were \$10.8 million in approved tax credits; after the authorization was used to issue certificates, \$5.8 million was carried over as the backlog. Effective July 1, 2017<sup>81</sup>, the Legislature again increased the annual authorization to \$10 million. DEP received 136 VCTC applications for 2016 calendar year expenses, and the approved tax credits totaled \$14.4 million. Of this total, \$14 million—approximately 97 percent—was allocated for tax credits for 119 brownfield sites.<sup>82</sup> DEP received 139 VCTC applications for 2017 calendar year expenses totaling \$12.8 million.<sup>83</sup> As of February 1, 2018, DEP had a backlog of \$10.2 million in approved tax credits that have not been funded<sup>84</sup>. On July 1, 2018, the \$10 million annual authorization for FY 2018-19 becomes available which will reduce the current backlog to \$200,000. However, the \$12.8 million in tax credits applied for 2017 costs when added to the \$200,000 tax credits outstanding will create a backlog of approximately \$13 million<sup>85</sup> that will be partially funded when the \$10 million annually authorized credit amount becomes available on July 1, 2019.

### Effect of Proposed Changes

The bill provides a one-time additional tax credit authorization of \$8.5 million for FY 2018-19.

<sup>78</sup> s. 220.1845, F.S.

<sup>79</sup> Florida Brownfields Redevelopment Program, 2016-17 Annual Report, on file with House Ways & Means staff. Unavailable online as of Feb. 1, 2018.

<sup>80</sup> DEP, Florida Brownfields Redevelopment Program, 2016 Annual Report, no longer available at: [http://www.dep.state.fl.us/Waste/quick\\_topics/publications/wc/brownfields/AnnualReport/2016/2015-16\\_FDEP\\_Annual.pdf](http://www.dep.state.fl.us/Waste/quick_topics/publications/wc/brownfields/AnnualReport/2016/2015-16_FDEP_Annual.pdf) (last visited March 22, 2017).

<sup>81</sup> See ss. 32 and 41, ch. 2017-36, Laws of Fla. (HB 7109).

<sup>82</sup> Florida Brownfields Redevelopment Program, 2016-17 Annual Report, on file with House Ways & Means staff.

<sup>83</sup> Email correspondence with DEP staff, Feb. 1, 2018, on file with House Ways and Means Committee.

<sup>84</sup> Email correspondence with DEP staff, Feb. 1, 2018, on file with House Ways and Means Committee.

<sup>85</sup> Note that, for various reasons, not all of the \$12.8 million in tax credits applied for will be approved.

## **Communications Services Tax**

### **Current Situation**

Chapter 202, F.S., imposes a tax on the retail sale of communications services that originate and terminate in this state, or that originate or terminate in this state and is charged to a service address in this state.<sup>86</sup> The term “communication services” is defined as the “transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals...to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.”<sup>87</sup> Chapter 202 provides for a state communications services tax (CST), a state gross receipts tax, and provides local governments the authority to impose a local CST.<sup>88</sup>

Pursuant to s. 202.24, F.S., the authority of a public body to require taxes, fees, charges, or other impositions from dealers of communications services for occupying its roads and rights-of-way is specifically preempted by the state because of unique circumstances applicable to communications services dealers. A tax, charge, fee, or other imposition includes<sup>89</sup> any amount or in-kind payment of property or services which is required by ordinance or agreement to be paid or furnished to a public body by or through a dealer of communications services in its capacity as a dealer of communications services, regardless of whether such amount or in-kind payment of property or services is:

1. Designated as a sales tax, excise tax, subscriber charge, franchise fee, user fee, privilege fee, occupancy fee, rental fee, license fee, pole fee, tower fee, base-station fee, or other tax or fee;
2. Measured by the amounts charged or received for services, regardless of whether such amount is permitted or required to be separately stated on the customer’s bill, by the type or amount of equipment or facilities deployed, or by other means; or
3. Intended as compensation for the use of public roads or rights-of-way, for the right to conduct business, or for other purposes.

### **Effect of Proposed Changes**

The bill enumerates the term “security fund” as a specifically preempted imposition or levy under ch. 202, F.S. This clarifies that the current broad preemption of various local government taxes, fees, and other impositions related use of public right of ways by communications services providers also applies to “security funds.”

### **Property Taxation in Florida**

Local governments, including counties, school districts, and municipalities have the constitutional authority to levy ad valorem taxes. Special districts may also be given this authority by law.<sup>90</sup> Ad valorem taxes are collected on the fair market value of the property, adjusting for any exclusions, differentials or exemptions.

All ad valorem taxation must be at a uniform rate within each taxing unit, subject to certain exceptions with respect to intangible personal property.<sup>91</sup> However, the Florida constitutional provision requiring

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<sup>86</sup> s. 202.12(1)(a), F.S.

<sup>87</sup> s. 202.11(1), F.S.

<sup>88</sup> ss. 202.12(1)(a), 202.19-202.22, and 203.01(1)(b), F.S.

<sup>89</sup> s. 202.24(2)(b), F.S.

<sup>90</sup> FLA. CONST. art VII, s. 9.

<sup>91</sup> FLA. CONST. art VII, s. 2.



that taxes be imposed at a uniform rate refers to the application of a common rate to all taxpayers within each taxing unit – not variations in rates between taxing units.<sup>92</sup>

Federal, state, and county governments are immune from taxation but municipalities are not subdivisions of the state and may be subject to taxation absent an express exemption.<sup>93</sup> The Florida Constitution grants property tax relief in the form of certain valuation differentials,<sup>94</sup> assessment limitations,<sup>95</sup> and exemptions,<sup>96</sup> including the exemptions relating to municipalities and exemptions for educational, literary, scientific, religious or charitable purposes.

## **Assessment of Citrus Packing and Processing Equipment**

### Current Situation

#### *Taxation of Tangible Personal Property*

“Tangible personal property” means all goods, chattels, and other articles of value (not including vehicles) capable of manual possession and whose chief value is intrinsic to the article itself.<sup>97</sup> All tangible personal property is subject to ad valorem taxation unless expressly exempted.<sup>98</sup> Household goods and personal effects,<sup>99</sup> items of inventory,<sup>100</sup> and up to \$25,000 of assessed value for each tangible personal property tax return<sup>101</sup> are exempt from ad valorem taxation.

Anyone who owns tangible personal property on January 1 of each year and who has a proprietorship, partnership, or corporation, or is a self-employed agent or a contractor, must file a tangible personal property return to the property appraiser by April 1 each year.<sup>102</sup> Property owners who lease, lend, or rent property must also file a return. Each tangible personal property tax return is eligible for an exemption from ad valorem taxation of up to \$25,000 of assessed value.<sup>103</sup>

#### *Taxation of Agricultural Property*

Section 193.461, F.S., allows properties classified as bona fide agricultural operations to be taxed according to the “use” value of the agricultural operation, rather than the development value. Generally, tax assessments for qualifying lands are lower than tax assessments for other uses. Lands classified as agricultural for assessment purposes retain their agricultural classification if the land is taken out of production by a state or federal eradication or quarantine program, including the Citrus Health

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<sup>92</sup> See, for example, *Moore v. Palm Beach County*, 731 So. 2d 754 (Fla. 4th DCA 1999) citing *W. J. Howey Co. v. Williams*, 142 Fla. 415, 195 So. 181, 182 (1940).

<sup>93</sup> “Exemption” presupposes the existence of a power to tax, while “immunity” implies the absence of it. See *Turner v. Florida State Fair Authority*, 974 So. 2d 470 (Fla. 2d DCA 2008); *Dept. of Revenue v. Gainesville*, 918 So. 2d 250, 257-59 (Fla. 2005).

<sup>94</sup> FLA. CONST. art VII, s. 4, authorizes valuation differentials, which are based on character or use of property.

<sup>95</sup> FLA. CONST. art VII, s. 4(c), authorizes the “Save Our Homes” property assessment limitation, which limits the increase in assessment of homestead property to the lesser of 3% or the percentage change in the Consumer Price Index. Section 4(e) authorizes counties to 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. This provision is known as the “Granny Flats” assessment limitation.

<sup>96</sup> FLA. CONST. art VII, s. 3, provides authority for the various property tax exemptions. The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone, properties used to provide affordable housing, educational facilities, charter schools, property owned and used by any labor organizations, community centers, space laboratories, and not-for-profit sewer and water companies.

<sup>97</sup> s. 192.001(11)(d), F.S.

<sup>98</sup> s. 196.001(1), F.S.

<sup>99</sup> s. 196.181, F.S.

<sup>100</sup> s. 196.185, F.S.

<sup>101</sup> s. 196.183, F.S.

<sup>102</sup> s. 193.062, F.S.; see also DOR, Tangible Personal Property, <http://dor.myflorida.com/dor/property/tpp/> (last visited Feb. 15, 2018).

<sup>103</sup> Fla. Const. art. VII, s. 3.

Response Program, for a period of five years. If these agricultural lands are converted to fallow or are otherwise nonincome producing, property tax collectors may only assess a de minimis value up to \$50 per acre on a single-year assessment.<sup>104</sup>

For purposes of ad valorem property taxation, agricultural equipment that is located on property classified as agricultural under s. 193.461, F.S., and is obsolete and no longer usable for its intended purpose is deemed to have a market value no greater than its value for salvage.<sup>105</sup>

### *Citrus Greening*

Citrus Huanglongbing, more commonly known as citrus greening disease, is an endemic citrus disease that impairs a tree's ability to properly mature, resulting in the production of small, bitter, and economically useless fruit. The disease is incurable and causes trees to become more susceptible to other diseases. Citrus greening was discovered in Miami-Dade County in 2005 and has since spread to all citrus producing counties in Florida.

Over a five year period from 2006-2011, it is estimated that citrus greening disease has resulted in an economic loss of \$4.54 billion and the loss of 8,257 jobs. From 1999-2010, 56 packing houses and 33 processing plants were shut down, partially as a result of decreased production due to citrus greening.<sup>106</sup> The U.S. Department of Agriculture forecasted that Florida's citrus production for the 2017-2018 season will be 33 percent less than last season and a decline of more than 80 percent since peak citrus production during the 1997-1998 season. The 2017-2018 forecasted citrus production is also expected to be the smallest production since the 1944-1945 season.<sup>107</sup>

### Effect of Proposed Changes

The bill creates s. 193.4516, F.S. to provide for purposes of ad valorem taxation, tangible personal property owned and operated by a citrus fruit packing or processing facility shall be deemed to have a market value no greater than its salvage value, provided the tangible personal property is no longer used in the operation of the facility due to the effects of Hurricane Irma or citrus greening. This valuation will be effective only for the 2018 tax year. The bill will apply retroactively to January 1, 2018.

The bill also creates s. 218.135, F.S., to direct the legislature to provide fiscally constrained counties<sup>108</sup> an appropriation to offset the reduction in ad valorem tax revenue which occur as a direct result of the implementation of s. 193.4516, F.S. The affected counties must apply to DOR and provide supporting documentation to receive the appropriation. The appropriations will be distributed to the affected counties in January of each fiscal year in proportion of the total reduction in ad valorem tax revenue resulting from the implementation of s. 193.4516, F.S.

## **Homestead Property Damaged or Destroyed by Natural Disaster in 2017**

### Current Situation

#### *Tax Relief for Natural Disasters*

The Legislature has provided tax relief for the victims of natural disasters on at least four occasions.<sup>109</sup> Chapter 88-101, L.O.F., created s. 196.295(3), F.S., which provided an abatement of taxes for properties damaged by windstorms or tornadoes.<sup>110</sup> To receive the abatement, the property owner was required to file an application with the property appraiser by March 1 of the year following the year in

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<sup>104</sup> s. 193.461(7)(a), F.S.

<sup>105</sup> s. 193.4615, F.S.

<sup>106</sup> Economic Impacts of Citrus Greening in Florida, 2006/07-2010/11, FE903. UF IFAS Extension. January 2012.

<sup>107</sup> USDA National Agriculture Statistics Service December Forecast, Citrus Maturity Test Results and Fruit Size, available at:

[https://www.nass.usda.gov/Statistics\\_by\\_State/Florida/Publications/Citrus/Citrus\\_Forecast/2017-18/cit1217.pdf](https://www.nass.usda.gov/Statistics_by_State/Florida/Publications/Citrus/Citrus_Forecast/2017-18/cit1217.pdf)

<sup>108</sup> See s. 218.67(1), F.S. for a definition of "fiscally constrained counties."

<sup>109</sup> chs. 88-101, 98-185, 2004-474, and 2007-106, Laws of Fla.

