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# State Affairs Committee

January 30, 2024  
12:30 PM – 2:30 PM  
Webster Hall (212 Knott)

Meeting Packet  
**REVISED**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### State Affairs Committee

**Start Date and Time:** Tuesday, January 30, 2024 12:30 pm  
**End Date and Time:** Tuesday, January 30, 2024 02:30 pm  
**Location:** Webster Hall (212 Knott)  
**Duration:** 2.00 hrs

#### Consideration of the following bill(s):

HJR 53 Ad Valorem Property Tax Exemption for the Surviving Spouse of Quadriplegics by Tant  
HB 55 Tax Exemptions for Surviving Spouses of Quadriplegics by Tant  
HB 319 Pub. Rec./Military Personnel and Their Families by Holcomb, Rudman  
HB 689 Ad Valorem Tax Exemption for Nonprofit Homes for the Aged by Smith  
HB 691 Town of Horseshoe Beach, Dixie County by Shoaf  
CS/HB 705 Public Works Projects by Local Administration, Federal Affairs & Special Districts Subcommittee, Shoaf  
HB 819 Lehigh Acres Municipal Services Improvement District, Hendry and Lee Counties by Esposito  
HB 1115 Three Rivers Stewardship District, Sarasota County by Buchanan  
HB 7043 OGSR/Agency Personnel Information by Ethics, Elections & Open Government Subcommittee, Arrington  
HB 7047 OGSR/Utility Owned or Operated by a Unit of Local Government by Ethics, Elections & Open Government Subcommittee, Porras

#### Consideration of the following proposed committee substitute(s):

PCS for HB 395 -- Protection of Historical Monuments and Memorials

To submit an electronic appearance form, and for information about attending or testifying at a committee meeting, please see the "Visiting the House" tab at [www.myfloridahouse.gov](http://www.myfloridahouse.gov).

**NOTICE FINALIZED on 01/26/2024 4:04PM by Rando.Lexi**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 53 Ad Valorem Property Tax Exemption for the Surviving Spouse of Quadriplegics

**SPONSOR(S):** Tant

**TIED BILLS:** HB 55 **IDEN./SIM. BILLS:** SJR 618

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	24 Y, 0 N	Rexford	Aldridge
2) Local Administration, Federal Affairs & Special Districts Subcommittee	15 Y, 0 N	Mwakyanjala	Darden
3) State Affairs Committee		Mwakyanjala	Williamson

### SUMMARY ANALYSIS

Ad valorem taxes are annual taxes levied by counties, cities, school districts and certain special districts. These taxes are based on the just value of real and tangible personal property as determined by county property appraisers on January 1 of each year.

Article VII, Section 3 of the Florida Constitution provides for specific exemptions from property taxes for widows and widowers, blind persons, and persons who are totally and permanently disabled. Accordingly, current law allows homestead property owned and used by quadriplegics and certain other disabled persons to be exempt from ad valorem taxes. This exemption does not carry over to the surviving spouse of a quadriplegic or other disabled person if the quadriplegic or other disabled person predeceases his or her spouse.

The Florida Constitution prescribes various instances where a property tax exemption carries over to a surviving spouse, such as the exemption for surviving spouses of partially or permanently disabled veterans over the age of 65 and the exemption for surviving spouses of a first responder who died in the line of duty.

The joint resolution proposes an amendment to Article VII, Section 6 of the Florida Constitution to allow the ad valorem tax exemption received by a quadriplegic to carry over to his or her surviving spouse if the quadriplegic person predeceases his or her spouse.

The joint resolution, if passed by the Legislature, would be considered by the electorate at the 2024 general election and, if approved by 60 percent of the electors voting on the measure, the joint resolution would take effect on January 1, 2025.

The Revenue Estimating Conference estimated that the joint resolution has no impact on state and local government revenues because the joint resolution is not self-executing.

**A joint resolution proposing an amendment to the Florida Constitution requires a three-fifths vote of the membership of each house of the Legislature to appear on the next general election ballot.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Property Taxes in Florida

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.<sup>1</sup> The ad valorem tax is an annual tax levied by counties, municipalities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.<sup>2</sup> The Florida Constitution requires all property be assessed at just value for ad valorem tax purposes,<sup>3</sup> and it provides for specified assessment limitations, property classifications, and exemptions.<sup>4</sup> After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any applicable exemptions to produce the taxable value.<sup>5</sup>

##### Exemptions

Article VII, Section 6 of the Florida Constitution provides that every person who owns real estate with legal and equitable title, and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies, including school district levies. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding school district levies.

The Florida Constitution also creates specific ad valorem exemptions. For example, Article VII, Section 3 of the Florida Constitution provides for specific exemptions from property taxes for widows and widowers, blind persons, and persons who are totally and permanently disabled.

There are a handful of instances in the Florida Constitution where a property tax exemption granted by way of the status or condition of one's spouse carries over to the surviving spouse upon death. Some examples include the exemption for surviving spouses of partially or permanently disabled veterans over the age of 65<sup>6</sup> and the exemption for surviving spouses of a first responder who died in the line of duty.<sup>7</sup>

##### Exemptions for Quadriplegics and Other Disabled Persons

Under current law, homestead property used and owned by a quadriplegic person is totally exempt from property taxes.<sup>8</sup> Paraplegic, hemiplegic, and other disabled persons<sup>9</sup> with a certain gross household income can also receive a total exemption.<sup>10</sup> To be eligible for the exemption, the disabled person must provide proof of their disability to the property appraiser in the county where the

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<sup>1</sup> Art. VII, s. 1(a), Fla. Const.

<sup>2</sup> Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in Art. VII, s. 1(b), Fla. Const., and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>3</sup> Art. VII, s. 4, Fla. Const.

<sup>4</sup> Art. VII, ss. 3, 4, and 6, Fla. Const.

<sup>5</sup> S. 196.031, F.S.

<sup>6</sup> Art. VII, s. 6(e)(2), Fla. Const.

<sup>7</sup> Art. VII, s. 6(f)(2), Fla. Const.

<sup>8</sup> S. 196.101(1), F.S.

<sup>9</sup> Other disabled persons include, a person who must use a wheelchair for mobility or a person who is legally blind. S. 196.101(2), F.S.

<sup>10</sup> S. 196.101(2), F.S.

homestead property is located.<sup>11</sup> Proof can be in the form of a certification from two doctors licensed in Florida or a certification from the United States Department of Veterans Affairs.<sup>12</sup> Currently, this property tax exemption does not carry over to the surviving spouse of the disabled person when the disabled person predeceases his or her spouse.

### **Effect of Proposed Changes**

The joint resolution amends Article VII, Section 6 of the Florida Constitution to authorize the Legislature to allow the homestead property tax exemption for homestead property used and owned by a quadriplegic person to carry over to his or her surviving spouse if the quadriplegic person predeceases his or her spouse.

The joint resolution, if passed by the Legislature, would place the amendment on the ballot at the 2024 general election, or an earlier special election held for the purpose of proposing this amendment to the voters,<sup>13</sup> where 60 percent of the electors voting on the measure must approve it for passage. If approved, the amendment would take effect January 1, 2025. The joint resolution is not subject to the Governor's veto powers.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

Article XI, Section 5(d) of the Florida Constitution requires publication of a proposed amendment in a newspaper of general circulation in each county. The Division of Elections within the Department of State must advertise the full text of the amendment twice in a newspaper of general circulation in each county where the amendment will appear on the ballot. The Division must also provide each supervisor of elections with either booklets or posters displaying the full text of each proposed amendment.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The Revenue Estimating Conference estimated that the joint resolution has no impact on state and local government revenues because the joint resolution is not self-executing.<sup>14</sup>

2. Expenditures:

None.

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

None, because the amendment proposed by the joint resolution is subject to voter approval and is not self-executing.

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<sup>11</sup> S. 196.101(3), F.S.

<sup>12</sup> S. 196.101(3), F.S.

<sup>13</sup> Pursuant to art. XI, s. 5 of the Florida Constitution, placing the joint resolution on a special election ballot would require the legislature to pass a general law by three-fifths vote of each house.

<sup>14</sup> Revenue Estimate Conference, *Tax Exemption for Surviving Spouse of Quadriplegics*,

[http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2024/\\_pdf/page6-8.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2024/_pdf/page6-8.pdf) (last visited Jan. 22, 2024).

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.

House Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VII and the creation of a new section in Article XII of the State Constitution to authorize the Legislature to provide for a homestead property tax exemption for the surviving spouse of certain quadriplegics.

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

That the following amendment to Section 6 of Article VII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 6. Homestead exemptions.—

(a) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five thousand dollars and, for all levies other than school district levies, on the assessed valuation greater than fifty thousand



26 | dollars and up to seventy-five thousand dollars, upon  
27 | establishment of right thereto in the manner prescribed by law.  
28 | The real estate may be held by legal or equitable title, by the  
29 | entirety, jointly, in common, as a condominium, or indirectly  
30 | by stock ownership or membership representing the owner's or  
31 | member's proprietary interest in a corporation owning a fee or a  
32 | leasehold initially in excess of ninety-eight years. The  
33 | exemption shall not apply with respect to any assessment roll  
34 | until such roll is first determined to be in compliance with the  
35 | provisions of section 4 by a state agency designated by general  
36 | law. This exemption is repealed on the effective date of any  
37 | amendment to this Article which provides for the assessment of  
38 | homestead property at less than just value.

39 |       (b) Not more than one exemption shall be allowed any  
40 | individual or family unit or with respect to any residential  
41 | unit. No exemption shall exceed the value of the real estate  
42 | assessable to the owner or, in case of ownership through stock  
43 | or membership in a corporation, the value of the proportion  
44 | which the interest in the corporation bears to the assessed  
45 | value of the property.

46 |       (c) By general law and subject to conditions specified  
47 | therein, the Legislature may provide to renters, who are  
48 | permanent residents, ad valorem tax relief on all ad valorem tax  
49 | levies. Such ad valorem tax relief shall be in the form and  
50 | amount established by general law.

51 (d) The legislature may, by general law, allow counties or  
52 municipalities, for the purpose of their respective tax levies  
53 and subject to the provisions of general law, to grant either or  
54 both of the following additional homestead tax exemptions:

55 (1) An exemption not exceeding fifty thousand dollars to a  
56 person who has the legal or equitable title to real estate and  
57 maintains thereon the permanent residence of the owner, who has  
58 attained age sixty-five, and whose household income, as defined  
59 by general law, does not exceed twenty thousand dollars; or

60 (2) An exemption equal to the assessed value of the  
61 property to a person who has the legal or equitable title to  
62 real estate with a just value less than two hundred and fifty  
63 thousand dollars, as determined in the first tax year that the  
64 owner applies and is eligible for the exemption, and who has  
65 maintained thereon the permanent residence of the owner for not  
66 less than twenty-five years, who has attained age sixty-five,  
67 and whose household income does not exceed the income limitation  
68 prescribed in paragraph (1).

69

70 The general law must allow counties and municipalities to grant  
71 these additional exemptions, within the limits prescribed in  
72 this subsection, by ordinance adopted in the manner prescribed  
73 by general law, and must provide for the periodic adjustment of  
74 the income limitation prescribed in this subsection for changes  
75 in the cost of living.

76 (e) (1) Each veteran who is age 65 or older who is  
 77 partially or totally permanently disabled shall receive a  
 78 discount from the amount of the ad valorem tax otherwise owed on  
 79 homestead property the veteran owns and resides in if the  
 80 disability was combat related and the veteran was honorably  
 81 discharged upon separation from military service. The discount  
 82 shall be in a percentage equal to the percentage of the  
 83 veteran's permanent, service-connected disability as determined  
 84 by the United States Department of Veterans Affairs. To qualify  
 85 for the discount granted by this paragraph, an applicant must  
 86 submit to the county property appraiser, by March 1, an official  
 87 letter from the United States Department of Veterans Affairs  
 88 stating the percentage of the veteran's service-connected  
 89 disability and such evidence that reasonably identifies the  
 90 disability as combat related and a copy of the veteran's  
 91 honorable discharge. If the property appraiser denies the  
 92 request for a discount, the appraiser must notify the applicant  
 93 in writing of the reasons for the denial, and the veteran may  
 94 reapply. The Legislature may, by general law, waive the annual  
 95 application requirement in subsequent years.

96 (2) If a veteran who receives the discount described in  
 97 paragraph (1) predeceases his or her spouse, and if, upon the  
 98 death of the veteran, the surviving spouse holds the legal or  
 99 beneficial title to the homestead property and permanently  
 100 resides thereon, the discount carries over to the surviving

101 spouse until he or she remarries or sells or otherwise disposes  
 102 of the homestead property. If the surviving spouse sells or  
 103 otherwise disposes of the property, a discount not to exceed the  
 104 dollar amount granted from the most recent ad valorem tax roll  
 105 may be transferred to the surviving spouse's new homestead  
 106 property, if used as his or her permanent residence and he or  
 107 she has not remarried.

108 (3) This subsection is self-executing and does not require  
 109 implementing legislation.

110 (f) By general law and subject to conditions and  
 111 limitations specified therein, the Legislature may provide ad  
 112 valorem tax relief equal to the total amount or a portion of the  
 113 ad valorem tax otherwise owed on homestead property to:

114 (1) The surviving spouse of a veteran who died from  
 115 service-connected causes while on active duty as a member of the  
 116 United States Armed Forces.

117 (2) The surviving spouse of a first responder who died in  
 118 the line of duty.

119 (3) A first responder who is totally and permanently  
 120 disabled as a result of an injury or injuries sustained in the  
 121 line of duty. Causal connection between a disability and service  
 122 in the line of duty shall not be presumed but must be determined  
 123 as provided by general law. For purposes of this paragraph, the  
 124 term "disability" does not include a chronic condition or  
 125 chronic disease, unless the injury sustained in the line of duty



151 AD VALOREM TAX EXEMPTION FOR SURVIVING SPOUSES OF  
152 QUADRIPLEGICS.—Proposing an amendment to the State Constitution  
153 to authorize the Legislature to provide for a property tax  
154 exemption for the surviving spouse of a quadriplegic who was  
155 receiving a property tax exemption on real estate used and owned  
156 as a homestead at the time of their death. The amendment takes  
157 effect January 1, 2025.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 55 Tax Exemptions for Surviving Spouses of Quadriplegics

**SPONSOR(S):** Tant and others

**TIED BILLS:** HJR 53 **IDEN./SIM. BILLS:** CS/SB 616

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	24 Y, 0 N	Rexford	Aldridge
2) Local Administration, Federal Affairs & Special Districts Subcommittee	15 Y, 0 N	Mwakyanjala	Darden
3) State Affairs Committee		Mwakyanjala	Williamson

### SUMMARY ANALYSIS

Ad valorem taxes are annual taxes levied by counties, cities, school districts and certain special districts. These taxes are based on the just value of real and tangible personal property as determined by county property appraisers on January 1 of each year.

Current law allows homestead property owned and used by quadriplegic persons and certain other disabled persons to be exempt from ad valorem taxes. This exemption does not carry over to the surviving spouse of a quadriplegic or other disabled person if the quadriplegic or other disabled person predeceases his or her spouse. Other property tax exemptions in law, like exemptions for certain disabled veterans and first responders, allow a surviving spouse to enjoy the exemption as long as the surviving spouse continues to reside on the property and does not remarry.

The bill implements an amendment to Article VII, Section 6 of the Florida Constitution, which is proposed by HJR 53 (2024), to allow the ad valorem tax exemption available to a quadriplegic person to carry over to his or her surviving spouse if the quadriplegic person predeceases his or her spouse. The exemption would apply to the property until the surviving spouse remarries or disposes of the property. If the surviving spouse moves, the dollar amount of the exemption as reflected in the most recent tax roll can be transferred to the surviving spouse's new residence.

The Revenue Estimating Conference (REC) estimated the bill to have a zero or negative indeterminate impact on local government revenues due to the need for approval by the voters of the constitutional amendment proposed by HJR 53. If approved by the voters, and assuming current millage rates, the REC estimated the bill to have a negative recurring impact on school tax revenues of \$0.4 million and \$0.6 million on non-school local tax revenues in Fiscal Year 2024-25.

This bill takes effect on January 1, 2025, if the amendment to the Florida Constitution proposed by HJR 53 is approved by the voters at the 2024 general election or at an earlier special election.



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Property Taxes in Florida

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.<sup>1</sup> The ad valorem tax is an annual tax levied by counties, municipalities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.<sup>2</sup> The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,<sup>3</sup> and it provides for specified assessment limitations, property classifications, and exemptions.<sup>4</sup> After the property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any applicable exemptions to produce the taxable value.<sup>5</sup>

##### Exemptions

Article VII, Section 6 of the Florida Constitution provides that every person who owns real estate with legal and equitable title, and maintains their permanent residence or the permanent residence of their dependent upon such real estate, is eligible for a \$25,000 homestead tax exemption applicable to all ad valorem tax levies including school district levies. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding school district levies.

The Florida Constitution also creates specific ad valorem exemptions. For example, Article VII, Section 3 of the Florida Constitution provides for specific exemptions from property taxes for widows and widowers, blind persons, and persons who are totally and permanently disabled.

There are a handful of instances in current law where a property tax exemption granted by way of the status or condition of one's spouse carries over to the surviving spouse upon death. Some examples include the exemption for surviving spouses of totally and permanently disabled first responders<sup>6</sup> and the exemption for surviving spouses of partially or totally disabled veterans over age 65.<sup>7</sup> In these examples and in other instances in law, the surviving spouse can enjoy the exemption as long as he or she continues to reside on the property and he or she does not remarry. The surviving spouse can also transfer the value of the exemption to a different homestead property.

##### Exemptions for Quadriplegics and Other Disabled Persons

Under current law, homestead property used and owned by a quadriplegic person is totally exempt from property taxes.<sup>8</sup> Paraplegic, hemiplegic, and other disabled persons<sup>9</sup> with a certain gross household income can also receive a total exemption.<sup>10</sup> To be eligible for the exemption, the disabled

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<sup>1</sup> Art. VII, s. 1(a), Fla. Const.

<sup>2</sup> Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in Art. VII, s. 1(b), Fla. Const., and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>3</sup> Art. VII, s. 4, Fla. Const.

<sup>4</sup> Art. VII, ss. 3, 4, and 6, Fla. Const.

<sup>5</sup> S. 196.031, F.S.

<sup>6</sup> S. 196.102(8), F.S.

<sup>7</sup> S. 196.082(3), F.S.

<sup>8</sup> S. 196.101(1), F.S.

<sup>9</sup> Other disabled persons include, a person who must use a wheelchair for mobility or a person who is legally blind. S. 196.101(2), F.S.

<sup>10</sup> S. 196.101(2), F.S.

person must provide proof of their disability to the property appraiser in the county where the homestead property is located.<sup>11</sup> Proof can be in the form of a certification from two doctors licensed in Florida or a certification from the United States Department of Veterans Affairs.<sup>12</sup> Currently, this property tax exemption does not carry over to the surviving spouse of the disabled person when the disabled person predeceases his or her spouse.

### HJR 53 (2024)

HJR 53, to which this bill is linked, proposes an amendment to the Florida Constitution to authorize the Legislature to allow the homestead property tax exemption for homestead property used and owned by a quadriplegic person to carry over to his or her surviving spouse if the quadriplegic person predeceases his or her spouse. If approved by the voters at the 2024 general election, or an earlier special election, the amendment would take effect January 1, 2025.

### **Effect of Proposed Changes**

This bill implements the amendment to Article VII, Section 6 of the Florida Constitution, proposed by HJR 53, to allow the exemption for homestead property taxes held by a quadriplegic person to carry over to his or her surviving spouse if the quadriplegic person predeceases his or her spouse. The surviving spouse can continue to enjoy this exemption as long as he or she holds the legal or beneficial title to the homestead, permanently resides thereon, and does not remarry.

If the surviving spouse moves from the property, the dollar amount of the exemption as reflected in the most recent tax roll can be transferred to the surviving spouse's new residence. The surviving spouse can continue to enjoy the exemption at his or her new residence as long as he or she permanently resides on the property and does not remarry.

The bill provides emergency rulemaking authority to the Department of Revenue to administer the provisions of the act.

#### **B. SECTION DIRECTORY:**

Section 1: Amends s. 196.101, F.S., to allow the homestead property tax exemption held by a quadriplegic person to carry over to his or her surviving spouse.

Section 2: Authorizes the Department of Revenue to adopt emergency rules to administer the act.

Section 3: Provides a contingent effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

The Revenue Estimating Conference (REC) estimated the bill to have a zero or negative indeterminate impact on local government revenues due to the need for approval by the voters of

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<sup>11</sup> S. 196.101(3), F.S.

<sup>12</sup> S. 196.101(3), F.S.

the constitutional amendment proposed by HJR 53. If approved by the voters, and assuming current millage rates, the REC estimated the bill to have a negative recurring impact on school tax revenues of \$0.4 million and \$0.6 million on non-school local tax revenues in Fiscal Year 2024-25.<sup>13</sup>

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If HJR 53 is approved by the voters and this bill goes into effect, surviving spouses of deceased quadriplegic persons would be eligible to receive property tax relief in certain situations.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Article VII, Section 18 of the Florida Constitution may apply because this bill may reduce the authority that counties or municipalities have to raise revenues in the aggregate to the extent it allows the ad valorem tax exemption available to a quadriplegic person to carry over to his or her surviving spouse if the quadriplegic person predeceases his or her spouse in certain circumstances; however, an exemption may apply because the bill may have an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill authorizes the Department of Revenue to adopt emergency rules to administer the act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

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<sup>13</sup> Revenue Estimating Conference, *Tax Exemption for Surviving Spouse of Quadriplegics (Implementing Bill)*

[http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2024/\\_pdf/page9-11.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2024/_pdf/page9-11.pdf) (last visited Jan. 22, 2024).

1                                   A bill to be entitled  
 2           An act relating to tax exemptions for surviving  
 3           spouses of quadriplegics; amending s. 196.101, F.S.;  
 4           authorizing the surviving spouses of certain  
 5           quadriplegics to carry over a certain tax exemption in  
 6           certain circumstances; authorizing the Department of  
 7           Revenue to adopt emergency rules; providing a  
 8           contingent effective date.

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

11  
 12           Section 1. Subsections (1) and (3) of section 196.101,  
 13 Florida Statutes, are amended to read:

14           196.101 Exemption for totally and permanently disabled  
 15 persons; surviving spouse carryover.-

16           (1) (a) Any real estate used and owned as a homestead by  
 17 any quadriplegic is exempt from taxation.

18           (b) If the quadriplegic granted an exemption under  
 19 paragraph (a) predeceases his or her spouse and if, upon the  
 20 death of the quadriplegic, the spouse holds legal or beneficial  
 21 title to the homestead and permanently resides thereon as  
 22 specified in s. 196.031, the discount from ad valorem tax that  
 23 the quadriplegic received carries over to the benefit of the  
 24 quadriplegic's spouse until such time as he or she remarries or  
 25 sells or otherwise disposes of the property. If the spouse sells

26 | or otherwise disposes of the property, a discount not to exceed  
27 | the dollar amount granted from the most recent ad valorem tax  
28 | roll may be transferred to his or her new residence, as long as  
29 | the new residence is used as his or her primary residence and he  
30 | or she does not remarry.

