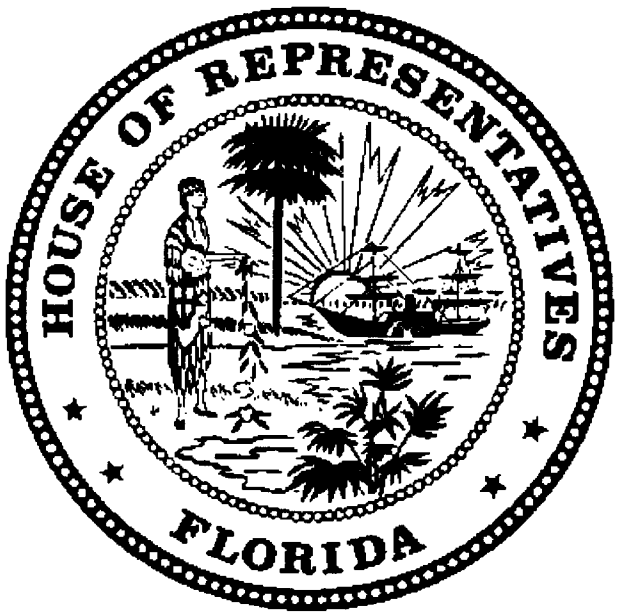

ECONOMIC AFFAIRS COMMITTEE

MEETING PACKET

Thursday, February 18, 2016
8:00 AM – 10:30 AM
Reed Hall (102 HOB)

Steve Crisafulli
Speaker

Jose Oliva
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Economic Affairs Committee

Start Date and Time:	Thursday, February 18, 2016 08:00 am
End Date and Time:	Thursday, February 18, 2016 10:30 am
Location:	Reed Hall (102 HOB)
Duration:	2.50 hrs

Consideration of the following bill(s):

CS/HB 253 Highway Safety by Criminal Justice Subcommittee, Passidomo
CS/HB 411 Farm Vehicles by Highway & Waterway Safety Subcommittee, Beshears
CS/HB 487 Persons Who Are Deaf by Highway & Waterway Safety Subcommittee, Torres, La Rosa
CS/HB 627 Community Contribution Tax Credits by Economic Development & Tourism Subcommittee, Moraitis
CS/HB 775 Emergency Preparedness and Response by Finance & Tax Committee, Ingram
CS/HB 929 Peril of Flood by Insurance & Banking Subcommittee, Ahern
CS/HB 1017 Reemployment Assistance Fraud by Economic Development & Tourism Subcommittee, La Rosa
CS/HB 1087 Protection of Motor Vehicle Dealers' Consumer Data by Highway & Waterway Safety Subcommittee, Rooney
CS/CS/HB 1133 Emergency Management by Finance & Tax Committee, Economic Development & Tourism Subcommittee, Young
HB 1169 Emergency Management by Powell
CS/HB 1361 Growth Management by Local Government Affairs Subcommittee, La Rosa
HB 1379 Airport Zoning Law of 1945 by Miller
HB 1437 Port of Palm Beach District, Palm Beach County by Hager
HB 7081 Issuance of Specialty License Plates by Highway & Waterway Safety Subcommittee, Steube

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Wednesday, February 17, 2016.

By request of the Chair, all Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Wednesday, February 17, 2016.

NOTICE FINALIZED on 02/16/2016 4:10PM by Manning.Karen

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 253 Highway Safety
SPONSOR(S): Criminal Justice Subcommittee; Passidomo and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 332

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Cox	White
2) Appropriations Committee	19 Y, 0 N	Cobb	Leznoff
3) Economic Affairs Committee		Johnson	Pitts

SUMMARY ANALYSIS

The bill amends and creates various sections of the Florida Statutes, which are designed to protect bicyclists and other vulnerable users of a roadway.

Specifically, the bill:

- Defines "bicycle lane," "bodily injury," and "vulnerable user of a public roadway or vulnerable user;"
- Requires a vehicle to pass at a safe distance of not less than three feet between any part of or attachment to the vehicle, anything extending from the vehicle, or any trailer or other thing being towed by the vehicle and a vulnerable user;
- Allows a driver to briefly and safely drive on the left side of a roadway in a no-passing zone when passing a vulnerable user in order to provide at least three feet between the vehicle and the vulnerable user;
- Requires a person making a right turn that overtakes a vulnerable user traveling in the same direction to signal appropriately and to complete the turn only if it can be achieved by maintaining a safe distance from the vulnerable user;
- Prohibits a person operating a vehicle who overtakes and passes a vulnerable user of a public roadway proceeding in the same direction from making a right or left turn at an intersection or into a private road or driveway unless the turn can be made at a safe distance from the vulnerable user with reasonable safety and will not impede the travel of the vulnerable user;
- Requires a person operating a vehicle to allow a group of bicyclists to proceed through a stop sign as a group in specified instances; and
- Requires a law enforcement officer to note on specified traffic citations if the violation contributed to the bodily injury of a vulnerable user and permits the hearing official to impose a fine of no more than $2,500; and
- Requires the recipients of citations for infractions of specified sections which result in bodily injury to a vulnerable user to appear before a judge for a hearing.

According to the Department of Highway Safety and Motor Vehicles (DHSMV), the bill will have a negative but insignificant fiscal impact due to the programming hours necessary for implementation. The bill establishes a mandatory court hearing for certain violations that result in the bodily injury of a vulnerable road user. According the State Court System, these incidents typically go before a judge currently, so the provision's impact to the judiciary will be minimal, and can be absorbed within current resources. The bill will also have an indeterminate, positive revenue impact to the state and local governments due to the additional fine that may be imposed for certain violations. See fiscal comments.

The bill is effective October 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Protecting Bicyclists

In Florida, bicyclists are considered vehicle operators and are required to obey the same rules of the road as other vehicle operators, including obeying traffic signs, signals, and lane markings.[1]

Florida crash reports for the 2014 calendar year indicate that 7,737 pedestrians, 8,040 motorcyclists, 6,680 bicyclists, and 399 other non-motorists were injured in traffic crashes.[2]

During the 2014 Regular Session, the Florida Legislature passed legislation[3] that ranked a "leaving the scene of an accident" offense one level higher in the offense severity ranking chart[4] if the victim of the offense was a vulnerable road user.[5] The bill defined a "vulnerable road user" as:

- A pedestrian, including a person actually engaged in work upon a highway, work upon utility faculties along a highway, or the provision of emergency services within the right of way;
- A person operating a bicycle, motorcycle, scooter, or moped lawfully on the roadway;
- A person riding an animal; or
- A person lawfully operating on a public right-of-way, crosswalk, or shoulder of the roadway:
  - A farm tractor or similar vehicle designed primarily for farm use;
  - A skateboard, roller skates, or in-line skates;
  - A horse-drawn carriage;
  - An electric personal assistive mobility device; or
  - A wheelchair.[6]

Definitions

The bill creates definitions for the terms "bicycle lane," "bodily injury," and "vulnerable user or vulnerable user of a public roadway." These definitions apply to all of ch. 316, F.S.

"Bicycle Lane" is defined as a portion of a roadway or highway that has been designated by pavement markings and signs for the preferential or exclusive use by bicycles.

"Bodily injury" is defined as an injury to a human being consisting of:

- A broken bone;
- A torn ligament;
- A concussion;
- A laceration requiring stitches; or
- Any other physical injury that results in impairment of the function of a bodily member, organ, or mental faculty.[7]

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[1] s. 316.2065(1), F.S.

[2] Florida Department of Highway Safety and Motor Vehicles, *Traffic Crash Facts Annual Report 2014*, https://firesportal.com/Pages/Public/DHSMVDocuments.aspx (last visited October 21, 2015).

[3] Ch. 2014-225, Laws of Florida.