<sup>110</sup> s. 196.295(3), F.S., repealed by ch. 92-173, s. 8, Laws of Fla.

which the windstorm or tornado occurred.<sup>111</sup> After making a determination on the validity of the application, the property appraiser was directed to issue an official statement to the tax collector containing the number of the months the property was uninhabitable due to the damage or destruction, the value of the property prior to the damage or destruction, the total taxes due on the property as reduced by the number of months the property was uninhabitable, and the amount of the reduction in taxes.<sup>112</sup>

Upon receipt of the official statement, the tax collector reduced the amount of taxes due on the property on the tax collection roll and informed the board of county commissioners and DOR of the total reduction in taxes for all property in the county receiving the abatement.<sup>113</sup> The law was applied retroactively to January 1, 1988 and included a repeal effective of July 1, 1989.<sup>114</sup> The language was removed from statute in 1992.<sup>115</sup>

### *Natural Disaster Provisions*

Current law provides that the Governor shall issue an executive order declaring a state of emergency if he finds an emergency has occurred or a threat is imminent.<sup>116</sup> Depending on the severity of the emergency, the declaration may result in a military mobilization or allow out-of-state healthcare professionals to provide services in the disaster area.<sup>117</sup>

### Effect of Proposed Changes

The bill creates s. 197.318, F.S., providing a relief credit<sup>118</sup> for homestead parcels on which the defined residential improvements were damaged or destroyed by a hurricane that occurred in 2016 or 2017, namely hurricanes Hermine, Matthew, and Irma. If the residential improvement is rendered uninhabitable for at least 30 days due to a hurricane that occurred during the 2016 or 2017 calendar year, taxes initially levied in 2019 may be abated.

The tax credit is in the form of a refund. The amount of the credit reflects the value of the homestead structure for the portion of 2016 or 2017 that it was uninhabitable as a consequence of hurricane damage.

To receive the tax abatement, the property owner must submit an application to the property appraiser by March 1, 2019. A property owner who fails to submit the application by March 1, 2019, waives a claim for abatement of taxes from the natural disaster. The application must identify the residential parcel on which the residential improvement was damaged or destroyed, the hurricane that caused the damage or destruction, the date the damage or destruction occurred, and the number of days the property was uninhabitable during either the 2016 or 2017 calendar year.

Upon receipt of the application, the property appraiser investigates the statements contained therein and determines if the property owner qualifies for the disaster relief credit. If the property appraiser determines that the property owner is not entitled to the tax abatement, the property owner may file a petition with the value adjustment board. If the property owner qualifies the property appraiser shall issue an official written statement to the tax collector by April 1, 2019 containing:

- The number of days during the calendar year in which the natural disaster occurred that the residential improvement was uninhabitable.<sup>119</sup>

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<sup>111</sup> s. 196.295(3)(a), F.S., repealed by ch. 92-173, s. 8, Laws of Fla.

<sup>112</sup> s. 196.295(3)(d), F.S., repealed by ch. 92-173, s. 8, Laws of Fla.

<sup>113</sup> s. 196.295(3)(e)-(f), F.S., repealed by ch. 92-173, s. 8, Laws of Fla.

<sup>114</sup> s. 196.295(3)(h), F.S., repealed by ch. 92-173, s. 8, Laws of Fla.

<sup>115</sup> ch. 92-173, s. 8, Laws of Fla.

<sup>116</sup> s. 252.36, F.S.

<sup>117</sup> s. 252.36(3)(c)1. and 2., F.S.

<sup>118</sup> The bill defines "disaster relief credit" as the product arrived at by multiplying the damage differential by the amount of timely paid taxes that were initially levied in the year the natural disaster occurred.

<sup>119</sup> To qualify for the disaster relief credit, the residential improvement must be uninhabitable for at least 30 days.

- The just value of the residential parcel on January 1, 2016 or 2017.
- The post-disaster just value of the residential parcel, as determined by the property appraiser.
- The percent change in value applicable to the residential parcel.<sup>120</sup>

The tax collector uses the property appraiser's written statement to calculate the value of the damage differential and disaster relief credit and processes a refund in an amount equal to the disaster relief.<sup>121</sup>

The tax collector must notify DOR and the governing board of each affected local government of the total reduction in taxes of all property receiving a credit pursuant to this section. The bill applies retroactively to January 1, 2016, and expires January 1, 2021.

The bill also amends s. 194.032, F.S., to provide that value adjustment boards may hear appeals pertaining to tax abatements under the newly created s. 197.318, F.S.

The bill also creates s. 218.131, F.S., requiring the legislature to appropriate funds to offset the reduction in ad valorem tax revenue in taxing jurisdictions in Monroe County and fiscally constrained counties which occur as a direct result of the implementation of s. 197.318, F.S. The affected taxing jurisdictions must apply to DOR and provide supporting documentation to receive the appropriation. The appropriations will be distributed to the affected taxing jurisdictions in January 2020 in proportion of the total reduction in ad valorem tax revenue resulting from the implementation of s. 197.318, F.S.

## **Save Our Homes Portability Affected by Storm Damage**

### Current Situation

The "Save Our Homes" amendment to the Florida Constitution was approved by voters in 1992.<sup>122</sup> This amendment limits annual assessment increases to the lower of: 3% of the assessment for the prior year or the change in the Consumer Price Index (CPI) for all urban consumers. See Fla. Const., art. VII, s. 4(d)(1). The operation of this provision over time results in the market value of a homestead property exceeding its assessed value for property tax purposes if the property owner does not sell the property.

Section 193.155(8), F.S., allows a homestead to 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 either of the two immediately preceding years. Property owners who relocate to a new homestead may also transfer or "port" up to \$500,000 of their accrued benefit, also known as the Save our Home (SOH) benefit, to the new homestead.

Section 193.155(8)(g), F.S., provides for purposes of receiving an assessment reduction pursuant to this subsection, a person entitled to assessment under this section may abandon his or her property even though it remains his or her primary residence by notifying the property appraiser of the county where the homestead is located. The 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.

### Effect of Proposed Changes

The bill amends s. 193.155(8), F.S., and creates a new paragraph to allow owners of homestead property that was significantly damaged or destroyed as a result of a named tropical storm or hurricane to elect to have the property deemed abandoned if the owner establishes a new homestead by January 1 of the second year immediately following the storm or hurricane. This will allow the owner of the homestead property to keep their SOH benefit if they move from the significantly damaged or destroyed property to establish a new homestead by the end of the year following the storm.

<sup>120</sup> The bill defines the "percent change in value" as the difference between the residential parcels just value as of Jan. 1, 2017, and its postdisaster just value expressed as a percentage of the parcel's just value as of Jan. 1, 2017.

<sup>121</sup> The bill defines "damage differential" as the product arrived at by multiplying the percent change in value by a ratio, the numerator of which is the number of days the residential improvement was rendered uninhabitable, the denominator of which is 365.

<sup>122</sup> s. 193.155(1), F.S.

## **Agricultural Classification of Lands impacted by Hurricane Irma**

### Current Situation

Florida requires all property to be assessed at its “just value” (i.e., fair market value) unless the state constitution provides an exception.<sup>123</sup> Agricultural land is one exception to the just value requirement.<sup>124</sup> Agricultural land is assessed based on its current use as agricultural land, which generally results in a lower assessment. However, when agricultural land ceases to be used for bona fide agricultural purposes, it no longer qualifies for its agricultural assessment.<sup>125</sup>

### Effect of Proposed Changes

The bill provides that lands that were classified as agricultural but are not actively used for agricultural production due to a hurricane that made landfall in Florida in 2017 must continue to be assessed as agricultural lands until December 31, 2022, unless the lands are converted to nonagricultural use. The bill first applies this treatment to the 2018 property tax roll.

## **Exemption for Unmarried Surviving Spouse of a Disabled Ex-Servicemember**

### Current Situation

Current law provides a \$5,000 property tax exemption to any resident ex-servicemember who was honorably discharged and has been disabled to a degree of 10 percent or more by misfortune or while serving during a period of wartime service. This exemption is also extended to the surviving spouse of the disabled ex-servicemember if, at the time of the disabled ex-servicemember’s death, the unremarried surviving spouse was married to the ex-servicemember for at least 5 years.<sup>126</sup>

### Effect of Proposed Changes

The bill removes the requirement that the unremarried surviving spouse of a disabled ex-servicemember be married for at least 5 years on the date of the ex-servicemember’s death in order to be entitled to the \$5,000 property tax exemption.

## **Exemption for Deployed Servicemembers<sup>127</sup>**

### Current Situation

The Florida Constitution grants an exemption for military servicemembers that have Florida homesteads and are deployed on active duty outside the continental United States, Alaska or Hawaii in support of military operations designated by the Legislature.<sup>128</sup> The exemption is equal to the taxable value of the qualifying servicemember’s homestead on January 1 of the year in which the exemption is sought, multiplied by the number of days that the servicemember was on a qualifying deployment in the preceding calendar year, and divided by the number of days in that year.<sup>129</sup>

### *Eligible Military Operations*

The Legislature has designated the following military operations as eligible for the exemption:

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<sup>123</sup> FLA. CONST. art. VII, s. 4

<sup>124</sup> FLA. CONST. art. VII, s.4(a)

<sup>125</sup> s. 193.461(4)(b), F.S.

<sup>126</sup> s. 196.24, F.S.

<sup>127</sup> Section 196.173(7), F.S., defines the term “servicemember” for purposes of this exemption to mean a member or former member of any branch of the United States military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard.

<sup>128</sup> Fla. Const. art. VII, s. 3(g). See also s. 196.173, F.S.

<sup>129</sup> s. 196.173(4), F.S.

- Operation Joint Task Force Bravo, which began in 1995;
- Operation Joint Guardian, which began on June 12, 1999;
- Operation Noble Eagle, which began on September 15, 2001;
- Operation Enduring Freedom, which began on October 7, 2001;
- Operations in the Balkans, which began in 2004;
- Operation Nomad Shadow, which began in 2007;
- Operation U.S. Airstrikes Al Qaeda in Somalia, which began in January 2007;
- Operation Copper Dune, which began in 2009;
- Operation Georgia Deployment Program, which began in August 2009;
- Operation New Dawn, which began on September 1, 2010, and ended on December 15, 2011;
- Operation Odyssey Dawn, which began on March 19, 2011, and ended on October 31, 2011;
- Operation Spartan Shield, which began in June 2011;
- Operation Observant Compass, which began in October 2011;
- Operation Inherent Resolve, which began on August 8, 2014;
- Operation Atlantic Resolve, which began in April 2014;
- Operation Freedom's Sentinel, which began on January 1, 2015;
- Operation Resolute Support, which began in January 2015.

### *Annual Report of All Known and Unclassified Military Operations*

By January 15 of each year, the Department of Military Affairs (DMA) must submit to the President of the Senate, the Speaker of the House of Representatives, and the tax committees of each house of the Legislature a report of all known and unclassified military operations outside the continental United States, Alaska, or Hawaii for which servicemembers based in the continental United States have been deployed during the previous calendar year.<sup>130</sup>

To the extent possible, the report must include:

- The official and common names of the military operations;
- The general location and purpose of each military operation;
- The date each military operation commenced; and
- The date each military operation terminated, unless the operation is ongoing.<sup>131</sup>

DMA submitted the required report in January 2018, providing the names, dates, locations and general purposes of all known and unclassified military operations that occurred outside the continental United States, Alaska, and Hawaii in calendar year 2017.<sup>132</sup>

### Effect of Proposed Changes

The bill updates the statutory list of military operations eligible for the exemption by specifying that Operation Enduring Freedom ended on December 31, 2014 and by removing from the list Operations New Dawn and Odyssey Dawn that ended on December 15, 2011, and October 31, 2011, respectively, which are no longer relevant for purposes of the tax exemption.

## **Exemption for Water and Wastewater Utilities**

### Current Situation

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<sup>130</sup> s. 196.173(3), F.S.

<sup>131</sup> s. 196.173(3), F.S.

<sup>132</sup> DMA, Office of the Adjutant General, *Named Operations 2017Report*, on file with the House Ways & Means Committee.

Section 163.01, F.S., also known as the Florida Interlocal Cooperation Act of 1969, enables local governments to cooperate with other localities on a basis of mutual advantage to provide services and facilities that will best address the geographic, economic, population, and other factors that affect the needs and development of local communities. The act authorizes public agencies to exercise jointly, by contract in the form of an interlocal agreement, any power, privilege, or authority shared by those agencies in order to more efficiently provide services and facilities.

An interlocal agreement may provide for a separate legal or administrative entity to administer or execute the agreement, which may be a commission, board, or council constituted pursuant to the agreement. Section 163.01(7)(g), F.S. provides a separate legal entity may acquire, own, construct, improve, operate, and manage public facilities, or finance facilities on behalf of any person, relating to a governmental function or purpose, including, but not limited to, wastewater facilities, water or alternative water supply facilities, and water reuse facilities, which may serve populations within or outside of the members of the entity. Since the legal entities created under the Florida Interlocal Act of 1969 perform essential governmental functions they are not required to pay any taxes or assessments of any kind on property acquired to perform such functions.

In a recent circuit court case, the court concluded that water and wastewater facilities owned by an entity created under ch. 163 were not exempt from ad valorem taxes, despite the exemption provided in s. 163.01(7), F.S.<sup>133</sup> The court reasoned that the facilities did not serve a governmental function or purpose for members located within the entity when the facilities only served members located outside the entity. The court also declined to interpret the exemption provided in s. 163.01(7) as an ad valorem exemption because the language in the statute does not specifically mention ad valorem taxation. Lastly, the court reasoned that the facilities were subject to taxation when the entity contracted a private entity to perform the water treatment services because that private entity would be subject to tax had it owned the property.