31 | (3) The production by any ~~totally and permanently disabled~~  
32 | person entitled to the exemption in subsection (1) or subsection  
33 | (2) of a certificate of such disability from two licensed  
34 | doctors of this state or from the United States Department of  
35 | Veterans Affairs or its predecessor to the property appraiser of  
36 | the county wherein the property lies, is prima facie evidence of  
37 | the fact that he or she is entitled to such exemption.

38 | Section 2. The Department of Revenue may, and all  
39 | conditions are deemed met to, adopt emergency rules pursuant to  
40 | s. 120.54(4), Florida Statutes, to administer this act.  
41 | Notwithstanding any other law, emergency rules adopted pursuant  
42 | to this section are effective for 6 months after adoption and  
43 | may be renewed during the pendency of procedures to adopt  
44 | permanent rules addressing the subject of the emergency rules.

45 | Section 3. This act shall take effect on the effective  
46 | date of the amendment to the State Constitution proposed by HJR  
47 | 53, or a similar joint resolution having substantially the same  
48 | specific intent and purpose, if such amendment is approved at  
49 | the next general election or at an earlier special election  
50 | specifically authorized by law for that purpose.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 319 Pub. Rec./Military Personnel and Their Families

**SPONSOR(S):** Holcomb, Rudman, and others

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 548

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	16 Y, 0 N	Mwakyanjala	Darden
2) Ethics, Elections & Open Government Subcommittee	17 Y, 0 N	Skinner	Toliver
3) State Affairs Committee		Mwakyanjala	Williamson

### SUMMARY ANALYSIS

Current law provides several public record exemptions for certain identification and location information of specified current or former agency employees and their spouses and children. However, no exemption from public record requirements currently exists for United States military personnel.

The bill creates a public record exemption for the following identification and location information of current or former military personnel and their spouses and dependents:

- Home addresses, telephone numbers, and dates of birth of current and former military personnel, and the telephone numbers associated with the personal communication devices of such personnel;
- Home addresses, telephone numbers, and dates of birth of the spouses and dependents of current and former military personnel, and the telephone numbers associated with the personal communication devices of such spouses and dependents; and
- Names and locations of schools attended by the spouses of current and former military personnel, and schools or day care facilities attended by dependents of such personnel.

The bill defines "military personnel" to mean persons employed by the U.S. Department of Defense who have been authorized to access information deemed "secret" or "top secret" by the Federal Government, as well as current or former servicemembers of a special operations force.

In order for the exemption to apply, the military personnel member must submit to the custodial agency a written request that the information be exempt and a written statement that reasonable efforts have been made by the military personnel member to protect the identification and location information from being accessible through other means available to the public.

The bill provides that the public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2029, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.

The bill may have a negative, but likely insignificant, fiscal impact on state and local governments.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Public Records

The Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government.<sup>1</sup> The Legislature, however, may provide by general law an exemption<sup>2</sup> from public record requirements provided that the exemption passes by a two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.<sup>3</sup>

Current law also addresses the public policy regarding access to government records, guaranteeing every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt.<sup>4</sup> Furthermore, the Open Government Sunset Review Act<sup>5</sup> provides that a public record exemption may be created, revised, or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."<sup>6</sup> An identifiable public purpose is served if the exemption meets one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.<sup>7</sup>

Pursuant to the Open Government Sunset Review Act, a new public record exemption or substantial amendment of an existing public record exemption is repealed on October 2<sup>nd</sup> of the fifth year following enactment, unless the Legislature reenacts the exemption.<sup>8</sup>

##### Current Public Record Exemptions for Identification and Location Information

Current law provides several public record exemptions for identification and location information of specified current or former agency employees and their spouses and children.<sup>9</sup> Identification and location information typically includes the home addresses,<sup>10</sup> telephone numbers,<sup>11</sup> dates of birth, and photographs of specified agency employees and their spouses and children. Additionally, the places of employment of the spouses and children of the specified agency employees as well as the names and

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<sup>1</sup> Art. I, s. 24(a), Fla. Const.

<sup>2</sup> A public record exemption means a provision of general law which provides that a specified record, or portion thereof, is not subject to the access requirements of s. 119.07(1), F.S., or s. 24, Art. I of the Florida Constitution. See s. 119.011(8), F.S.

<sup>3</sup> Art. I, s. 24(c), Fla. Const.

<sup>4</sup> See s. 119.01, F.S.

<sup>5</sup> S. 119.15, F.S.

<sup>6</sup> S. 119.15(6)(b), F.S.

<sup>7</sup> *Id.*

<sup>8</sup> S. 119.15(3), F.S.

<sup>9</sup> See s. 119.071(4)(d), F.S.

<sup>10</sup> The term "home addresses" means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address. S. 119.071(4)(d)1.a., F.S.

<sup>11</sup> The term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices. S. 119.071(4)(d)1.c., F.S.



locations of schools and day care facilities attended by those children are exempt from public record requirements.<sup>12</sup>

Current law also provides a public record exemption for specified identification and location information for certain federal officials, such as United States attorneys, assistant U.S. attorneys, U.S. Courts of Appeal judges, U.S. District Court judges, and U.S. Magistrates, as well as the spouses and children of such officials.<sup>13</sup> In order for the exemption to apply, the attorney, judge, or magistrate must submit to the custodial agency a written request to exempt the information from public record requirements.<sup>14</sup> In addition, the attorney, judge, or magistrate must submit a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.<sup>15</sup>

A similar public record exemption for the identification and location information of current or former members of the U.S. Armed Forces, their reserve components, and the National Guard, who served after September 11, 2001, as well as their spouses and dependents previously existed in statute. However, that exemption sunset on October 2, 2020.<sup>16</sup>

### Effect of Proposed Changes

The bill creates a public record exemption for the identification and location information of current and former military personnel and their spouses and dependents. The bill defines “military personnel” to mean persons employed by the U.S. Department of Defense who have been authorized to access information deemed “secret” or “top secret” by the Federal Government, as well as current or former servicemembers of a special operations force.<sup>17</sup>

Specifically, the public record exemption provides that the following identification and location information is exempt<sup>18</sup> from public record requirements:

- Home addresses, telephone numbers, and dates of birth of current and former military personnel, and the telephone numbers associated with the personal communication devices of such personnel;
- Home addresses, telephone numbers, and dates of birth of the spouses and dependents of current and former military personnel, and the telephone numbers associated with the personal communication devices of such spouses and dependents; and
- Names and locations of schools attended by the spouses of current and former military personnel, and schools or day care facilities attended by dependents of such personnel.

In order for the exemption to apply, the military personnel member must submit to the custodial agency a written request to exempt the information from public record requirements and a written statement that he or she has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public.

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<sup>12</sup> See s. 119.071(4)(d)2., F.S.

<sup>13</sup> S. 119.071(5)(i), F.S.

<sup>14</sup> S. 119.071(5)(i)2.a., F.S.

<sup>15</sup> S. 119.071(5)(i)2.b., F.S.

<sup>16</sup> Formerly s. 119.071(5)(k), F.S.

<sup>17</sup> The bill defines “special operations force” to mean those active and reserve component forces of the military services designated by the Secretary of Defense and specifically organized, trained, and equipped to conduct and support special operations. The term includes, but is not limited to, servicemembers of the U.S. Army Special Forces and the U.S. Army 75th Ranger Regiment; the U.S. Navy SEALs and Special Warfare Combatant-Craft Crewmen; the U.S. Air Force Combat Control, Pararescue, and Tactical Air Control Party specialists; the U.S. Marine Corps Critical Skills Operators; and any other component of the U.S. Special Operations Command approved by the Criminal Justice Standards and Training Commission. See ss. 943.10(5) and (22), F.S.

<sup>18</sup> There is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So.3d 1060, 1070 (Fla. 4th DCA 2018); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att’y Gen. Fla. 04- 09 (2004).

The bill provides the constitutionally required public necessity statement,<sup>19</sup> which provides, in part, that the public record exemption is necessary because disclosure of such records jeopardizes the safety of such military personnel, their spouses, and dependents. Pursuant to the Open Government Sunset Review Act, the bill provides that the exemption will repeal on October 2, 2029, unless reenacted by the Legislature.

**B. SECTION DIRECTORY:**

Section 1: Amends s. 119.071, F.S., relating to general exemptions from inspecting or copying of records.

Section 2: Provides a public necessity statement as required by the Florida Constitution.

Section 3: Provides an effective date of upon becoming a law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

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

None.

**D. FISCAL COMMENTS:**

The bill could create a negative, but likely insignificant, fiscal impact on state and local agencies as staff for those entities could require training related to the public record exemption. It is unclear whether the staff will experience an increase in workload due to the number of military personnel who may take advantage of the public record exemption. The costs should be absorbed as they are part of the day-to-day responsibilities of the agency.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

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<sup>19</sup> Art. I, s. 24(c), Fla. Const., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

2. Other:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it includes a public necessity statement. The public necessity statement provides, in part, that as terrorist groups have threatened military personnel and their families and have encouraged terrorist sympathizers to harm military personnel and their families within the United States, the Legislature finds that allowing continued public access to the identification and location information of current and former military personnel and their families jeopardizes the safety of these military personnel, their spouses, and their dependents.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for the identification and location information of current and former military personnel, as well as the spouses and dependents of such persons. The exemption is limited to those military personnel who serve or served in a special operations force, or who are or were employed by the U.S. Department of Defense and authorized to access information deemed "secret" or "top secret" by the Federal Government, to prevent potential harm to those persons and their families by terrorists or terrorist sympathizers. As such, it does not appear to be in conflict with the constitutional requirement that it be no broader than necessary to accomplish its purpose.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.



25 (II) Home addresses, telephone numbers, and dates of birth  
26 of the spouses and dependents of current and former military  
27 personnel, and the telephone numbers associated with the  
28 personal communication devices of such spouses and dependents.

29 (III) Names and locations of schools attended by the  
30 spouses of current and former military personnel and schools or  
31 day care facilities attended by dependents of current and former  
32 military personnel.

33 b. "Military personnel" means persons employed by the  
34 United States Department of Defense who are authorized to access  
35 information that is deemed "secret" or "top secret" by the  
36 Federal Government or who are servicemembers of a special  
37 operations force.

38 c. "Special operations force" has the same meaning as  
39 provided in s. 943.10(22).

40 2. Identification and location information held by an  
41 agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the  
42 State Constitution if the current or former military personnel  
43 member submits to an agency that has custody of the  
44 identification and location information:

45 a. A written request to exempt the identification and  
46 location information from public disclosure; and

47 b. A written statement that he or she has made reasonable  
48 efforts to protect the identification and location information

49 from being accessible through other means available to the  
50 public.

51 3. This exemption applies to identification and location  
52 information held by an agency before, on, or after the effective  
53 date of this exemption.

54 4. This paragraph is subject to the Open Government Sunset  
55 Review Act in accordance with s. 119.15 and shall stand repealed  
56 on October 2, 2029, unless reviewed and saved from repeal  
57 through reenactment by the Legislature.

58 Section 2. The Legislature finds that it is a public  
59 necessity that identification and location information of  
60 current and former military personnel, and their spouses and  
61 dependents, that is held by an agency be made exempt from s.  
62 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
63 State Constitution. Military personnel perform among the most  
64 critical, most effective, and most dangerous operations in  
65 defense of our nation's freedom. Terrorist groups have  
66 threatened military personnel and their families and have  
67 encouraged terrorist sympathizers to harm military personnel and  
68 their families within the United States. One terrorist group has  
69 allegedly gathered the photographs and home addresses of  
70 military personnel from public sources to create and publish a  
71 list of military personnel in order to make such persons  
72 vulnerable to an act of terrorism. The Legislature finds that  
73 allowing continued public access to the identification and

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74 | location information of current and former military personnel  
75 | and their families jeopardizes the safety of these personnel,  
76 | their spouses, and their dependents. The Legislature finds that  
77 | protecting the safety and security of current and former  
78 | military personnel, and their spouses and dependents, outweighs  
79 | any public benefit that may be derived from the public  
80 | disclosure of the identification and location information.

81 | Section 3. This act shall take effect upon becoming a law.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 689 Ad Valorem Tax Exemption for Nonprofit Homes for the Aged

**SPONSOR(S):** Smith and others

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 220

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	23 Y, 0 N	Rexford	Aldridge
2) Local Administration, Federal Affairs & Special Districts Subcommittee	14 Y, 0 N	Burgess	Darden
3) State Affairs Committee		Burgess	Williamson

**SUMMARY ANALYSIS**

Florida law exempts from ad valorem taxation property used as a home for the aged by certain non-profit corporations if at least 75 percent of the occupants of the facility are over the age of 62 years or totally and permanently disabled. The exemption also applies to the extent these properties are used exclusively to conduct religious services or render nursing or medical services.

Individual units and apartments in such a facility may be exempt from ad valorem taxation if the units or apartments are reserved for, restricted to, or actually occupied by a permanent resident of the state who is at least 62 years of age or totally and permanently disabled and who meets certain income qualifications.

The bill revises eligibility for the ad valorem tax exemption for property used as a home for the aged by nonprofit corporations to include property owned by a Florida limited partnership where an entity not licensed under ch. 429, F.S., and wholly owned by a corporation not-for-profit under ch. 617, F.S., is the sole general partner. The changes made by the bill will first apply to the 2025 ad valorem tax roll.

The Revenue Estimating Conference estimates that the bill will not impact state government revenues and will have a recurring negative impact on local government revenues of -\$0.1 million beginning in Fiscal Year 2025-26.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Ad Valorem Taxes

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.<sup>1</sup> Ad valorem taxes are annual taxes levied by counties, municipalities, school districts, and certain special districts. These taxes are based on the just value (fair market value) of real and tangible personal property as determined by county property appraisers on January 1 of each year.<sup>2</sup> The just value may be subject to limitations and exemptions, which factor in to the property appraiser's calculation of taxable value. Each year, local governing boards levy millage rates (i.e., tax rates) on taxable value to generate the property tax revenue contemplated in their annual budgets.

##### Exemption for Property Used by Nonprofit Homes for the Aged

Florida law exempts from ad valorem taxation property used as a home for the aged by certain nonprofit corporations.<sup>3</sup> In order to qualify for the exemption, the following criteria must be met:

- The applicant for exemption must be qualified as a 501(c)(3) exempt charitable organization under federal law by January 1 of the year it requests to be exempt from Florida ad valorem taxation; and be either:
  - A corporation not-for-profit pursuant to ch. 617, F.S.; or
  - A Florida limited partnership, the sole general partner of which is a corporation not-for-profit pursuant to ch. 617, F.S.;
- 75 percent of the occupants of the facility must be over the age of 62 years or be totally and permanently disabled; and
- Certain facilities must also acquire licensing by the Agency for Health Care Administration.<sup>4</sup>

Upon sufficient proof that the applicant meets the above criteria, the property appraiser will exempt the portions of the facility that are devoted exclusively to the conduct of religious services or the rendering of nursing or medical services.<sup>5</sup> In addition, the property appraiser may exempt individual units or apartments in the facility if residency in those units or apartments is reserved for or restricted to, or the unit or apartment is occupied by, a permanent resident of the state who is:

- An individual with a gross income<sup>6</sup> of no more than \$38,869<sup>7</sup> per year who is either at least 62 years of age or is totally and permanently disabled;
- A couple with a combined gross income of no more than \$43,636 per year, or the surviving spouse of such a couple, if the surviving spouse lived with the deceased at the time of the deceased's death in a home for the aged, at least one of whom must be at least 62 years of age or is totally and permanently disabled; or
- A totally and permanently disabled veteran who meets the requirements of s. 196.081, F.S.<sup>8</sup>

If any portion of the facility is used for a non-exempt purpose, those portions may be valued and placed upon the tax rolls separately from any portion entitled to the exemption.<sup>9</sup> Common areas of the home

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<sup>1</sup> Art. VII, s. 1(a), Fla. Const.

<sup>2</sup> Art. VII, s. 4, Fla. Const.

<sup>3</sup> Art. VII, ss. 3(a) and 6(c), Fla. Const., implemented by s. 196.1975, F.S.

<sup>4</sup> Ss. 196.1975(1) and (2), F.S. Licensure by the Agency for Health Care Administration is required for facilities that furnish medical facilities or nursing services to residents or that qualifies as an assisted living facility under ch. 429, F.S.

<sup>5</sup> S. 196.1975(3), F.S.

<sup>6</sup> Social security benefits are considered gross income for the purposes of this exemption. S. 196.1975(6), F.S.

<sup>7</sup> S. 196.1975(4)(b), F.S. See also Fla. Dept. of Revenue, Cost of Living Adjustments, <https://www.floridarevenue.com/property/Documents/CostofLivingAdjust.pdf> (last accessed Jan. 24, 2024).

<sup>8</sup> S. 196.1975(4)(a), F.S. Current law defines the maximum income limitation as \$7,200 (for individuals) or \$8,000 (for couples) in the year the provision was passed (1977), adjusted annually by the percentage change in U.S. Department of Labor's cost-of-living index. See s. 196.1975(4)(a) and (b). The values above reflect those present adjustments for 2023 Fla. Dept. of Revenue, Cost of Living Adjustments, <https://www.floridarevenue.com/property/Documents/CostofLivingAdjust.pdf> (last accessed Jan. 24, 2024).

are exempt from taxation as long as at least 25 percent of the units or apartments of the home are restricted to or occupied by persons who meet the income requirements.<sup>10</sup>

The facility must file an application annually with the property appraiser to demonstrate continuing qualification for the exemption.<sup>11</sup> The facility must also file an affidavit from each person residing in a unit or apartment in the facility who meets the disability or income requirements described above.<sup>12</sup> The person signing the affidavit must attest that he or she resides in the unit or apartment claiming the exemption and, in good faith, makes that unit or apartment his or her permanent residence.<sup>13</sup>

#### Licensure of Assisted Care Communities

In order to operate an assisted living facility, an adult family-care home, or an adult day care center, Florida law requires the Agency for Health Care Administration to issue a license authorizing operation.<sup>14</sup> Current law prescribes a handful of exemptions from the ch. 429, F.S., licensure requirements. For example, a facility operated by the federal government<sup>15</sup> or licensed by the Agency for Persons with Disabilities<sup>16</sup> is not required to be licensed as an assisted living facility under ch. 429, F.S.

#### **Effect of Proposed Changes**

The bill revises eligibility for the ad valorem tax exemption for property used as a home for the aged by nonprofit corporations to include property owned by a Florida limited partnership where an entity not licensed under ch. 429, F.S., and wholly owned by a corporation not-for-profit under ch. 617, F.S., is the sole general partner.

The changes made by the bill will first apply to the 2025 ad valorem tax roll.

#### **B. SECTION DIRECTORY:**

Section 1: Amends s. 196.1975, F.S., revising criteria for the ad valorem taxation exemption for property used by nonprofit homes for the aged.

Section 2: Clarifies that changes made to the ad valorem tax exemption for nonprofit homes for the aged will first apply to the 2025 ad valorem tax roll.

Section 3: Provides an effective date of January 1, 2025.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

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<sup>9</sup> S. 196.1975(11), F.S.

<sup>10</sup> S. 196.1975(8), F.S.

<sup>11</sup> S. 196.1975(9)(b), F.S. This application is known as a Form DR-504HA, Fla. Dept. of Revenue, Property Tax Oversight Forms, <https://floridarevenue.com/property/Documents/dr504ha.pdf> (last accessed Jan. 24, 2024).

<sup>12</sup> S. 196.1975(9)(b), F.S. This application is known as a Form DR-504S.

<sup>13</sup> *Id.*

<sup>14</sup> Ss. 429.07(1), 429.67(1), and 429.907(1), F.S.

<sup>15</sup> Ss. 429.04(2)(a) and 429.905(1)(a), F.S.

<sup>16</sup> S. 429.04(2)(b), F.S.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The Revenue Estimating Conference estimates that the bill will not impact state government revenues and will have a recurring negative impact on local government revenues of -\$0.1 million beginning in Fiscal Year 2025-26.

2. Expenditures:

None.

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

The bill will enable additional homes for the aged operated by not-for-profit corporations to qualify for the ad valorem tax exemption.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Article VII, Section 18 of the Florida Constitution may apply because this bill reduces ad valorem tax revenues to the extent it enables additional homes for the aged operated by not-for-profit corporations to qualify for an ad valorem tax exemption; however, an exemption may apply because the bill may have an insignificant fiscal impact.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.

1                                   A bill to be entitled  
 2           An act relating to ad valorem tax exemption for  
 3           nonprofit homes for the aged; amending s. 196.1975,  
 4           F.S.; revising ownership entities for certain  
 5           nonprofit homes qualifying for an exemption from ad  
 6           valorem taxation to include certain limited  
 7           partnerships; providing applicability; providing an  
 8           effective date.

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

11  
 12           Section 1. Subsection (1) of section 196.1975, Florida  
 13 Statutes, is amended to read:

14           196.1975 Exemption for property used by nonprofit homes  
 15 for the aged.—Nonprofit homes for the aged are exempt to the  
 16 extent that they meet the following criteria:

17           (1) The applicant must be a corporation not for profit  
 18 under ~~pursuant to~~ chapter 617 or a Florida limited partnership,  
 19 the sole general partner of which is a corporation not for  
 20 profit under ~~pursuant to~~ chapter 617 or an entity not licensed  
 21 under chapter 429 and wholly owned by a corporation not for  
 22 profit under chapter 617, and the corporation not for profit  
 23 must have been exempt as of January 1 of the year for which  
 24 exemption from ad valorem property taxes is requested from  
 25 federal income taxation by having qualified as an exempt

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26 | charitable organization under ~~the provisions of~~ s. 501(c)(3) of  
27 | the Internal Revenue Code of 1954 or of the corresponding  
28 | section of a subsequently enacted federal revenue act.

29 |       Section 2. The amendments made by this act to s.  
30 | 196.1975(1), Florida Statutes, first apply to the 2025 ad  
31 | valorem tax roll.

32 |       Section 3. This act shall take effect January 1, 2025.



## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 691 Town of Horseshoe Beach, Dixie County

**SPONSOR(S):** Shoaf

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	16 Y, 0 N	Burgess	Darden
2) Regulatory Reform & Economic Development Subcommittee	13 Y, 0 N	Phelps	Anstead
3) State Affairs Committee		Burgess	Williamson

### SUMMARY ANALYSIS

Florida's Beverage Law limits the number of "quota licenses" that the Department of Business and Professional Regulation (DBPR) may issue per county. A quota license allows a business to serve any alcoholic beverage regardless of alcoholic content, including liquor. DBPR is not limited by the Beverage Law on the number of licenses it may issue for businesses that serve only malt beverages and wine.