[4] Criminal offenses are ranked in the "offense severity ranking chart" from level one (least severe) to level ten (most severe) and are assigned points based on the severity of the offense. A defendant's sentence is calculated based on points assigned for factors including: the offense for which the defendant is being sentenced; injury to the victim; additional offenses that the defendant committed at the time of the primary offense; the defendant's prior record; and other aggravating factors. The points are added to determine the "lowest permissible sentence" for the offense. *See* ss. 921.0022 and 921.0024, F.S.

[5] s. 316.027(2)(f), F.S.

[6] s. 316.027 (1)(b), F.S.

[7] This definition does not apply to statutes that refer to the term "serious bodily injury."

"Vulnerable user of a public roadway" or "vulnerable user" is defined as:

- A pedestrian, including a person actually engaged in work upon a highway, work upon utility faculties along a highway, or the provision of emergency services within the right-of-way;
- A person operating, or who is a passenger on, a bicycle, motorcycle, scooter, or moped lawfully on the roadway;
- A person riding an animal; or
- A person lawfully operating on a public roadway, crosswalk, or shoulder of the roadway:
    - A farm tractor or similar vehicle designed primarily for farm use;
    - A horse-drawn carriage;
    - An electric personal assistive mobility device; or
    - A wheelchair.

The bill also places the definition section in alphabetical order and amends ss. 212.05, 316.027, 316.1303, 316.235, 316.545, 316.605, 316.6105, 316.613, 316.622, 316.650, 316.70, 320.01, 320.08, 320.0801, 320.38, 322.0261, 322.031, 450.181, 559.903, 655.960, 732.402, and 860.065, F.S., to conform to the changes made in the definition section.

Overtaking and Passing

Section 316.083, F.S., in part, requires a driver of a vehicle overtaking a bicycle (or other non-motorized vehicle) to pass at a safe distance of no less than three feet between the vehicle and the bicycle. A violation is a noncriminal traffic infraction punishable as a moving violation.[8]

Section 316.084, F.S., provides specified instances when a vehicle may overtake and pass on the right of another vehicle.

Effect of the Bill

The bill expands the requirements of s. 316.083, F.S., to apply to motor vehicles overtaking a vulnerable user of a public roadway. The bill requires a vehicle to pass at a safe distance of not less than three feet between any part of or attachment to the vehicle, anything extending from the vehicle, or any trailer or other thing being towed by the vehicle and the vulnerable user.

Violations of s. 316.083, F.S., remain a noncriminal traffic infraction. However, if the violation contributed to the bodily injury of a vulnerable user, the bill requires the law enforcement officer issuing the citation to make a note of such on the citation.

The bill also amends s. 316.084, F.S., to clarify that a bicycle in the bicycle lane or on the shoulder of a roadway is not prohibited by the section's requirements from passing other vehicles on the right.

No-Passing Zones

Section 316.0875, F.S., prohibits a driver from driving on the left side of a roadway in a no-passing zone.[9] This prohibition does not apply when an obstruction exists making it necessary to drive to the left of the center of the highway, nor to the driver of a vehicle turning left into or from an alley, private road or driveway.[10] A violation is a noncriminal traffic infraction, punishable as a moving violation.[11]

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[8] s. 316.083(3), F.S.

[9] Section 316.0875, F.S., authorizes the Department of Transportation and local authorities to determine those portions of any highway under their respective jurisdiction where overtaking and passing or driving to the left of the roadway would be especially hazardous. The statute also authorizes these entities to, by appropriate signs or markings on the roadway, indicate the beginning and end of such zones.

[10] s. 316.0875(3), F.S.

[11] s. 316.0875(4), F.S.

Effect of the Bill
As noted above, s. 316.0875, F.S., prohibits a driver from driving on the left side of a roadway in a no-passing zone. The bill specifies that this prohibition does not apply when the driver of a motor vehicle is required to cross pavement striping indicating a no-passing zone when passing a vulnerable user in order to provide at least three feet between the vehicle and the vulnerable user.

Turning at Intersections
Section 316.151, F.S., in part, requires a driver of a vehicle turning right at an intersection to approach and make the turn as close as practicable to the right-hand curb or edge of the roadway.[12] The section also provides specified restrictions for a vehicle turning left at an intersection. A violation is a noncriminal traffic infraction, punishable as a moving violation.[13]

Effect of the Bill
The bill amends s. 316.151, F.S., requiring a vehicle that is overtaking and passing a vulnerable user proceeding in the same direction by turning right to:

- Give an appropriate signal;[14] and
- Only complete the turn if it can be made a safe distance from the vulnerable user.

The bill also provides that a driver of a vehicle must yield the right-of-way to a bicycle or pedestrian when crossing a sidewalk, bicycle lane, or bicycle path to turn right.

Violations remain a noncriminal traffic infraction. However, if the violation contributed to the bodily injury of a vulnerable user, the bill requires the law enforcement officer issuing the citation to make a note of such on the citation.

Careless Driving
Section 316.1925, F.S., requires a person operating a vehicle upon the streets or highways within the state to drive in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. A person's failure to do so is careless driving, citable as a moving violation.[15]

Effect of the Bill
The bill requires a law enforcement officer issuing a careless driving citation to make a note on the citation if the violation contributed to the bodily injury of a vulnerable user.

Bicycle Regulations
Every person operating a bicycle must comply with all the regulations of ch. 316, F.S., except for those which by their nature can have no application to bicyclists, or that are specially enumerated in s. 316.2065, F.S.[16] In part, s. 316.2065, F.S., prohibits persons riding bicycles on a roadway to ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles. The statute is silent as to roadway operation of persons riding bicycles in groups of four or more.

Effect of the Bill
The bill permits persons riding in groups of four or more, to proceed through a stop sign in a group, provided the group comes to a full stop at the stop sign and obeys all traffic laws. A person operating a vehicle is required to allow the entire group to travel through the intersection before moving forward.

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[12] s. 316.151(1)(a), F.S.
[13] s. 316.151(3), F.S.
[14] The bill references "an appropriate signal as provided for in s. 316.155, F.S." Section 316.155(2), F.S., provides "a signal of intention to turn right or left must be given continuously during not less than the last 100 feet traveled by the vehicle before turning, except that such a signal by hand or arm need not be given continuously by a bicyclist if the hand is needed in the control or operation of the bicycle."
[15] s. 316.1925(2), F.S.
[16] s. 316.2065(1), F.S.

The bill also makes conforming changes to the section to include the new term "bicycle lane."

Mandatory Hearing

Section 318.19, F.S., requires persons cited for the following to appear before a judge for a hearing:

- Any infraction which results in a crash that causes the death of another;
- Any infraction which results in a crash that causes "serious bodily injury" of another;
- Any infraction of s. 316.172(1)(b), F.S. (requiring traffic to stop for a school bus);
- Any infraction of s. 316.520(1) or (2), F.S. (relating to loads on vehicles); or
- Any infraction of ss. 316.183(2), 316.187, or 316.189, F.S. (all relating to speed zones), of exceeding the speed limit by 30 miles per hour or more.

Effect of the Bill

The bill adds that a person cited for any of the following traffic infractions that contributed to the bodily injury of a vulnerable user must appear before a judge for a hearing:

- Any infraction of s. 316.083, F.S. (overtaking or passing);
- Any infraction of s. 316.151, F.S. (turning when passing a vulnerable user); or
- Any violation of s. 316.1925, F.S. (careless driving).

Newly-Created Section

Infractions Contributing to Bodily Injury of a Vulnerable User

For cases where a violation of ss. 316.083, 316.151, or 316.189, F.S., contributes to the bodily injury of a vulnerable user, the bill creates s. 318.142, F.S., to:

- Require the law enforcement officer issuing the citation to make a note of such on the citation; and
- Permit, in addition to any other penalty, the imposition of a fine of no more than $2,500.

Finally, the bill reenacts ss. 316.072, 316.1923, 318.14, and 318.18, F.S., to incorporate amendments by the bill to statutes that are cross-referenced in the reenacted sections.

B. SECTION DIRECTORY:

Section 1. Amends s. 316.003, F.S., relating to definitions.