### Effect of Proposed Changes

This bill clarifies that any separate legal entity created under s. 163.01(7)(g), F.S., is not required to pay any taxes or assessments, including ad valorem tax, on property acquired or used by the entity to perform essential governmental functions regardless of whether the property is located within or outside of the jurisdiction of the members of the entity. The bill also clarifies that the entity, in performance of its authorized purposes, provides essential governmental functions for the public health, safety and welfare of the people of the state and not just the members located within the entity. Further, the bill clarifies that the exemption is not affected by the entity entering into agreements with private entities for services related to utilities owned by the separate legal entity.

### **Taxation of Multiple Parcel Buildings**

#### Current Situation

Currently, owners of entities in a mixed use multiple parcel building all share the same tax folio number of the property upon which the building is located, unless portions of the building are legally separated, such as a condominium. If the ownership of the property is not legally separated, the owner of the building may require the users of the building to contribute toward payment of taxes on the value of the land under the building. When a party fails to make its contribution, a tax certificate could be sold or the property could eventually be sold for nonpayment of taxes.

Section 197.3631, F.S., provides general provisions for methods of collecting non-ad valorem assessments. Section 197.572, F.S., provides that when any lands are sold for nonpayment of taxes, or any tax certificate is issued thereon by a governmental unit or agency or pursuant to any tax lien foreclosure proceeding, the title to the land shall continue to be subject to any easement or telephone,

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<sup>133</sup> Florida Governmental Utility Authority v. Tim Parker and Linda Myers, Case Number 2014-CA-000472, Fla. 7<sup>th</sup> Judicial Circuit (December 8, 2016), per curiam affirmed, Florida Governmental Utility Authority v. Tim Parker and Linda Myers, Case No. 5D17-93, Slip Opinion 2017 WL 6624263, (Fla. 5<sup>th</sup> DCA Dec. 26, 2017)

telegraph, pipeline, power transmission, or other public service purpose and shall continue to be subject to any easement for the purposes of drainage or of ingress and egress to and from other land.

Section 197.573, F.S., allows for the survival of restrictions and covenants after tax sales. The statute provides when a deed in the chain of title contains restrictions and covenants running with the land, the restrictions and covenants shall survive and be enforceable after the issuance of a tax deed or master's deed, or a clerk's certificate of title upon foreclosure of a tax deed, tax certificate, or tax lien, to the same extent that it would be enforceable against a voluntary grantee of the owner of the title immediately before the delivery of the tax deed, master's deed, or clerk's certificate of title.

### Effect of Proposed Changes

The bill creates s. 193.0237, F.S., providing for the assessment of multiple parcel buildings. This section applies to any land on which a multiple parcel building is substantially completed as of January 1 of the respective assessment year. The bill defines a multiple parcel building as a building, other than one consisting entirely of a single condominium, timeshare, or cooperative, which contains separate parcels that are vertically located, in whole or in part, on or over the same land.

The bill prohibits separate ad valorem or non-ad valorem assessments against the land upon which the multiple parcel building is located. The property appraiser is required to allocate all of the just value of the land among the parcels in the multiple parcel building in the same proportion that the just value of the improvements in each parcel bears to the total just value of all the improvements in the entire multiple parcel building. Each parcel in a multiple parcel building must also be assigned a separate tax folio number.

The bill provides that a condominium, timeshare, or cooperative may be created within a parcel in the multiple parcel building. However, any land value allocated to the just value of a parcel containing a condominium or cooperative must be further allocated among the units pursuant to ss. 193.023(5) and 719.114, F.S., respectively. If a condominium or cooperative is created within a parcel, a separate tax folio number must be assigned to each unit.

The bill defines recorded instrument and provides that all provisions of a recorded instrument affecting a parcel in a multiple parcel building, which parcel has been sold for taxes or special assessments, survive and are enforceable to the same extent that they would be enforceable against a voluntary grantee of the title immediately before the delivery of the tax deed, master's deed, or clerk's certificate of title as provided in s. 197.573, F.S.

The bill amends s. 197.3631, F.S., adding a subsection providing that non-ad valorem special assessments based on the size of the area of the land containing a multiple parcel building, regardless of ownership, must be levied on and allocated among all parcels in the multiple parcel building on the same basis that the land value is allocated among parcels in s. 193.0237(3), F.S. For non-ad valorem assessments not based on the size or area of the land, each parcel in the multiple parcel building is subject to a separate assessment.

The bill amends s. 197.572, F.S., to add "support of certain improvements" to the statute catch-line. The bill also adds language to the statute providing that when lands are sold for nonpayment of taxes, the issuance of a tax certificate, or pursuant to any tax lien foreclosure proceeding, the title to the land will continue to be subject to any surviving easements for conservation purposes or "for" telephone, telegraph, pipeline, power transmission, or other public service purpose; and shall continue to be subject to any easement for "support of improvements that may be constructed above the lands," and for the purposes of drainage or of ingress and egress to and from other land.

The bill amends s. 197.573 (1), F.S., to include "other recorded instrument" providing that when a deed, or other recorded instrument in the chain of title contains restrictions and covenants running the land, the restrictions and covenants shall survive and be enforceable after the issuance of a tax deed or master's deed, or a clerk's certificate of title upon foreclosure of a tax deed, tax certificate, or tax lien, to the same extent that it would be enforceable against a voluntary grantee of the owner of the title immediately before the delivery of the tax deed, master's deed, or clerk's certificate of title.



The bill also makes technical changes to s. 197.573(2), F.S., and amends the statute providing this section does not protect covenants that create any debt or lien against or upon the property, except for covenants providing for satisfaction or survival of a lien of record held by a municipal or county governmental unit, or covenants providing a lien for assessments accruing after such tax deed, master's deed, or clerk's certificate of title to a condominium association, homeowners' association, property owners' association, or other person having assessment powers under such covenants.

## **School Discretionary Millage for Fixed Capital Outlay**

### **Current Situation**

Each school board may levy up to 1.5 mills against the taxable value for fixed capital outlay for district schools, including charter schools at the discretion of the school board, to be used for purposes specified in law.<sup>134</sup> If the additional 1.5-mill levy is not sufficient to meet specified district school board needs, the board is authorized to levy up to 0.25 mills to supplement fixed capital outlay in lieu of an equivalent amount of the discretionary mills for operations as provided in the General Appropriations Act (GAA).<sup>135</sup> The total discretionary millage levied for school purposes and fixed capital outlay, as provided in statute, may not exceed 1.75 mills.<sup>136</sup>

A school district may spend up to \$100 per unweighted full-time equivalent student from the revenue generated by the nonvoted discretionary capital outlay millage levy described above to fund expenses for the following additional purposes:<sup>137</sup>

- The purchase, lease-purchase, or lease of driver's education vehicles; motor vehicles used for the maintenance or operation of plant and equipment; security vehicles or vehicles used in storing or distributing materials and equipment.
- Payment of the cost of premiums, for property and casualty insurance necessary to insure school district educational and ancillary plants.

### **Effect of Proposed Changes**

The bill amends s. 1011.71, F.S., to raise the amount a school district may expend for the purchase or lease of specified vehicles or for the payment of the cost premiums for property and casualty insurance necessary to insure school district educational and ancillary plants from up to \$100 to up to \$150 per unweighted full-time equivalent student. This increase will provide school districts with additional flexibility in the expenditure of discretionary millage.

## **Documentary Stamp Tax**

### **General**

Florida imposes a documentary stamp tax on tax deeds and other documents related to real property at the rate of 70 cents per \$100 of the consideration paid therefor.<sup>138</sup> Consideration is defined to include, but is not limited to, the money paid or agreed to be paid; the discharge of an obligation; and the amount of any mortgage, purchase money mortgage lien, or other encumbrance, whether or not the underlying indebtedness is assumed.<sup>139</sup> Additionally, Florida imposes a documentary stamp tax on bonds, certificates of indebtedness, notes and other written obligations to pay money at the rate of 35 cents per \$100 of the amount of the indebtedness.<sup>140</sup>

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<sup>134</sup> s. 1011.71(2), F.S.

<sup>135</sup> s. 1011.71(3), F.S.

<sup>136</sup> *Id.*

<sup>137</sup> s. 1001.71(5), F.S.

<sup>138</sup> s. 201.02(1)(a), F.S.

<sup>139</sup> s. 201.02(1)(a), F.S.

<sup>140</sup> ss. 201.07 and 201.08, F.S.

## **Spousal Homestead Transfers**

### Current Situation

Current law exempts from documentary stamp taxes on documents related to real property for certain transfers or conveyances as specified in ch. 201, F.S.<sup>141</sup> For example, a deed, transfer, or conveyance between spouses or former spouses pursuant to an action for dissolution of their marriage wherein the real property is or was their marital home or an interest therein is not subject to taxation under ch. 201, F.S.<sup>142</sup> This exemption also applies to conveyances that occurred within one year before the dissolution of marriage.

Except for a conveyance prior to the dissolution of a marriage discussed above, there is currently no documentary stamp tax exemption for transfers or conveyances between married spouses. For instance, if a spouse owned real property prior to his or her marriage and added the other spouse's name to the deed subsequent to their marriage, documentary stamp tax would be imposed on such transaction.

### Effect of Proposed Changes

The bill provides an exemption from documentary stamp taxes for a deed or other instrument that transfers or conveys homestead property, or any interest therein, between spouses. The exemption applies if:

- The only consideration for the transfer or conveyance is the amount of a mortgage or other lien encumbering the homestead property at the time of the transfer or conveyance; and
- The deed or other instrument is recorded within one year after the date of the marriage.

This exemption applies to transfers or conveyances between spouses, regardless of whether the transfer or conveyance is from one spouse to another, from one spouse to both spouses, or from both spouses to one spouse.

## **Loans Issued by Local Housing Finance Authorities**

### Current Situation

Current law authorizes each county to create by ordinance a Housing Finance Authority (HFA) to encourage investment in construction and rehabilitation of suitable affordable housing units.<sup>143</sup> HFAs have the authority to issue bonds and use the bond proceeds to raise capital for financing of qualifying housing projects.<sup>144</sup> Bonds issued by a HFA, and all notes, mortgages, or other instruments given to secure repayment of the bonds, are exempt from all taxes.<sup>145</sup>

HFAs also have the authority to make conventional loans with funds derived from sources other than bond proceeds,<sup>146</sup> for instance, loans made to persons who otherwise cannot borrow from conventional lending sources.<sup>147</sup> However, even though bonds issued by a HFA and financial instruments given to secure repayment of the bonds are tax exempt, notes and mortgages pertaining to loans made by a

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<sup>141</sup> See ss. 201.02(6)-(8), and 201.24, F.S.

<sup>142</sup> s. 201.02(7), F.S.

<sup>143</sup> ch. 159, F.S.

<sup>144</sup> s. 159.612(2), F.S.

<sup>145</sup> s. 159.621, F.S.

<sup>146</sup> For example, funds from the State Housing Initiatives Partnership pursuant to ch. 420, F.S.

<sup>147</sup> s. 159.608(8), F.S.

HFA other than as part of a bond transaction remain subject to documentary stamp tax at a rate of 35 cents per \$100 of the consideration paid therefor.<sup>148</sup>

### Effect of Proposed Changes

The bill provides an exemption from documentary stamp taxes for any note or mortgage given in connection with a loan made by or on behalf of a housing finance authority. In order to qualify for the exemption, the housing authority must, at the time the note or mortgage is recorded, record an affidavit signed by an agent of the housing authority affirming that the loan was made by or on behalf of the housing finance authority.

## **Small Business Emergency Bridge Loans**

### Current Situation

The Florida Small Business Emergency Loan Program is part of Florida's response to disasters. The program's purpose is to provide short-term, interest-free working capital loans that are intended to "bridge the gap" between the time a major catastrophe hits and when a business has secured longer term recovery resources. Loans are awarded in amounts from \$1,000 to \$50,000, with terms of 90 or 180 days, and must be paid in full by the end of the loan term.<sup>149</sup>

The program was first activated following Hurricane Andrew and has been activated 20 additional times since then. In response to Hurricane Irma in September 2017, the program has made 829 small business loans totaling \$27,719,793 and 49 citrus-related loans totaling \$5,728,000.<sup>150</sup>

The Agricultural Economic Development Program<sup>151</sup> provides for disaster loans and grants for agricultural producers who have experienced losses from a natural disaster or a socio-economic condition or event. The loans and grants may be used to:

- Restore or replace essential physical property or remove debris from essential physical property;
- Pay all or part of production costs associated with the disaster year;
- Pay essential family living expenses; or
- Restructure farm debts.

Agricultural producers having parcels of land in production not exceeding 300 acres are eligible for loans under this program, and funds may be issued as direct loans or as loan guarantees for up to 90 percent of the total loan, in amounts not less than \$30,000 and not more than \$300,000. Loan applicants must provide at least ten percent equity.<sup>152</sup> This program has not been funded by the Legislature, and no loans have been made.<sup>153</sup>

### Effect of Proposed Changes

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<sup>148</sup> s. 201.08, F.S.