The bill creates an exception to the quota limitation and requires DBPR to issue a special alcoholic beverage license to any bona fide restaurant within the jurisdictional boundaries of the Town of Horseshoe Beach that meets the following requirements:

- Licensed by the Division of Hotels and Restaurants within DBPR.
- Occupies at least 1,700 square feet of contiguous space used as part of the food service establishment.
- Equipped to serve meals to 50 persons at one time.
- Derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 60-day operating period and each 12-month operating period thereafter.

The bill provides that failure of a licensee who is issued a special license to meet the food and nonalcoholic beverage gross revenue requirement during the covered operating period will result in the revocation of the license or denial of the pending application for a permanent license of a licensee operating with a temporary license. A licensee whose license is revoked, an applicant whose pending application for a permanent license is denied, or any person required to qualify for the special license application is ineligible to have any interest in a subsequent license application for a period of 120 days after the date of the final denial or revocation.

According to the Economic Impact Statement, the bill will result in an increase to revenues for local businesses, and will have an indeterminate positive impact on the local government's revenues due to increased sales tax and licensing revenues associated with the issuance of special licenses granted under the exception.

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



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of alcoholic beverages within the state.<sup>1</sup> Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law.

Under the Beverage Law, DBPR is not limited on the number of licenses it issues to businesses selling malt beverages or wine. However, the statute limits the number of licenses that may be issued under s. 565.02(1)(a)-(f), F.S., to one license per 7,500 residents per county with a minimum of three licenses per county that has approved the sale of intoxicating liquors.<sup>2</sup> This license, often referred to as a "quota license," allows a business to sell any alcoholic beverage regardless of alcoholic content, including liquor or distilled spirits.<sup>3</sup>

There are several exceptions to the quota license limitation,<sup>4</sup> and businesses that meet the requirements set out in one of the exceptions may be issued a special license by DBPR, allowing the business to serve any alcoholic beverages regardless of alcohol content. A food service establishment may qualify for an exemption if the building has at least 2,500 square feet of service area, is equipped to serve meals to 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 120-day operating period and the first 12-month operating period thereafter.<sup>5</sup>

There are several exceptions to the Beverage Law created by special act reducing certain licensing requirements for special zones in local jurisdictions.<sup>6</sup>

#### Effect of the Bill

The bill creates an exception to the quota limitation and requires DBPR to issue a special alcoholic beverage license to a bona fide restaurant within the jurisdictional boundaries of the Town of Horseshoe Beach if the restaurant:

- Is licensed by the Division of Hotels and Restaurants within DBPR;
- Occupies at least 1,700 square feet of contiguous space used as part of the food service establishment;
- Is equipped to serve meals to 50 persons at one time; and
- Derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 60-day operating period and each 12 -month operating period thereafter.

The bill provides that failure of a licensee, who is issued a special license, to meet the food and nonalcoholic beverage gross revenue requirement during the covered operating period will result in the revocation of the license or denial of the pending application for a permanent license of a licensee operating with a temporary license. A licensee whose license is revoked, an applicant whose pending application for a permanent license is denied, or any person required to qualify for the special license

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<sup>1</sup> S. 561.02, F.S.

<sup>2</sup> S. 561.20(1), F.S.

<sup>3</sup> S. 561.20, F.S.

<sup>4</sup> S. 561.20(2), F.S.

<sup>5</sup> S. 561.20(2)(a)4., F.S. See Rule 61A-3.0141, F.A.C.

<sup>6</sup> See e.g. chs. 2021-265, Laws of Fla. (Orlando Main Street Small Restaurant Incentive Area) and 2023-342 (Dennis Street Commercial Corridor, Downtown Incentive Zone in the City of Jacksonville Beach, and the North Florida Keys Corridor in Duval County).

application is ineligible to have any interest in a subsequent license application for a period of 120 days after the date of the final denial or revocation.

According to the Economic Impact Statement, the bill will result in an increase to revenues for local businesses, and will have an indeterminate positive impact on the local government's revenues due to increased sales tax and licensing revenues associated with the issuance of special licenses granted under the exception.

**B. SECTION DIRECTORY:**

Section 1: Creates an exception to the quota limitation for bona fide restaurants within the Town of Horseshoe Beach, Dixie County.

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

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? October 26, 2023 & November 2, 2023.

WHERE? The *Dixie County Advocate*, a weekly newspaper of general circulation published in Dixie County, Florida.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes  No

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.

1 A bill to be entitled  
 2 An act relating to the Town of Horseshoe Beach, Dixie  
 3 County; providing an exception to general law;  
 4 requiring the Division of Alcoholic Beverages and  
 5 Tobacco of the Department of Business and Professional  
 6 Regulation to issue a special alcoholic beverage  
 7 license to certain restaurants in the town which meet  
 8 certain space, seating, and minimum gross revenue  
 9 requirements; providing conditions for revocation of  
 10 such license or denial of a pending application for  
 11 such license; providing an effective date.

12  
 13 Be It Enacted by the Legislature of the State of Florida:

14  
 15 Section 1. Notwithstanding s. 561.20(1), Florida Statutes,  
 16 the Division of Alcoholic Beverages and Tobacco of the  
 17 Department of Business and Professional Regulation shall issue a  
 18 special alcoholic beverage license to a bona fide restaurant  
 19 located within the jurisdictional boundaries of the Town of  
 20 Horseshoe Beach which is licensed by the Division of Hotels and  
 21 Restaurants, occupies at least 1,700 square feet of contiguous  
 22 space used as a part of the food service establishment, is  
 23 equipped to serve meals to 50 persons at one time, and derives  
 24 at least 51 percent of its gross food and beverage revenue from  
 25 the sale of food and nonalcoholic beverages during the first 60-

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26 | day operating period and each 12-month operating period  
27 | thereafter. Failure of a licensee who is issued this special  
28 | license to meet the required percentage of food and nonalcoholic  
29 | beverage gross revenues during the applicable operating period  
30 | shall result in the revocation of the license or denial of the  
31 | pending application for a permanent license of a licensee  
32 | operating with a temporary license. A licensee whose license is  
33 | revoked, or an applicant whose pending application for a  
34 | permanent license is denied, or any person required to qualify  
35 | on the special food service alcohol license application, is  
36 | ineligible to have any interest in a subsequent application for  
37 | such license for 120 days after the date of the final denial or  
38 | revocation.

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



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 705 Public Works Projects

**SPONSOR(S):** Local Administration, Federal Affairs & Special Districts Subcommittee, Shoaf

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 594, SB 742

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Local Administration, Federal Affairs & Special Districts Subcommittee	10 Y, 5 N, As CS	Roy	Darden
2) State Affairs Committee		Roy	Williamson

**SUMMARY ANALYSIS**

Current law prohibits the state or any political subdivision that contracts for a public works project using state-appropriated funds from imposing certain requirements on contractors for public works projects, with certain exceptions. Current law defines “public works project” as an activity that is paid for with any state-appropriated funds and that consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof owned in whole or in part by any political subdivision.

The bill amends the definition of “public works project” to include all projects paid for with local funds in addition to state-appropriated funds.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Competitive Solicitation of Construction Services

Current law specifies the procedures to be followed in the procurement of construction services for public property and public owned buildings.<sup>1</sup> The Department of Management Services (DMS) is responsible for establishing by rule procedures:

- For determining the qualifications and responsibility of potential bidders prior to advertising for and receiving bids for building construction contracts.
- For awarding each state agency construction project to the lowest qualified bidder.
- To govern negotiations for construction contracts and contract modifications when such negotiations are determined to be in the best interest of the state.
- For entering into performance-based contracts for the development of public facilities when those contracts are determined to be in the best interest of the state.<sup>2</sup>

State contracts for construction projects that are projected to cost in excess of \$200,000 must be competitively bid.<sup>3</sup> A county, municipality, special district, or other political subdivision seeking to construct or improve a public building must competitively bid the project if the estimated cost is in excess of \$300,000.<sup>4</sup>

For a competitive solicitation<sup>5</sup> for construction services paid for with state-appropriated funds, a state college, county, municipality, school district, or other political subdivision of the state (local government) may not use a local ordinance or regulation that provides a preference based upon a contractor, subcontractor, or material supplier or carrier:

- Maintaining an office or place of business within a particular local jurisdiction;
- Hiring employees or subcontractors from within a particular local jurisdiction; or
- Prior payment of local taxes, assessments, or duties within a particular local jurisdiction.<sup>6</sup>

If state-appropriated funds are used to pay for the construction services, a local government must disclose in the solicitation document that any of the aforementioned preferences will be prohibited.<sup>7</sup>

##### Public Works Projects

A “public works project” is an activity that is paid for with any state-appropriated funds and that consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof owned in whole or in part by any political subdivision.<sup>8</sup>

Except as required by federal or state law, the state or any political subdivision that contracts for a public works project with state-appropriated funds may not:

- Prevent a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier, from participating in the bidding process based on the geographic location of the company headquarters or offices of the contractor, subcontractor, or material supplier or carrier

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<sup>1</sup> See ch. 255, F.S.

<sup>2</sup> S. 255.29, F.S.

<sup>3</sup> See s. 255.0525, F.S.; see also R. 60D-5.002 and 60D-5.0073, F.A.C.

<sup>4</sup> S. 255.20(1), F.S. For electrical work, local governments must competitively bid projects estimated to cost over \$75,000.

<sup>5</sup> “Competitive solicitation” means an invitation to bid, a request for proposals, or an invitation to negotiate. S. 255.248, F.S.

<sup>6</sup> S. 255.0991(2), F.S.

<sup>7</sup> S. 255.0991(3), F.S.

<sup>8</sup> S. 255.0992(1)(b), F.S.

submitting a bid on a public works project or the residences of employees of such contractor, subcontractor, or material supplier or carrier;

- Require a contractor, subcontractor, or material supplier or carrier engaged in the project to:
  - Pay employees a predetermined amount of wages or prescribe any wage rate;
  - Provide employees a specified type, amount, or rate of employee benefits;
  - Control, limit, or expand staffing; or
  - Recruit, train, or hire employees from a designated, restricted, or single source.
- Prohibit any contractor, subcontractor, or material supplier or carrier from receiving information about public works opportunities or submitting a bid on the project if such individual is able to perform the work described and is qualified, licensed, or certified as required by state law, unless that vendor has been placed on the state’s convicted vendor or discriminatory vendor lists.<sup>9</sup>

With certain exceptions,<sup>10</sup> these restrictions do not apply to public works projects that are locally funded.

Prior to July 1, 2023, the state or a political subdivision could impose such restrictions on contractors for state-funded public works projects, up to \$1 million; however, in 2023, the Legislature removed the cap and prohibited such restrictions for public works projects using any amount of state-appropriated funds.<sup>11</sup>

### **Effect of Proposed Changes**

The bill revises the definition of “public works project” to include all projects paid for with local or state funds. This means the aforementioned restrictions are applicable to all public works projects paid for with local or state funds instead of state funds only.

#### **B. SECTION DIRECTORY:**

Section 1: Amends s. 255.0992, F.S., relating to public works projects.

Section 2: Provides an effective date of July 1, 2024.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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<sup>9</sup> S. 255.0992(2), F.S.

<sup>10</sup> Section 255.0992(3), F.S., provides that the restrictions do not apply to contracts executed under ch. 337, F.S., or a use authorized by s. 212.055(1), F.S., that is approved by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county.

<sup>11</sup> Ch. 2023-134, Laws of Fla.



C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The prohibition on certain predetermined wage, benefits, and staffing requirements may result in a positive fiscal impact for contractors.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

On January 19, 2024, the Local Administration, Federal Affairs & Special Districts Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment removed the exception that would allow a local government to prevent a vendor from bidding based on geographic location for projects that are solely financed by a local government.

This analysis is drafted to the committee substitute as passed by the Local Administration, Federal Affairs & Special Districts Subcommittee.

1                                   A bill to be entitled  
 2           An act relating to public works projects; amending s.  
 3           255.0992, F.S.; revising the definition of the term  
 4           "public works project" to include activities paid for  
 5           with local funds; providing an effective date.

6  
 7   Be It Enacted by the Legislature of the State of Florida:  
 8

9           Section 1. Paragraph (b) of subsection (1) of section  
 10          255.0992, Florida Statutes, is amended to read:

11           255.0992 Public works projects; prohibited governmental  
 12          actions.—

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

14           (b) "Public works project" means an activity that is paid  
 15          for with any local or state-appropriated funds and that consists  
 16          of the construction, maintenance, repair, renovation,  
 17          remodeling, or improvement of a building, road, street, sewer,  
 18          storm drain, water system, site development, irrigation system,  
 19          reclamation project, gas or electrical distribution system, gas  
 20          or electrical substation, or other facility, project, or portion  
 21          thereof owned in whole or in part by any political subdivision.

22           Section 2. This act shall take effect July 1, 2024.



**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** HB 819 Lehigh Acres Municipal Services Improvement District, Hendry and Lee Counties  
**SPONSOR(S):** Esposito  
**TIED BILLS:** **IDEN./SIM. BILLS:**

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Local Administration, Federal Affairs & Special Districts Subcommittee	12 Y, 0 N	Roy	Darden
2) State Affairs Committee		Roy	Williamson

**SUMMARY ANALYSIS**

A “special district” is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law, special act, local ordinance, or rule of the Governor and Cabinet. A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter.

The Lehigh Acres Municipal Services Improvement District (District) lies primarily in the unincorporated area of eastern Lee County, with portions in Hendry County. The District is an independent special district created in 2015 to replace the East County Water Control District. The District provides drainage and water control, public improvements and community facilities, water and wastewater services, local streets and sidewalks, streetlights, and certain authority over outdoor signage and monuments. The District also preserves and protects water reserves through drainage, conservation, mitigation, navigational, and water management practices in 70,000 acres of land in Lehigh Acres in eastern Lee County and in the western portion of Hendry County. The District is authorized to raise funds as provided in general law but is prohibited from imposing or collecting ad valorem taxes.

The bill expands the boundaries of the District by adding a parcel owned by a single landowner who requested annexation into the district.

The Economic Impact Statement indicates the bill will increase District revenues by the amount of annual non-ad valorem assessments paid by the property owner.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Special Districts

A “special district” is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.<sup>1</sup> Special districts are created by general law, special act, local ordinance, or rule of the Governor and Cabinet.<sup>2</sup> A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.<sup>3</sup> Special districts are funded through the imposition of ad valorem taxes, fees, or charges on the users of those services as authorized by law.<sup>4</sup>

Special districts may be classified as dependent or independent based on their relationship with local general-purpose governments. A special district is classified as “dependent” if the governing body of a single county or municipality:

- Serves as governing body of the district;
- Appoints the governing body of the district;
- May remove members of the district’s governing body at-will during their unexpired terms; or
- Approves or can veto the budget of the district.<sup>5</sup>

A district is classified as “independent” if it does not meet any of the above criteria or is located in more than one county, unless the district lies entirely within the boundaries of a single municipality.<sup>6</sup>

Special districts do not possess “home rule” powers and may impose only those taxes, assessments, or fees authorized by special or general law. The special act creating an independent special district may provide for funding from a variety of sources while prohibiting others. For example, ad valorem tax authority is not mandatory for a special district.<sup>7</sup>

##### Lehigh Acres Municipal Services Improvement District

The Lehigh Acres Municipal Services Improvement District (District) lies primarily in the unincorporated area of eastern Lee County, and partially in Hendry County. The District is an independent special district created in 2015 to replace the East County Water Control District. When the District replaced the East County Water Control District, it assumed all rights, title, and possession of property, and all obligations and liabilities of the water control district.<sup>8</sup>

The District provides drainage and water control, public improvements and community facilities, water and wastewater services, local streets and sidewalks, streetlights, and certain authority over outdoor

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<sup>1</sup> See *Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).

<sup>2</sup> See ss. 189.02(1), 189.031(3), and 190.005(1), F.S. See *generally* ss. 189.012(6), F.S.

<sup>3</sup> Local Administration, Federal Affairs & Special Districts Subcommittee, *The Local Government Formation Manual*, 62, available at <https://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=3227> (last visited Jan. 8, 2024).

<sup>4</sup> The method of financing a district must be stated in its charter. Ss. 189.02(4)(g) and 189.031(3), F.S. Independent special districts may be authorized to impose ad valorem taxes as well as non-ad valorem special assessments in the special acts comprising their charters. See, e.g., ch. 2023-335, s. 6 of s. 1, Laws of Fla. (East River Ranch Stewardship District). See also, e.g., ss. 190.021 (community development districts), 191.009 (independent fire control districts), 197.3631 (non-ad valorem assessments), 298.305 (water control districts), and 388.221, F.S. (mosquito control), and ch. 2004-397, s. 27 of s. 3, Laws of Fla. (South Broward Hospital District).

<sup>5</sup> S. 189.012(2), F.S.

<sup>6</sup> S. 189.012(3), F.S.

<sup>7</sup> See, e.g., ch. 2006-354, Laws of Fla. (Argyle Fire District may impose special assessments, but has no ad valorem tax authority).

<sup>8</sup> Ch. 2015-202, ss. 1(8) and 7, Laws of Fla.

signage and monuments.<sup>9</sup> The District also preserves and protects water reserves through drainage, conservation, mitigation, navigational, and water management practices in 70,000 acres of land in Lehigh Acres in eastern Lee County and in the western portion of Hendry County.<sup>10</sup>

The District maintains a 311-mile canal system containing 3,260 culvert crossings, 22 bridges, and 66 water control structures.<sup>11</sup> The canals, as well as 20 lakes, flow into the Caloosahatchee River via four outfalls: Orange River, Bedman Creek, Hickeys Creek, and Carlos Waterway.<sup>12</sup> Additionally, the District maintains 1,298 preserve acres,<sup>13</sup> as well as 578-acre Harns Marsh, which is an active stormwater facility that is also used for passive recreation and public exploration.<sup>14</sup>

The District is authorized to raise funds as provided in general law but is prohibited from imposing or collecting ad valorem taxes.<sup>15</sup>

### Effect of Proposed Change

The bill expands the boundaries of the District by adding a parcel owned by a single landowner who requested annexation into the District.<sup>16</sup>

The Economic Impact Statement indicates the bill will increase District revenues by the amount of annual non-ad valorem assessments paid by the property owner.

#### B. SECTION DIRECTORY:

Section 1: Amends ch. 2015-202, Laws of Florida, as amended, expanding the boundaries of the Lehigh Acres Municipal Services Improvement District Lee County.

Section 2: Provides an effective date of October 1, 2024.

## II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? October 27, 2023.

WHERE? *News-Press*, a daily newspaper published at Fort Myers in Lee County.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes  No

## III. COMMENTS

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<sup>9</sup> Ch. 2015-202, Laws of Fla.

<sup>10</sup> Lehigh Acres Municipal Services Improvement District, *Culvert Replacement Project*, <https://la-msid.com/la-msid/page/culvert-replacement-project> (last visited Jan. 16, 2024).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Lehigh Acres Municipal Services Improvement District, *Harns Marsh*, <https://la-msid.com/community/page/harns-marsh> (last visited Jan 16, 2024).

<sup>15</sup> Ch. 2012-202, s. 5(1) and (2), Laws of Fla.

<sup>16</sup> Landowner Agreement Between Lehigh Acres Municipal Services Improvement District and Rocklyn Homes, Inc. (Aug. 8, 2023) (on file with the Local Administration, Federal Affairs & Special Districts Subcommittee).

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.

1                                   A bill to be entitled  
 2           An act relating to the Lehigh Acres Municipal Services  
 3           Improvement District, Hendry and Lee Counties;  
 4           amending chapter 2015-202, Laws of Florida, as  
 5           amended; expanding the territorial boundaries of the  
 6           district; providing an effective date.

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

9  
 10           Section 1. Section 2 of section 4 of chapter 2015-202,  
 11           Laws of Florida, as amended by chapter 2017-216, Laws of  
 12           Florida, is amended to read:

13           Section 2. District boundaries.—The lands incorporated  
 14           within the Lehigh Acres Municipal Services Improvement District  
 15           consist of the following described lands in Hendry and Lee  
 16           Counties:

17  
 18           A. LANDS IN LEE COUNTY, FLORIDA:

19  
 20           TOWNSHIP 43 SOUTH, RANGE 27 EAST

21  
 22           SECTION 30: The following portions of Section 30;

23  
 24           That portion of Section 30 lying both South of the  
 25           Southerly Right-of-Way line of State Road 80



26  
 27 AND West of Bateman Road; LESS Lots 1 thru 4, Lots 18  
 28 thru 28, Lots 31 and 32, Lots 37 and 38, Lots 41 thru  
 29 44 all as shown on Pine Creek Acres, Unit No. 1 as  
 30 recorded in Plat Book 10, Page 13 of the Public  
 31 Records of Lee County, Florida;

32  
 33 AND LESS Lot 1, Lots 24 thru 28, Lots 40 thru 52, the  
 34 North 35 feet of Lot 53, that portion of the 50 foot  
 35 Right-of-Way for Pine Boulevard lying East of the  
 36 Southerly prolongation of the West line of Lot 28 to  
 37 the South Right-of-Way line of said Pine Boulevard AND  
 38 lying West of the Southerly prolongation of the East  
 39 line of Lot 24 to the South Right-of-Way line of said  
 40 Pine Boulevard, that portion of the 50 foot Right-of-  
 41 Way for Dixie Lane lying North of the Westerly  
 42 prolongation of the South line of Lot 1 to the West  
 43 Right-of-Way line of said Dixie Lane, all as shown on  
 44 Pine Creek Acres, Unit No. 2 as recorded in Plat Book  
 45 10, Page 74 of the said Public Records;

46  
 47 AND LESS the following described parcel;

48  
 49 BEGINNING at the Northeast corner of Pine Creek Acres,  
 50 Unit No. 1 as recorded in Plat Book 10, Page 13 of the

51 | said Public Records; thence South 00° 56' 00" East  
 52 | along the East line of said Pine Creek Acres, Unit No.  
 53 | 1 and the Southerly projection thereof, a distance of  
 54 | 225.19 feet; thence North 89° 35' 20" East, a distance  
 55 | of 166.20 feet; thence North 00° 24' 40" West, a  
 56 | distance of 203.00 feet to the said Southerly Right-  
 57 | of-Way line of State Road 80; thence North 82° 54' 00"  
 58 | West along the said Southerly Right-of-Way line of  
 59 | State Road 80 to the POINT OF BEGINNING;

60 |  
 61 | AND LESS the following described parcel;

62 |  
 63 | Commencing at the said Northeast corner of Pine Creek  
 64 | Acres, Unit No. 1; thence South 82° 54' 00" East along  
 65 | the said Southerly Right-of-Way line of State Road 80,  
 66 | a distance of 308.57 feet to the POINT OF BEGINNING of  
 67 | this description; thence South 00° 24' 40" East, a  
 68 | distance of 225.19 feet; thence North 89° 35' 20"  
 69 | East, a distance of 209.19 feet; thence North 00° 24'  
 70 | 40" West, a distance of 210.00 feet to the said  
 71 | Southerly Right-of-Way line of State Road 80; thence  
 72 | Northwesterly along the said Southerly Right-of-Way  
 73 | line of State Road 80 to the POINT OF BEGINNING;

74 |  
 75 | SECTION 31: The following portions of Section 31;

76  
 77 The West 1/2, together with the West 1/2 of the  
 78 Southeast 1/4, together with the Southeast 1/4 of the  
 79 Southeast 1/4, together with the Southwest 1/4 of the  
 80 Northeast 1/4, together with the Southwest 1/4 of the  
 81 Northwest 1/4 of the Northeast 1/4.