Section 2. Amends s. 316.027, F.S., relating to crash involving death or personal injuries.

Section 3. Amends s. 316.083, F.S., relating to overtaking and passing a vehicle.

Section 4. Amends s. 316.084, F.S., relating to when overtaking on the right is permitted.

Section 5. Amends s. 316.0875, F.S., relating to no-passing zones.

Section 6. Amends s. 316.151, F.S., relating to required position and method of turning at intersections.

Section 7. Amends s. 316.1925, F.S., relating to careless driving.

Section 8. Amends s. 316.2065, F.S., relating to bicycle regulations.

Section 9. Creates s. 318.142, F.S., relating to infractions contributing to bodily injury of a vulnerable user of a public roadway.

Section 10. Amends s. 318.19, F.S., relating to infractions requiring a mandatory hearing.

Section 11. Amends s. 212.05, F.S., relating to sales, storage, use tax.

Section 12. Amends s. 316.1303, F.S., relating to traffic regulations to assist mobility-impaired persons.

Section 13. Amends s. 316.235, F.S., relating to additional lighting equipment.

Section 14. Amends s. 316.545, F.S., relating to weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.

Section 15. Amends s. 316.605, F.S., relating to licensing of vehicles.

Section 16. Amends s. 316.6105, F.S., relating to violations involving operation of motor vehicle in unsafe condition or without required equipment; procedure for disposition.

Section 17. Amends 316.613, F.S., relating to child restraint requirements.

Section 18. Amends s. 316.622, F.S., relating to farm labor vehicles.

Section 19. Amends s. 316.650, F.S., relating to traffic citations.

Section 20. Amends s. 316.70, F.S., relating to nonpublic sector buses; safety rules.

Section 21. Amends s. 320.01, F.S., relating to definitions.

Section 22. Amends s. 320.08, F.S., relating to license taxes.

Section 23. Amends s. 320.0801, F.S., relating to additional license tax on certain vehicles.

Section 24. Amends s. 320.38, F.S., relating to when nonresident exemption not allowed.

Section 25. Amends s. 322.0261, F.S., relating to driver improvement course; requirement to maintain driving privileges; failure to complete; department approval of course.

Section 26. Amends s. 322.031, F.S., relating to nonresident; when license required.

Section 27. Amends s. 450.181, F.S., relating to definitions.

Section 28. Amends s. 559.903, F.S., relating to definitions.

Section 29. Amends s. 655.960, F.S., relating to definitions.

Section 30. Amends s. 732.402, F.S., relating to exempt property.

Section 31. Amends s. 860.065, F.S., relating to commercial transportation; penalty for use in commission of a felony.

Section 32. Reenacts s. 316.072, F.S., relating to obedience to and effect of traffic laws.

Section 33. Reenacts s. 316.1923, F.S., relating to aggressive careless driving.

Section 34. Reenacts s. 318.14, F.S., relating to noncriminal traffic infractions; exception; procedures.

Section 35. Reenacts s. 318.18, F.S., relating to amount of penalties.

Section 36. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill creates s. 318.142, F.S., which establishes a fine of up to $2,500 if a violation of s. 316.083 (overtaking or passing a vehicle), 316.151 (turning while passing), or 316.1925 (careless driving) results in the bodily injury of a vulnerable road user on a public roadway. The additional revenue from the potential fines will have an indeterminate, positive fiscal impact to general revenue and state trust funds.

2. Expenditures:

The bill requires a person cited for certain traffic infractions (overtaking or passing, turning when passing, or careless driving) that contribute to the bodily injury of a vulnerable user to appear for a judicial hearing. According to the DHSMV's annual crash reports, there are typically 6,500 to 7,000 crashes per year that result in bodily injury, including approximately 130 fatalities. The State Court System states that these cases typically go before a judge currently, so the provision's impact to the judiciary will be minimal, and can be absorbed within current resources.

The bill will have a negative but insignificant fiscal impact to the DHSMV due to the estimated $36,240 in programming costs required to implement the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill creates s. 318.142, F.S., which establishes a fine of up to $2,500 if a violation of s. 316.083 (overtaking and passing a vehicle), 316.151 (executing an illegal turn), or 316.1925 (careless driving) results in the bodily injury of a vulnerable road user on a public roadway. The additional revenue from the potential fines will have an indeterminate, positive fiscal impact to local governments' revenues.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons who violate ss. 316.083, 316.151, or 316.1925, F.S., and contribute to the bodily injury of a vulnerable user may be subject to the imposition of a fine of no more than $2,500.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 4, 2015, the Criminal Justice Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. Collectively, the amendments:

- Remove a provision creating a first degree misdemeanor offense for specified persons to commit a noncriminal traffic infraction that causes serious bodily or death;
- Make conforming changes in ss. 316.027 and 322.0261, F.S., for the bill's addition of the definition for "vulnerable user."
- Make a technical change to correct an "and" to "or" on line 693 of the bill; and
- Reenact statutes that cross-reference sections of law amended by the act.

This bill analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.

A bill to be entitled

An act relating to highway safety; amending s. 316.003, F.S.; providing definitions; amending s. 316.027, F.S.; deleting the definition of the term "vulnerable road user"; conforming provisions to changes made by the act; amending s. 316.083, F.S.; revising provisions relating to the passing of a vehicle; directing a law enforcement officer issuing a citation for specified violations to note certain information on the citation; amending s. 316.084, F.S.; exempting bicycles from provisions for passing a vehicle on the right under certain circumstances; amending s. 316.0875, F.S.; revising exceptions to provisions for designated no-passing zones; amending s. 316.151, F.S.; revising provisions for turning at intersections; directing a law enforcement officer issuing a citation for specified violations to note certain information on the citation; amending s. 316.1925, F.S.; revising provisions relating to careless driving; directing a law enforcement officer issuing a citation for specified violations to note certain information on the citation; amending s. 316.2065, F.S.; revising provisions for operation of a bicycle; requiring motor vehicle operators to allow a group of bicycles to travel through an intersection under certain circumstances; creating s. 318.142,

F.S.; providing penalties for specified infractions contributing to bodily injury of a vulnerable user; amending s. 318.19, F.S.; requiring a hearing for specified offenses; directing a law enforcement officer issuing a citation for specified violations to note certain information on the citation; amending s. 322.0261, F.S., relating to driver improvement courses; revising the definition of "vulnerable road users"; amending ss. 212.05, 316.1303, 316.235, 316.545, 316.605, 316.6105, 316.613, 316.622, 316.650, 316.70, 320.01, 320.08, 320.0801, 320.38, 322.031, 450.181, 559.903, 655.960, 732.402, and 860.065, F.S.; conforming cross-references; reenacting ss. 316.072(4)(b), 316.1923(5), 318.14(2), and 318.18(1)(b), F.S., relating to obedience to and effect of traffic laws, aggressive careless driving, noncriminal traffic infractions, and amount of penalties, respectively, to incorporate amendments made by the act in references thereto; providing an effective date.

WHEREAS, the Legislature recognizes that everyone must share the road, and

WHEREAS, there are laws in place, such as ss. 316.2065 and 316.2068, Florida Statutes, that require certain vulnerable road

users to follow safe practices when operating on the roadways of the state, and

WHEREAS, there are laws in place that similarly require persons who operate a vehicle on the highways of the state to operate the vehicle in a safe manner, and

WHEREAS, it is the intent of the Legislature to amend the Florida Uniform Traffic Control laws to protect vulnerable road users while balancing their rights against the rights of those who choose to travel by motor vehicle, NOW, THEREFORE,

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

Section 1. Section 316.003, Florida Statutes, is amended to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context otherwise requires:

(1) AUTHORIZED EMERGENCY VEHICLES.—Vehicles of the fire department (fire patrol), police vehicles, and such ambulances and emergency vehicles of municipal departments, public service corporations operated by private corporations, the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, the Department of Health, the Department of Transportation, and the Department of Corrections as are designated or authorized by their respective department

or the chief of police of an incorporated city or any sheriff of any of the various counties.