<sup>149</sup> <http://www.floridadisasterloan.org/> (last visited Mar. 2, 2018).

<sup>150</sup> Total amounts as of January 8, 2018.

<sup>151</sup> Section 570.82, F.S.

<sup>152</sup> *Id.*

<sup>153</sup> Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Disaster Loans*, Proposed Language, Jan 12, 2018 Revenue Impact Results, available at [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/\\_pdf/page278-281.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/page278-281.pdf).

The bill creates s. 201.25, F.S., providing an exemption from documentary stamp tax for any loan made by the Florida Small Business Emergency Loan Program in response to a disaster for which the governor declares a state of emergency pursuant to s. 252.36, F.S., or any loan made by the Agricultural Economic Development Program.

## **Article V Fees**

### **Traffic Fine Reduction for Driver Improvement Course Attendance**

#### **Current Situation**

In general, ch. 318, F.S., provides for the disposition of traffic infractions. Specifically, s. 318.14, F.S., provides the procedures for processing noncriminal traffic infractions. A person who commits a noncriminal traffic infraction and is issued a citation, must elect to appear before a designated official, pay the citation, or enter into a payment plan with the clerk of court within 30 days after the citation is issued to avoid having his or her driver license suspended.<sup>154</sup>

Section 318.14(9), F.S., provides that a person who does not hold a commercial driver license or commercial learner's permit and who is cited while driving a noncommercial motor vehicle for a noncriminal traffic infraction may, in lieu of a court appearance, elect to attend a basic driver improvement course.<sup>155</sup> If a driver improvement course is completed, adjudication is withheld and points<sup>156</sup> are not assessed against the person's driver license. However, a person may not elect to attend a driver improvement course if he or she elected to attend a driver improvement course in the preceding 12 months.

Similarly, the option to attend a driver improvement program is unavailable for citations related to:

- Violating the posted speed limit when the driver exceeds the posted speed limit by 30 miles per hour or more;
- Not carrying the vehicle's certificate of registration while the vehicle is in use;
- Operating a motor vehicle with an expired registration;
- Operating a motor vehicle with a driver license expired for six months or less; and
- Operating a motor vehicle without carrying a driver license.<sup>157</sup>

A person may not make more than five elections for a driver improvement course within his or her lifetime.<sup>158</sup> If a person completes a basic driver improvement course, 18 percent of the civil penalty imposed<sup>159</sup> is deposited in the State Courts Revenue Trust Fund. However, the 18 percent is not revenue for purposes of s. 28.36, F.S.,<sup>160</sup> and may not be used in establishing the budget of the clerk of the court under s. 28.36, F.S., or s. 28.35, F.S.<sup>161</sup>

Prior to 2009, s. 318.14(9), F.S., provided for an 18 percent reduction in the civil penalty for persons who completed driver improvement school. In 2009, the statute was changed to remove the 18 percent reduction in fines and to allocate those funds to the State Courts Revenue Trust Fund.<sup>162</sup>

Section 318.15, F.S., relates to failure to comply with a civil penalty or failure to appear. Specifically s. 318.15(1)(b), F.S., provides that a person who elects to attend driver improvement school and has paid

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<sup>154</sup> s. 318.14, F.S.

<sup>155</sup> Driver improvement courses must be approved by the DHSMV.

<sup>156</sup> Points are provided for in s. 322.27, F.S.

<sup>157</sup> s. 318.14(9), F.S.

<sup>158</sup> s. 318.14(9), F.S.

<sup>159</sup> The civil penalty is imposed under s. 318.18(3), F.S. The civil penalty imposed varies by violation.

<sup>160</sup> Section 28.36, F.S., provides budget procedures for court-related functions of the clerk of the court.

<sup>161</sup> Section 28.35, F.S., creates the Florida Clerk of Court Operations Corporation.

<sup>162</sup> ch. 2009-7, Laws of Fla. The bill had an effective date of Feb. 1, 2009.

the civil penalty<sup>163</sup> who subsequently fails to attend the driver improvement school within the time specified by the court is deemed to have admitted the infraction and is adjudicated guilty. In such a case, the clerk of the court notifies the Department of Highway Safety and Motor Vehicles (DHSMV) of the person's failure to attend driver improvement school and points are assessed on the person's driver license.

The cost of driver improvement courses range from \$15 to \$40, depending on the provider.<sup>164</sup> From 2008 to 2017, there has been a decrease in the number of individuals who have opted to attend a driver improvement course.<sup>165</sup>

**Number of Individuals Electing to Attend  
Driver Improvement Courses 2008-2017**

<b>Calendar Year</b>	<b>Individuals Electing Driver Improvement Course</b>	<b>Elected But Did Not Attend</b>
2008	479,116	-
2009	397,707	-
2010	347,458	42
2011	301,421	395
2012	271,256	404
2013	255,315	621
2014	260,131	839
2015	239,960	2,097
2016	221,884	8,386
2017	201,576	24,040
<b>Total</b>	<b>2,975,824</b>	<b>36,824</b>

**Effect of Proposed Changes**

The bill amends s. 318.14(9), F.S., providing a reduction of 9 percent on the civil penalty for a noncriminal traffic infraction if the person elects to attend driver improvement school. The bill also removes the provision that 9 percent of the civil penalty from those attending driver improvement schools is deposited into the State Courts Revenue Trust Fund. Therefore, the bill reduces the fine for those attending a driver improvement course and reduces the revenue provided to the State Courts Revenue Trust Fund.

The bill also amends s. 318.15(1)(b), F.S., making conforming changes regarding the reduction in fines for those who elect to attend a driver improvement course.

**Cigarette Tax Distributions**

**Current Situation**

Chapter 210, F.S., governs taxes on tobacco products. Cigarette tax collections received by the Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation are deposited into the Cigarette Tax Collection Trust Fund. Section 210.20, F.S., provides for the payment of monthly distributions as follows:  
From the total amount of cigarette tax collections:<sup>166</sup>

<sup>163</sup> The civil penalty is provided for in s. 318.14(9), F.S.

<sup>164</sup> DHSMV, *2017 Agency Legislative Bill Analysis: HB 547*, on file with the House Transportation & Infrastructure Subcommittee.

<sup>165</sup> Email from DHSMV staff, Dec. 1, 2017, on file with House Transportation & Infrastructure Subcommittee.

<sup>166</sup> See s. 210.20(2)(a), F.S.

- 8.0 percent service charge to the General Revenue Fund;<sup>167</sup> and
- 0.9 percent to the Alcoholic Beverage and Tobacco Trust Fund.

From the remaining net collections:<sup>168</sup>

- 2.9 percent to the Revenue Sharing Trust Fund for Counties;
- 29.3 percent to the Public Medical Assistance Trust Fund;
- 4.04 percent to the Moffitt Center;<sup>169</sup> and
- 1.0 percent to the Biomedical Research Trust Fund in the Department of Health (DOH).<sup>170</sup>

After the above distributions are made, the remaining balance of net cigarette tax collections is deposited in the General Revenue Fund.<sup>171</sup>

The funds distributed to the Moffitt Center may not be less than \$15.6 million annually, which is the amount that would have been paid to the Moffitt Center in Fiscal Year 2001-2002 at the 4.04 percent rate. This distribution is scheduled to expire June 30, 2053.<sup>172</sup>

### Effect of Proposed Changes

The bill creates reporting requirements for distributions from cigarette tax collections going to the Moffitt Center. By March 15 of each year, the Center shall report to the Office of Economic and Demographic Research the following information:

- An itemized accounting of all expenditures of the distributed funds, including amounts spent on debt service.
- A statement indicating what portion of the distributed funds have been pledged for debt service.
- The original principal amount, and current debt service schedule of any bonds or other borrowing for which the distributed funds have been pledged or debt service.

### Taxes Imposed on Motor and Diesel Fuel

#### **Generally**

Motor fuel and diesel fuel are subject to state taxation pursuant to ch. 206, F.S. The tax rate is a combination of several state and local rates, and the revenue collected is distributed to various state trust funds and to local governments for revenue sharing purposes.<sup>173</sup> For 2017, the combined state tax rate is 24.8 cents per gallon.<sup>174</sup> In addition, the retail sale of motor and diesel fuel is subject to sales tax under ch. 212, F.S., under certain circumstances if fuel taxes have not been paid.<sup>175</sup>

<sup>167</sup> See s. 215.20(1), F.S. concerning the appropriation of the eight percent service charge to the General Revenue Fund.

<sup>168</sup> See s. 210.20(2)(a), F.S.

<sup>169</sup> See s. 210.20(2)(b), F.S. The distribution of cigarette tax funds to the Moffitt Center was initiated in 1998, using 2.59% for the calculation on net cigarette tax collections. See ch. 98-286, Laws of Fla. The last adjustment to the percentage for the calculation occurred in 2014, when the percentage was set at the current 4.04% from July 1, 2014 through June 30, 2017. See s. 8 of ch. 2014-38, Laws of Fla.

<sup>170</sup> Pursuant to s. 210.20(2)(c), F.S. these funds (constituting 1.0% of net collections) are appropriated in an amount up to \$3 million annually during the period of July 1, 2013 to June 30, 2033, to DOH and the Sanford-Burnham Medical Research Institute for the purpose of those entities working to establish activities and grant opportunities relating to biomedical research.

<sup>171</sup> See s. 210.20(b), F.S.

<sup>172</sup> s. 210.20(2)(b), F.S.

<sup>173</sup> s. 206.41, F.S.

<sup>174</sup> REC, 2018 FLORIDA TAX HANDBOOK, pp. 126-127, available at: <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf>

<sup>175</sup> ss. 212.18(3) and 212.0501, F.S.; Rule 12B-5.120, F.A.C.

## Fuel Used for Agricultural Shipment after Hurricane Irma

### Current Situation

Current law exempts the sale or use of motor and diesel fuel for agricultural or farm purposes;<sup>176</sup> however, agricultural or farm purposes are generally defined to mean “use exclusively on a farm or for processing farm products on the farm, and does not include fuel used in any vehicle or equipment operated upon public highways of the state.”<sup>177</sup>

### Effect of Proposed Changes

The bill creates an exemption from state and local taxes imposed on motor fuel and diesel under parts I and II, ch. 206, F.S.,<sup>178</sup> for fuel that is used for the transportation of agricultural products from the farm or agricultural land to a facility used to process, package, or store the product. The exemption is available through a refund of previously paid taxes and applies to purchases made between September 10, 2017, and June 30, 2018. Excluded from this exemption are the “constitutional fuel tax” levied under s. 9(c), Art. XII of the 1968 State Constitution, and the 0.125 cents per gallon levied to defray expenses for motor fuel inspection, testing and analysis by the Department of Agriculture and Consumer Services.<sup>179</sup>

To receive a refund, the fuel purchaser must apply to DOR by December 31, 2018, and include the following information:

- The name and address of the person claiming the refund.
- The name and address of up to three owners of a farm or agricultural land whose agricultural product was shipped by the fuel purchaser.
- The sales invoice or other proof of purchase of the fuel, showing the number of gallons of fuel purchased, the type of fuel purchased, the date of purchase, and the name and place of business of the dealer from whom the fuel was purchased.
- The license number, or other identification number, of the motor vehicle that used the exempt fuel.
- An affidavit executed by the fuel purchaser including a statement that he or she purchased and used the fuel in a manner that qualifies for this exemption.

## Export of Tax-Free Fuels

### Current Situation

Chapter 206, F.S., provides for the licensing of a person engaged in business as a terminal supplier, importer, exporter, blender, biodiesel manufacturer, or wholesaler of motor fuel within this state.<sup>180</sup> Generally, taxes on motor fuel are imposed on all of the following:<sup>181</sup>

- The removal of motor fuel in this state from a terminal<sup>182</sup> if the motor fuel is removed at the rack.<sup>183</sup>
- The removal of motor fuel in this state from any refinery under certain circumstances.

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<sup>176</sup> ss. 206.41(4)(c), 206.64, 206.874(2)-(3), and 212.0501, F.S.

<sup>177</sup> The restriction does not apply to fuel used on highways to move equipment from one farm to another.

<sup>178</sup> The exemption does not include the 2 cent per gallon “second gas tax” imposed pursuant to art. XII, sec. 9(c), Fla. Const. under s. 206.41(1)(a), F.S., or the 0.125 cents per gallon inspection fee imposed under s. 206.41(1)(h), F.S.

<sup>179</sup> ss. 206.41(1)(a) and (h), F.S.

<sup>180</sup> s. 206.02, F.S.

<sup>181</sup> s. 206.41(6), F.S.

<sup>182</sup> “Terminal” means a storage and distribution facility for taxable motor or diesel fuel, supplied by pipeline or marine vessel, that has the capacity to receive and store a bulk transfer of taxable motor or diesel fuel. See s. 206.01(18), F.S.

<sup>183</sup> “Rack” means the part of a terminal or refinery by which fuel is physically removed into tanker trucks or rail cars. See s. 206.01(12), F.S.