82  
 83 SECTION 36: The East 1/2 of Section 36, LESS the  
 84 Northwest 1/4 of the Northeast 1/4 thereof.

85  
 86 TOWNSHIP 44 SOUTH, RANGE 26 EAST

87  
 88 SECTION 1-3: All of Sections 1, 2 and 3.

89  
 90 SECTION 4: The East 1/2 of Section 4.

91  
 92 SECTION 10: The following portions of Section 10;

93  
 94 The East 1/2 of the Southeast 1/4, together with the  
 95 Northwest 1/4 of the Southeast 1/4.

96  
 97 SECTIONS 11-14: All of Sections 11, 12, 13 and 14.

98  
 99 SECTION 15: The East 1/2 of the East 1/2 of Section  
 100 15.

101  
102  
103  
104  
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106  
107  
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112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124

SECTION 16: The following portions of Section 16;

All of Units 1 through 5 of "Lehigh Acres" as recorded in Plat Book 27, Page 186 of the Public Records of Lee County, Florida, together with Lot 16, Block 36 of "Buckingham Park, Northwest Section" as recorded in Plat Book 9, Page 92 of the said Public Records.

SECTION 19: The following portions of Section 19;

The Southeast 1/4, together with that portion of the Northeast 1/4 of said Section 19 lying South of Buckingham Road.

SECTION 20: The following portions of Section 20;

The South 1/2, together with that portion of the North 1/2 of said Section 20 lying South of Buckingham Road.

SECTION 21: The following portions of "Buckingham Park, South Section" as recorded in Plat Book 9, Page 99 of the said Public Records being in Section 21:

125 Lots 3 through 10 of Block 40; Lots 1 and 3 of Block  
 126 38,

127  
 128 Lot 28 of Block 39; the North 40 feet of Lot 29 of  
 129 Block 39; all of Tract "D", all of Block "E," together  
 130 with the Re-subdivision of that portion of Block "E"  
 131 of said "Buckingham Park, South Section" as replatted  
 132 on "Plat of Unit 3 Lehigh Park, a Subdivision of  
 133 Lehigh Acres" as recorded in Plat Book 15, Page 66 of  
 134 the said Public Records, together with that portion of  
 135 said Section 21 lying Southwesterly of the centerline  
 136 of a 60 foot easement as described in Miscellaneous  
 137 Book 32, Page 335 of the said Public Records.

138  
 139 SECTION 22: That portion of Section 22 lying South and  
 140 Southwesterly of Homestead Road as shown on Plat of  
 141 "Buckingham Park Entrance Roads" as recorded in Plat  
 142 Book 9, Page 97 of the said Public Records;

143  
 144 AND that portion, lying and being East of Buckingham  
 145 Park, as shown by plat recorded in plat book 9, page  
 146 61, and lying and being North of Homestead Road, as  
 147 shown by plat of Buckingham Park Entrance Roads,  
 148 recorded in Plat Book 9, Page 97; excepting therefrom  
 149 that part of Section 22 deeded to Theodore C. Handweg

150 and Grace E. Handweg, his wife, which deed is  
 151 recorded in Deed Book 232, Page 378 and described as  
 152 follows: BEGINNING at the point of intersection of the  
 153 East line of Buckingham Park Northeast Section,  
 154 according to plat recorded in Plat Book 9, Pages 59 to  
 155 65 with the North line of Section 22, run S 89°52'10"  
 156 E along said section line for 500 feet; thence run S  
 157 00°49'20" E for 51.3 feet to the North line of  
 158 Homestead Road; thence run Westerly along said North  
 159 line on an arc of a curve to the left of radius  
 160 1,482.4 feet for 467.2 feet to a point of tangency;  
 161 thence run S 89°10'40" W along said north line for  
 162 40.5 feet to said East line of Buckingham Park; thence  
 163 run N 00°25'10" W along said East line for 14.8 feet  
 164 to the POINT OF BEGINNING.

165  
 166 SECTIONS 23-29: All of Sections 23, 24, 25, 26, 27, 28  
 167 and 29.

168  
 169 SECTION 30: The following portions of Section 30;

170  
 171 The South 1/2, together with the South 100 feet of the  
 172 North 1/2 together with the remainder of the Northeast  
 173 1/4.

174

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175 SECTION 31: That portion of said Section 31 lying  
 176 Northeasterly of State Road 82.

177  
 178 SECTIONS 32-36: All of Sections 32, 33, 34, 35 and 36.

179  
 180 TOWNSHIP 44 SOUTH, RANGE 27 EAST

181  
 182 SECTION 1: All of Section 1.

183  
 184 SECTION 2: All of Section 2, LESS the Northwest 1/4 of  
 185 the Northwest 1/4 thereof.

186  
 187 SECTION 3: All of Section 3, LESS the Northeast 1/4  
 188 thereof, AND LESS the East 1/2 of the Northwest 1/4  
 189 thereof.

190  
 191 SECTIONS 4-36: All of Sections 4, 5, 6, 7, 8, 9, 10,  
 192 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23,  
 193 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and  
 194 36.

195  
 196 TOWNSHIP 45 SOUTH, RANGE 26 EAST

197  
 198 SECTIONS 1-3: All of Section 1, 2 and 3.

199

200 SECTION 4: All that portion of Section 4 lying North  
 201 of State Road 82.  
 202

203 SECTION 5: All that portion of Section 5 lying North  
 204 of State Road 82.  
 205

206 SECTION 6: All that portion of Section 6 lying North  
 207 of State Road 82.  
 208

209 SECTION 9: All that portion of Section 9 lying North  
 210 of State Road 82.  
 211

212 SECTION 10: All that portion of Section 10 lying North  
 213 of State Road 82.  
 214

215 SECTION 11: All that portion of Section 11 lying North  
 216 of State Road 82.  
 217

218 SECTION 12: All of Section 12.  
 219

220 SECTION 13: All that portion of Section 13 lying North  
 221 of State Road 82.  
 222

223 SECTION 14: All that portion of Section 14 lying North  
 224 of State Road 82.



225  
 226 TOWNSHIP 45 SOUTH, RANGE 27 EAST  
 227  
 228 SECTIONS 1-17:  
 229  
 230 All of Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,  
 231 13, 14, 15, 16 and 17.  
 232  
 233 SECTION 18: All of Section 18, LESS the 200 foot  
 234 Right-of-Way for State Road 82 thereof, AND LESS the  
 235 Westerly 25 feet of that portion of said Section 18  
 236 lying Northerly of said State Road 82, said 25 foot  
 237 strip as conveyed to Lee County for roadway purposes  
 238 by deed recorded in Official Record Book 147, Page 73  
 239 of the said Public Records of Lee County.  
 240  
 241 SECTION 19: All of Section 19, LESS the 200 foot  
 242 Right-of-Way for State Road 82 thereof.  
 243  
 244 SECTION 20: All of Section 20, LESS the 200 foot  
 245 Right-of-Way for State Road 82 thereof, AND LESS the  
 246 following described parcel, BEGINNING at the  
 247 intersection of the Southwesterly Right-of-Way line of  
 248 State Road 82 and the South line of said Section 20;  
 249 thence North 24° 51' 40" West along the said

250 Southwesterly Right-of-Way line of State Road 82, a  
 251 distance of 1000.00 feet; thence South 32° 24' 30"  
 252 West, a distance of 1081.39 feet to a point of  
 253 intersection with the said South line of Section 20;  
 254 thence North 89° 40' 40" East along the said South  
 255 line of Section 20, a distance of 1000.00 feet to the  
 256 POINT OF BEGINNING. Last described parcel being  
 257 recorded in Deed Book 306, Page 153 of the said Public  
 258 Records of Lee County.

259  
 260 SECTIONS 21-26: All of Sections 21, 22, 23, 24, 25 and  
 261 26.

262  
 263 SECTION 27: All of Section 27 lying NORTH of State  
 264 Road 82.

265  
 266 SECTION 28: All of Section 28 lying North of State  
 267 Road 82.

268  
 269 SECTION 29: All of Section 29 lying North of State  
 270 Road 82.

271  
 272 SECTION 34: All of Section 34 lying North of State  
 273 Road 82.

274

275 SECTION 35: All of Section 35 lying North of State  
 276 Road 82.

277  
 278 SECTION 36: All of Section 36 LESS the 200 foot Right-  
 279 of-Way for State Road 82 thereof.

280  
 281 B. LANDS IN HENDRY COUNTY, FLORIDA

282  
 283 TOWNSHIP 43 SOUTH, RANGE 28 EAST

284  
 285 SECTION 30: The following portions of Section 30:

286  
 287 The West 400.00 feet of the Southwest 1/4 less the  
 288 right-of-way for State Road 80, together with the  
 289 parcel commencing at the West 1/4 corner of Section  
 290 30; thence along the West Section line North 01° 01'  
 291 11" West, a distance of 164.01 feet to the North  
 292 right-of-way line of State Road 80 and the POINT OF  
 293 BEGINNING; thence continuing North 01° 01' 11" West, a  
 294 distance of 1156.17 feet to the South Right-of-Way  
 295 line for the Caloosahatchee River (C-43 canal); thence  
 296 along said South Right-of-Way line North 78° 07' 28"  
 297 East, a distance of 162.92 feet; thence South 01° 01'  
 298 11" East, a distance of 415.55 feet; thence South 45°  
 299 02' 36" East, a distance of 345.35 feet; thence South

300 01° 01' 11" East, a distance of 520.42 feet to the  
 301 North Right-of-Way for State Road 80; thence along  
 302 said right-of-way South 88° 36' 43" West, a distance  
 303 of 400.00 feet to the POINT OF BEGINNING.

304  
 305 SECTION 31: The following portions of Section 31;

306  
 307 The Southeast 1/4 of the Northwest 1/4, together with  
 308 the East 1/2 of the Southwest 1/4, together with the  
 309 South 185.00 feet of the North 1/2 of the Northwest  
 310 1/4 less the West 1189.24 feet of the East 1439.25  
 311 feet of the South 25.00 feet thereof; together with  
 312 the West 660.76 feet of the North 30.00 feet of the  
 313 Southwest 1/4 of the Northwest 1/4; together with the  
 314 West 400.00 feet of the Northwest 1/4 of the Northwest  
 315 1/4.

316  
 317 TOWNSHIP 44 SOUTH, RANGE 28 EAST

318  
 319 SECTION 6: The West 1/2 of Section 6.

320  
 321 SECTION 7: The West 1/2 of Section 7.

322  
 323 SECTION 18: The West 1/2 of Section 18.

324

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325 SECTION 19: The West 1/2 of Section 19.

326

327 SECTION 30: The West 1/2 of Section 30.

328

329 SECTION 31: The West 1/2 of Section 31.

330 Section 2. This act shall take effect October 1, 2024.



## HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 1115 Three Rivers Stewardship District, Sarasota County

**SPONSOR(S):** Buchanan

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Administration, Federal Affairs & Special Districts Subcommittee	14 Y, 0 N	Roy	Darden
2) State Affairs Committee		Roy	Williamson

### SUMMARY ANALYSIS

A “special district” is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary. Special districts are created by general law, special act, local ordinance, or rule of the Governor and Cabinet. A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter.

The Three Rivers Stewardship District (district) is an independent special district in Sarasota County created in 2023. The district was created for the purpose of facilitating an integral relationship among regional transportation, land use, and urban design, to provide for economic development opportunities. The district is governed by a five-member board of supervisors selected on a one vote per acre basis for four-year terms.

The district is authorized to impose ad valorem taxes but only after all members of the board are elected on a popular vote basis and the levy of ad valorem taxes is approved by the district voters in a subsequent referendum. In addition, the district may levy user charges and fees, non-ad valorem maintenance taxes as authorized by general law, maintenance special assessments, and benefit special assessments.

The bill revises the boundaries of the district to correct errors in the property description and to add an additional tract to the district. The additional tract increases the total acreage of the district by approximately 949 acres, bringing the district to a total of 3,686.495 acres.

The Economic Impact Statement indicates the bill will raise an expected \$150,000 and \$172,500 in additional revenue in the first and second fiscal year after the bill takes effect, all of which is anticipated to be used for infrastructure and costs related to the jurisdictional expansion.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Special Districts

A “special district” is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.<sup>1</sup> Special districts are created by general law, special act, local ordinance, or rule of the Governor and Cabinet.<sup>2</sup> A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.<sup>3</sup> Special districts are funded through the imposition of ad valorem taxes, fees, or charges on the users of those services as authorized by law.<sup>4</sup>

Special districts may be classified as dependent or independent based on their relationship with local general-purpose governments. A special district is classified as “dependent” if the governing body of a single county or municipality:

- Serves as governing body of the district;
- Appoints the governing body of the district;
- May remove members of the district’s governing body at-will during their unexpired terms; or
- Approves or can veto the budget of the district.<sup>5</sup>

A district is classified as “independent” if it does not meet any of the above criteria or is located in more than one county, unless the district lies entirely within the boundaries of a single municipality.<sup>6</sup>

Special districts do not possess “home rule” powers and may impose only those taxes, assessments, or fees authorized by special or general law. The special act creating an independent special district may provide for funding from a variety of sources while prohibiting others. For example, ad valorem tax authority is not mandatory for a special district.<sup>7</sup>

##### Three Rivers Stewardship District

The Three Rivers Stewardship District (district) is an independent special district in Sarasota County created in 2023.<sup>8</sup> The district was created for the purpose of facilitating an integral relationship among regional transportation, land use, and urban design, to provide for economic development opportunities.<sup>9</sup> The district is authorized to provide district services extraterritorially upon execution of an interlocal agreement.<sup>10</sup>

The district is governed by a five-member board of supervisors (board) elected by the landowners on a

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<sup>1</sup> See *Halifax Hospital Medical Center v. State of Fla., et al.*, 278 So. 3d 545, 547 (Fla. 2019).

<sup>2</sup> See ss. 189.02(1), 189.031(3), and 190.005(1), F.S. See generally ss. 189.012(6), F.S.

<sup>3</sup> Local Administration, Federal Affairs & Special Districts Subcommittee, *The Local Government Formation Manual*, 62, available at <https://myfloridahouse.gov/Sections/Committees/committeesdetail.aspx?CommitteeId=3227> (last visited Jan. 19, 2024).

<sup>4</sup> The method of financing a district must be stated in its charter. Ss. 189.02(4)(g) and 189.031(3), F.S. Independent special districts may be authorized to impose ad valorem taxes as well as non-ad valorem special assessments in the special acts comprising their charters. See, e.g., ch. 2023-335, s. 6 of s. 1, Laws of Fla. (East River Ranch Stewardship District). See also, e.g., ss. 190.021 (community development districts), 191.009 (independent fire control districts), 197.3631 (non-ad valorem assessments), 298.305 (water control districts), and 388.221, F.S. (mosquito control), and ch. 2004-397, s. 27 of s. 3, Laws of Fla. (South Broward Hospital District).

<sup>5</sup> S. 189.012(2), F.S.

<sup>6</sup> S. 189.012(3), F.S.

<sup>7</sup> See, e.g., ch. 2006-354, Laws of Fla. (Argyle Fire District may impose special assessments, but has no ad valorem tax authority).

<sup>8</sup> Ch. 2023-337, s. 2(1)(a), Laws of Fla.

<sup>9</sup> Ch. 2023-337, s. 2(1)(b), Laws of Fla.

<sup>10</sup> Ch. 2023-337, s. 3(4), Laws of Fla.



one-acre, one-vote basis to serve four-year terms.<sup>11</sup> As qualified electors move into the district, members will be chosen in an election of the qualified electorate rather than at a landowners' meeting, and once 27,000 qualified electors reside within the district, all five members will be elected by the qualified electorate.<sup>12</sup>

The district is authorized to levy ad valorem taxes but only after all members of the board are elected on a popular vote basis and the levy of ad valorem taxes is approved by the district voters in a subsequent referendum.<sup>13</sup> In addition, the district may levy user charges and fees, non-ad valorem maintenance taxes as authorized by general law, maintenance special assessments, and benefit special assessments.<sup>14</sup>

The district's charter provides that the charter may only be amended by special act of the Legislature. However, the board may not ask the Legislature to amend its charter without first obtaining a resolution or official statement from Sarasota County stating the amendment is consistent with approved local government plans of the county and that the county has no objection to the amendment.<sup>15</sup> The district received this consent.<sup>16</sup>

### Effects of Proposed Changes

The bill revises the boundaries of the district to correct errors in the property description and to add an additional tract to the district. The additional tract increases the total acreage of the district by approximately 949 acres, bringing the district to a total of 3,686.495 acres.

The Economic Impact Statement indicates the bill will raise an expected \$150,000 and \$172,500 in additional revenue in the first and second fiscal year after the bill takes effect, all of which is anticipated to be used for infrastructure and costs related to the jurisdictional expansion.

#### B. SECTION DIRECTORY:

Section 1: Amends ch. 2023-337, Laws of Florida, revising boundaries of the district.

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

### II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? November 11, 2023.

WHERE? *The Herald-Tribune*, a daily newspaper of general circulation published in Sarasota County.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes  No

<sup>11</sup> Ch. 2023-337, s. 5, Laws of Fla.

<sup>12</sup> Ch. 2023-337, s. 5(3)(a)2.a(V), Laws of Fla.

<sup>13</sup> Ch. 2023-337, ss. 5(3)(a)1. and 6(12)(a), Laws of Fla. The district currently does not levy ad valorem taxes.

<sup>14</sup> Ch. 2023-337, ss. 6(6)(j) and 6(12), Laws of Fla.

<sup>15</sup> Ch. 2023-337, s.2(3)(f), Laws of Fla.

<sup>16</sup> Letter from Ron Cutsinger, Chair, Sarasota County Board of County Commissioners to Patrick Neal, President, Neal Land and Neighborhoods (Oct. 24, 2023) (on file with Federal Affairs & Special Districts Subcommittee).

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

None.

**B. RULE-MAKING AUTHORITY:**

The bill neither provides authority for nor requires rulemaking by executive branch agencies.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.

1                                   A bill to be entitled  
 2           An act relating to the Three Rivers Stewardship  
 3           District, Sarasota County; amending chapter 2023-337,  
 4           Laws of Florida; revising the boundaries of the  
 5           district; providing an effective date.

6  
 7 Be It Enacted by the Legislature of the State of Florida:  
 8

9           Section 1. Section 4 of chapter 2023-337, Laws of Florida,  
 10 is amended to read:

11           Section 4. Formation; boundaries.—The Three Rivers  
 12 Stewardship District, an independent special district, is  
 13 created and incorporated in Sarasota County and shall embrace  
 14 and include the territory described as:

15  
 16           TRACT 1 DESCRIPTION (as prepared by the certifying  
 17 Surveyor and Mapper):

18  
 19           A tract of land of lying in Sections 16, 20, 21, 28,  
 20 29 & 32, Township 37 South, Range 19 East, Sarasota  
 21 County, Florida, being more particularly described as  
 22 follows:

23  
 24           BEGIN at the northernmost corner of LT Ranch  
 25 Neighborhood One recorded in Plat Book 53, Page 176

26 | ~~175~~ of the Public Records of Sarasota County, Florida;  
 27 | the following nine (9) calls are along the westerly  
 28 | boundary line of said LT Ranch Neighborhood One: (1)  
 29 | thence S.34°10'43"W., a distance of 1,104.05 feet to a  
 30 | point of curvature of a curve to the left having a  
 31 | radius of 2,865.00 feet and a central angle of  
 32 | 33°39'37"; (2) thence Southerly along the arc of said  
 33 | curve, a distance of 1,683.14 feet, to the point of  
 34 | tangency of said curve; (3) thence S.00°31'06"W., a  
 35 | distance of 255.04 feet to a point of curvature of a  
 36 | curve to the right having a radius of 955.00 feet and  
 37 | a central angle of 24°06'58"; (4) thence Southerly  
 38 | along the arc of said curve, a distance of 401.96  
 39 | feet, to the point of tangency of said curve; (5)  
 40 | thence S.24°38'04"W., a distance of 694.50 feet to the  
 41 | point of curvature of a non-tangent curve to the left,  
 42 | having a radius of 955.00 ~~955.09~~ feet and a central  
 43 | angle of 31°15'02" ~~31°14'51"~~; (6) thence Southerly  
 44 | along the arc of said curve, a distance of 520.88  
 45 | feet, said curve having a chord bearing and distance  
 46 | of S.09°18'38"W., 514.45 feet, to the point of  
 47 | tangency of said curve; (7) thence S.06°18'48"E., a  
 48 | distance of 1,214.80 feet to the point of curvature of  
 49 | a non-tangent curve to the right, having a radius of  
 50 | 955.00 feet and a central angle of 69°53'06"; (8)

51 |       thence Southwesterly along the arc of said curve, a  
 52 |       distance of 1,164.84 feet, said curve having a chord  
 53 |       bearing and distance of S.28°37'45"W. ~~S.28°37'10"W.~~,  
 54 |       1,093.96 feet, to the point of tangency of said curve;  
 55 |       (9) thence S.63°34'18"W. ~~S.63°33'43"W.~~, along said  
 56 |       westerly boundary and the extension thereof, a  
 57 |       distance of 390.82 feet to a point of curvature of a  
 58 |       curve to the left having a radius of 955.00 feet and a  
 59 |       central angle of 49°33'38" ~~49°33'39"~~; the following  
 60 |       seven (7) calls are along the centerline of a 150-foot  
 61 |       wide Access Easement, recorded in Official Record  
 62 |       Instrument Number 2015078648 of said Public Records;  
 63 |       (1) thence Southwesterly along the arc of said curve,  
 64 |       a distance of 826.07 feet, to the point of tangency of  
 65 |       said curve; (2) thence S.14°00'40"W. ~~S.14°00'06"W.~~, a  
 66 |       distance of 1,573.41 feet to a point of curvature of a  
 67 |       curve to the right having a radius of 955.00 feet and  
 68 |       a central angle of 75°26'47"; (3) thence Southwesterly  
 69 |       along the arc of said curve, a distance of 1,257.54  
 70 |       ~~1,257.53~~ feet, to the point of tangency of said curve;  
 71 |       (4) thence S.89°27'28"W. ~~S.89°26'53"W.~~, a distance of  
 72 |       400.65 feet to a point of curvature of a curve to the  
 73 |       left having a radius of 694.00 feet and a central  
 74 |       angle of 89°57'34" ~~89°57'53"~~; (5) thence Southwesterly  
 75 |       along the arc of said curve, a distance of 1,089.64

76 | ~~1,089.71~~ feet, to the point of tangency of said curve;  
 77 | (6) thence S.00°30'06"E. ~~S.00°31'00"E.~~, a distance of  
 78 | 1,417.28 ~~1,416.57~~ feet; (7) thence S.00°31'33"W.  
 79 | ~~S.00°33'01"W.~~, a distance of 2691.19 ~~2691.22~~ feet to  
 80 | the end of said 150-foot wide Access Easement, also  
 81 | being a point on the easterly line of aforementioned  
 82 | Section 32; thence S.00°35'45"W., along the easterly  
 83 | line of said Section 32, a distance of 2690.82 feet to  
 84 | the southeast corner of said Section 32; thence  
 85 | N.89°34'53"W., along the southerly line of said  
 86 | Section 32, a distance of 5,324.11 ~~5,348.98~~ feet to  
 87 | ~~the southwest corner of said Section 32; thence~~  
 88 | ~~N.01°29'58"E., along the westerly line of said Section~~  
 89 | ~~32, a distance of 5,355.02 feet to the southwest~~  
 90 | ~~corner of the aforementioned Section 29; thence~~  
 91 | ~~N.01°03'48"W., along the westerly line of said Section~~  
 92 | ~~29, a distance of 5,373.24 feet to the southwest~~  
 93 | ~~corner of the aforementioned Section 20; thence~~  
 94 | ~~N.88°56'12"E., a distance of 25.00 feet to the east~~  
 95 | right-of-way line of Ibis Street as~~r~~ recorded in  
 96 | Official Record Book 60, Page 196 of said Public  
 97 | Records, said point lying S.89°34'53"E. 25.00 feet  
 98 | from the southwest corner of said Section 32; the  
 99 | following four (4) calls are along the easterly right-  
 100 | of-way line of said Ibis Street and lying 25.00 feet

101 easterly of the east lines of Sections 32, 29, and 20;  
 102 (1) thence N.01°30'08"E., a distance of 5,354.56 feet;  
 103 (2) thence N.00°12'43"E., a distance of 2672.81 feet;  
 104 (3) thence N.02°19'37"W., a distance of 2,702.87 feet;  
 105 (4) thence N.00°21'49"W., along said east line, a  
 106 distance of 5,396.54 feet to the north line of the  
 107 aforementioned ~~said~~ Section 20; thence S.89°33'38"E.,  
 108 a distance of 5,323.34 feet to the southwest corner of  
 109 the aforementioned Section 16; thence N.00°24'46"E.,  
 110 along the west line of said Section 16, a distance of  
 111 1,320.36 feet; thence S.89°52'39"E., a distance of  
 112 2,660.98 feet; thence N.00°53'16"E., a distance of  
 113 1,295.00 feet to the south right-of-way line of Clark  
 114 Road, State Road 72; thence S.55°49'33"E., along said  
 115 south right-of-way line, a distance of 3,081.77 feet  
 116 to the POINT OF BEGINNING.