(2) ~~(90)~~ AUTONOMOUS VEHICLE.—Any vehicle equipped with autonomous technology. The term "autonomous technology" means technology installed on a motor vehicle that has the capability to drive the vehicle on which the technology is installed without the active control or monitoring by a human operator. The term excludes a motor vehicle enabled with active safety systems or driver assistance systems, including, without limitation, a system to provide electronic blind spot assistance, crash avoidance, emergency braking, parking assistance, adaptive cruise control, lane keep assistance, lane departure warning, or traffic jam and queuing assistant, unless any such system alone or in combination with other systems enables the vehicle on which the technology is installed to drive without the active control or monitoring by a human operator.

(3) ~~(2)~~ BICYCLE.—Every vehicle propelled solely by human power, and every motorized bicycle propelled by a combination of human power and an electric helper motor capable of propelling the vehicle at a speed of not more than 20 miles per hour on level ground upon which any person may ride, having two tandem wheels, and including any device generally recognized as a bicycle though equipped with two front or two rear wheels. The term does not include such a vehicle with a seat height of no more than 25 inches from the ground when the seat is adjusted to

its highest position or a scooter or similar device. No person under the age of 16 may operate or ride upon a motorized bicycle.

(4) BICYCLE LANE.—A portion of a roadway or highway that has been designated by pavement markings and signs for the preferential or exclusive use by bicycles.

(5) ~~(63)~~ BICYCLE PATH.—Any road, path, or way that is open to bicycle travel, which road, path, or way is physically separated from motorized vehicular traffic by an open space or by a barrier and is located either within the highway right-of-way or within an independent right-of-way.

(6) BODILY INJURY.—Except for purposes of any statute referring to the term "serious bodily injury," the term "bodily injury" means an injury to a human being consisting of a broken bone, a torn ligament, a concussion, a laceration requiring stitches, or any other physical injury that results in impairment of the function of a bodily member, organ, or mental faculty.

(7) ~~(76)~~ BRAKE HORSEPOWER.—The actual unit of torque developed per unit of time at the output shaft of an engine, as measured by a dynamometer.

(8) ~~(3)~~ BUS.—Any motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons and any motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation.

(9) ~~(4)~~ BUSINESS DISTRICT.—The territory contiguous to, and

including, a highway when 50 percent or more of the frontage thereon, for a distance of 300 feet or more, is occupied by buildings in use for business.

(10) ~~(5)~~ CANCELLATION.—Cancellation means that a license which was issued through error or fraud is declared void and terminated. A new license may be obtained only as permitted in this chapter.

(11) ~~(64)~~ CHIEF ADMINISTRATIVE OFFICER.—The head, or his or her designee, of any law enforcement agency which is authorized to enforce traffic laws.

(12) ~~(65)~~ CHILD.—A child as defined in s. 39.01, s. 984.03, or s. 985.03.

(13) ~~(66)~~ COMMERCIAL MOTOR VEHICLE.—Any self-propelled or towed vehicle used on the public highways in commerce to transport passengers or cargo, if such vehicle:

(a) Has a gross vehicle weight rating of 10,000 pounds or more;

(b) Is designed to transport more than 15 passengers, including the driver; or

(c) Is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act, as amended (49 U.S.C. ss. 1801 et seq.).

A vehicle that occasionally transports personal property to and from a closed-course motorsport facility, as defined in s. 549.09(1)(a), is not a commercial motor vehicle if it is not

used for profit and corporate sponsorship is not involved. As used in this subsection, the term "corporate sponsorship" means a payment, donation, gratuity, in-kind service, or other benefit provided to or derived by a person in relation to the underlying activity, other than the display of product or corporate names, logos, or other graphic information on the property being transported.

(14) ~~(67)~~ COURT.—The court having jurisdiction over traffic offenses.

(15) ~~(6)~~ CROSSWALK.—

(a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway, measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway.

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

(16) ~~(7)~~ DAYTIME.—The period from a half hour before sunrise to a half hour after sunset. Nighttime means at any other hour.

(17) ~~(8)~~ DEPARTMENT.—The Department of Highway Safety and Motor Vehicles as defined in s. 20.24. Any reference herein to Department of Transportation shall be construed as referring to the Department of Transportation, defined in s. 20.23, or the appropriate division thereof.

(18) ~~(9)~~ DIRECTOR.—The Director of the Division of the

Florida Highway Patrol of the Department of Highway Safety and Motor Vehicles.

(19) ~~(10)~~ DRIVER.—Any person who drives or is in actual physical control of a vehicle on a highway or who is exercising control of a vehicle or steering a vehicle being towed by a motor vehicle.

(20) ~~(83)~~ ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE.—Any self-balancing, two-nontandem-wheeled device, designed to transport only one person, with an electric propulsion system with average power of 750 watts (1 horsepower), the maximum speed of which, on a paved level surface when powered solely by such a propulsion system while being ridden by an operator who weighs 170 pounds, is less than 20 miles per hour. Electric personal assistive mobility devices are not vehicles as defined in this section.

(21) ~~(11)~~ EXPLOSIVE.—Any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effect on contiguous objects or of destroying life or limb.

(22) ~~(62)~~ FARM LABOR VEHICLE.—Any vehicle equipped and used

for the transportation of nine or more migrant or seasonal farm workers, in addition to the driver, to or from a place of employment or employment-related activities. The term does not include:

(a) Any vehicle carrying only members of the immediate family of the owner or driver.

(b) Any vehicle being operated by a common carrier of passengers.

(c) Any carpool as defined in s. 450.28(3).

(23) ~~(12)~~ FARM TRACTOR.—Any motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry.

(24) ~~(13)~~ FLAMMABLE LIQUID.—Any liquid which has a flash point of 70 degrees Fahrenheit or less, as determined by a Tagliabue or equivalent closed-cup test device.

(25) ~~(68)~~ GOLF CART.—A motor vehicle designed and manufactured for operation on a golf course for sporting or recreational purposes.

(26) ~~(14)~~ GROSS WEIGHT.—The weight of a vehicle without load plus the weight of any load thereon.

(27) ~~(69)~~ HAZARDOUS MATERIAL.—Any substance or material which has been determined by the secretary of the United States Department of Transportation to be capable of imposing an unreasonable risk to health, safety, and property. This term includes hazardous waste as defined in s. 403.703(13).

(28) ~~(15)~~ HOUSE TRAILER.—

(a) A trailer or semitrailer which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place (either permanently or temporarily) and is equipped for use as a conveyance on streets and highways, or

(b) A trailer or a semitrailer the chassis and exterior shell of which is designed and constructed for use as a house trailer, as defined in paragraph (a), but which is used instead, permanently or temporarily, for the advertising, sales, display, or promotion of merchandise or services or for any other commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

(29) ~~(16)~~ IMPLEMENT OF HUSBANDRY.—Any vehicle designed and adapted exclusively for agricultural, horticultural, or livestock-raising operations or for lifting or carrying an implement of husbandry and in either case not subject to registration if used upon the highways.

(30) ~~(17)~~ INTERSECTION.—

(a) The area embraced within the prolongation or connection of the lateral curblines; or, if none, then the lateral boundary lines of the roadways of two highways which join one another at, or approximately at, right angles; or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict.

(b) Where a highway includes two roadways 30 feet or more apart, then every crossing of each roadway of such divided

highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways 30 feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(31) ~~(18)~~ LANED HIGHWAY.—A highway the roadway of which is divided into two or more clearly marked lanes for vehicular traffic.

(32) ~~(19)~~ LIMITED ACCESS FACILITY.—A street or highway especially designed for through traffic and over, from, or to which owners or occupants of abutting land or other persons have no right or easement, or only a limited right or easement, of access, light, air, or view by reason of the fact that their property abuts upon such limited access facility or for any other reason. Such highways or streets may be parkways from which trucks, buses, and other commercial vehicles are excluded; or they may be freeways open to use by all customary forms of street and highway traffic.