- The entry of motor fuel into this state for sale, consumption, use, or warehousing under certain circumstances.
- The removal of motor fuel in this state to an unregistered person, unless there was a prior taxable removal, entry, or sale of the motor fuel.
- The removal or sale of blended motor fuel in this state by the blender thereof.

However, current law exempts the purchase of taxable motor fuels at a terminal by a licensed exporter only under the following circumstances:

- The exporter has designated to the terminal supplier the destination for delivery of the fuel to a location outside the state;
- The exporter is licensed in the state of destination and has supplied the terminal supplier with that license number;
- The exporter has not been barred from making tax-free exports by the department for violation of s. 206.051(5); and
- The terminal supplier collects and remits to the state of destination all taxes imposed on said fuel by the destination state.

If a licensed exporter pays Florida motor fuel taxes, the exporter can take a credit on its monthly fuel tax return or apply for a refund of Florida fuel tax paid on fuel exported from the state.<sup>184</sup>

Terminal suppliers may exchange fuel above the loading rack of a terminal with other terminal suppliers without paying motor fuel taxes,<sup>185</sup> but fuel tax must be paid by a terminal supplier that purchases motor fuel at the rack from another terminal supplier.

When a terminal supplier purchases motor fuel at the rack from another terminal supplier and subsequently resells the motor fuel to an exporter, the purchasing terminal supplier must pay Florida motor fuel tax on his purchase and charge Florida motor fuel tax to the exporter on the resale. Although the exporter may take a credit or refund for the Florida motor fuel tax (as described above), the exporter must first pay the Florida motor fuel tax as well as the motor fuel tax in the state to which the fuel will be exported.

### Effect of Proposed Changes

The bill amends s. 206.052, F.S., to provide an exemption from motor fuel taxes for a terminal supplier that purchases motor fuel from another terminal supplier at a terminal under the following circumstances:

- The terminal supplier who purchased the motor fuel sells the motor fuels to a licensed exporter for immediate export from the state.
- The terminal supplier who purchased the motor fuel has designated to the terminal supplier who sold the motor fuels the destination for delivery of the fuel to a location outside the state.
- The terminal supplier who purchased the motor fuel is licensed in the state of destination and has supplied the terminal supplier who sold the motor fuels with that license number.
- The licensed exporter has not been barred from making tax-free exports by the department for violation of s. 206.051(5).
- The terminal supplier who sold the motor fuel to the other terminal supplier collects and remits to the state of destination all taxes imposed on said fuel by the destination state.

## **Aviation Fuel Taxes**

### Current Situation

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<sup>184</sup> s. 206.051(4), F.S.

<sup>185</sup> Rule 12B-5.050, F.A.C.



## Florida Law

Florida law imposes an excise tax of 6.9 cents on every gallon of aviation fuel sold in the state or brought into the state for use.<sup>186</sup> Aviation fuel is defined as “fuel for use in aircraft, and includes aviation gasoline and aviation turbine fuels and kerosene, as determined by the American Society for Testing Materials specifications D-910 or D-1655 or current specifications.”<sup>187</sup>

In 2016, the Legislature amended the fuel tax laws by removing a limited exemption for certain air carriers and reducing the tax rate on all air carriers.<sup>188</sup> The combination of the exemption repeal and tax rate cut was intended to be neutral with respect to total aviation fuel tax collections on a recurring basis. The 2016 law changes provided a delayed effective date to July 1, 2019. Beginning in fiscal year 2019-2020, the excise tax on aviation fuel will be 4.27 per gallon.

Collections of aviation fuel tax in fiscal year 2018-19 are estimated to be \$34 million, net of refunds. After implementation of the rate cut enacted by the Legislature in 2016, collections of aviation fuel tax in fiscal year 2019-20 are estimated to be \$27.7 million, net of refunds.<sup>189</sup>

## Federal Law

The Federal Aviation Administration (FAA) is the agency within the United States Department of Transportation (USDOT) that, among other things, regulates the air transportation system in the United States.<sup>190</sup> Title 14 of the Code of Federal Regulations, in part, provides the licensing, certification, and operational specifications for all aviation activities in the United States. Federal regulations define “air carrier” to mean a person who undertakes directly by lease, or other arrangement, to engage in air transportation. Part 121 provides the operating requirements for domestic, flag, and supplemental operations. Part 125 provides for the certification and operation requirements for airplanes having a seating capacity of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more; part 125 also provides rules governing person on board such aircrafts. Part 135 provides the operating requirements for commuter and on-demand operations and rules governing persons on board such aircrafts.

The FAA imposes certain restrictions on the uses of revenues for airport operators that accept Federal assistance.<sup>191</sup> Generally, revenues from state and local taxes on aviation fuel may only be used for certain aviation-related purposes such as airport operating costs, or in the case of state taxes, a “state aviation program.”<sup>192</sup> However, the revenue from state and local taxes on aviation fuel which were in effect prior to December 30, 1987, is considered “grandfathered” and is eligible for use for otherwise impermissible expenditures.<sup>193</sup> On November 7, 2014, the FAA clarified its interpretation of the federal requirements for the use of revenue derived from taxes on aviation fuel, and requested each state to validate compliance with this FAA regulation.<sup>194</sup> On April 26, 2016, the Florida Department of Transportation validated the state’s compliance with the FAA regulation.<sup>195</sup>

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<sup>186</sup> s. 206.9825, F.S.

<sup>187</sup> s. 206.9815, F.S.

<sup>188</sup> Ch. 2016-220, Laws of Fla.

<sup>189</sup> EDR, Florida Transportation Revenue Estimating Conference, February 2018.

<sup>190</sup> USDOT, Administrations, available at: <http://www.dot.gov/administrations> (last visited Feb. 15, 2018).

<sup>191</sup> 49 U.S.C. §§ 47107(b) and 47133; Public Laws No. 97-248 and 100-223.

<sup>192</sup> “State aviation program” is not defined, but generally refers to state programs that support capital improvements or operating costs of airports; FAA, Policy and Procedures Concerning the use of Airport Revenue: Proceeds from Taxes on Aviation Fuel, 79 FR 66282, available at: [https://www.faa.gov/airports/resources/publications/federal\\_register\\_notices/](https://www.faa.gov/airports/resources/publications/federal_register_notices/) (last visited Feb. 15, 2018).

<sup>193</sup> Dec. 30, 1987, is the “grandfather” deadline because The Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223, passed on that date, which first required state and local taxes on aviation fuel to be spent on airport-related purposes.

<sup>194</sup> FAA, Policy and Procedures Concerning the use of Airport Revenue: Proceeds from Taxes on Aviation Fuel, 79 FR 66282, available at: [https://www.faa.gov/airports/resources/publications/federal\\_register\\_notices/](https://www.faa.gov/airports/resources/publications/federal_register_notices/) (last visited Feb 15, 2018).

<sup>195</sup> Florida DOT, correspondence from FDOT State Aviation Manager to FAA Director of Office of Airport Compliance and Management Analysis, April 26, 2016, on file with House Ways & Means Committee.

## Effect of Proposed Changes

Beginning July 1, 2019, the bill reduces the excise tax on aviation fuel from 4.27 cents per gallon to 2.85 cents per gallon for aviation fuel paid by an air carrier who conducts scheduled operations or all-cargo operations that are authorized under 14 C.F.R. parts 121, 129, or 135. The exemption is available only through a refund of previously paid taxes. The purchaser must pay the 4.27 cents per gallon tax at the time of purchase and request a refund of 1.42 cents per gallon. The refund provided under this section plus the refund provided under s. 206.9855 may not exceed 4.27 cents per gallon of aviation fuel purchased by an air carrier.

## Natural Gas Fuel Tax

### Current Situation

In 2013, CS/CS/HB 579 established a fuel tax rate structure for motor vehicles powered by natural gas and repealed the decal fee imposed on “alternative fuel” vehicles.<sup>196</sup> The bill also provided an exemption from the new rate structure until December 31, 2018, and exempted from the sales and use tax natural gas and natural gas fuel when placed into the fuel system of a motor vehicle.<sup>197</sup>

Beginning January 1, 2019, the following taxes are imposed on natural gas fuel:

- An excise tax of 4 cents upon each motor fuel equivalent gallon of natural gas fuel.
- An additional tax of 1 cent upon each motor fuel equivalent gallon<sup>198</sup> of natural gas fuel, which is designated as the “ninth-cent fuel tax.”
- An additional tax of 1 cent on each motor fuel equivalent gallon of natural gas fuel by each county, which is designated as the “local option fuel tax.”
- An additional tax on each motor fuel equivalent gallon of natural gas fuel, which is designated as the “State Comprehensive Enhanced Transportation System (SCETS) Tax,” at a rate determined by statute.<sup>199</sup>
- An additional tax is imposed on each motor fuel equivalent gallon of natural gas fuel “for the privilege of selling natural gas fuel,” designated as the “fuel sales tax,” at a rate determined by statute.<sup>200</sup>

## Effect of Proposed Changes

The bill amends s. 206.9955, F.S., to delay the imposition of the tax on natural gas fuel used in motor vehicles from January 1, 2019, to January 1, 2024.

In addition, the bill clarifies the formula used to adjust the tax rates and sets the 12-month period ending September 30, 2013, as the base year in the formula.

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<sup>196</sup> The bill created a new Part V of Ch. 206, F.S., consisting of ss. 206.9951 – 206.998, entitled ‘NATURAL GAS FUEL.’ It repealed various provisions, including ss. 206.877 and 206.89, F.S.; and it amended and relocated various provisions to the new Part V. *See supra* note 4 for a detailed analysis of the bill.

<sup>197</sup> *See* s. 212.08(4)(a)2., F.S.

<sup>198</sup> “Motor fuel equivalent gallon” is defined in s. 206.9951(1), F.S., to mean the volume of natural gas fuel it takes to equal the energy content of one gallon of motor fuel. Section 206.9955, F.S., currently defines the motor fuel equivalent gallon for compressed natural gas, liquefied natural gas, and liquefied petroleum gas.

<sup>199</sup> Paragraph (d) of s. 206.9955(2), F.S., currently requires the DOR, each calendar year, to determine the tax rate applicable to the sale of natural gas fuel for the following 12-month period beginning January 1, rounded to the nearest tenth of a cent, by adjusting the initially established rate of 5.8 cents per gallon by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30.

<sup>200</sup> Paragraph (e) of s. 206.9955(2), F.S., currently requires the DOR, each calendar year, to determine the tax rate applicable to the sale of natural gas fuel, rounded to the nearest tenth of a cent, for the following 12-month period beginning January 1. The tax rate is to be calculated by adjusting the initially established tax rate of 9.2 cents per gallon by the percentage change in the average of the Consumer Price Index for the most recent 12-month period ending September 30.

The bill also:

- Amends s. 206.9952(3), F.S.:
  - to delay the expiration of a \$200 penalty for each month a person acts as a natural gas retailer without a valid natural gas fuel retailer license from December 31, 2018, to December 31, 2023.
  - to delay the effective date of the penalty of 25 percent of the tax that is assessed on the total purchases made during the person's unlicensed period until January 1, 2024.
- Amends s. 206.966, F.S., to delay the date on which natural gas fuel retailers are required to begin filing related monthly reports with the DOR from February 2019 to February 2024.

## **Vehicle Registration Tax: Transportation of Agriculture, Horticulture, and Forestry Products**

### **Current Situation**

Under s. 320.08(4)(n), F.S., a restricted agricultural license plate is available for a truck tractor or heavy truck, not operated as a for-hire vehicle, engaged exclusively in transporting raw, unprocessed, and nonmanufactured agricultural or horticultural products within a 150-mile radius of its home address. The annual tax for the plate is:

- \$87.75 if the vehicle's declared gross weight is less than 44,000 pounds; or
- \$324 if the vehicle's declared gross weight is 44,000 pounds or more and the vehicle only transports:
  - From the point of production to the point of primary manufacture;
  - From the point of production to the point of assembling the same; or
  - From the point of production to a shipping point by rail, water, or motor transportation company.

For these purposes, a truck tractor or heavy truck is considered to be not operated as a for-hire vehicle when the owner of the truck is also the owner of the raw, unprocessed, and nonmanufactured agricultural or horticultural product or the user of the farm implements and fertilizer being delivered. The Department of Highway Safety and Motor Vehicles (DHSMV) may require any documentation deemed necessary to determine eligibility before issuance of this restricted plate.

Generally, a truck tractor or heavy truck, which does not qualify for the restricted plate, is required to pay an annual registration tax that can range from \$60.75 to \$1,322, depending on the vehicle's overall gross weight.<sup>201</sup> Portions of annual license registration taxes are deposited into the General Revenue Fund<sup>202</sup> and the remaining funds are distributed to the State Transportation Trust Fund as provided in s. 320.20, F.S.

According to the DHSMV, in Fiscal Year 2016-2017, 1,608 trucks registered as restricted agricultural trucks. Of those, approximately 60 percent were over 44,000 pounds.<sup>203</sup>

### **Effect of Proposed Changes**

The bill amends s. 320.08(4)(n), F.S., removing the 150-mile radius restriction for trucks to be issued an agricultural restricted license plate. Instead, truck tractors or heavy trucks that operate *within the state* and otherwise meet the criteria for the restricted plate are eligible for the restricted plate. It is likely that the bill will increase the number of vehicles that qualify for the agricultural restricted plate.