117  
 118 ~~Said tract of land contains 2,802.19 acres, more or~~  
 119 ~~less.~~

120  
 121 LESS AND EXCEPT: (The School Board of Sarasota County,  
 122 Florida - Official Record Instrument #2020093694)

123  
 124 A parcel of land lying in Section 21, Township 37  
 125 South, Range 19 East, Sarasota County, Florida, and

126 being more particularly described as follows:  
 127  
 128 COMMENCE at the Northeast corner of said Section 21 ~~it~~  
 129 ~~run~~ thence along the North boundary of said Section  
 130 21, N.89°41'18"W., a distance of 766.13 feet to a  
 131 point on a curve on the Westerly boundary of the 150-  
 132 foot Access Easement, according to Official Records  
 133 Instrument Number 2015078648, of the Public Records of  
 134 Sarasota County, Florida; thence along said Westerly  
 135 boundary of the 150-foot Access Easement, the  
 136 following eight (8) courses: 1) Southerly, 1683.76  
 137 feet along the arc of a non-tangent curve to the left  
 138 having a radius of 2,940.00 ~~2940.00~~ feet and a central  
 139 angle of 32°48'50" (chord bearing S.16°55'31"W.,  
 140 1660.85 feet); 2) S.00°31'06"W., a distance of 255.04  
 141 feet; 3) Southerly, 370.40 feet along the arc of a  
 142 tangent curve to the right having a radius of 880.00  
 143 feet and a central angle of 24°06'58" (chord bearing  
 144 S.12°34'35"W., 367.67 feet); 4) S.24°38'04"W., a  
 145 distance of 699.55 feet; 5) Southerly, 78.14 ~~78.13~~  
 146 feet along the arc of a tangent curve to the left  
 147 having a radius of 1030.00 feet and a central angle of  
 148 04°20'47" (chord bearing S.22°27'40"W., 78.12 feet) to  
 149 the POINT OF BEGINNING; 6) Southerly, 478.21 feet  
 150 along the arc of a non-tangent curve to the left



151 having a radius of 1030.00 feet and a central angle of  
152  $26^{\circ}36'05''$  (chord bearing  $S.06^{\circ}59'14''W.$ , 473.93 feet);  
153 7)  $S.06^{\circ}18'48''E.$ , a distance of 1214.80 feet; 8)  
154 Southerly, 172.95 feet along the arc of a tangent  
155 curve to the right having a radius of 880.00 feet and  
156 a central angle of  $11^{\circ}15'37''$  (chord bearing  
157  $S.00^{\circ}40'59''E.$ , 172.67 feet); thence Southwesterly,  
158 41.76 feet along the arc of a compound curve to the  
159 right having a radius of 25.00 feet and a central  
160 angle of  $95^{\circ}42'19''$  (chord bearing  $S.52^{\circ}47'59''W.$ , 37.07  
161 feet); thence  $N.79^{\circ}20'52''W.$ , a distance of 132.30  
162 feet; thence Northwesterly, 670.59 feet along the arc  
163 of a tangent curve to the right having a radius of  
164 940.00 feet and a central angle of  $40^{\circ}52'28''$  (chord  
165 bearing  $N.58^{\circ}54'38''W.$ , 656.46 feet); thence  
166 Northwesterly, 953.27 feet along the arc of a reverse  
167 curve to the left having a radius of 1060.00 feet and  
168 a central angle of  $51^{\circ}31'36''$  (chord bearing  
169  $N.64^{\circ}14'12''W.$ , 921.47 feet); thence  $N.90^{\circ}00'00''W.$ , a  
170 distance of 178.46 feet; thence  $N.00^{\circ}00'00''E.$ , a  
171 distance of 1497.37 feet; thence  $N.90^{\circ}00'00''E.$ , a  
172 distance of 546.03 feet; thence Easterly, 619.13 feet  
173 along the arc of a tangent curve to the right having a  
174 radius of 1440.00 feet and a central angle of  
175  $24^{\circ}38'04''$  (chord bearing  $S.77^{\circ}40'58''E.$ , 614.37 feet);

176 |           thence S.65°21'56"E., a distance of 542.10 feet;  
 177 |           thence Southeasterly, 37.37 feet along the arc of a  
 178 |           tangent curve to the right having a radius of 25.00  
 179 |           feet and a central angle of 85°39'13" (chord bearing  
 180 |           S.22°32'20"E., 33.99 feet) to the POINT OF BEGINNING.

181 |  
 182 |           Total described parcel containing 2,727.1 ~~65.09~~ acres,  
 183 |           more or less. (2,792.22 acres, minus 65.09 acres)

184 |  
 185 |           TRACT 2 DESCRIPTION (as prepared by the certifying  
 186 |           Surveyor and Mapper):

187 |  
 188 |           A tract of land lying in Sections 30 and 31, Township  
 189 |           37 South, Range 38 East, Sarasota County, Florida,  
 190 |           being more particularly described as follows:

191 |  
 192 |           Commence at the northeast corner of said Section 30;  
 193 |           thence S.88°31'18"W., along the north line of said  
 194 |           Section 30, a distance of 25.01 feet to the POINT OF  
 195 |           BEGINNING, said point being on the west right-of-way  
 196 |           line of Ibis Street (50.00 foot wide public right-of-  
 197 |           way) as recorded in Official Records Book 62, Page 432  
 198 |           in the Public Records of Sarasota County, Florida;  
 199 |           thence S.02°19'37"E., along said west right-of-way line,  
 200 |           a distance of 2,702.49 feet; thence S.89°18'42"W., a

201 distance of 1,307.52 feet; thence S.00°22'13"W., a  
202 distance of 666.03 feet; thence N.89°15'23"E., a  
203 distance of 112.12 feet; thence S.00°20'54"W., a  
204 distance of 1,332.28 feet; thence N.89°34'15"E., a  
205 distance of 1,200.35 feet to a point on the  
206 abovementioned west right-of-way line of Ibis Street;  
207 thence along said west right-of-way line for the  
208 following two (2) calls: (1) thence S.00°12'43"W., a  
209 distance of 667.79 feet; (2) thence S.01°30'08"W., a  
210 distance of 4,462.45 feet to the point of curvature of a  
211 non-tangent curve to the left, having a radius of 550.00  
212 feet and a central angle of 15°15'39"; thence westerly  
213 along the arc of said curve, a distance of 146.49 feet,  
214 said curve having a chord bearing and distance of  
215 N.67°38'11"W., 146.06 feet, to the end of said curve;  
216 thence N.75°16'00"W., a distance of 90.16 feet to the  
217 point of curvature of a non-tangent curve to the left,  
218 having a radius of 490.00 feet and a central angle of  
219 14°22'03"; thence westerly along the arc of said curve,  
220 a distance of 122.87 feet, said curve having a chord  
221 bearing and distance of N.82°27'02"W., 122.55 feet, to  
222 the point of curvature of a non-tangent curve to the  
223 left, having a radius of 718.00 feet and a central angle  
224 of 42°03'55"; thence westerly along the arc of said  
225 curve, a distance of 527.14 feet, said curve having a

226 chord bearing and distance of N.75°41'40"W., 515.38  
227 feet, to the end of said curve; thence N.18°54'26"E., a  
228 distance of 302.35 feet; thence N.65°01'05"W., a  
229 distance of 1,068.36 feet; thence S.35°25'57"W., a  
230 distance of 1,176.73 feet; thence N.89°13'36"W., a  
231 distance of 489.05 feet; thence S.00°07'10"E., a  
232 distance of 427.55 feet to the point of curvature of a  
233 non-tangent curve to the left, having a radius of 500.00  
234 feet and a central angle of 11°31'42"; thence westerly  
235 along the arc of said curve, a distance of 100.60 feet,  
236 said curve having a chord bearing and distance of  
237 N.75°35'35"W., 100.43 feet, to the point of tangency of  
238 said curve; thence N.81°21'26"W., a distance of 108.92  
239 feet to the point of curvature of a curve to the left  
240 having a radius of 350.00 feet and a central angle of  
241 16°01'28"; thence westerly along the arc of said curve,  
242 a distance of 97.89 feet to the point of tangency of  
243 said curve; thence S.82°37'06"W., a distance of 75.69  
244 feet to the point of curvature of a curve to the left  
245 having a radius of 350.00 feet and a central angle of  
246 14°32'49"; thence westerly along the arc of said curve,  
247 a distance of 88.86 feet to the end of said curve, said  
248 point being on the east right-of-way line of Interstate  
249 75 (State Road 93, Section 17075-2407) as recorded in  
250 Road Plat Book 2, Page 54 in said Public Records; thence

251 N.21°33'01"W., along said east right-of-way line, a  
 252 distance of 3,912.60 feet to a point on the west line of  
 253 the abovementioned Section 31; thence N.00°46'55"E.,  
 254 along said west Section line, a distance of 1,210.25  
 255 feet to the northwest corner of said Section 31, also  
 256 being the southwest corner of said Section 30; thence  
 257 N.00°49'51"E., along the west line of said Section 30, a  
 258 distance of 2,635.22 feet to the West 1/4 corner of said  
 259 Section 30; thence N.00°49'50"E., continuing along the  
 260 west line of said Section 30, a distance of 2,637.35  
 261 feet to the northwest corner of said Section 30; thence  
 262 N.88°31'18"E., along the north line of said Section 30,  
 263 a distance of 2,067.47 feet to the north 1/4 corner of  
 264 said Section 30; thence continue N.88°31'18"E., along  
 265 said north line of Section 30, a distance of 2,642.69  
 266 feet to the POINT OF BEGINNING.

267  
 268 Said tract contains 41,791,246 square feet or 959.3950  
 269 acres, more or less.

270  
 271 TOTAL DESCRIBED PARCEL CONTAINING A TOTAL AREA OF  
 272 3,686.495 ~~2,737.1~~ ACRES, MORE OR LESS.

273  
 274 Being subject to any rights-of-way, restrictions, and  
 275 easements of record.

HB 1115

2024

276

277

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



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7043 PCB EEG 24-08 OGSR/Agency Personnel Information

**SPONSOR(S):** Ethics, Elections & Open Government Subcommittee, Arrington

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 7030

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ethics, Elections & Open Government Subcommittee	16 Y, 0 N	Skinner	Toliver
1) State Affairs Committee		Skinner	Williamson

### SUMMARY ANALYSIS

The Open Government Sunset Review Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2<sup>nd</sup> of the fifth year after enactment.

Current law provides public record exemptions for specified personal identification and location information of certain current or former agency personnel — often due to the nature of their employment — and their spouses and children. Examples of agency personnel to which the exemptions apply include law enforcement personnel, state attorneys, public defenders, various investigators, code enforcement officers, firefighters, emergency medical technicians, and paramedics.

In 2019, the Legislature expanded the public record exemptions by creating a definition of “home address,” to encompass descriptive property information, including parcel and plot identification numbers, legal property description, neighborhood name and lot number, and GPS coordinates. It also clarified that the public record exemption for law enforcement personnel applies to civilian personnel employed by a law enforcement agency.

The bill saves from repeal the public record exemptions that protect this specified identification and location information of certain current or former agency personnel and their spouses and children, which will repeal on October 2, 2024, if the bill does not become law.

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



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR Act)<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>2</sup>

The OGSR Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.<sup>3</sup>

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>4</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

##### Agency Personnel Information

Current law provides that certain personal identification and location information of specified individuals — often due to the nature of their employment — held by an agency<sup>5</sup> is exempt<sup>6</sup> from public record requirements.<sup>7</sup> The exempt information includes home addresses,<sup>8</sup> telephone numbers,<sup>9</sup> dates of birth,

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Article I, s. 24(c), FLA. CONST.

<sup>5</sup> “Agency” means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of ch. 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. Section 119.011(2), F.S.

<sup>6</sup> There is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates *confidential and exempt*. A record classified as *exempt* from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att’y Gen. Fla. 04- 09 (2004).

<sup>7</sup> See s. 119.071(4)(d)2., F.S. The public record exemptions under review are contained within s. 119.071(4)(d)2.a.-v., F.S., However, sub-subparagraphs e. and v. are not a part of this review. See ss. 119.071(4)(d)2.e. and 119.071(4)(d)2.v., F.S.

<sup>8</sup> “Home addresses” means the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address. Section 119.071(4)(d)1.a., F.S.

<sup>9</sup> “Telephone numbers” includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices. Section 119.071(4)(d)1.c., F.S.

and in many instances, the employee's photograph.<sup>10</sup> The public record exemptions protect certain information regarding the spouses and children of such employees, including their names,<sup>11</sup> home addresses, telephone numbers, dates of birth, and places of employment, as well as the names and locations of schools and day care facilities attended by the children.<sup>12</sup> Photographs of the spouses and children are also exempt from public record requirements in several instances. The current or former<sup>13</sup> personnel to which this exemption applies include:<sup>14</sup>

- Sworn law enforcement or civilian personnel employed by a law enforcement agency.
- Correctional and correctional probation officers.
- Department of Children and Families personnel who investigate abuse, neglect, exploitation, fraud, theft, or other criminal activities.
- Department of Health personnel who support the investigation of child abuse or neglect.
- Department of Revenue or local government personnel who enforce and collect revenue or enforce child support.
- Nonsworn investigative personnel of the Department of Financial Services who investigate fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations.
- Nonsworn investigation personnel of the Office of Financial Regulation's Bureau of Financial Investigations who investigate fraud, theft, other related criminal activities, or state regulatory requirement violations.
- State attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors.
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers.
- Certain human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district.<sup>15</sup>
- Code enforcement officers.
- Guardians ad litem.<sup>16</sup>
- Certain personnel of the Department of Juvenile Justice.<sup>17</sup>
- Public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel.
- Investigators or inspectors of the Department of Business and Professional Regulation.
- County tax collectors.
- Department of Health personnel who determine or adjudicate eligibility of social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of DOH licensed health care practitioners or health care facilities.

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<sup>10</sup> Section 119.071(4)(d)2.a.-v., F.S. The exemptions for current or former guardians ad litem and current or former staff and domestic violence advocates of domestic violence centers also exempt their places of employment. *See* ss. 119.071(4)(d)2.j. and 119.071(4)(d)2.u., F.S.

<sup>11</sup> The names of the spouses and children of certain addiction treatment personnel are not exempt. *See* s. 119.071(4)(d)2.s., F.S.

<sup>12</sup> Section 119.071(4)(d)2.a.-v., F.S.

<sup>13</sup> The exemptions in most cases apply to current or former personnel, however, in some cases an exemption applies only to currently employed personnel. The following personnel exemptions apply only to currently employed persons: general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings; child support enforcement hearing officers; and county tax collectors. *See* ss. 119.071(4)(d)2.g. and 119.071(4)(d)2.n., F.S.

<sup>14</sup> Section 119.071(4)(d)2., F.S.

<sup>15</sup> Such personnel include those whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties. Section 119.071(4)(d)2.h., F.S.

<sup>16</sup> *See* s. 39.820(1), F.S.

<sup>17</sup> Such personnel include juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors. Section 119.071(4)(d)2.k., F.S.

- Impaired practitioner consultants retained by an agency as well as certain employees of such persons.<sup>18</sup>
- Certified<sup>19</sup> firefighters, emergency medical technicians, and paramedics.
- Agency inspector general or internal audit department personnel who audit or investigate waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline.
- Certain personnel of addiction treatment facilities.<sup>20</sup>
- Certain personnel of child advocacy centers, as well as Child Protection Team members who support the investigations of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or provide services a part of a multidisciplinary case review team.<sup>21</sup>
- Domestic violence center staff and domestic violence advocates.<sup>22</sup>

In order for such personnel within an exempt category to have their information protected from public record requirements by an agency that is not their employer, such personnel must submit, under oath, a written and notarized request for the information to be kept exempt.<sup>23</sup> The request must confirm that the individual is eligible for the exemption and state the statutory basis for the exemption.<sup>24</sup>

#### Public Record Exemption under Review

In 2019, the Legislature expanded the public record exemptions for the identification and location information of certain agency personnel by creating a broad definition of “home address.”<sup>25</sup> Home address was defined to mean:

[T]he dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.<sup>26</sup>

The 2019 public necessity statement<sup>27</sup> provided:

[T]he current exemptions do not provide protection for various forms of descriptive property information that may be used on its own, or in conjunction with other information, to reveal the home addresses that otherwise should be protected from public disclosure. Therefore, the Legislature finds that it is a public necessity to specifically define the term ‘home addresses’ so that the safety and privacy of various personnel and their family members are not compromised.<sup>28</sup>

<sup>18</sup> Employees of current or former impaired practitioners whose duties result in a determination of a person’s skill and safety to practice a licensed profession are captured by the exemption. Section 119.071(4)(d)2.p., F.S.

<sup>19</sup> The exemption applies to firefighters certified in compliance with s. 633.408, F.S., and emergency medical technicians and paramedics certified under ch. 401, F.S.; see ss. 119.071(4)(d)2.d. and 119.071(4)(d)2.q., F.S.

<sup>20</sup> Such personnel include directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility.

“Addiction treatment facility” means a county government, or agency thereof, that is licensed pursuant to s. 397.401 and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311 (26), F.S. Section 119.071(4)(d)2.s., F.S.

<sup>21</sup> Such personnel include directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(2), F.S., and fulfills the screening requirements of s. 39.3035(3), F.S. Section 119.071(4)(d)2.t., F.S.

<sup>22</sup> For the exemption to apply to those persons, the domestic violence center in question must be certified by DCF under ch. 39, F.S. Section 119.071(4)(d)2.u., F.S.

<sup>23</sup> Section 119.071(4)(d)3., F.S.

<sup>24</sup> *Id.*

<sup>25</sup> Chapter 2019-12, L.O.F.

<sup>26</sup> Section 119.071(4)(d)1.a., F.S.

<sup>27</sup> Article I, s. 24(c), FLA. CONST., requires each public record exemption to “state with specificity the public necessity justifying the exemption.”

<sup>28</sup> Chapter 2019-12, L.O.F.

The Legislature also clarified that the public record exemption for law enforcement personnel applies to civilian personnel employed by a law enforcement agency.<sup>29</sup>

Pursuant to the OGSR Act, the exemptions will repeal on October 2, 2024, unless reenacted by the Legislature.<sup>30</sup>

During the 2023 interim, as part of the review under the OGSR Act, House and Senate committee staff sent questionnaires<sup>31</sup> to the various entities with authority over the categories of employees listed in the public record exemption under review. Questionnaires were sent to the following entities:

- State agencies.
- City and county governments.
- County property appraisers' offices.
- County tax collectors' offices.
- School districts.
- State universities.
- Sheriffs' offices.
- Police departments.
- Clerks of the circuit courts' offices.
- State attorneys' offices.
- Public defenders' offices.
- Criminal Conflict and Civil Regional Counsel regions.
- Statewide Guardian Ad Litem Office.

Regarding the new definition of "home address," the vast majority of responses indicated that there had not been any issues interpreting or applying the definition, nor had there been any questions or concerns.<sup>32</sup> Regarding the agency personnel exemptions themselves, the vast majority of responses that suggested action recommended the exemption be reenacted as is.<sup>33</sup> Many of the responses cited employee safety as the basis for this recommendation.

### **Effect of the Bill**

The bill removes the scheduled repeal of the public record exemptions, thereby maintaining the exemptions for the specified agency personnel and their spouses and children.

#### **B. SECTION DIRECTORY:**

Section 1 amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 2 provides an effective date of October 1, 2024.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

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<sup>29</sup> *Id.*

<sup>30</sup> Section 119.071(4)(d)10., F.S.

<sup>31</sup> Open Government Sunset Review Questionnaire, Certain Agency Personnel and their Spouses and Children, responses on file with the Ethics, Elections & Open Government Subcommittee.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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

None.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not require rulemaking nor confer or alter an agency's rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

None.



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26 c. "Telephone numbers" includes home telephone numbers,  
27 personal cellular telephone numbers, personal pager telephone  
28 numbers, and telephone numbers associated with personal  
29 communications devices.

30 2.a. The home addresses, telephone numbers, dates of  
31 birth, and photographs of active or former sworn law enforcement  
32 personnel or of active or former civilian personnel employed by  
33 a law enforcement agency, including correctional and  
34 correctional probation officers, personnel of the Department of  
35 Children and Families whose duties include the investigation of  
36 abuse, neglect, exploitation, fraud, theft, or other criminal  
37 activities, personnel of the Department of Health whose duties  
38 are to support the investigation of child abuse or neglect, and  
39 personnel of the Department of Revenue or local governments  
40 whose responsibilities include revenue collection and  
41 enforcement or child support enforcement; the names, home  
42 addresses, telephone numbers, photographs, dates of birth, and  
43 places of employment of the spouses and children of such  
44 personnel; and the names and locations of schools and day care  
45 facilities attended by the children of such personnel are exempt  
46 from s. 119.07(1) and s. 24(a), Art. I of the State  
47 Constitution.