(33) ~~(20)~~ LOCAL AUTHORITIES.—Includes all officers and public officials of the several counties and municipalities of this state.

(34) ~~(91)~~ LOCAL HEARING OFFICER.—The person, designated by a department, county, or municipality that elects to authorize traffic infraction enforcement officers to issue traffic citations under s. 316.0083(1)(a), who is authorized to conduct hearings related to a notice of violation issued pursuant to s.

316.0083. The charter county, noncharter county, or municipality may use its currently appointed code enforcement board or special magistrate to serve as the local hearing officer. The department may enter into an interlocal agreement to use the local hearing officer of a county or municipality.

(35) ~~(80)~~ MAXI-CUBE VEHICLE.—A specialized combination vehicle consisting of a truck carrying a separable cargo-carrying unit combined with a semitrailer designed so that the separable cargo-carrying unit is to be loaded and unloaded through the semitrailer. The entire combination may not exceed 65 feet in length, and a single component of that combination may not exceed 34 feet in length.

(36) ~~(61)~~ MIGRANT OR SEASONAL FARM WORKER.—Any person employed in hand labor operations in planting, cultivation, or harvesting agricultural crops.

(37) ~~(77)~~ MOPED.—Any vehicle with pedals to permit propulsion by human power, having a seat or saddle for the use of the rider and designed to travel on not more than three wheels; with a motor rated not in excess of 2 brake horsepower and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground; and with a power-drive system that functions directly or automatically without clutching or shifting gears by the operator after the drive system is engaged. If an internal combustion engine is used, the displacement may not exceed 50 cubic centimeters.

(38) ~~(86)~~ MOTOR CARRIER TRANSPORTATION CONTRACT.—

(a) A contract, agreement, or understanding covering:

1. The transportation of property for compensation or hire by the motor carrier;

2. Entrance on property by the motor carrier for the purpose of loading, unloading, or transporting property for compensation or hire; or

3. A service incidental to activity described in subparagraph 1. or subparagraph 2., including, but not limited to, storage of property.

(b) "Motor carrier transportation contract" does not include the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or other agreements providing for the interchange, use, or possession of intermodal chassis, containers, or other intermodal equipment.

(39) ~~(21)~~ MOTOR VEHICLE.—Except when used in s. 316.1001, a self-propelled vehicle not operated upon rails or guideway, but not including any bicycle, motorized scooter, electric personal assistive mobility device, swamp buggy, or moped. For purposes of s. 316.1001, "motor vehicle" has the same meaning as in s. 320.01(1)(a).

(40) ~~(22)~~ MOTORCYCLE.—Any motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor or a moped.

(41) ~~(82)~~ MOTORIZED SCOOTER.—Any vehicle not having a seat

or saddle for the use of the rider, designed to travel on not more than three wheels, and not capable of propelling the vehicle at a speed greater than 30 miles per hour on level ground.

(42)~~(78)~~ NONPUBLIC SECTOR BUS.—Any bus which is used for the transportation of persons for compensation and which is not owned, leased, operated, or controlled by a municipal, county, or state government or a governmentally owned or managed nonprofit corporation.

(43)~~(23)~~ OFFICIAL TRAFFIC CONTROL DEVICES.—All signs, signals, markings, and devices, not inconsistent with this chapter, placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning, or guiding traffic.

(44)~~(24)~~ OFFICIAL TRAFFIC CONTROL SIGNAL.—Any device, whether manually, electrically, or mechanically operated, by which traffic is alternately directed to stop and permitted to proceed.

(45)~~(25)~~ OPERATOR.—Any person who is in actual physical control of a motor vehicle upon the highway, or who is exercising control over or steering a vehicle being towed by a motor vehicle.

(46)~~(26)~~ OWNER.—A person who holds the legal title of a vehicle, or, in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in

the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee, or lessee, or mortgagor shall be deemed the owner, for the purposes of this chapter.

(47) ~~(27)~~ PARK OR PARKING.—The standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers as may be permitted by law under this chapter.

(48) ~~(28)~~ PEDESTRIAN.—Any person afoot.

(49) ~~(29)~~ PERSON.—Any natural person, firm, copartnership, association, or corporation.

(50) ~~(30)~~ PNEUMATIC TIRE.—Any tire in which compressed air is designed to support the load.

(51) ~~(31)~~ POLE TRAILER.—Any vehicle without motive power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole, or by being boomed or otherwise secured to the towing vehicle, and ordinarily used for transporting long or irregularly shaped loads such as poles, pipes, or structural members capable, generally, of sustaining themselves as beams between the supporting connections.

(52) ~~(32)~~ POLICE OFFICER.—Any officer authorized to direct or regulate traffic or to make arrests for violations of traffic regulations, including Florida highway patrol officers, sheriffs, deputy sheriffs, and municipal police officers.

(53)~~(33)~~ PRIVATE ROAD OR DRIVEWAY.—Except as otherwise provided in paragraph (53)(b), any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons.

(54)~~(34)~~ RADIOACTIVE MATERIALS.—Any materials or combination of materials which emit ionizing radiation spontaneously in which the radioactivity per gram of material, in any form, is greater than 0.002 microcuries.

(55)~~(35)~~ RAILROAD.—A carrier of persons or property upon cars operated upon stationary rails.

(56)~~(36)~~ RAILROAD SIGN OR SIGNAL.—Any sign, signal, or device erected by authority of a public body or official, or by a railroad, and intended to give notice of the presence of railroad tracks or the approach of a railroad train.

(57)~~(37)~~ RAILROAD TRAIN.—A steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails, except a streetcar.

(58)~~(38)~~ RESIDENCE DISTRICT.—The territory contiguous to, and including, a highway, not comprising a business district, when the property on such highway, for a distance of 300 feet or more, is, in the main, improved with residences or residences and buildings in use for business.

(59)~~(39)~~ REVOCATION.—Revocation means that a licensee's privilege to drive a motor vehicle is terminated. A new license may be obtained only as permitted by law.

(60)~~(40)~~ RIGHT-OF-WAY.—The right of one vehicle or

pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other.

(61) ~~(41)~~ ROAD TRACTOR.—Any motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon, either independently or as any part of the weight of a vehicle or load so drawn.

(62) ~~(42)~~ ROADWAY.—That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a highway includes two or more separate roadways, the term "roadway" as used herein refers to any such roadway separately, but not to all such roadways collectively.

(63) ~~(43)~~ SADDLE MOUNT; FULL MOUNT.—An arrangement whereby the front wheels of one vehicle rest in a secured position upon another vehicle. All of the wheels of the towing vehicle are upon the ground, and only the rear wheels of the towed vehicle rest upon the ground. Such combinations may include one full mount, whereby a smaller transport vehicle is placed completely on the last towed vehicle.

(64) ~~(44)~~ SAFETY ZONE.—The area or space officially set apart within a roadway for the exclusive use of pedestrians and protected or so marked by adequate signs or authorized pavement markings as to be plainly visible at all times while set apart

as a safety zone.

(65) ~~(92)~~ SANITATION VEHICLE.—A motor vehicle that bears an emblem that is visible from the roadway and clearly identifies that the vehicle belongs to or is under contract with a person, entity, cooperative, board, commission, district, or unit of local government that provides garbage, trash, refuse, or recycling collection.

(66) ~~(45)~~ SCHOOL BUS.—Any motor vehicle that complies with the color and identification requirements of chapter 1006 and is used to transport children to or from public or private school or in connection with school activities, but not including buses operated by common carriers in urban transportation of school children. The term "school" includes all preelementary, elementary, secondary, and postsecondary schools.

(67) ~~(46)~~ SEMITRAILER.—Any vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon, or is carried by, another vehicle.

(68) ~~(47)~~ SIDEWALK.—That portion of a street between the curbline, or the lateral line, of a roadway and the adjacent property lines, intended for use by pedestrians.