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<sup>201</sup> See s. 320.08(4)(a)-(1), F.S.

<sup>202</sup> As required by s. 320.08, F.S.

<sup>203</sup> Email from Kevin Jacobs, DHSMV, RE: SB 672 (Jan. 8, 2018) (on file with the Senate Committee on Transportation).

## Tourist Development Taxes

### Current Situation

The Local Option Tourist Development Act<sup>204</sup> authorizes counties to levy five separate taxes on transient rental<sup>205</sup> transactions (“tourist development taxes” or “TDTs”). Depending on a county’s eligibility to levy such taxes, the maximum tax rate varies from a minimum of three percent to a maximum of six percent:

- The original TDT may be levied at the rate of 1 or 2 percent (s. 125.0104(3)(c), F.S.).<sup>206</sup>
- An additional 1 percent tax may be levied by counties who have previously levied a TDT at the 1 or 2 percent rate for at least three years.<sup>207</sup>
- A high tourism impact tax may be levied at an additional 1 percent.<sup>208</sup>
- A professional sports franchise facility tax may be levied up to an additional 1 percent.<sup>209</sup>
- An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.<sup>210</sup>

### TDT Process

Each county that levies the original 1 or 2 percent tax is required to have a “tourist development council.”<sup>211</sup> The tourist development council is a group of residents from the county that are appointed by the county governing authority. The tourist development council, among other duties, makes recommendations to the county governing authority for the effective operation of the special projects or for uses of the TDT revenue.

Prior to the authorization of the original 1 or 2 percent TDT, the levy must be approved by a countywide referendum<sup>212</sup> and additional TDT levies must be authorized by a vote of the county’s governing authority or by voter approval of a countywide referendum.<sup>213</sup> Each county proposing to levy the original 1 or 2 percent tax must then adopt an ordinance for the levy and imposition of the tax,<sup>214</sup> which must include a plan for tourist development prepared by the tourist development council.<sup>215</sup> The plan for tourist development must include the anticipated net tax revenue to be derived by the county for the two years following the tax levy, as well as a list of the proposed uses of the tax and the approximate cost for each project or use.<sup>216</sup> The plan for tourist development may not be substantially amended except by ordinance enacted by an affirmative vote of a majority plus one additional member of the governing board.<sup>217</sup>

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<sup>204</sup> s. 125.0104, F.S.

<sup>205</sup> s. 125.0104(3)(a)(1), F.S. considers “transient rental” to be the rental or lease of any accommodation for a term of 6 months or less.

<sup>206</sup> s. 125.0104(3)(c), F.S. Sixty-three counties levy this tax, all at a rate of 2 percent. Office of Economic & Demographic Research (EDR), Local Option Tourist / Food & Beverage Tax Rates, available at <http://edr.state.fl.us/Content/local-government/data/county-municipal/> (last visited Dec. 19, 2017).

<sup>207</sup> s. 125.0104(3)(d), F.S. Fifty-one of the eligible 59 counties levy this tax. *Id.*

<sup>208</sup> s. 125.0104(3)(m), F.S. Five of the eight eligible counties levy this tax. *Id.*

<sup>209</sup> s. 125.0104(3)(l), F.S. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities or professional sports franchises, and convention centers and to promote and advertise tourism. Forty-three of the 67 eligible counties levy this additional tax. *Id.*

<sup>210</sup> s. 125.0104(3)(n) F.S. Twenty-nine of the eligible 65 counties levy the additional professional sports franchise facility tax. *Id.*

<sup>211</sup> s. 125.0104(4)(e), F.S.

<sup>212</sup> s. 125.0104(6), F.S.

<sup>213</sup> s. 125.0104(3)(d), F.S.

<sup>214</sup> s. 125.0104(4)(a), F.S.

<sup>215</sup> s. 125.0104(4), F.S.

<sup>216</sup> See s. 125.0104(4), F.S.

<sup>217</sup> See s. 125.0104(4), F.S. The provisions found in ss. 125.0104(4)(a)-(d), F.S., do not apply to the high tourism impact tax, the professional sports franchise facility tax, or the additional professional sports franchise facility tax.

## *TDT Uses*

Current statute prescribes the authorized uses of TDT revenues, which includes tourism marketing, water- or beach-oriented projects, and construction of tourist-related facilities.<sup>218</sup> The permitted uses of each local option tax vary according to the particular levy. Revenues received by a county from a tax levied under s. 125.0104(3)(c) and (d), F.S. (the original 1 or 2 percent levy and the additional 1 percent levy), must be used only for purposes listed in s. 125.0104(5), F.S. These purposes are:

- The acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum that is publicly owned and operated or owned and operated by a not-for-profit organization, or promotion of a zoo.
- Promotion and advertising of tourism in the state.
- Funding of convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies, or by contract with chambers of commerce or similar associations in the county.
- Financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river.<sup>219</sup>
- In counties with populations less than 750,000, tourist development tax revenue may be used for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement, maintenance, operation, or promotion of zoos, fishing piers, or nature centers which are publicly owned and operated or owned and operated by a not-for-profit organization and open to the public.
- A county located adjacent to the Gulf of Mexico or the Atlantic Ocean, except a county that receives revenue from taxes levied pursuant to s. 125.0108, F.S. may use up to 10 percent of the tax revenue received pursuant to this section to reimburse expenses incurred in providing public safety services, including emergency medical services, and law enforcement services, which are needed to address impacts related to increased tourism and visitors to an area.
- Securing revenue bonds issued by the county for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum or financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control.

The use of TDT revenue for any purpose not expressly authorized in statute is expressly prohibited.<sup>220</sup>

## *TDT Administration*

Section 125.0104(10), F.S., authorizes a county levying TDTs to self-administer the tax, if the county adopts an ordinance providing for the local collection and administration of the tax. A county that chooses to self-administer the taxes must choose whether to assume all responsibility for auditing the records and accounts of dealers and assessing, collecting, and enforcing payments of delinquent taxes, or to delegate this authority to DOR.

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<sup>218</sup> Florida Legislative Committee on Intergovernmental Relations, Issue Brief: Utilization of Local Option Tourist Taxes by Florida Counties in Fiscal Year 2009-10 (December 2009), available at <http://edr.state.fl.us/Content/local-government/reports/localopttourist09.pdf> (last visited Dec. 19, 2017).

<sup>219</sup> In counties with populations less than 100,000, up to 10 percent of tourist development tax revenues may be used for financing beach park facilities. *See* s. 125.0104(5)(a), F.S.

<sup>220</sup> s. 125.0104(5)(d), F.S.

## Effect of Proposed Changes

The bill authorizes additional uses of TDT revenues. It allows counties to use TDT revenues in connection with developing or operating public facilities<sup>221</sup> within the boundaries of the county or subcounty special taxing district in which the tax is levied if the public facilities are needed to increase tourist-related business activities in the county or subcounty special district and are recommended by the county tourist development council. TDT revenues may also be used for any related land acquisition, land improvement, design, and engineering costs and all other professional and related costs required to bring public facilities into service.

Additionally, the bill extends the current authorization to use tourist development tax revenues on such things as restoration and maintenance of beaches, inland lakes and rivers, to expressly include the same types of expenditures for estuaries, lagoons, and channels.

The bill establishes prerequisites prior to using TDT funds for “public facilities” as allowed in the bill. The following conditions must first be satisfied:

- At least \$10 million in TDT revenues must have been received by the county in the prior fiscal year;
- The use must be approved by a vote of at least two-thirds of the county governing board membership;
- No more than 70 percent of the cost of the new facilities may be paid for with TDT revenues;
- At least 40 percent of TDT revenues collected by the county are spent to promote and advertise tourism; and
- An independent analysis, performed at the expense of the county tourist development council, must demonstrate the positive impact of the infrastructure project on tourist-related business in the county.

## **Local Business Taxes**

### Current Situation

#### *Background*

In 1972, the Florida Legislature elected to stop administering occupational license taxes at the state level and gave the authority to local governments. Local governments were then authorized to levy occupational license taxes according to the provisions of the “Local Occupational License Act.”<sup>222</sup>

In 2006, 368 of the then-incorporated 404 municipalities and 52 of the 67 counties in Florida had some sort of local occupational license tax in place. Although the local occupational license tax was designed to be purely revenue producing in nature, it had become, unintentionally, a measure of professional and business qualifications to engage in a specific activity. Chapter 2006-152, L.O.F., renamed the act as the “Local Business Tax Act” to reflect that the business or individual has merely paid a tax and it alone does not authenticate the qualifications of a business or individual. The legislation removed the term “occupational license” and added the terms “local business tax” and “local business tax receipt.”

#### *Administrative Procedures*

Under current law, a county or municipality, by appropriate resolution or ordinance, may impose a local business tax for the privilege of engaging in or managing a business, profession, or occupation within its jurisdiction.<sup>223</sup> This differs from fees or licenses paid to any board, commission, or officer for permits,

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<sup>221</sup> “Public facilities” is defined to mean “major capital improvements that have a life expectancy of 5 or more years, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, and pedestrian facilities.”

<sup>222</sup> Ch. 72-306, Laws of Fla. *See also* ch. 205, F.S.

<sup>223</sup> ss. 205.032 and 205.042, F.S.

registration, examination, or inspection. Unless otherwise provided by law, these fees or licenses are deemed to be regulatory and in addition to, but not in lieu of, any local business tax imposed under the provisions of ch. 205, F.S.<sup>224</sup> “Business,” “profession,” and “occupation” do not include the customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions in this state.<sup>225</sup>

Currently, the method for adopting a local business tax ordinance, revising the rate structure of such a tax, or reclassifying occupations within the tax structure is dependent on both the date of the adoption of the tax and the statute under which it was adopted.<sup>226</sup> Municipalities wishing to revise their rate structure and classification must do so under s. 205.043, F.S., or adopt a new ordinance under s. 205.0315, F.S.

Local business taxes must be “based upon reasonable classifications” and “uniform throughout any class.” Rate structure revisions have been permitted under this section since October 1, 1980, subject to limitations on increases above the tax rate levied on October 1, 1971.<sup>227</sup>

### *Exemptions*

Local governments may exempt certain individuals from all or some portion of local business taxes as well as regulate the issuance of tax receipts to certain individuals or businesses. Such exemptions include the following:

- An exemption of 50 percent of the business tax levied when the permanent business location or branch office is located in an enterprise zone.<sup>228</sup>
- Vehicles used for the sale and delivery of tangible personal property at wholesale or retail from the place of business on which a business tax is paid.<sup>229</sup>
- An individual who engages in or manages a business, profession, or occupation as an employee of another person, excluding individuals acting in the capacity as an independent contractor.<sup>230</sup>
- An individual licensed and operating as a real estate broker associate or sales associate under chapter 475, F.S.<sup>231</sup>
- All disabled persons physically incapable of manual labor, widows with minor dependents, and persons 65 years or older, with not more than one employee or helper, and who use their own capital only, not in excess of \$1,000.<sup>232</sup>
- An exemption of \$50 toward the local business tax for all honorably discharged members of the United States Armed Forces who served during certain specified periods, who are also disabled from performing manual labor and who are permanent residents and electors of the state. The unremarried spouse of a deceased disabled veteran who qualified for the exemption is also entitled to this exemption.<sup>233</sup>
- Charitable and religious organizations.<sup>234</sup>
- A licensed mobile home dealer or mobile home manufacturer, or an employee of a dealer or manufacturer, who performs setup operations.<sup>235</sup>

### *Local Business Tax on the Gross Sales of Retail and Wholesale Merchants*

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<sup>224</sup> s. 205.022(5), F.S.

<sup>225</sup> s. 205.022(1), F.S.

<sup>226</sup> s. 205.0315, F.S.

<sup>227</sup> s. 205.043, F.S.

<sup>228</sup> s. 205.054, F.S.

<sup>229</sup> s. 205.063, F.S.

<sup>230</sup> s. 205.066, F.S.

<sup>231</sup> s. 205.067, F.S.

<sup>232</sup> s. 205.162, F.S.

<sup>233</sup> s. 205.171, F.S.

<sup>234</sup> ss 205.191 and 205.192, F.S.

<sup>235</sup> s. 205.193, F.S.