48 b. The home addresses, telephone numbers, dates of birth,  
49 and photographs of current or former nonsworn investigative  
50 personnel of the Department of Financial Services whose duties

51 include the investigation of fraud, theft, workers' compensation  
52 coverage requirements and compliance, other related criminal  
53 activities, or state regulatory requirement violations; the  
54 names, home addresses, telephone numbers, dates of birth, and  
55 places of employment of the spouses and children of such  
56 personnel; and the names and locations of schools and day care  
57 facilities attended by the children of such personnel are exempt  
58 from s. 119.07(1) and s. 24(a), Art. I of the State  
59 Constitution.

60 c. The home addresses, telephone numbers, dates of birth,  
61 and photographs of current or former nonsworn investigative  
62 personnel of the Office of Financial Regulation's Bureau of  
63 Financial Investigations whose duties include the investigation  
64 of fraud, theft, other related criminal activities, or state  
65 regulatory requirement violations; the names, home addresses,  
66 telephone numbers, dates of birth, and places of employment of  
67 the spouses and children of such personnel; and the names and  
68 locations of schools and day care facilities attended by the  
69 children of such personnel are exempt from s. 119.07(1) and s.  
70 24(a), Art. I of the State Constitution.

71 d. The home addresses, telephone numbers, dates of birth,  
72 and photographs of current or former firefighters certified in  
73 compliance with s. 633.408; the names, home addresses, telephone  
74 numbers, photographs, dates of birth, and places of employment  
75 of the spouses and children of such firefighters; and the names



76 and locations of schools and day care facilities attended by the  
77 children of such firefighters are exempt from s. 119.07(1) and  
78 s. 24(a), Art. I of the State Constitution.

79 e. The home addresses, dates of birth, and telephone  
80 numbers of current or former justices of the Supreme Court,  
81 district court of appeal judges, circuit court judges, and  
82 county court judges, and of current judicial assistants; the  
83 names, home addresses, telephone numbers, dates of birth, and  
84 places of employment of the spouses and children of current or  
85 former justices and judges and of current judicial assistants;  
86 and the names and locations of schools and day care facilities  
87 attended by the children of current or former justices and  
88 judges and of current judicial assistants are exempt from s.  
89 119.07(1) and s. 24(a), Art. I of the State Constitution. This  
90 sub-subparagraph is subject to the Open Government Sunset Review  
91 Act in accordance with s. 119.15 and shall stand repealed on  
92 October 2, 2028, unless reviewed and saved from repeal through  
93 reenactment by the Legislature.

94 f. The home addresses, telephone numbers, dates of birth,  
95 and photographs of current or former state attorneys, assistant  
96 state attorneys, statewide prosecutors, or assistant statewide  
97 prosecutors; the names, home addresses, telephone numbers,  
98 photographs, dates of birth, and places of employment of the  
99 spouses and children of current or former state attorneys,  
100 assistant state attorneys, statewide prosecutors, or assistant

101 statewide prosecutors; and the names and locations of schools  
102 and day care facilities attended by the children of current or  
103 former state attorneys, assistant state attorneys, statewide  
104 prosecutors, or assistant statewide prosecutors are exempt from  
105 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

106 g. The home addresses, dates of birth, and telephone  
107 numbers of general magistrates, special magistrates, judges of  
108 compensation claims, administrative law judges of the Division  
109 of Administrative Hearings, and child support enforcement  
110 hearing officers; the names, home addresses, telephone numbers,  
111 dates of birth, and places of employment of the spouses and  
112 children of general magistrates, special magistrates, judges of  
113 compensation claims, administrative law judges of the Division  
114 of Administrative Hearings, and child support enforcement  
115 hearing officers; and the names and locations of schools and day  
116 care facilities attended by the children of general magistrates,  
117 special magistrates, judges of compensation claims,  
118 administrative law judges of the Division of Administrative  
119 Hearings, and child support enforcement hearing officers are  
120 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
121 Constitution.

122 h. The home addresses, telephone numbers, dates of birth,  
123 and photographs of current or former human resource, labor  
124 relations, or employee relations directors, assistant directors,  
125 managers, or assistant managers of any local government agency

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126 or water management district whose duties include hiring and  
127 firing employees, labor contract negotiation, administration, or  
128 other personnel-related duties; the names, home addresses,  
129 telephone numbers, dates of birth, and places of employment of  
130 the spouses and children of such personnel; and the names and  
131 locations of schools and day care facilities attended by the  
132 children of such personnel are exempt from s. 119.07(1) and s.  
133 24(a), Art. I of the State Constitution.

134 i. The home addresses, telephone numbers, dates of birth,  
135 and photographs of current or former code enforcement officers;  
136 the names, home addresses, telephone numbers, dates of birth,  
137 and places of employment of the spouses and children of such  
138 personnel; and the names and locations of schools and day care  
139 facilities attended by the children of such personnel are exempt  
140 from s. 119.07(1) and s. 24(a), Art. I of the State  
141 Constitution.

142 j. The home addresses, telephone numbers, places of  
143 employment, dates of birth, and photographs of current or former  
144 guardians ad litem, as defined in s. 39.820; the names, home  
145 addresses, telephone numbers, dates of birth, and places of  
146 employment of the spouses and children of such persons; and the  
147 names and locations of schools and day care facilities attended  
148 by the children of such persons are exempt from s. 119.07(1) and  
149 s. 24(a), Art. I of the State Constitution.

150 k. The home addresses, telephone numbers, dates of birth,

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151 and photographs of current or former juvenile probation  
152 officers, juvenile probation supervisors, detention  
153 superintendents, assistant detention superintendents, juvenile  
154 justice detention officers I and II, juvenile justice detention  
155 officer supervisors, juvenile justice residential officers,  
156 juvenile justice residential officer supervisors I and II,  
157 juvenile justice counselors, juvenile justice counselor  
158 supervisors, human services counselor administrators, senior  
159 human services counselor administrators, rehabilitation  
160 therapists, and social services counselors of the Department of  
161 Juvenile Justice; the names, home addresses, telephone numbers,  
162 dates of birth, and places of employment of spouses and children  
163 of such personnel; and the names and locations of schools and  
164 day care facilities attended by the children of such personnel  
165 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
166 Constitution.

167 1. The home addresses, telephone numbers, dates of birth,  
168 and photographs of current or former public defenders, assistant  
169 public defenders, criminal conflict and civil regional counsel,  
170 and assistant criminal conflict and civil regional counsel; the  
171 names, home addresses, telephone numbers, dates of birth, and  
172 places of employment of the spouses and children of current or  
173 former public defenders, assistant public defenders, criminal  
174 conflict and civil regional counsel, and assistant criminal  
175 conflict and civil regional counsel; and the names and locations

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176 of schools and day care facilities attended by the children of  
177 current or former public defenders, assistant public defenders,  
178 criminal conflict and civil regional counsel, and assistant  
179 criminal conflict and civil regional counsel are exempt from s.  
180 119.07(1) and s. 24(a), Art. I of the State Constitution.

181 m. The home addresses, telephone numbers, dates of birth,  
182 and photographs of current or former investigators or inspectors  
183 of the Department of Business and Professional Regulation; the  
184 names, home addresses, telephone numbers, dates of birth, and  
185 places of employment of the spouses and children of such current  
186 or former investigators and inspectors; and the names and  
187 locations of schools and day care facilities attended by the  
188 children of such current or former investigators and inspectors  
189 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
190 Constitution.

191 n. The home addresses, telephone numbers, and dates of  
192 birth of county tax collectors; the names, home addresses,  
193 telephone numbers, dates of birth, and places of employment of  
194 the spouses and children of such tax collectors; and the names  
195 and locations of schools and day care facilities attended by the  
196 children of such tax collectors are exempt from s. 119.07(1) and  
197 s. 24(a), Art. I of the State Constitution.

198 o. The home addresses, telephone numbers, dates of birth,  
199 and photographs of current or former personnel of the Department  
200 of Health whose duties include, or result in, the determination

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201 or adjudication of eligibility for social security disability  
202 benefits, the investigation or prosecution of complaints filed  
203 against health care practitioners, or the inspection of health  
204 care practitioners or health care facilities licensed by the  
205 Department of Health; the names, home addresses, telephone  
206 numbers, dates of birth, and places of employment of the spouses  
207 and children of such personnel; and the names and locations of  
208 schools and day care facilities attended by the children of such  
209 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
210 the State Constitution.

211 p. The home addresses, telephone numbers, dates of birth,  
212 and photographs of current or former impaired practitioner  
213 consultants who are retained by an agency or current or former  
214 employees of an impaired practitioner consultant whose duties  
215 result in a determination of a person's skill and safety to  
216 practice a licensed profession; the names, home addresses,  
217 telephone numbers, dates of birth, and places of employment of  
218 the spouses and children of such consultants or their employees;  
219 and the names and locations of schools and day care facilities  
220 attended by the children of such consultants or employees are  
221 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
222 Constitution.

223 q. The home addresses, telephone numbers, dates of birth,  
224 and photographs of current or former emergency medical  
225 technicians or paramedics certified under chapter 401; the

226 | names, home addresses, telephone numbers, dates of birth, and  
 227 | places of employment of the spouses and children of such  
 228 | emergency medical technicians or paramedics; and the names and  
 229 | locations of schools and day care facilities attended by the  
 230 | children of such emergency medical technicians or paramedics are  
 231 | exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 232 | Constitution.

233 |         r. The home addresses, telephone numbers, dates of birth,  
 234 | and photographs of current or former personnel employed in an  
 235 | agency's office of inspector general or internal audit  
 236 | department whose duties include auditing or investigating waste,  
 237 | fraud, abuse, theft, exploitation, or other activities that  
 238 | could lead to criminal prosecution or administrative discipline;  
 239 | the names, home addresses, telephone numbers, dates of birth,  
 240 | and places of employment of spouses and children of such  
 241 | personnel; and the names and locations of schools and day care  
 242 | facilities attended by the children of such personnel are exempt  
 243 | from s. 119.07(1) and s. 24(a), Art. I of the State  
 244 | Constitution.

245 |         s. The home addresses, telephone numbers, dates of birth,  
 246 | and photographs of current or former directors, managers,  
 247 | supervisors, nurses, and clinical employees of an addiction  
 248 | treatment facility; the home addresses, telephone numbers,  
 249 | photographs, dates of birth, and places of employment of the  
 250 | spouses and children of such personnel; and the names and

251 | locations of schools and day care facilities attended by the  
252 | children of such personnel are exempt from s. 119.07(1) and s.  
253 | 24(a), Art. I of the State Constitution. For purposes of this  
254 | sub-subparagraph, the term "addiction treatment facility" means  
255 | a county government, or agency thereof, that is licensed  
256 | pursuant to s. 397.401 and provides substance abuse prevention,  
257 | intervention, or clinical treatment, including any licensed  
258 | service component described in s. 397.311(26).

259 |       t. The home addresses, telephone numbers, dates of birth,  
260 | and photographs of current or former directors, managers,  
261 | supervisors, and clinical employees of a child advocacy center  
262 | that meets the standards of s. 39.3035(2) and fulfills the  
263 | screening requirement of s. 39.3035(3), and the members of a  
264 | Child Protection Team as described in s. 39.303 whose duties  
265 | include supporting the investigation of child abuse or sexual  
266 | abuse, child abandonment, child neglect, and child exploitation  
267 | or to provide services as part of a multidisciplinary case  
268 | review team; the names, home addresses, telephone numbers,  
269 | photographs, dates of birth, and places of employment of the  
270 | spouses and children of such personnel and members; and the  
271 | names and locations of schools and day care facilities attended  
272 | by the children of such personnel and members are exempt from s.  
273 | 119.07(1) and s. 24(a), Art. I of the State Constitution.

274 |       u. The home addresses, telephone numbers, places of  
275 | employment, dates of birth, and photographs of current or former



276 staff and domestic violence advocates, as defined in s.  
 277 90.5036(1)(b), of domestic violence centers certified by the  
 278 Department of Children and Families under chapter 39; the names,  
 279 home addresses, telephone numbers, places of employment, dates  
 280 of birth, and photographs of the spouses and children of such  
 281 personnel; and the names and locations of schools and day care  
 282 facilities attended by the children of such personnel are exempt  
 283 from s. 119.07(1) and s. 24(a), Art. I of the State  
 284 Constitution.

285 v. The home addresses, telephone numbers, dates of birth,  
 286 and photographs of current or former inspectors or investigators  
 287 of the Department of Agriculture and Consumer Services; the  
 288 names, home addresses, telephone numbers, dates of birth, and  
 289 places of employment of the spouses and children of current or  
 290 former inspectors or investigators; and the names and locations  
 291 of schools and day care facilities attended by the children of  
 292 current or former inspectors or investigators are exempt from s.  
 293 119.07(1) and s. 24(a), Art. I of the State Constitution. This  
 294 sub-subparagraph is subject to the Open Government Sunset Review  
 295 Act in accordance with s. 119.15 and shall stand repealed on  
 296 October 2, 2028, unless reviewed and saved from repeal through  
 297 reenactment by the Legislature.

298 3. An agency that is the custodian of the information  
 299 specified in subparagraph 2. and that is not the employer of the  
 300 officer, employee, justice, judge, or other person specified in

301 subparagraph 2. must maintain the exempt status of that  
302 information only if the officer, employee, justice, judge, other  
303 person, or employing agency of the designated employee submits a  
304 written and notarized request for maintenance of the exemption  
305 to the custodial agency. The request must state under oath the  
306 statutory basis for the individual's exemption request and  
307 confirm the individual's status as a party eligible for exempt  
308 status.

309 4.a. A county property appraiser, as defined in s.  
310 192.001(3), or a county tax collector, as defined in s.  
311 192.001(4), who receives a written and notarized request for  
312 maintenance of the exemption pursuant to subparagraph 3. must  
313 comply by removing the name of the individual with exempt status  
314 and the instrument number or Official Records book and page  
315 number identifying the property with the exempt status from all  
316 publicly available records maintained by the property appraiser  
317 or tax collector. For written requests received on or before  
318 July 1, 2021, a county property appraiser or county tax  
319 collector must comply with this sub-subparagraph by October 1,  
320 2021. A county property appraiser or county tax collector may  
321 not remove the street address, legal description, or other  
322 information identifying real property within the agency's  
323 records so long as a name or personal information otherwise  
324 exempt from inspection and copying pursuant to this section is  
325 not associated with the property or otherwise displayed in the

326 public records of the agency.

327 b. Any information restricted from public display,  
328 inspection, or copying under sub-subparagraph a. must be  
329 provided to the individual whose information was removed.

330 5. An officer, an employee, a justice, a judge, or other  
331 person specified in subparagraph 2. may submit a written request  
332 for the release of his or her exempt information to the  
333 custodial agency. The written request must be notarized and must  
334 specify the information to be released and the party authorized  
335 to receive the information. Upon receipt of the written request,  
336 the custodial agency must release the specified information to  
337 the party authorized to receive such information.

338 6. The exemptions in this paragraph apply to information  
339 held by an agency before, on, or after the effective date of the  
340 exemption.

341 7. Information made exempt under this paragraph may be  
342 disclosed pursuant to s. 28.2221 to a title insurer authorized  
343 pursuant to s. 624.401 and its affiliates as defined in s.  
344 624.10; a title insurance agent or title insurance agency as  
345 defined in s. 626.841(1) or (2), respectively; or an attorney  
346 duly admitted to practice law in this state and in good standing  
347 with The Florida Bar.

348 8. The exempt status of a home address contained in the  
349 Official Records is maintained only during the period when a  
350 protected party resides at the dwelling location. Upon

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351 conveyance of real property after October 1, 2021, and when such  
352 real property no longer constitutes a protected party's home  
353 address as defined in sub-subparagraph 1.a., the protected party  
354 must submit a written request to release the removed information  
355 to the county recorder. The written request to release the  
356 removed information must be notarized, must confirm that a  
357 protected party's request for release is pursuant to a  
358 conveyance of his or her dwelling location, and must specify the  
359 Official Records book and page, instrument number, or clerk's  
360 file number for each document containing the information to be  
361 released.

362 9. Upon the death of a protected party as verified by a  
363 certified copy of a death certificate or court order, any party  
364 can request the county recorder to release a protected  
365 decedent's removed information unless there is a related request  
366 on file with the county recorder for continued removal of the  
367 decedent's information or unless such removal is otherwise  
368 prohibited by statute or by court order. The written request to  
369 release the removed information upon the death of a protected  
370 party must attach the certified copy of a death certificate or  
371 court order and must be notarized, must confirm the request for  
372 release is due to the death of a protected party, and must  
373 specify the Official Records book and page number, instrument  
374 number, or clerk's file number for each document containing the  
375 information to be released. A fee may not be charged for the

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376 | release of any document pursuant to such request.

377 |       ~~10. Except as otherwise expressly provided in this~~  
378 | ~~paragraph, this paragraph is subject to the Open Government~~  
379 | ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~  
380 | ~~repealed on October 2, 2024, unless reviewed and saved from~~  
381 | ~~repeal through reenactment by the Legislature.~~

382 |       Section 2. This act shall take effect October 1, 2024.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7047      PCB EEG 24-07      OGSR/Utility Owned or Operated by a Unit of Local Government

**SPONSOR(S):** Ethics, Elections & Open Government Subcommittee, Porras

**TIED BILLS:**                      **IDEN./SIM. BILLS:** CS/SB 7006

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ethics, Elections & Open Government Subcommittee	16 Y, 0 N	Poreda	Toliver
1) Energy, Communications & Cybersecurity Subcommittee	14 Y, 0 N	Phelps	Keating
2) State Affairs Committee		Poreda	Williamson

### SUMMARY ANALYSIS

The Open Government Sunset Review (OGSR) Act requires the Legislature to review each public record exemption and each public meeting exemption five years after enactment. If the Legislature does not reenact the exemption, it automatically repeals on October 2<sup>nd</sup> of the fifth year after enactment.

Municipalities are authorized by general law to provide water and sewer utility services, as well as electric and natural gas utility services. Counties are authorized to provide water and sewer utility services both within their individual boundaries and in adjoining counties.

Current law provides public record exemptions for information held by a utility owned or operated by a unit of local government (local government utility) related to the security of its information technology (I.T.) and customer meter-derived data and billing information in increments of less than one billing cycle. Current law also provides a public meeting exemption for those portions of meetings held by a local government utility that would reveal information related to the security of its I.T. and customer meter-derived data and billing information. Any closed portion of such meeting must be recorded and transcribed and such recordings and transcripts are exempt from public record requirements.

Current law provides a general public record exemption, applicable to all agencies, for certain information related to cybersecurity. Pursuant to the OGSR Act, the general public record exemption for cybersecurity information will repeal on October 2, 2027, unless reviewed and saved from repeal by the Legislature.

The bill extends the repeal date for the public record exemptions related to local government utility I.T. security information and the public meeting exemption to October 2, 2027, to coincide with the OGSR repeal date of the general cybersecurity exemption. The bill saves from repeal the public record exemption for customer meter-derived data and billing information, which will repeal on October 2, 2024, if this bill does not become law.

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

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR Act)<sup>1</sup> sets forth a legislative review process for newly created or substantially amended public record or public meeting exemptions. It requires an automatic repeal of the exemption on October 2<sup>nd</sup> of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>2</sup>

The OGSR Act provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.<sup>3</sup>

If, and only if, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required. If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote are not required.<sup>4</sup>

##### Local Government Utilities

The Florida Constitution grants municipalities the governmental, corporate, and proprietary powers necessary to enable them to conduct municipal government, perform municipal functions, and render municipal services, and permits them to exercise any power for municipal purposes, except when expressly prohibited by law.<sup>5</sup>

Counties not operating under a charter have the power of self-government as provided by general or special law, while charter counties have all powers of self-government not inconsistent with general law or with special law approved by the county electors.<sup>6</sup> Counties are authorized by general law to provide water and sewer utility services both within their individual boundaries and in adjoining counties.<sup>7</sup> Municipalities are authorized by general law to provide water and sewer utility services<sup>8</sup> as well as natural gas services<sup>9</sup> and electric and gas utilities<sup>10</sup>

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<sup>1</sup> Section 119.15, F.S.

<sup>2</sup> Section 119.15(3), F.S.

<sup>3</sup> Section 119.15(6)(b), F.S.

<sup>4</sup> Article I, s. 24(c), FLA. CONST.

<sup>5</sup> Article VIII, s. 2(b), FLA. CONST.

<sup>6</sup> Article VIII, s. 1(f)-(g), FLA. CONST.

<sup>7</sup> Sections. 125.01(1)(k)1., F.S. and 153.03, F.S.

<sup>8</sup> Pursuant to s. 180.06, F.S., a municipality may "provide water and alternative water supplies;" "provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;" and "construct reservoirs, sewerage systems, trunk sewers, intercepting sewers, pumping stations, wells, siphons, intakes, pipelines, distribution systems, purification works, collection systems, treatment and disposal works" to accomplish these purposes.

<sup>9</sup> Section 180.06(8), F.S.

<sup>10</sup> Chapter. 366, F.S.



## Florida Public Service Commission

The Florida Public Service Commission (PSC) ensures Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, "in a safe, affordable, and reliable manner."<sup>11</sup> The PSC primarily regulates investor owned utilities but is able to exercise limited authority over publicly owned utilities in the following areas:<sup>12</sup>

- Rate base or economic regulation.
- Competitive market oversight.
- Monitoring of safety, reliability, and service.

## Utility Customer Consumption Data

Traditional, analog utility meters record consumption at a utility customer's premises. On a regular, periodic basis, the meter is "read" in person by a utility employee to determine how much of the utility's service — electric, natural gas, or water/wastewater — was used at the premises since the last meter reading. This data is used by the utility for purposes of customer billing. In recent years, utilities have deployed, to varying degrees, newer "smart meter"<sup>13</sup> technologies that measure a utility customer's consumption on a more frequent basis (e.g., hourly) and transmit this data automatically and wirelessly to the utility. The utility still uses this data for billing purposes but can also use it to monitor its system and identify and locate problems more quickly.<sup>14</sup>

## Cybersecurity Public Record Exemption

In 2022, the Legislature created a general public record exemption applicable to all agencies<sup>15</sup> for the certain information related to cybersecurity.<sup>16</sup> Specifically, s. 119.0725, F.S., provides that the following information is confidential and exempt<sup>17</sup> from public record requirements:

- Information related to critical infrastructure.<sup>18</sup>
- Network schematics, hardware and software configurations, or encryption information or information that identifies detection, investigation, or response practices for suspected or confirmed cybersecurity incidents, including suspected or confirmed breaches, if the disclosure of such information would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:
  - Data or information, whether physical or virtual; or
  - Information technology (I.T.) resources, which include an agency's existing or proposed I.T. systems.
- Coverage limits and deductible or self-insurance amounts of insurance or other risk mitigation coverages acquired for the protection of I.T. systems, operational technology systems, or data of an agency.
- Cybersecurity incident information contained in certain reports.