(69) ~~(48)~~ SPECIAL MOBILE EQUIPMENT.—Any vehicle not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, including, but not limited to, ditchdigging apparatus, well-

boring apparatus, and road construction and maintenance machinery, such as asphalt spreaders, bituminous mixers, bucket loaders, tractors other than truck tractors, ditchers, leveling graders, finishing machines, motor graders, road rollers, scarifiers, earthmoving carryalls and scrapers, power shovels and draglines, and self-propelled cranes and earthmoving equipment. The term does not include house trailers, dump trucks, truck-mounted transit mixers, cranes or shovels, or other vehicles designed for the transportation of persons or property to which machinery has been attached.

(70) ~~(49)~~ STAND OR STANDING.—The halting of a vehicle, whether occupied or not, otherwise than temporarily, for the purpose of, and while actually engaged in, receiving or discharging passengers, as may be permitted by law under this chapter.

(71) ~~(50)~~ STATE ROAD.—Any highway designated as a state-maintained road by the Department of Transportation.

(72) ~~(51)~~ STOP.—When required, complete cessation from movement.

(73) ~~(52)~~ STOP OR STOPPING.—When prohibited, any halting, even momentarily, of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or to comply with the directions of a law enforcement officer or traffic control sign or signal.

(74) ~~(70)~~ STRAIGHT TRUCK.—Any truck on which the cargo unit and the motive power unit are located on the same frame so as to

form a single, rigid unit.

(75)~~(53)~~ STREET OR HIGHWAY.—

(a) The entire width between the boundary lines of every way or place of whatever nature when any part thereof is open to the use of the public for purposes of vehicular traffic;

(b) The entire width between the boundary lines of any privately owned way or place used for vehicular travel by the owner and those having express or implied permission from the owner, but not by other persons, or any limited access road owned or controlled by a special district, whenever, by written agreement entered into under s. 316.006(2)(b) or (3)(b), a county or municipality exercises traffic control jurisdiction over said way or place;

(c) Any area, such as a runway, taxiway, ramp, clear zone, or parking lot, within the boundary of any airport owned by the state, a county, a municipality, or a political subdivision, which area is used for vehicular traffic but which is not open for vehicular operation by the general public; or

(d) Any way or place used for vehicular traffic on a controlled access basis within a mobile home park recreation district which has been created under s. 418.30 and the recreational facilities of which district are open to the general public.

(76)~~(54)~~ SUSPENSION.—Temporary withdrawal of a licensee's privilege to drive a motor vehicle.

(77)~~(89)~~ SWAMP BUGGY.—A motorized off-road vehicle that is

designed or modified to travel over swampy or varied terrain and that may use large tires or tracks operated from an elevated platform. The term does not include any vehicle defined in chapter 261 or otherwise defined or classified in this chapter.

(78) ~~(81)~~ TANDEM AXLE.—Any two axles whose centers are more than 40 inches but not more than 96 inches apart and are individually attached to or articulated from, or both, a common attachment to the vehicle, including a connecting mechanism designed to equalize the load between axles.

(79) ~~(71)~~ TANDEM TRAILER TRUCK.—Any combination of a truck tractor, semitrailer, and trailer coupled together so as to operate as a complete unit.

(80) ~~(72)~~ TANDEM TRAILER TRUCK HIGHWAY NETWORK.—A highway network consisting primarily of four or more lanes, including all interstate highways; highways designated by the United States Department of Transportation as elements of the National Network; and any street or highway designated by the Florida Department of Transportation for use by tandem trailer trucks, in accordance with s. 316.515, except roads on which truck traffic was specifically prohibited on January 6, 1983.

(81) ~~(73)~~ TERMINAL.—Any location where:

(a) Freight either originates, terminates, or is handled in the transportation process; or

(b) Commercial motor carriers maintain operating facilities.

(82) ~~(55)~~ THROUGH HIGHWAY.—Any highway or portion thereof

on which vehicular traffic is given the right-of-way and at the entrances to which vehicular traffic from intersecting highways is required to yield right-of-way to vehicles on such through highway in obedience to either a stop sign or yield sign, or otherwise in obedience to law.

(83) ~~(56)~~ TIRE WIDTH.—Tire width is that width stated on the surface of the tire by the manufacturer of the tire, if the width stated does not exceed 2 inches more than the width of the tire contacting the surface.

(84) ~~(57)~~ TRAFFIC.—Pedestrians, ridden or herded animals, and vehicles, streetcars, and other conveyances either singly or together while using any street or highway for purposes of travel.

(85) ~~(87)~~ TRAFFIC INFRACTION DETECTOR.—A vehicle sensor installed to work in conjunction with a traffic control signal and a camera or cameras synchronized to automatically record two or more sequenced photographic or electronic images or streaming video of only the rear of a motor vehicle at the time the vehicle fails to stop behind the stop bar or clearly marked stop line when facing a traffic control signal steady red light. Any notification under s. 316.0083(1)(b) or traffic citation issued by the use of a traffic infraction detector must include a photograph or other recorded image showing both the license tag of the offending vehicle and the traffic control device being violated.

(86) ~~(84)~~ TRAFFIC SIGNAL PREEMPTION SYSTEM.—Any system or

device with the capability of activating a control mechanism mounted on or near traffic signals which alters a traffic signal's timing cycle.

(87) ~~(58)~~ TRAILER.—Any vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle.

(88) ~~(74)~~ TRANSPORTATION.—The conveyance or movement of goods, materials, livestock, or persons from one location to another on any road, street, or highway open to travel by the public.

(89) ~~(88)~~ TRI-VEHICLE.—An enclosed three-wheeled passenger vehicle that:

(a) Is designed to operate with three wheels in contact with the ground;

(b) Has a minimum unladen weight of 900 pounds;

(c) Has a single, completely enclosed, occupant compartment;

(d) Is produced in a minimum quantity of 300 in any calendar year;

(e) Is capable of a speed greater than 60 miles per hour on level ground; and

(f) Is equipped with:

1. Seats that are certified by the vehicle manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 207, "Seating systems" (49 C.F.R. s. 571.207);

2. A steering wheel used to maneuver the vehicle;

3. A propulsion unit located forward or aft of the enclosed occupant compartment;

4. A seat belt for each vehicle occupant certified to meet the requirements of Federal Motor Vehicle Safety Standard No. 209, "Seat belt assemblies" (49 C.F.R. s. 571.209);

5. A windshield and an appropriate windshield wiper and washer system that are certified by the vehicle manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 205, "Glazing Materials" (49 C.F.R. s. 571.205) and Federal Motor Vehicle Safety Standard No. 104, "Windshield Wiping and Washing Systems" (49 C.F.R. s. 571.104); and

6. A vehicle structure certified by the vehicle manufacturer to meet the requirements of Federal Motor Vehicle Safety Standard No. 216, "Rollover crush resistance" (49 C.F.R. s. 571.216).

(90) ~~(59)~~ TRUCK.—Any motor vehicle designed, used, or maintained primarily for the transportation of property.

(91) ~~(60)~~ TRUCK TRACTOR.—Any motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn.

(92) ~~(93)~~ UTILITY SERVICE VEHICLE.—A motor vehicle that bears an emblem that is visible from the roadway and clearly identifies that the vehicle belongs to or is under contract with a person, entity, cooperative, board, commission, district, or unit of local government that provides electric, natural gas,

water, wastewater, cable, telephone, or communications services.

(93) ~~(75)~~ VEHICLE.—Every device, in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.

(94) ~~(85)~~ VICTIM SERVICES PROGRAMS.—Any community-based organization whose primary purpose is to act as an advocate for the victims and survivors of traffic crashes and for their families. The victims services offered by these programs may include grief and crisis counseling, assistance with preparing victim compensation claims excluding third-party legal action, or connecting persons with other service providers, and providing emergency financial assistance.