The Cities of Panama City and Panama City Beach levy separate business taxes on the gross sale of all retail and wholesale merchants within the municipal jurisdiction. These municipalities are the only known local governments in Florida that levy a local business tax on the gross receipts of retail and wholesale merchants.<sup>236</sup>

For retail merchants, the City of Panama City imposes a tax of \$10 for each \$1,000 (i.e. 1 percent) of gross sales with a minimum tax of \$1.50 per month. The tax imposed on wholesale merchants is \$0.50 for each \$1,000 of gross sales, or major fraction thereof (i.e. 0.05 percent) with a minimum tax of \$1.50 per month. The tax only applies to the first \$5,000 collected by a merchant for any single item of merchandise.<sup>237</sup>

The City of Panama City Beach imposes a tax of \$10 for each \$1,000 (i.e. 1 percent) of gross sales with a minimum tax of \$50 per year for retail merchants. The tax imposed on wholesale merchants is \$1.50 for each \$1,000 of gross sales, or major fraction thereof (i.e. 0.15 percent) with a minimum tax of \$50 per year.<sup>238</sup>

### Effect of Proposed Changes

The bill authorizes an exemption to the local business tax for honorably discharged veterans and their spouses, unremarried surviving spouses of honorably discharged veterans, active duty military servicemembers' spouses, and low-income persons receiving public assistance, as defined in s. 403.2554, F.S., or having a household income less than 130 percent of the federal poverty level. The exemption for the spouses of active duty military servicemembers requires a receipt of permanent change of station orders to the county or municipality.

The bill requires an individual to complete and sign, under penalty of perjury, a Request for Fee Exemption to be furnished by the local governing authority and to provide written documentation supporting the request. Additionally, the bill provides an exemption for businesses with fewer than 100 people, if an individual to whom an exemption may apply owns a majority interest in the business. Such an individual owner must also complete and sign, under penalty of perjury, a Request for Fee Exemption for the business to be furnished by the local governing authority and to provide written documentation supporting the request.

The bill allows any municipality that imposes a business tax on the gross sales of all retail and wholesale merchants within the municipal jurisdiction to continue to impose such tax. The municipality may change, by ordinance, the definition of a merchant, but not the rate of the tax.

The bill repeals s. 205.171, F.S., which provides an exemption of \$50 toward the local business tax for all honorably discharged members of the United States Armed Forces who served during certain specified periods, who are also disabled from performing manual labor and who are permanent residents and electors of the state, as well as the unremarried spouse of a deceased disabled veteran who qualified for the exemption.

### Marketplace Contractors

#### Current Situation

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<sup>236</sup> Office of Economic and Demographic Research, *2016 Local Government Financial Information Handbook* at 148, available at <http://edr.state.fl.us/Content/local-government/reports/lgfih16.pdf> (accessed 11/17/2017).

<sup>237</sup> Panama City Code of Ordinances, ch. 14, sec. 14-29 (April 21, 2017).

<sup>238</sup> *Supra* note 35. The Fiscal Year 2016-2017 City of Panama City Beach budget identifies \$10.3 million of projected revenue from local business tax levies (the single largest revenue source) and no levy of ad valorem taxes. Panama City Beach Administration, *Budgets & Financial Statements, Amended 2016/Adopted 2017 Budget*, at 7, available at <http://www.pcbgov.com/home/showdocument?id=6254> (last accessed 11/17/2017).



## Background

Businesses will classify individuals providing services as employees or independent contractors for a variety of reasons. For example, a business must withhold certain federal employment taxes and pay unemployment tax on wages paid to an employee.<sup>239</sup> However, a business does not generally have to withhold or pay any taxes on payments to independent contractors. The general rule is that an individual is an independent contractor if the business has the right to control or direct only the result of the work, not what will be done and how it will be done.<sup>240</sup>

Both federal and state laws provide protection to individuals providing services as employees. These protections include workplace safety, anti-discrimination, anti-child labor, workers' compensation, and wage protection laws. The Fair Labor Standards Act (FLSA)<sup>241</sup> is the main federal law regarding wages. Florida law provides workplace protections for employees throughout the Florida Statutes, including workplace safety, anti-discrimination, workers' compensation, and reemployment assistance.<sup>242</sup>

### Workers' Compensation

Chapter 440, F.S., governs the administration of the workers' compensation system in Florida. The Division of Workers' Compensation within the Department of Financial Services is responsible for administering ch. 440, F.S. Workers' compensation provides a remedy for injured employees for certain workplace injuries.<sup>243</sup> Generally, independent contractors are not considered employees for purposes of workers' compensation.<sup>244</sup>

### Reemployment Assistance

Chapter 443, F.S., governs the administration of Florida's unemployment insurance program, which was created by the Legislature in 1937<sup>245</sup> and was rebranded as the "Reemployment Assistance Program" in 2012.<sup>246</sup> The Department of Economic Opportunity (DEO) is responsible for administering the program,<sup>247</sup> and DOR provides tax collection services on behalf of DEO and deposits the taxes into the state's Unemployment Compensation Trust Fund (UC Trust Fund).<sup>248</sup> The UC Trust Fund is used solely for the purpose of paying benefits to eligible claimants.<sup>249</sup>

Florida employers are required to pay state taxes into Florida's Reemployment Assistance (RA) program as a cost of doing business. Employers must file quarterly reports and pay taxes within one month following after the close of each quarter. DOR reviews the reports and makes a determination of whether the business is liable to pay RA taxes.<sup>250</sup> Generally, a business is liable to pay state reemployment tax if, in the current or preceding calendar year, the business:

- Paid more than \$1,500 in quarterly wages in a calendar year;

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<sup>239</sup> Internal Revenue Service, *Independent Contract (Self-Employed) or Employee?*, Dec. 28, 2017, available at: <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee> (last visited Feb. 23, 2018).

<sup>240</sup> Internal Revenue Service, *Independent Contract (Self-Employed) or Employee?*, Dec. 28, 2017, available at: <https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-self-employed-or-employee> (last visited Feb. 23, 2018).

<sup>241</sup> 29 U.S.C. ch. 8.

<sup>242</sup> ch. 440, 443, and 448, F.S.; ss. 487.2011-2071, and 760.10, F.S.

<sup>243</sup> s. 440.13(1)(d), F.S.

<sup>244</sup> s. 440.02(15), F.S. Note, however, that certain contractors performing in services in the construction industry are considered employees for the purpose of ch. 440, F.S. See, e.g., s. 440.02(15)(c), F.S.

<sup>245</sup> ch. 18402, Laws of Fla.

<sup>246</sup> ch. 2012-30, Laws of Fla.

<sup>247</sup> ss. 20.60(5)(c) and 443.171, F.S.

<sup>248</sup> s. 443.1316, F.S.

<sup>249</sup> ss. 443.131 443.191, F.S.

<sup>250</sup> DOR, *Employer Guide to Reemployment Tax*, available at [http://floridarevenue.com/Forms\\_library/current/rt800002.pdf](http://floridarevenue.com/Forms_library/current/rt800002.pdf) (last visited Feb. 22, 2018).

- Had at least one employee for any portion of a day during any 20 weeks in a calendar year; or
- Is liable under the Federal Unemployment Tax Act as a result of employment in another state.<sup>251</sup>

Section 443.1216, F.S., provides the circumstances under which employment is subject to the requirement to pay RA taxes of ch. 443, F.S. Generally, ch. 443, F.S., only applies to services performed under the usual common-law rules in determining the employer-employee relationship; and, employers are not required to pay RA taxes for compensation paid to independent contractors.<sup>252</sup>

### *Local Laws, Regulations, and Ordinances*

In general, local governments have wide authority under home rule powers to enact various ordinances to accomplish their local needs, except as otherwise provided by state law.<sup>253</sup> For example, a county or municipality may, by appropriate resolution or ordinance, impose a local business tax for the privilege of engaging in or managing a business, profession, or occupation within its jurisdiction.<sup>254</sup> However, state law prohibits local governments from imposing local business taxes on individuals who are employees of another person.<sup>255</sup>

### Effect of Proposed Changes

The bill creates ch. 451, F.S., to provide that a marketplace contractor is considered an independent contractor of the marketplace platform for purposes of state and local laws, regulations, and ordinances, including chs. 440 and 443, F.S., under certain circumstances.

The bill establishes the following definitions:

“Marketplace contractor” means any individual or entity that enters into an agreement with a marketplace platform to use the platform to connect with a third-party seeking temporary household services and, in return for compensation, offers or provides such services to the third-party through the marketplace platform.

- “Marketplace platform” means an entity operating in this state that offers an online-enabled technology application service, website, or system that enables marketplace contractors to provide temporary household services to a third-party; and that accepts service requests from the public only through its online-enabled technology application service, website, or system.
- “Household services” means furniture assembly, interior painting, television mounting, local moving help (excluding transporting items), hanging items, home cleaning, installation of in-home technology, or installing or replacing door hardware. However, the term does not include any service that requires licensure under chapter 489.

The bill provides that a marketplace contractor is considered an independent contractor of the marketplace platform for purposes of state and local laws, regulations, and ordinances, including chs. 440 and 443, F.S., if all of the following conditions are met:

- The marketplace platform does not unilaterally prescribe specific hours during which the marketplace contractor must be available to accept service requests from a third-party submitted through the platform.
- The marketplace platform does not prohibit the marketplace contractor from using the technology application offered by other marketplace platforms.
- The marketplace platform does not restrict the contractor from engaging in any other occupation or business.

<sup>251</sup> s. 443.1215, F.S.

<sup>252</sup> s. 443.1216, F.S.

<sup>253</sup> Article VIII of the state constitution establishes the powers of chartered counties, non-charter counties and municipalities. Chapters 125 and 166, F.S., provide the additional powers and constraints of counties and municipalities.

<sup>254</sup> ch. 205, F.S.

<sup>255</sup> s. 205.066, F.S. <sup>256</sup> s. 20.21, F.S. The head of the Department is the Governor and the Cabinet. Section 20.21(1), F.S.

- The marketplace platform and marketplace contractor agree in writing that the contractor is an independent contractor with respect to the marketplace platform.
- The marketplace contractor bears all or substantially all of the marketplace contractor's expenses incurred by the marketplace contractor in performing the services.
- The marketplace contractor is responsible for the taxes on the marketplace contractor's income.

The proposed changes in this section of the bill apply retroactively to services performed by a marketplace provider before July 1, 2018, if the above conditions were satisfied during the period when the services were performed.

Third parties seeking services through the platform and marketplace contractors working through the platform must comply with chapter 440 (workers' compensation) in the same manner as if they had not connected through the platform.

The proposed changes in this section of the bill do not apply to:

- Services performed in the employ of the state, a political subdivision of the state, an Indian tribe, an instrumentality of a state, or any political subdivision of a state or an Indian tribe that is wholly owned by one or more states, political subdivisions, or Indian tribes, respectively, provided that such service is excluded from employment as defined in ss. 3301 and 3306 of the Federal Unemployment Tax Act.
- Services performed in the employ of a religious, charitable, educational, or other organization that is excluded from employment as defined in ss. 3301 through 3311 of the Federal Unemployment Tax Act, solely by reason of s. 3306(c)(8) of the act.

## **Taxpayer Rights Advocate**

### *Taxpayers' Rights Advocate*

The taxpayers' rights advocate located within DOR<sup>256</sup> is appointed by and reports to the executive director of the department.<sup>257</sup> The taxpayers' rights advocate facilitates the resolution of taxpayer complaints and problems that have not been resolved through normal administrative channels within the department, including taxpayer complaints regarding unsatisfactory treatment of taxpayers by department employees.<sup>258</sup> The taxpayers' rights advocate may also issue a stay of action on behalf of a taxpayer who has suffered or is about to suffer irreparable loss as a result of action by the department.<sup>259</sup>

Section 213.015, F.S., sets out a Florida Taxpayers' Bill of Rights to guarantee that the rights, privacy, and property of Florida taxpayers are adequately safeguarded and protected during tax assessments, collection, and enforcement processes administered under the revenue laws of this state.<sup>260</sup> Twenty-one rights are compiled in the Taxpayers' Bill of Rights, including the right of assistance from a taxpayers' rights advocate of the department.<sup>261</sup> The department's executive director is required to designate a taxpayers' rights advocate and adequate staff to administer the taxpayer problem resolution program.<sup>262</sup>

<sup>256</sup> s. 20.21, F.S. The head of the Department is the Governor and the Cabinet. Section 20.21(1), F.S.

<sup>257</sup> ss. 20.21(3) and 213.018(1), F.S.

<sup>258</sup> ss. 20.21(3)(a), 213.015(2) and 213.018, F.S.

<sup>259</sup> ss. 20.21(3)(b) and 213.018(2), F.S.

<sup>260</sup> See FLA. CONST., ART I, s. 25.

<sup>261</sup> s. 213.015, F.S. See also [http://floridarevenue.com/Pages/taxpayers\\_bill\\_of\\_rights.aspx](http://floridarevenue.com/Pages/taxpayers_bill_of_rights.aspx) (last visited on Jan. 18, 2018).

<sup>262</sup> s. 213.018(1), F.S.