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<sup>11</sup> Florida Public Service Commission, *About*, available at <https://www.psc.state.fl.us/about> (last visited Jan. 15, 2024).

<sup>12</sup> Florida Public Service Commission, *2022 Annual Report*, available at <https://www.floridapsc.com/pscfiles/website-files/PDF/Publications/Reports/General/AnnualReports/2022.pdf> (last visited January 16, 2024)

<sup>13</sup> See Florida Public Service Commission, *Smart Meters*, available at <https://www.floridapsc.com/pscfiles/website-files/pdf/Utilities/Electricgas/SmartMeters/SmartMeter.pdf> (last visited January 16, 2024).

<sup>14</sup> *Id.*

<sup>15</sup> "Agency" means any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of ch. 119, F.S., the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency. Section 119.011(2), F.S.

<sup>16</sup> See s. 119.0725, F.S.

<sup>17</sup> There is a difference between records the Legislature designates *exempt* from public record requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So.2d 1015 (Fla. 2004); *State v. Wooten*, 260 So. 3d 1060, 1070 (Fla. 4th DCA 2018); *City of Rivera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Op. Att'y Gen. Fla. 04- 09 (2004).

<sup>18</sup> "Critical infrastructure" means existing and proposed information technology and operation technology systems and assets, whether physical and virtual, the incapacity or destruction of which would negatively affect security, economic security, public health, or public safety. Section 119.0725(1)(b), F.S.

The Legislature also created a public meeting exemption for any portion of a meeting that would reveal the confidential and exempt information, and required any portion of an exempt meeting to be recorded and transcribed.<sup>19</sup> The recording and transcript are confidential and exempt from public record requirements.<sup>20</sup>

#### Public Record and Public Meeting Exemptions under Review

In 2016, the Legislature created a public record exemption for the following information held by a utility<sup>21</sup> owned or operated by a unit of local government (local government utility):

- Information related to the security of a local government utility's technology, processes, and practices designed to protect the utility's networks, computers, programs, and data from attack, damage, or unauthorized access that, if disclosed, would facilitate the alteration, disclosure, or destruction of such data or I.T. resources.
- Information related to the security of a local government utility's existing or proposed I.T. systems or industrial control technology systems that, if disclosed, would facilitate unauthorized access to, and alteration or destruction of, such systems in a manner that would adversely impact the safe and reliable operations of the systems and the utility.<sup>22</sup>

The 2016 public necessity statement<sup>23</sup> for the public record exemption for certain I.T. security information provided that:

[M]any utilities have adopted technologies, processes, and practices designed to secure data, information technology systems, and industrial control technology systems. Disclosure of sensitive information related to these security measures could result in the identification of vulnerabilities that allow a security breach that damages utility systems and disrupts the safe and reliable operation of such systems, adversely impacting the public health and safety and the economic well-being of the state. Because of the interconnected nature of utility systems, a security breach may also impact national security concerns.<sup>24</sup>

In 2019, the Legislature created a public record exemption for customer meter-derived data and billing information in increments of less than one billing cycle held by a local government utility,<sup>25</sup> and a public meeting exemption for any portion of a meeting held by a local government utility wherein the protected local government utility I.T. security information or customer meter-derived data and bill information would be discussed.<sup>26</sup> All closed portions of the exempt meeting must be recorded and transcribed and such recording or transcription is exempt from public record requirements.<sup>27</sup>

The 2019 public necessity statement for the public record exemption for customer meter-derived data and billing information provided that:

Smart meters, which can record and transmit detailed data on a customer's use of utility services, present unique security concerns. These concerns were addressed in a report released in October 2010 by the United States Department of Energy titled "Data Access and Privacy Issues related to Smart Grid Technologies." The report recommended that customer data be protected from release to third parties.

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<sup>19</sup> Section 119.0725(3), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> "Utility" means a person or entity that provides electricity, natural gas, telecommunications, water, chilled water, reuse water, or wastewater. Section 119.011(15), F.S.

<sup>22</sup> Chapter 2016-95, L.O.F., codified as s. 119.0713(5), F.S.

<sup>23</sup> Article I, s. 24(c), FLA. CONST., requires each public record exemption to "state with specificity the public necessity justifying the exemption."

<sup>24</sup> Chapter 2016-95, L.O.F.

<sup>25</sup> Chapter 2019-38, L.O.F., codified as s. 119.0713(5)(a)3., F.S.

<sup>26</sup> Chapter 2019-37, L.O.F., codified as s. 286.0113(3), F.S.

<sup>27</sup> Section 286.0113(3)(a), F.S. However, a court of competent jurisdiction, following an in-camera review, may determine that the meeting was not restricted to the discussion of data and information made exempt, and in that event, the portion of the recording or transcript which reveals nonexempt data and information may be disclosed to a third party.

This detailed customer data can be used to specifically identify minute-by-minute usage patterns, including the exact appliance or service being used. This information creates significant security issues for both businesses and homeowners.<sup>28</sup>

The 2019 public necessity statement for the public meeting exemption provided that:

[A]s utility system infrastructure becomes more connected and integrated through information and communications technology, the exposure to damage from attacks through such technology grows. These attacks may result in the disruption of utility services and damage to utility systems. Maintaining safe and reliable utility systems is vital to protecting the public health and safety and to ensuring the economic well-being of this state.<sup>29</sup>

Pursuant to the OGSR Act, each of the above exemptions will repeal on October 2, 2024, unless reenacted by the Legislature.

During the 2023 interim, House and Senate committee staff jointly sent questionnaires to city and county governments. In total, staff received 39 responses from those entities.<sup>30</sup> Most respondents indicated that they were unaware of any litigation concerning the exemptions under review and had not encountered any issues interpreting or applying the exemptions. The vast majority of respondents recommended that the exemptions be reenacted as is, and no respondent recommended eliminating the public record or public meeting exemptions. As a part of the questionnaire, respondents were asked whether the local government utility I.T. security exemptions were duplicative of the general cybersecurity exemption in s. 119.0725, F.S. Some respondents noted there may be overlap between the exemptions.

### **Effect of the Bill**

The bill extends the repeal date for the public record exemption for local government utility I.T. security information and the public meeting exemption. The repeal date is extended from October 2, 2024, to October 2, 2027, to coincide with the OGSR repeal date of the general cybersecurity exemption in s. 119.0725, F.S.

The bill saves from repeal the public record exemption for customer meter-derived data and billing information in increments of less than one billing cycle held by a local government utility, which will repeal on October 2, 2024, if this bill does not become law

### **B. SECTION DIRECTORY:**

Section 1 amends s. 119.0713, F.S., relating to local government agency exemptions from inspection or copying of public records.

Section 2 amends s. 286.0113, F.S., relating to general exemptions from public meetings.

Section 3 provides an effective date of October 1, 2024.

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<sup>28</sup> Chapter 2019-38, L.O.F.

<sup>29</sup> Chapter 2019-37, L.O.F.

<sup>30</sup> Open Government Sunset Review Questionnaire, Public Records and Public Meetings Related to utilities owned or operated by a unit of local government, responses on file with the Ethics, Elections & Open Government Subcommittee.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill does not require rulemaking nor confer rulemaking authority.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

## IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.



26 Statutes, is amended to read:

27 119.0713 Local government agency exemptions from  
 28 inspection or copying of public records.—

29 (5)(a) The following information held by a utility owned  
 30 or operated by a unit of local government is exempt from s.  
 31 119.07(1) and s. 24(a), Art. I of the State Constitution:

32 1. Information related to the security of the technology,  
 33 processes, or practices of a utility owned or operated by a unit  
 34 of local government that are designed to protect the utility's  
 35 networks, computers, programs, and data from attack, damage, or  
 36 unauthorized access, which information, if disclosed, would  
 37 facilitate the alteration, disclosure, or destruction of such  
 38 data or information technology resources.

39 2. Information related to the security of existing or  
 40 proposed information technology systems or industrial control  
 41 technology systems of a utility owned or operated by a unit of  
 42 local government, which, if disclosed, would facilitate  
 43 unauthorized access to, and alteration or destruction of, such  
 44 systems in a manner that would adversely impact the safe and  
 45 reliable operation of the systems and the utility.

46 3. Customer meter-derived data and billing information in  
 47 increments less than one billing cycle.

48 (b) This exemption applies to such information held by a  
 49 utility owned or operated by a unit of local government before,  
 50 on, or after the effective date of this exemption.

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51 (c) Subparagraphs (a)1. and 2. are ~~This subsection is~~  
52 subject to the Open Government Sunset Review Act in accordance  
53 with s. 119.15 and shall stand repealed on October 2, 2027 ~~2024~~,  
54 unless reviewed and saved from repeal through reenactment by the  
55 Legislature.

56 Section 2. Subsection (3) of section 286.0113, Florida  
57 Statutes, is amended to read:

58 286.0113 General exemptions from public meetings.—

59 (3)(a) That portion of a meeting held by a utility owned  
60 or operated by a unit of local government which would reveal  
61 information that is exempt under s. 119.0713(5) is exempt from  
62 s. 286.011 and s. 24(b), Art. I of the State Constitution. All  
63 exempt portions of such a meeting must be recorded and  
64 transcribed. The recording and transcript of the meeting are  
65 exempt from disclosure under s. 119.07(1) and s. 24(a), Art. I  
66 of the State Constitution unless a court of competent  
67 jurisdiction, following an in camera review, determines that the  
68 meeting was not restricted to the discussion of data and  
69 information made exempt by this section. In the event of such a  
70 judicial determination, only the portion of the recording or  
71 transcript which reveals nonexempt data and information may be  
72 disclosed to a third party.

73 (b) This subsection is subject to the Open Government  
74 Sunset Review Act in accordance with s. 119.15 and shall stand  
75 repealed on October 2, 2027 ~~2024~~, unless reviewed and saved from

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76 | repeal through reenactment by the Legislature.

77 |       Section 3. This act shall take effect October 1, 2024.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCS for HB 395 Protection of Historical Monuments and Memorials

**SPONSOR(S):** State Affairs Committee

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Villa	Williamson

**SUMMARY ANALYSIS**

The Division of Historical Resources (Division) within the Department of State is charged with protecting and preserving Florida’s historic sites and properties and the Florida Historical Commission (Commission) aids and advises the Division. The Department of Veterans’ Affairs (FDVA) is tasked with serving the state’s veteran population.

A local government may not exercise authority in an area preempted by the state. To expressly preempt a subject area, the Legislature must use clear statutory language stating its intention to do so.

The bill creates the “Historic Florida Monuments and Memorials Protection Act” and specifies the Legislature’s intent to protect monuments and memorials from removal, damage, or destruction by preempting local government action.

The bill declares that the state occupies the whole field of removal, damage, or destruction of historic Florida monuments or memorials (monuments or memorials) to the exclusion of any existing or future local government ordinance, regulation, or rule, or any action by an elected or appointed local government official. The bill invalidates any local government measure that impinges on the Legislature’s exclusive authority relating to monuments or memorials and requires the courts to issue a permanent injunction prohibiting the local government from enforcing such measure. An elected or appointed local government official that knowingly and willfully enacts or enforces such measure is subject to a \$1,000 fine. Public funds may not be used to defend or reimburse the local official.

The bill provides standing to bring a civil action to interested groups and individuals that helped construct, design, or regularly use the monument or memorial. The group or individual may be awarded actual damages, capped at \$100,000, and reasonable attorney fees and costs, for violations of the act.

The bill requires a local government that unlawfully damages, removes, or destroys a monument or memorial to return it to its original condition or location within three years. If the local government cannot afford to do so, the state must restore or relocate such monument or memorial and DOS must withhold from the local government certain funds until the local government reimburses the state for the cost of restoring or relocating the monument or memorial.

The bill authorizes a local government to temporarily remove and relocate a monument or memorial in certain instances and requires the local government to provide certain written notifications to the Division.

The bill will likely have an indeterminate fiscal impact on the state and appears to have no fiscal impact on local governments unless they act in violation of the bill’s provisions. See Fiscal Analysis.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Background

##### Florida Historical Resources Act

The Florida Historical Resources Act (Resources Act)<sup>1</sup> was established to preserve archaeological sites and objects of antiquity for the public benefit.<sup>2</sup> The Resources Act recognizes Florida's historic properties as an important legacy to be cherished and preserved for current and future generations. Accordingly, it is Florida's policy to lead, assist, administer, and encourage public entities and private citizens to preserve the state's historic environment and resources.<sup>3</sup>

##### Department of State

The Department of State (DOS) is comprised of six divisions: Elections, Historical Resources, Corporations, Library and Information Services, Arts and Culture, and Administration.<sup>4</sup> The head of DOS is the Secretary of State (Secretary). The Secretary is appointed by and serves at the pleasure of the Governor, and is confirmed by the Senate.<sup>5</sup>

##### *Division of Historical Resources*

The Division of Historical Resources (Division), one of the six divisions established within DOS,<sup>6</sup> is charged with encouraging identification, evaluation, protection, preservation, collection, conservation, and interpretation of information about Florida's historic sites and properties or objects related to Florida's history and culture.<sup>7</sup> Some of the Division's responsibilities include:

- Developing a comprehensive statewide historic preservation plan.
- Directing and conducting a comprehensive statewide survey, and maintaining an inventory, of historic resources.
- Ensuring that historic resources are duly considered at all levels of planning and development.
- Providing public information, education, and technical assistance concerning historic preservation programs.<sup>8</sup>

The Division is comprised of the Bureau of Historic Preservation,<sup>9</sup> Bureau of Historical Museums,<sup>10</sup> and Bureau of Archaeological Research.<sup>11,12</sup>

##### *Florida Historical Commission*

The Florida Historical Commission (Commission) is established within DOS to serve in an advisory capacity to the director of the Division and engages the public in the preservation and safeguarding of Florida's historic and archaeological sites and properties.<sup>13</sup> The Commission is composed of 11

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<sup>1</sup> Sections 267.011-267.22, F.S., are known as the Florida Historical Resources Act. See s. 267.011, F.S.

<sup>2</sup> Section 267.14, F.S.

<sup>3</sup> See s. 267.061(1)(a), F.S.

<sup>4</sup> Section 20.10(2), F.S.

<sup>5</sup> Section 20.10(1), F.S.

<sup>6</sup> Section 20.10(2)(b), F.S.

<sup>7</sup> See s. 267.031, F.S.

<sup>8</sup> Section 267.031(5)(a), (b), (d), and (f), F.S.

<sup>9</sup> The Bureau of Historic Preservation engages in historic preservation initiatives with the goal of identifying, evaluating, preserving, and interpreting the historical and cultural resources within the state.

<sup>10</sup> The Bureau of Historical Museums is comprised of designated museums that interpret Florida history for the public through diverse means, including object-based exhibitions, living history interactions, and guided tours.

<sup>11</sup> The Bureau of Archeological Research oversees the state's archaeology program, including underwater sites such as shipwrecks and pre-Columbian sites that are among some of the oldest human sites in the world.

<sup>12</sup> Florida Department of State, *Florida Division of Historical Resources / About*, available at <https://dos.fl.gov/historical/about/> (last visited January 23, 2024).

<sup>13</sup> Section 267.0612, F.S.

members with seven appointed by the Governor in consultation with the Secretary, two appointed by the President of the Senate, and two appointed by the Speaker of the House of Representatives. The Commission's membership must include a licensed architect with historic preservation and architectural history expertise, a professional American historian, an architectural historian, a prehistoric archaeologist, and an historic archaeologist.<sup>14</sup>

The Commission's duties include providing assistance, advice, and recommendations to the Division in the following areas:

- Establishing priorities for the identification, acquisition, protection, and preservation of historic and archaeological sites and properties.
- Formulating criteria to assess the significance of historic and archaeological sites.
- Evaluating proposals for historic preservation grants administered by the Division.
- Conducting an active outreach program to promote public understanding and engagement in the preservation of the state's historic and archaeological sites and properties.
- Identifying and expressing public goals for historic preservation and gathering public ideas necessary for the formulation of alternative policies.
- Recommending rules related to the historic preservation programs administered by the Division.
- Protecting and preserving Florida's historic and archaeological sites and properties.<sup>15</sup>

### *Florida Historical Marker Program*

The Florida Historical Marker Program is designed to raise public awareness of Florida's cultural history, encourage the preservation of historical resources, promote a sense of community among state citizens, and enhance the enjoyment and edification of tourists.<sup>16</sup> Markers may be placed on public property and on private property with permission.<sup>17</sup> These markers narrate the stories of the people and places instrumental in shaping Florida, by identifying the churches, schools, archaeological sites, battlefields, homes, highways, historic trails, and anniversaries that are significant to Florida's history and culture.<sup>18</sup>

The Division is responsible for the administration of all aspects of the Florida Historic Marker Program. This includes managing the application process; making selections and designations of properties, persons, or events to be marked; and handling the placement and maintenance of the markers.<sup>19</sup> Currently, there are approximately 1,200 markers throughout the state.<sup>20</sup>

### Memorials, Museums, and Arts and Culture

The Florida Arts and Culture Act<sup>21</sup> (Culture Act) recognizes the rich cultural resources within the state and is intended to provide state support for, and garner national and international recognition of, the efforts, works, and performances of Florida artists, agencies, museums, and nonprofits.<sup>22</sup> The Culture Act designates the Secretary of State as Florida's chief cultural officer, and creates the Division of State Arts and Culture to administer state and federal arts funding, award grants, and provide guidance on the acquisition and display of fine arts to individuals, groups, organizations, and agencies.<sup>23</sup> In addition, the Division of State Arts and Culture sponsors and promotes performances and exhibits, organizes cultural programs and exchanges, and accepts funding to further its objectives.<sup>24</sup>

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<sup>14</sup> Section 267.0612(1)(a), F.S.

<sup>15</sup> Section 267.0612(6) and (7), F.S.

<sup>16</sup> Section 267.074, F.S.

<sup>17</sup> Section 267.074(4)(a), F.S.

<sup>18</sup> Florida Department of State, Florida Division of Historical Resources, *Historical Markers*, available at <https://dos.fl.gov/historical/preservation/historical-markers/> (last visited January 23, 2024); see also s. 267.074(2), F.S.

<sup>19</sup> Rule 1A-48.003(1), F.A.C.; see also s. 267.074, F.S.

<sup>20</sup> See Florida Department of State, *Florida Historical Marker List*, available at <https://apps.flheritage.com/markers/> (last visited January 23, 2024).

<sup>21</sup> Sections 265.281-265.703, F.S., are known as the "Florida Arts and Culture Act." See, s. 265.281, F.S.

<sup>22</sup> Section 265.282, F.S.

<sup>23</sup> Section 265.284, F.S.

<sup>24</sup> *Id.*

## Florida Department of Veterans' Affairs

The Florida Department of Veterans' Affairs (FDVA) is the constitutionally chartered<sup>25</sup> state veterans' affairs department. FDVA is required to aid all former, present, and future members of the Armed Forces of the United States and their spouses and dependents in certain instances.<sup>26</sup> FDVA is headed by the Governor and Cabinet.<sup>27</sup> An executive director is appointed by the Governor subject to a majority vote of the Governor and Cabinet, with the Governor on the prevailing side, and subject to Senate confirmation.<sup>28</sup>

## Criminal Penalty for Destruction of a Memorial

Willfully and maliciously destroying or demolishing any memorial or historic property,<sup>29</sup> or willfully and maliciously pulling down a memorial or historic property, unless authorized by the owner of the memorial or the historic property,<sup>30</sup> is punishable as a second-degree felony.<sup>31</sup> If convicted, the perpetrator must be ordered to pay restitution, including the full cost of repair or replacement of the memorial or historic property.<sup>32</sup>

The term "memorial" means a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is constructed and located with the intent of being permanently displayed or perpetually maintained; is dedicated to a historical person, an entity, an event, or a series of events; and honors or recounts the military service of any past or present United States Armed Forces military personnel, or the past or present public service of a resident of the geographical area comprising the state or the United States. The term includes, but is not limited to, the Florida Women's Hall of Fame, Florida Medal of Honor Wall, Florida Veterans' Hall of Fame, POW-MIA Chair of Honor Memorial, Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden, Florida Law Enforcement Officers' Hall of Fame, Florida Holocaust Memorial, Florida Slavery Memorial, and any other memorial located within the Capitol Complex.<sup>33</sup>

## Civil Action

The State Constitution provides that "the courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay."<sup>34</sup> In order to bring a civil action, the claimant must be the real party in interest or be expressly authorized by statute to bring the claim on behalf of the real party in interest.<sup>35</sup> Generally, the aggrieved party can sue for actual damages incurred; however, there are situations where punitive damages or other remedies may be available depending on the nature of the case and applicable laws.<sup>36</sup> Actual damages are damages that repay actual losses. Punitive damages are damages in addition to actual damages and are intended to punish and thereby deter blameworthy conduct.<sup>37</sup>

## Attorney Fees and Costs

In Florida, a party generally may recover attorney fees only if authorized by statute or agreement of the parties. This is known as the "American Rule."<sup>38</sup> To establish the appropriate award of attorney fees, the Court is required to compute the lodestar.<sup>39</sup> The lodestar figure is determined by multiplying the hours reasonably spent on a case by the reasonable hourly rate for the services provided. This amount

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<sup>25</sup> Article IV, s. 11, FLA. CONST.

<sup>26</sup> Section 292.05(1), F.S.

<sup>27</sup> Article IV, s. 11, FLA. CONST. See also s. 20.37(1), F.S.

<sup>28</sup> Section 20.37(1), F.S.

<sup>29</sup> "Historic property" means any building, structure, site, or object that has been officially designated as a historic building, historic structure, historic site, or historic object through a federal, state, or local designation program. Section 806.135(1) (a), F.S.

<sup>30</sup> Section 806.135(2), F.S.

<sup>31</sup> A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 755.083, F.S.

<sup>32</sup> Section 806.135(3), F.S.

<sup>33</sup> Section 806.135(1)(b), F.S.; see also ch. 265, F.S.

<sup>34</sup> Article I, s. 21, FLA. CONST.

<sup>35</sup> Fla. R. Civ. P. 1.210(a).

<sup>36</sup> See s. 768.72, F.S.

<sup>37</sup> See "Punitive Damages," Black's Law Dictionary (11<sup>th</sup> ed. 2019).

<sup>38</sup> *Dade County v. Peña*, 664 So. 2d 959 (Fla. 1995); *Reiterer v. Monteil*, 98 So. 3d 586 (Fla. 2d DCA 2012).