(95) VULNERABLE USER OF A PUBLIC ROADWAY OR VULNERABLE USER.—

(a) A pedestrian, including a person actually engaged in work upon a highway, work upon utility facilities along a highway, or the provision of emergency services within the right-of-way;

(b) A person operating, or who is a passenger on, a bicycle, motorcycle, scooter, or moped lawfully on the roadway;

(c) A person riding an animal; or

(d) A person lawfully operating on a public roadway, crosswalk, or shoulder of the roadway:

1. A farm tractor or similar vehicle designed primarily for farm use;

2. A horse-drawn carriage;

3. An electric personal assistive mobility device; or

4. A wheelchair.

(96) ~~(79)~~ WORK ZONE AREA.—The area and its approaches on any state-maintained highway, county-maintained highway, or municipal street where construction, repair, maintenance, or other street-related or highway-related work is being performed or where one or more lanes is closed to traffic.

Section 2. Subsection (1) and paragraphs (e) and (f) of subsection (2) of section 316.027, Florida Statutes, are amended to read:

316.027 Crash involving death or personal injuries.—

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

~~(a)~~ "serious bodily injury" means an injury to a person, including the driver, which consists of a physical condition that creates a substantial risk of death, serious personal disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

~~(b) "Vulnerable road user" means:~~

~~1. A pedestrian, including a person actually engaged in work upon a highway, or in work upon utility facilities along a highway, or engaged in the provision of emergency services within the right-of-way;~~

~~2. A person operating a bicycle, motorcycle, scooter, or moped lawfully on the roadway;~~

~~3. A person riding an animal; or~~

~~4. A person lawfully operating on a public right-of-way, crosswalk, or shoulder of the roadway:~~

~~a. A farm tractor or similar vehicle designed primarily for farm use;~~

~~b. A skateboard, roller skates, or in-line skates;~~

~~c. A horse-drawn carriage;~~

~~d. An electric personal assistive mobility device; or~~

~~e. A wheelchair.~~

(2)

(e) A driver who violates paragraph (a), paragraph (b), or paragraph (c) shall have his or her driver license revoked for at least 3 years as provided in s. 322.28(4).

1. A person convicted of violating paragraph (a), paragraph (b), or paragraph (c) shall, before his or her driving privilege may be reinstated, present to the department proof of completion of a victim's impact panel session in a judicial circuit if such a panel exists, or if such a panel does not exist, a department-approved driver improvement course relating to the rights of vulnerable ~~road~~ users relative to vehicles on the roadway as provided in s. 322.0261(2).

2. The department may reinstate an offender's driving privilege after he or she satisfies the 3-year revocation period as provided in s. 322.28(4) and successfully completes either a victim's impact panel session or a department-approved driver improvement course relating to the rights of vulnerable ~~road~~ users relative to vehicles on the roadway as provided in s.

322.0261(2).

3. For purposes of this paragraph, an offender's driving privilege may be reinstated only after the department verifies that the offender participated in and successfully completed a victim's impact panel session or a department-approved driver improvement course.

(f) For purposes of sentencing under chapter 921 and determining incentive gain-time eligibility under chapter 944, an offense listed in this subsection is ranked one level above the ranking specified in s. 921.0022 or s. 921.0023 for the offense committed if the victim of the offense was a vulnerable ~~road~~ user.

Section 3. Section 316.083, Florida Statutes, is amended to read:

316.083 Overtaking and passing a vehicle.—The following provisions ~~rules shall~~ govern the overtaking and passing of a vehicle ~~vehicles~~ proceeding in the same direction~~, subject to those limitations, exceptions, and special rules hereinafter stated~~:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall give an appropriate signal as provided for in s. 316.156, shall pass to the left thereof at a safe distance, and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.

(2) The driver of a motor vehicle overtaking a person

operating a bicycle or other vulnerable user of a public roadway ~~nonmotorized vehicle~~ must pass the person operating the bicycle or other vulnerable user ~~nonmotorized vehicle~~ at a safe distance of not less than 3 feet between any part of or attachment to the motor vehicle, anything extending from the motor vehicle, or any trailer or other thing being towed by the motor vehicle and the bicycle, the person operating the bicycle, or other vulnerable user ~~nonmotorized vehicle~~.

(3) ~~(2)~~ Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle, on audible signal or upon the visible blinking of the headlamps of the overtaking vehicle if such overtaking is being attempted at nighttime, and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

(4) ~~(3)~~ A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318. If a violation of this section contributed to the bodily injury of a vulnerable user of a public roadway, the law enforcement officer issuing the citation for the violation shall note such information on the citation.

Section 4. Section 316.084, Florida Statutes, is amended to read:

316.084 When overtaking on the right is permitted.—

(1) The driver of a vehicle may overtake and pass on the right of another vehicle only under the following conditions:

(a) When the vehicle overtaken is making or about to make a left turn;

(b) Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving traffic in each direction;

(c) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

(2) The driver of a vehicle may overtake and pass another vehicle on the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

(3) This section does not prohibit a bicycle that is in a bicycle lane or on the shoulder of a roadway or highway from passing another vehicle on the right.

(4) ~~(3)~~ A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

Section 5. Section 316.0875, Florida Statutes, is amended to read:

316.0875 No-passing zones.—

(1) The Department of Transportation and local authorities are authorized to determine those portions of any highway under their respective jurisdiction where overtaking and passing or

driving to the left of the roadway would be especially hazardous and may, by appropriate signs or markings on the roadway, indicate the beginning and end of such zones, and, when such signs or markings are in place and clearly visible to an ordinarily observant person, each ~~every~~ driver of a vehicle shall obey the directions thereof.

(2) Where signs or markings are in place to define a no-passing zone as set forth in subsection (1), a ~~no~~ driver may not, ~~shall~~ at any time, drive on the left side of the roadway with such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.

(3) This section does not apply to a person who safely and briefly drives to the left of the center of the roadway or pavement striping only to the extent necessary to:

(a) Avoid ~~When~~ an obstruction; ~~exists making it necessary to drive to the left of the center of the highway, nor~~

(b) Turn ~~To the driver of a vehicle turning~~ left into or from an alley, private road, or driveway; or

(c) Comply with the requirements regarding a safe distance to pass a vulnerable user, as required by s. 316.083(2).

(4) A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

Section 6. Section 316.151, Florida Statutes, is amended to read:

316.151 Required position and method of turning at intersections.—

(1)(a) Right turn.—The driver of a vehicle intending to turn right at an intersection onto a highway, public or private roadway, or driveway shall do so as follows:

1.~~(a) Right turn.—~~Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

2. When overtaking and passing a bicycle or other vulnerable user proceeding in the same direction, the driver of a motor vehicle shall give an appropriate signal as provided for in s. 316.155 and shall make the right turn only if it can be made at a safe distance from the bicycle or other vulnerable user.

3. When crossing a sidewalk, bicycle lane, or bicycle path to turn right, the driver of a motor vehicle shall yield the right-of-way to a bicycle or pedestrian.

(b) Left turn.—The driver of a vehicle intending to turn left at an ~~any~~ intersection onto a highway, public or private roadway, or driveway shall do so as follows:

1. The driver shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle. Thereafter, ~~and, after entering the intersection,~~ the left turn shall be made so as to leave the intersection in a lane lawfully available to traffic moving in such direction upon the roadway being entered.

2. A person riding a bicycle and intending to turn left in accordance with this section is entitled to the full use of the lane from which the turn may legally be made. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

~~(c) Left turn by bicycle.~~ In addition ~~to the method of making a left turn described in paragraph (b)~~, a person riding a bicycle and intending to turn left may do so as follows ~~has the option of following the course described hereafter~~:

a. The rider shall approach the turn as close as practicable to the right curb or edge of the roadway;

b. After proceeding across the intersecting roadway, the turn shall be made as close as practicable to the curb or edge of the roadway on the far side of the intersection; and~~,~~

c. Before proceeding, the bicyclist shall comply with any official traffic control device or police officer regulating traffic on the highway along which the bicyclist intends to proceed.