## *Chief Inspector General*

Section 14.32, F.S., creates the Office of Chief Inspector General in the Executive Office of the Governor. The Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor.<sup>263</sup> The Chief Inspector General is appointed by, and serves at the pleasure of, the Governor and serves as the inspector general for the Executive Office of the Governor.<sup>264</sup> Some of the duties of the Chief Inspector General include:

- Initiating investigations, recommending policies, and carrying out other activities designed to deter, detect, and prevent, fraud, waste, mismanagement, and misconduct in government;
- Investigating and examining records of any agency under the direct supervision of the Governor, and coordinating complaint-handling activities with the agencies;
- Coordinating the activities of the Whistle-blower's Act<sup>265</sup> and maintaining the whistle-blower's hotline;
- Acting as liaison and monitoring the activities of the inspectors general in the agencies under the Governor's jurisdiction; and
- Conducting special investigations and management reviews at the request of the Governor.<sup>266</sup>

The Chief Inspector General also has various duties relating to public-private partnerships, including advising on internal control and performance measures, conducting audits, investigating complaints of fraud, and monitoring contract compliance.<sup>267</sup>

### *Department of Revenue Information Sharing*

Taxpayer information received by DOR is generally confidential and exempt from public records requirements.<sup>268</sup> This confidential treatment and exemption from public records requirements extends to all information contained in returns, reports, accounts, declarations, investigative reports, and letters of technical advice.<sup>269</sup>

The department is authorized to make confidential information available to certain government officials in performance of their official duties.<sup>270</sup>

### Effect of Proposed Changes

The bill amends s. 20.21, F.S., to require the Chief Inspector General to appoint the taxpayers' rights advocate within DOR. The taxpayers' rights advocate remains under the general supervision of the executive director of DOR for administrative purposes, but reports to the Chief Inspector General. The bill provides that the taxpayers' rights advocate may be removed from office only by the Chief Inspector General.

The bill further requires the taxpayers' rights advocate to furnish an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Inspector General by January 1 of each year. Such report must include the following:

- The objectives of the taxpayers' rights advocate for the upcoming fiscal year;
- The number of complaints filed in the previous fiscal year;

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<sup>263</sup> s. 14.32(1), F.S.

<sup>264</sup> *Id.*

<sup>265</sup> The Whistle-blower's Act can be found in ss. 112.3187-112.31895, F.S.

<sup>266</sup> s. 14.32(2), F.S.

<sup>267</sup> s. 14.32(3), F.S.

<sup>268</sup> s. 213.053(2)(a), F.S.

<sup>269</sup> *Id.*

<sup>270</sup> s. 213.053(7), F.S.

- A summary of resolutions or outstanding issues from the previous fiscal year report;
- A summary of the most common problems encountered by taxpayers, including a description of the nature of the problems, and the number of complaints for each serious problem;
- The initiatives the taxpayers' rights advocate has taken or is planning to take to improve taxpayer services and the department's responsiveness;
- Recommendations for administrative or legislative action as appropriate to resolve problems encountered by taxpayers; and
- Other information as the taxpayers' rights advocate may deem advisable.

This report must contain a complete and substantive analysis in addition to statistical information.

The bill authorizes DOR to make confidential information available to the taxpayers' rights advocate or his or her agent in performance of his or her official duties.

The bill provides that the person serving as the taxpayers' rights advocate as of the effective date of the bill shall continue to serve in that capacity until such person voluntarily leaves the position or is removed by the Chief Inspector General.

## **Administrative Provisions**

### **Current Situation**

Under s. 28.241(1)(a)2., F.S., a party instituting a civil action in circuit court relating to real property or mortgage foreclosure must pay a graduated filing fee based on the value of the claim. For cases where the value of the claim is more than \$50,000, but less than \$250,000, the filing fee is \$900, of which \$700 must be remitted by the clerk of court to DOR for deposit in the General Revenue Fund.<sup>271</sup>

Under s. 28.241(6), F.S., attorneys wishing to appear pro hac vice<sup>272</sup> in trial and appellate proceedings must pay a \$100 filing fee. The fee is deposited into the General Revenue Fund.

Section 741.01(3), F.S., requires payment of a \$25 filing fee for issuance of a marriage license. The fee is deposited into the General Revenue Fund.

Taxpayer information received by DOR is generally confidential and exempt from public records requirements.<sup>273</sup> This confidential treatment and exemption from public records requirements extends to all information contained in returns, reports, accounts, declarations, investigative reports, and letters of technical advice.<sup>274</sup> The department is authorized to make confidential information available to certain government officials in performance of their official duties.<sup>275</sup>

### **Effect of Proposed Changes**

The bill would redirect the deposit of fifty percent of the fees imposed under ss. 28.241(6) and 741.01(3), F.S., from the General Revenue Fund to the State Courts Revenue Trust Fund. The bill would also redirect the first \$1.5 million in foreclosure filing fees remitted to DOR for claims of more than \$50,000, but less than \$250,000, from the General Revenue Fund to the Miami-Dade Clerk of Court.

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<sup>271</sup> s. 28.241(1)(a)2.d.(II), F.S.

<sup>272</sup> An attorney licensed in another state, but not a member of the Florida Bar, may appear in trial and appellate proceedings under certain circumstances. This is referred to as appearing Pro Hac Vice. See: <https://www.floridabar.org/rules/upl/upl002/#E-FilingProHacVice> (last visited Feb. 15, 2018)

<sup>273</sup> s. 213.053(2)(a), F.S.

<sup>274</sup> *Id.*

<sup>275</sup> s. 213.053(7), F.S.

The bill authorizes DOR to make confidential information available to the coordinator of the Office of Economic and Demographic Research or his or her agent in performance of his or her official duties.

## 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:

*See Fiscal Comments.*

#### 2. Expenditures:

*See Fiscal Comments.*

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce the sales tax on the rental of commercial real estate. The bill provides for a three-day back-to-school sales tax holiday and a seven-day disaster preparedness sales tax holiday.

The bill also contains several provisions designed to provide tax relief to citizens adversely affected by Hurricane Irma.

The bill provides a discount for certain noncriminal traffic infractions when the driver attends a driver improvement course.

The bill is expected to reduce the corporate income tax liability for certain taxpayers that utilize the tax credit programs affected by the bill.

### D. FISCAL COMMENTS:

The total impact of the bill in FY 2018-19 is -\$121.5 million (-\$73.8 million recurring) of which -\$71.9 million (-\$32.2 million recurring) is on General Revenue, -\$6.6 million (-\$17.3 million recurring) is on state trust funds, and -\$43.0 million (-\$24.3 million recurring) is on local government (see table below). Non-recurring state and local government impacts in years beyond FY 2018-19, total -\$2.7 million and -\$13.2 million, respectively. Total tax reductions proposed by the bill are represented by the sum of the recurring impacts, reflecting the annual value of permanent tax cuts when fully implemented, and the pure nonrecurring impacts, reflecting temporary tax reductions. The total of -\$171.2 million in tax reductions proposed by the bill is the sum of -\$73.8 million (recurring, excluding appropriations), -\$81.5 million (pure nonrecurring in FY 2018-19), and -\$15.9 million (pure nonrecurring after FY 2018-19).

Appropriations Detail—The \$1,055,205 appropriated in the bill consists of \$313,886 to implement the “back-to-school” and disaster relief sales tax holidays, \$91,319 for programming changes and certain taxpayer notifications, and \$650,000 to compensate fiscally constrained counties for ad valorem

revenue losses. Most of the above appropriations are needed to pay the cost of notifying several hundred thousand sales tax dealers of either the temporary or permanent law changes.

**Fiscal Year 2018-19 Estimated Fiscal Impacts (millions of \$)**

<b>Issues</b>	<b>General Revenue</b>		<b>State Trust Funds</b>		<b>Local</b>		<b>Total</b>	
	<b>1st Yr.</b>	<b>Recur.</b>	<b>1st Yr.</b>	<b>Recur.</b>	<b>1st Yr.</b>	<b>Recur.</b>	<b>1st Yr.</b>	<b>Recur.</b>
<u>Sales Tax</u> : Business Rent Tax Rate Cut	(11.4)	(27.4)	(*)	(*)	(1.5)	(3.5)	(12.9)	(30.9)
<u>Sales Tax</u> : Tax Holiday/"Back-to-School"	(26.0)	-	(*)	-	(6.7)	-	(32.7)	-
<u>Sales Tax</u> : Agriculture Building Materials	(7.0)	-	(*)	-	(1.8)	-	(8.8)	-
<u>Sales Tax</u> : Agriculture Fencing	(2.2)	-	(*)	-	(0.6)	-	(2.8)	-
<u>Sales Tax</u> : Generators for Nursing Homes/ALFs	(5.3)	-	(*)	-	(1.4)	-	(6.7)	-
<u>Sales Tax</u> : Tax Holidays/Disaster Preparedness	(4.6)	-	(*)	-	(1.2)	-	(5.8)	-
<u>Sales Tax</u> : Recyclers	(0.7)	(0.7)	(0.3)	(0.3)	(0.2)	(0.2)	(1.2)	(1.2)
<u>Sales Tax</u> : Aquaculture	(0.2)	(0.1)	(*)	(*)	(*)	(*)	(0.2)	(0.1)
<u>Sales Tax/Corp Inc Tax</u> : Comm Cont Tax Credits	(1.8)	-	-	-	(0.2)	-	(2.0)	-
<u>Ad Valorem</u> : Citrus Processing/Packing Hurr Relief (1)	-	-	-	-	(10.5)	-	(10.5)	-
<u>Ad Valorem</u> : Dis.Vet/Surviving Spouse Exemption (1)	-	-	-	-	-	(0.1)	-	(0.1)
<u>Ad Valorem</u> : FGUA Clarification (1)	-	-	-	-	-	(*)	-	(*)
<u>Ad Valorem</u> : Save Our Homes Portability (1)	-	-	-	-	-	(1.2)	-	(1.2)
<u>Clerks of Court</u> : Distribution	(1.5)	-	-	-	1.5	-	-	-
<u>Corp Income Tax</u> : Brownfields Credit Increase	(8.5)	-	-	-	-	-	(8.5)	-
<u>Doc Stamp Tax</u> : Housing Authority Obligations	(0.2)	(0.2)	(0.3)	(0.3)	-	-	(0.5)	(0.5)
<u>Doc Stamp Tax</u> : Spousal Transfers	(0.6)	(0.6)	(0.9)	(0.9)	-	-	(1.5)	(1.5)
<u>Doc Stamp</u> : Disaster Loans	(**)	(**)	(**)	(**)	-	-	(**)	(**)
<u>Fuel Tax</u> : Aviation Tax Rate Reduction	-	(1.1)	-	(13.0)	-	-	-	(14.1)
<u>Fuel Tax</u> : Refunds for Agricultural Transportation	-	-	(2.5)	-	(1.2)	-	(3.7)	-
<u>Fuel Tax</u> : Supplier Export Exemption	-	-	(*)	(*)	(*)	(*)	(*)	(*)
<u>Fuels Tax</u> : Natural Gas Fuels Extension	(*)	(0.1)	(0.1)	(0.4)	(0.1)	(0.2)	(0.2)	(0.7)
<u>Highway Safety</u> : Truck License Taxes (ag and forestry trucks)	(*)	(*)	(*)	(*)	-	-	(*)	(*)
<u>Local Business Tax</u> : Exemptions for certain persons	-	-	-	-	(19.1)	(19.1)	(19.1)	(19.1)
<u>Spec. Assessments/Ad Valorem</u> : Multiparcel Buildings	-	-	-	-	(**)	(**)	(**)	(**)
<u>Communication Services Tax</u> : Security Fund	-	-	-	-	(**)	(**)	(**)	(**)
<u>Traffic Fines</u> : 9% Discount (Jan. 1, 2019)	(0.8)	(2.0)	0.1	0.2	-	-	(0.7)	(1.8)
<u>Marketplace Contractors</u>	-	-	(2.6)	(2.6)	-	-	(2.6)	(2.6)
<u>Appropriation</u> : Tax Holidays & Administration	(0.41)	-	-	-	-	-	(0.41)	-
<u>Appropriation</u> : Fiscally Constrained Counties (citrus processing and greening)	(0.65)	-	-	-	-	-	(0.65)	-
<b>2018-19 Total</b>	<b>(71.9)</b>	<b>(32.2)</b>	<b>(6.6)</b>	<b>(17.3)</b>	<b>(43.0)</b>	<b>(24.3)</b>	<b>(121.5)</b>	<b>(73.8)</b>
<b>Non-recurring Impacts After FY 2018-19</b>								
<u>Sales Tax/Corp Inc Tax</u> : Comm Cont Tax Credits	(2.7)	-	-	-	(0.3)	-	(3.0)	-
<u>Ad Valorem</u> : Homestead Hurricane Relief	-	-	-	-	(12.9)	-	(12.9)	-
<b>Bill Total</b>	<b>(74.6)</b>	<b>(32.2)</b>	<b>(6.6)</b>	<b>(17.3)</b>	<b>(56.2)</b>	<b>(24.3)</b>	<b>(137.4)</b>	<b>(73.8)</b>
<b>Pure Nonrecurring =</b>								<b>(97.4)</b>
<b>Recurring + Pure Nonrecurring (2) =</b>								<b>(171.2)</b>
<p>(*) Impact less than \$50,000; (**) Impact is indeterminate.                  (1) Ad valorem tax impacts assume current tax rates.                  (2) Recurring tax cut total (excl. appropriations) = -\$73.8 million                  Pure nonrecurring tax cuts in FY 2018-19= -\$81.5 million  <u>Pure nonrecurring tax cuts after FY 2018-19 = -\$15.9 million</u>                  -\$171.2 million</p>								