<sup>39</sup> Section 57.104(2), F.S. See also *Tru Mobility, Inc., v. Briggs Auto Group, Inc.*, 2023 WL 4930277 (U.S. D.C. D. Kan. 2023).

may then be adjusted based on various factors, such as the complexity of the case or the level of success achieved.<sup>40</sup>

In addition, the prevailing party is entitled to an award of litigation costs<sup>41</sup> and other specified expenses, including expenses for posting and maintaining bonds, court reporter fees, taxes on legal services, if applicable, and expert witness fees under certain circumstances.<sup>42</sup>

### Local Government Powers

The Florida Constitution grants counties and municipalities broad “home rule” authority that did not exist prior to the ratification of the 1968 Constitution.<sup>43</sup> Non-charter county governments may exercise those powers of self-government that are provided by general or special law.<sup>44</sup> Counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.<sup>45</sup> Municipalities have governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform municipal functions and provide municipal services, and exercise any power for municipal purposes except when expressly prohibited by law.<sup>46</sup> A local government enactment may be inconsistent with state law if the:

- State Constitution preempts the subject area;
- Legislature preempts the subject area; or
- Local enactment conflicts with a state statute.

### Preemption

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.<sup>47</sup> To expressly preempt a subject area, the Legislature must use clear statutory language stating its intention to do so.<sup>48</sup> Implied preemption occurs when the Legislature has demonstrated an intent to preempt an area, though not stated expressly. Florida courts find implied preemption when “the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.”<sup>49</sup>

Where state preemption applies, a local government may not exercise authority in that area.<sup>50</sup> Whether a local government ordinance or other measure violates preemption is ultimately decided by a court. If a local government improperly enacts an ordinance or other measure on a matter preempted to the state, a person may challenge the ordinance by filing a lawsuit. A court ruling against the government may declare the preempted ordinance void.<sup>51</sup>

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<sup>40</sup> See *Fla. Patient's Comp. Fund. v. Rowe*, 472 So. 2d 1145 (Fla. 1985). The following factors should be taken into consideration: the time and labor required, the novelty and difficulty of the case, and the skill requisite to properly perform; the apparent likelihood that the employment will preclude other employment by the lawyer; the fee customarily charged in the locality for similar services; the results obtained; the time limitations imposed by the client or circumstances; the nature and length of the relationship with the client; the experience, reputation, and ability of the lawyer; and whether the fee is fixed or contingent.

<sup>41</sup> Section 57.041, F.S.

<sup>42</sup> Section 57.071, F.S.

<sup>43</sup> See art. VIII, s. 5, FLA. CONST. (1885) (declaring powers, duties, and compensation of county commissioners shall be prescribed by law) and art. VIII, s. 8, FLA. CONST. (1885) (“The Legislature shall... prescribe [municipal] jurisdiction and powers”). See also, *City of Trenton v. State of New Jersey*, 262 U.S. 182 (1923) (“In the absence of state constitutional provisions safeguarding it to them, municipalities have no inherent right of self-government which is beyond the legislative control of the state.”), *Bowden v. Ricker*, 70 Fla. 154 (Fla. 1915) (“Under the provision of section 5 of article 8 of the [1885] Constitution that powers and duties of county commissioners ‘shall be prescribed by law,’ the authority of such officials is only such as may be conferred by statutory regulations.”).

<sup>44</sup> Article VIII, s. 1(f), FLA. CONST.

<sup>45</sup> Article VIII, s. 1(g), FLA. CONST.

<sup>46</sup> Article VIII, s. 2(b), FLA. CONST.; see also s. 166.021(1), F.S.

<sup>47</sup> See *City of Hollywood v. Mulligan*, 934 So. 2d 1238 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011 (Fla. 2d DCA 2005).

<sup>48</sup> *Mulligan*, 934 So. 2d at 1243.

<sup>49</sup> *Tallahassee Mem. Reg. Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826 (Fla. 1st DCA 1996).

<sup>50</sup> See *D'Agastino v. City of Miami*, 220 So. 3d 410 (Fla. 2017); Judge James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

<sup>51</sup> See, e.g., *Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).

### *Suspension of Ordinance*

A county or municipality must suspend enforcement of an ordinance that is legally challenged on the grounds that it is expressly preempted by the State Constitution or law, or is arbitrary or unreasonable, if:

- The action is filed within 90 days of the ordinance's adoption;
- The plaintiff requests suspension in the initial complaint; and
- The local government has been served with a copy of the complaint.<sup>52</sup>

In cases where a plaintiff appeals a final judgement declaring the ordinance valid and enforceable, the local government may enforce the ordinance 45 days after entry of the order unless the plaintiff obtains a stay of the lower court's order.<sup>53</sup>

### *Attorney Fees and Costs*

A prevailing party is entitled to attorney fees and costs<sup>54</sup> as well as damages in an action challenging a local government ordinance expressly preempted by the Florida Constitution or state law.<sup>55</sup> However, attorney fees, costs, and damages may not be awarded against a local government if:

- The local government receives written notice that an ordinance or proposed ordinance is expressly preempted; and
- Within 30 days of receiving the notice, withdraws the proposed ordinance; or, in the case of an adopted ordinance, notices an intent to repeal the ordinance within 30 days of receiving the notice and repeals the ordinance within 30 days thereafter.<sup>56</sup>

The award of attorney fees, costs, and damages under this provision is supplemental to other sanctions or remedies available under law or court rule; however, double recovery is not authorized if an affected person prevails on a claim brought against a local government pursuant to other applicable law involving the same ordinance, operative act, or transaction.<sup>57</sup>

### Legislative Immunity

The common law establishes a fundamental principle that legislators are afforded absolute immunity from liability in the performance of legislative acts.<sup>58</sup> This immunity, deeply rooted in history as a "venerable tradition," has endured since pre-colonial days.<sup>59</sup> Courts have upheld absolute immunity for legislators at all levels of government, including federal, state, and local levels.<sup>60</sup> The rationale behind this legal precedent lies in the belief that legislators, when exercising legislative powers, act in the public good and should be shielded from liability for an inadvertent misuse of such powers.<sup>61</sup> Further, courts fear that allowing personal liability could distort legislative discretion, impede the public good by interfering with the right to representation, burden frequently part-time citizen legislators, and deter service in local government.<sup>62</sup>

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<sup>52</sup> Sections 125.675(1) and 166.0411(1), F.S. The ordinance suspension provisions do not apply to ordinances enacted to implement part II of ch. 163, F.S.; s. 553.73, relating to the Florida Building Code; s. 633.202, F.S., relating to the Florida Fire Prevention Code; or laws creating, dissolving, or adjusting the boundaries of a community development district; ordinances required for compliance with a federal or state law or regulation; ordinances related to the issuance or refinancing of debt; ordinances related to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget; ordinances required to implement a contract or an agreement; ordinances related to procurement; and emergency ordinances. Sections 125.675(5) and 166.0411(5), F.S.

<sup>53</sup> Sections 125.675(2) and 166.0411(2), F.S.

<sup>54</sup> "Attorney fees and costs" means the reasonable and necessary attorney fees and costs incurred for all preparations, motions, hearings, trials, and appeals in a proceeding. Section 57.112(1), F.S.

<sup>55</sup> Section 57.112(2), F.S.

<sup>56</sup> Section 57.112(4), F.S.

<sup>57</sup> Section 57.112(5), F.S. This provision also does not apply to ordinances relating to growth management, building codes, or fire prevention codes. Section 57.112(6), F.S.

<sup>58</sup> See *Tenney v. Brandhove*, 341 U.S. 367 (1951). Florida adopted the common law in effect as of July 4, 1776. S. 2.01, F.S.

<sup>59</sup> *Bogan v. Scott-Harris*, 523 U.S. 44, 48-49 (1998). For additional examples of where absolute immunity of legislative acts has been recognized, see *Lake Country Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); *Elrod v. City of Daytona Beach*, 132 Fla. 24 (Fla. 1938); *Hough v. Amato*, 260 So. 2d 537 (Fla. 1st DCA 1972); *Jones v. Loving*, 55 Miss. 109 (Miss. 1877); *Ross v. Gonzales*, 29 S.W.2d 437 (Tex. Ct. App. 1930).

<sup>60</sup> *Bogan*, 523 U.S. 44.

<sup>61</sup> *Id.* at 50-51 (citing *Jones*, 55 Miss. 109).

<sup>62</sup> *Id.* at 52.

However, the freedom from personal liability does not make otherwise unlawful ordinances valid. Affected citizens have been able to challenge the validity of unlawful enactments by suing to have them declared invalid or have a court enjoin enforcement.<sup>63</sup>

In addition, courts recognize that legislators may be subject to personal liability for actions where the legislator lacks discretion.<sup>64</sup> This typically occurs when legislators are bound by an affirmative duty, such as when a law or court order has directed them to levy a tax. These acts are considered “ministerial,” as opposed to “legislative.”<sup>65</sup> An explicit and clear preemption could arguably remove discretion from local government officials seeking to engage in lawmaking within the preempted field.

## Effect of the Bill

The bill creates the “Historic Florida Monuments and Memorials Protection Act” and establishes legislative intent for the act.

The bill declares that the state occupies the whole field of removal, damage, or destruction of historic Florida monuments or memorials to the exclusion of any existing or future local government ordinance, regulation, or rule, or any action by an elected or appointed local government official. It provides that any such ordinances, regulations, rules, or actions are void. The bill defines “historic Florida monument or memorial” (monument or memorial) to mean a permanent statue, marker, plaque, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, or display constructed and located on public property which has been displayed for at least 25 years, with the intent of being permanently displayed or perpetually maintained and which is dedicated to any persons, places, or events that were important in the past or that are in remembrance or recognition of a significant person or event in state history.<sup>66</sup> It also defines “local government” to mean any municipality, county, school district, state college, state university, or other political subdivision of the state.

The bill provides that any local government or elected or appointed local government official that violates the preemption is liable. The bill requires a court to declare invalid any ordinance, regulation, or rule enacted or enforced by a local government that impinges upon the Legislature’s occupation of the whole field of removal, damage, or destruction of monuments or memorials and for the court to issue a permanent injunction against the local government prohibiting it from enforcing such ordinance, regulation, or rule. It is no defense that in enacting the ordinance, regulation, or rule the local government was acting in good faith or upon advice of counsel.

The bill requires a court to assess a civil fine of up to \$1,000 against an elected or appointed local government official who knowingly and willfully violates the Legislature’s occupation of the whole field of removal, damage, or destruction of monuments or memorials by enacting or enforcing any local ordinance, regulation, or rule impinging upon such exclusive occupation. Except as required by applicable law, public funds may not be used to defend or reimburse the unlawful conduct of an elected or appointed local government official found to have knowingly and willfully committed such violation.

The bill provides that the following person or organization has standing to bring a civil action for any violation of the Legislature’s occupation of the whole field of removal, damage, or destruction of monuments or memorials:

- A group involved in the design, erection, or care of the monument or memorial or a member of such a group.
- A group or person regularly using the monument or memorial for remembrance.

Such persons or organizations may sue a local government or an elected or appointed local government official in any court of this state having jurisdiction over the defendant for declaratory and

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<sup>63</sup> See, e.g., *Bogan*, 523 U.S. 44; *Lake Country Estates*, 440 U.S. 391 (1979); *Tenney*, 341 U.S. 367; *Elrod*, 132 Fla. 24 (Fla. 1938).

<sup>64</sup> *Bogan*, 523 U.S. 44.

<sup>65</sup> See *Id.*

<sup>66</sup> The bill also defines “historic Florida military monument or memorial,” which is a subset monuments or memorials, to mean a monument or memorial that honors or recounts the military service of any past or present military personnel, including any armed conflict since settlers from other countries came to what is now the U.S.



injunctive relief and for actual damages, as limited, caused by the violation. The court must award the prevailing plaintiff:

- Reasonably attorney fees and costs in accordance with the laws of this state.
- The actual damages incurred, but not more than \$100,000.

If a local government removes, damages, or destroys a monument or memorial in violation of the act, the local government is liable for restoring or relocating such monument or memorial to its original condition or location, or as close as possible to the original condition or location, within three years from the date of the removal, damage, or destruction. If the local government does not have the necessary funds, the state must restore or relocate such monument or memorial and DOS must withhold from the local government all arts, cultural, and historic preservation funding until the local government reimburses the state for the cost of restoring or relocating such monument or memorial. All such funds will again be available to the local government once the state is repaid. The bill prohibits a local government from retroactively collecting any such funds from DOS that otherwise would have been received during the period that state funds were withheld.

The bill provides that a local government may only remove a monument or memorial temporarily due to military necessity or for any construction or infrastructure project. The local government proposing to remove such monument or memorial must put into an escrow account the good-faith estimate of the funds necessary to relocate the monument or memorial. A monument or memorial temporarily removed for such purpose must be temporarily relocated to a site of similar prominence, honor, visibility, and access within the same county or municipality in which the monument or memorial was originally located.

The bill requires a local government to provide written notification to the Division, on a form prescribed by DOS in consultation with FDVA:

- Of the temporary removal of a monument or memorial. The written notification must be provided within 10 days of the local government's decision to temporarily remove the monument or memorial.
- That the military necessity has ceased or that the construction or infrastructure project is completed. The written notification must be provided within a reasonable time, but not more than 30 days, after the military necessity has ceased or the construction or infrastructure project has been completed.

The monument or memorial must be moved back to its original location or, if that is not possible, to a site with similar prominence, honor, visibility, and access within the same county or municipality as determined by DOS after consultation with the Commission or, for a military monument or memorial, FDVA.

The bill requires the Division to take any issue regarding protecting, preserving, or relocating a monument or memorial to the Commission, or in the case of a military monument or memorial, to the FDVA, for a recommendation to take action, to defer making a decision, or to not make a decision. The Division must make a written record of its decision to take action, to defer making a decision, or to not make a decision and the reasons therefor in consultation with the Commission, or in the case of a military monument or memorial, FDVA.

The bill authorizes DOS, in consultation with FDVA, to adopt rules to implement the act.

## B. SECTION DIRECTORY:

Section 1 provides a short title.

Section 2 creates s. 267.201, F.S., relating to protection of historic monuments and memorials.

Section 3 provides an effective date of July 1, 2024.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

The bill could have a fiscal impact on DOS and FDVA associated with any required rulemaking, and on DOS regarding the Division's responsibilities associated with the protection, preservation, and relocation of monuments and memorials.

The state could experience costs associated with restoring or refurbishing any monument or memorial in those instances when a local government does not have the necessary funds to do so. The bill, however, requires DOS to withhold from the local government all arts, cultural, and historic preservation funding until the local government reimburses the state for the cost of restoring or relocating the monument or memorial.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

A local government that removes, damages, or destroys a monument or memorial in violation of the act and that does not have the funds available to restore or relocate the monument or memorial will no longer receive arts, cultural, and historic preservation funding until certain requirements are met.

#### 2. Expenditures:

The bill should not have a fiscal impact on local governments to the extent local governments comply with the act. However, violations of the bill may result in an indeterminate, negative fiscal impact.

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

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

#### 2. Other:

None.

### B. RULE-MAKING AUTHORITY:

The bill authorizes DOS, in consultation with FDVA, to adopt rules to implement the bill and requires DOS, in consultation with FDVA, to prescribe forms used to notify DOS of certain actions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

Not applicable.



26           Section 1. This act may be cited as the "Historic Florida  
 27 Monuments and Memorials Protection Act."

28           Section 2. Section 267.201, Florida Statutes, is created  
 29 to read:

30           267.201 Protection of historic monuments and memorials.-

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

32           (a) "Department" means the Department of State.

33           (b) "Division" means the Division of Historical Resources  
 34 within the department.

35           (c) "Historic Florida military monument or memorial" means  
 36 a historic Florida monument or memorial that honors or recounts  
 37 the military service of any past or present military personnel,  
 38 including any armed conflict since settlers from other countries  
 39 came to what is now the United States.

40           (d) "Historic Florida monument or memorial" means a  
 41 permanent statue, marker, plaque, flag, banner, cenotaph,  
 42 religious symbol, painting, seal, tombstone, or display  
 43 constructed and located on public property which has been  
 44 displayed for at least 25 years, with the intent of being  
 45 permanently displayed or perpetually maintained and which is  
 46 dedicated to any persons, places, or events that were important  
 47 in the past or that are in remembrance or recognition of a  
 48 significant person or event in state history.

49           (e) "Local government" means any municipality, county,  
 50 school district, state college, state university, or any other

51 political subdivision of the state.

52 (2)(a) It is the intent of this Legislature to declare  
 53 void all ordinances, regulations, and executive actions  
 54 regarding the removal, damage, or destruction of historic  
 55 Florida monuments or memorials which have been enacted by any  
 56 local government.

57 (b) It is also the intent of the Legislature that the  
 58 state act to protect each historic Florida monument or memorial  
 59 from removal, damage, or destruction. The Legislature finds that  
 60 an accurate and factual history belongs to all Floridians and  
 61 future generations and the state has an obligation to protect  
 62 and preserve such history.

63 (c) Further, it is the intent of the Legislature to  
 64 provide statewide uniformity through the division. It is also  
 65 the Legislature's intent that the division actively work to  
 66 protect, preserve, and ensure that each historic Florida  
 67 monument or memorial is not removed, damaged, or destroyed,  
 68 regardless of the location of such monument or memorial in the  
 69 state and consult with the Department of Veterans' Affairs on  
 70 actions regarding historic Florida military monuments or  
 71 memorials.

72 (3) The state occupies the whole field of removal, damage,  
 73 or destruction of historic Florida monuments or memorials to the  
 74 exclusion of any existing or future local government ordinance,  
 75 regulation, or rule, or any action by an elected or appointed

76 local government official, and any such ordinances, regulations,  
 77 rules, or actions are void.

78 (4) (a) Any local government or elected or appointed local  
 79 government official that violates the Legislature's occupation  
 80 of the whole field of removal, damage, or destruction of  
 81 historic Florida monuments or memorials by enacting or enforcing  
 82 any local ordinance, regulation, or rule impinging upon such  
 83 exclusive occupation of the field shall be liable as provided in  
 84 this subsection.

85 (b) If a local government violates paragraph (a), the  
 86 court shall declare the ordinance, regulation, or rule invalid  
 87 and issue a permanent injunction against the local government  
 88 prohibiting it from enforcing such ordinance, regulation, or  
 89 rule. It is no defense that in enacting the ordinance,  
 90 regulation, or rule the local government was acting in good  
 91 faith or upon advice of counsel.

92 (c) The court shall assess a civil fine of up to \$1,000  
 93 against an elected or appointed local government official who  
 94 knowingly and willfully violates paragraph (a).

95 (d) Except as required by applicable law, public funds may  
 96 not be used to defend or reimburse the unlawful conduct of an  
 97 elected or appointed local government official found to have  
 98 knowingly and willfully violated paragraph (a).

99 (e)1. A person or an organization described in  
 100 subparagraph 2. may file suit against a local government or an

101 elected or appointed local government official in any court of  
 102 this state having jurisdiction over the defendant to the suit  
 103 for declaratory or injunctive relief and for actual damages, as  
 104 limited herein, caused by the violation. A court shall award a  
 105 prevailing plaintiff in any such suit:

106 a. Reasonable attorney fees and costs in accordance with  
 107 the laws of this state; and

108 b. The actual damages incurred, but not more than  
 109 \$100,000.

110 2. The following have standing to bring a civil action  
 111 for any violation of paragraph (a):

112 a. A group involved in the design, erection, or care of  
 113 the monument or memorial or a member of such a group.

114 b. A group or person regularly using the monument or  
 115 memorial for remembrance.

116 (5) If a historic Florida monument or memorial is removed,  
 117 damaged, or destroyed by a local government in violation of  
 118 paragraph (4) (a), the local government is liable for restoring  
 119 or relocating such monument or memorial to its original  
 120 condition or location or as close as possible to the original  
 121 condition or location within 3 years from the date of the  
 122 removal, damage, or destruction. If the local government does  
 123 not have the necessary funds, the state shall restore or  
 124 relocate such monument or memorial and the department shall  
 125 withhold from the local government all arts, cultural, and



126 historic preservation funding until the local government  
 127 reimburses the state for the cost of restoring or relocating  
 128 such monument or memorial and all such funds shall again be  
 129 available to the local government once the state is repaid. The  
 130 local government may not retroactively collect any of the  
 131 department funds that otherwise would have been received during  
 132 the period that state funds were withheld.

133 (6) (a) A local government may only remove a historic  
 134 Florida monument or memorial temporarily due to military  
 135 necessity or for any construction or infrastructure project.

136 (b) The local government proposing to remove such monument  
 137 or memorial shall put into an escrow account the good-faith  
 138 estimate of the funds necessary to relocate the monument or  
 139 memorial.

140 (c) A historic Florida monument or memorial temporarily  
 141 removed for such purpose shall be temporarily relocated to a  
 142 site of similar prominence, honor, visibility, and access within  
 143 the same county or municipality in which the monument or  
 144 memorial was originally located.

145 (d)1. A local government must provide written notification  
 146 to the division, on a form prescribed by the department in  
 147 consultation with the Department of Veterans' Affairs:

148 a. Of the temporary removal of a historic Florida  
 149 monument or memorial. The written notification must be provided  
 150 within 10 days of the local government's decision to temporarily

151 remove the historic Florida monument or memorial.

152 b. That the military necessity has ceased or that the  
 153 construction or infrastructure project is completed. The written  
 154 notification must be provided within a reasonable time, but not  
 155 more than 30 days, after the military necessity has ceased or  
 156 the construction or infrastructure project has been completed.

157 2. The historic Florida monument or memorial shall be  
 158 relocated back at the original location or, if that is not  
 159 possible, at a site with similar prominence, honor, visibility,  
 160 and access within the same county or municipality as determined  
 161 by the department after consultation with the Florida Historical  
 162 Commission or, for a historic Florida military monument or  
 163 memorial, after consultation with the Department of Veterans'  
 164 Affairs.

165 (7) (a) The division shall take any issue regarding  
 166 protecting, preserving, or relocating a historic Florida  
 167 monument or memorial to the Florida Historical Commission, or in  
 168 the case of a historic Florida military monument or memorial, to  
 169 the Department of Veterans' Affairs, for a recommendation to  
 170 take action, to defer making a decision, or to not make a  
 171 decision.

172 (b) The division shall make a written record of its  
 173 decision to take action, to defer making a decision, or to not  
 174 make a decision and the reasons therefor in consultation with  
 175 the Florida Historical Commission, or in the case of a historic

176 Florida military monument or memorial, the Department of  
 177 Veterans' Affairs.

178 (8) RULEMAKING.—The department, in consultation with the  
 179 Department of Veterans' Affairs, may adopt rules to implement  
 180 this section.

181 Section 3. This act shall take effect July 1, 2024.

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

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1 Committee/Subcommittee hearing bill: State Affairs Committee  
 2 Representative Eskamani offered the following:

**Amendment (with title amendment)**

Remove line 77 and insert:

6 rules, or actions are void unless such local government  
 7 ordinance, regulation, rule, or action is approved by voters of  
 8 the local government in a referendum, in which case the  
 9 ordinance, regulation, or rule, or action is exempt from this  
 10 section.

11 -----  
 12  
 13 **T I T L E A M E N D M E N T**

Remove line 5 and insert:

14 legislative intent; providing an exception for certain acts  
 15 approved by referendum; prohibiting certain acts  
 16