(2) The state, county, and local authorities in their respective jurisdictions may cause official traffic control devices to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection. When such devices are so placed, the ~~no~~ driver of a vehicle may not turn a vehicle at an intersection other than as directed and required by such devices.

(3) A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318. If a violation of this section contributes to the bodily injury of a vulnerable user of a public roadway, the law enforcement officer issuing the citation for the violation shall note such information on the citation.

Section 7. Section 316.1925, Florida Statutes, is amended to read:

316.1925 Careless driving.—

(1) A ~~Any~~ person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. A person who fails ~~Failure~~ to drive in such manner commits ~~shall constitute~~ careless driving and ~~a violation of this section.~~

~~(2) Any person who violates this section~~ shall be cited for a moving violation, punishable as provided in chapter 318.

(2) If a violation under subsection (1) contributed to the bodily injury of a vulnerable user of a public roadway, the law enforcement officer issuing the citation for the violation shall note such information on the citation.

Section 8. Subsections (1), (5), and (6) of section 316.2065, Florida Statutes, are amended to read:

316.2065 Bicycle regulations.—

(1) A bicycle is a vehicle under Florida law and shall be

operated in the same manner as any other vehicle and every person operating a bicycle ~~propelling a vehicle by human power~~ has all of the rights and all of the duties applicable to the driver of any other vehicle under this chapter, except as to special regulations in this chapter, and except as to provisions of this chapter which by their nature can have no application.

(5)(a) Any person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride in the bicycle lane ~~marked for bicycle use~~ or, if there is no bicycle lane in the roadway ~~is marked for bicycle use~~, as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:

1. When overtaking and passing another bicycle or vehicle proceeding in the same direction.

2. When preparing for a left turn at an intersection or into a private road or driveway.

3. When reasonably necessary to avoid any condition or potential conflict, including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or edge or within a bicycle lane. For the purposes of this subsection, a "substandard-width lane" is a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

(b) Any person operating a bicycle upon a one-way highway with two or more marked traffic lanes may ride as near the left-hand curb or edge of such roadway as practicable.

(6)(a) Persons riding bicycles upon a roadway or in a bicycle lane may not ride more than two abreast except on bicycle paths or parts of roadways set aside for the exclusive use of bicycles. Persons riding two abreast may not impede traffic when traveling at less than the normal speed of traffic at the time and place and under the conditions then existing and shall ride within a single lane.

(b) When stopping at a stop sign, persons riding bicycles in groups of four or more, after coming to a full stop and obeying all traffic laws, may proceed through the stop sign in a group and motor vehicle operators shall allow the entire group to travel through the intersection before moving forward.

Section 9. Section 318.142, Florida Statutes, is created to read:

318.142 Infractions contributing to bodily injury of a vulnerable user of a public roadway.—In addition to any other penalty imposed for a violation under s. 316.083, s. 316.151, or s. 316.1925, if the violation contributed to the bodily injury of a vulnerable user of a public roadway as defined in s. 316.003, the law enforcement officer issuing the citation for the infraction shall note such information on the citation and the designated official may impose a fine of not more than $2,500.

Section 10. Section 318.19, Florida Statutes, is amended to read:

318.19 Infractions requiring a mandatory hearing.—Any person cited for the infractions listed in this section shall not have the provisions of s. 318.14(2), (4), and (9) available to him or her but must appear before the designated official at the time and location of the scheduled hearing:

(1) Any infraction which results in a crash that causes the death of another;

(2) Any infraction which results in a crash that causes "serious bodily injury" of another as defined in s. 316.1933(1);

(3) Any infraction of s. 316.172(1)(b);

(4) Any infraction of s. 316.520(1) or (2); ~~or~~

(5) Any infraction of s. 316.183(2), s. 316.187, or s. 316.189 of exceeding the speed limit by 30 m.p.h. or more; or

(6) Any infraction of s. 316.083, s. 316.151, or s. 316.1925 which contributes to bodily injury of a vulnerable user of a public roadway as defined in s. 316.003. If an infraction listed in this subsection contributes to the bodily injury of a vulnerable user of a public roadway, the law enforcement officer issuing the citation for the infraction shall note such information on the citation.

Section 11. Paragraph (c) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a

taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(c) At the rate of 6 percent of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein; however, the following special provisions apply to the lease or rental of motor vehicles:

1. When a motor vehicle is leased or rented for a period of less than 12 months:

a. If the motor vehicle is rented in Florida, the entire amount of such rental is taxable, even if the vehicle is dropped off in another state.

b. If the motor vehicle is rented in another state and dropped off in Florida, the rental is exempt from Florida tax.

2. Except as provided in subparagraph 3., for the lease or rental of a motor vehicle for a period of not less than 12 months, sales tax is due on the lease or rental payments if the vehicle is registered in this state; provided, however, that no tax shall be due if the taxpayer documents use of the motor

vehicle outside this state and tax is being paid on the lease or rental payments in another state.

3. The tax imposed by this chapter does not apply to the lease or rental of a commercial motor vehicle as defined in s. 316.003(13)(a) ~~316.003(66)(a)~~ to one lessee or rentee for a period of not less than 12 months when tax was paid on the purchase price of such vehicle by the lessor. To the extent tax was paid with respect to the purchase of such vehicle in another state, territory of the United States, or the District of Columbia, the Florida tax payable shall be reduced in accordance with the provisions of s. 212.06(7). This subparagraph shall only be available when the lease or rental of such property is an established business or part of an established business or the same is incidental or germane to such business.

Section 12. Subsection (1) of section 316.1303, Florida Statutes, is amended to read:

316.1303 Traffic regulations to assist mobility-impaired persons.—

(1) Whenever a pedestrian who is mobility impaired is in the process of crossing a public street or highway with the assistance of a guide dog or service animal designated as such with a visible means of identification, a walker, a crutch, an orthopedic cane, or a wheelchair, the driver of a vehicle approaching the intersection, as defined in s. 316.003 ~~316.003(17)~~, shall bring his or her vehicle to a full stop before arriving at the intersection and, before proceeding,

shall take precautions necessary to avoid injuring the pedestrian.

Section 13. Subsection (5) of section 316.235, Florida Statutes, is amended to read:

316.235 Additional lighting equipment.—

(5) A bus, as defined in s. 316.003 ~~316.003(3)~~, may be equipped with a deceleration lighting system which cautions following vehicles that the bus is slowing, preparing to stop, or is stopped. Such lighting system shall consist of amber lights mounted in horizontal alignment on the rear of the vehicle at or near the vertical centerline of the vehicle, not higher than the lower edge of the rear window or, if the vehicle has no rear window, not higher than 72 inches from the ground. Such lights shall be visible from a distance of not less than 300 feet to the rear in normal sunlight. Lights are permitted to light and flash during deceleration, braking, or standing and idling of the bus. Vehicular hazard warning flashers may be used in conjunction with or in lieu of a rear-mounted deceleration lighting system.

Section 14. Paragraph (b) of subsection (2) and paragraph (a) of subsection (4) of section 316.545, Florida Statutes, are amended to read:

316.545 Weight and load unlawful; special fuel and motor fuel tax enforcement; inspection; penalty; review.—

(2)

(b) The officer or inspector shall inspect the license

plate or registration certificate of the commercial vehicle, as defined in s. 316.003 ~~316.003(66)~~, to determine if its gross weight is in compliance with the declared gross vehicle weight. If its gross weight exceeds the declared weight, the penalty shall be 5 cents per pound on the difference between such weights. In those cases when the commercial vehicle, as defined in s. 316.003 ~~316.003(66)~~, is being operated over the highways of the state with an expired registration or with no registration from this or any other jurisdiction or is not registered under the applicable provisions of chapter 320, the penalty herein shall apply on the basis of 5 cents per pound on that scaled weight which exceeds 35,000 pounds on laden truck tractor-semitrailer combinations or tandem trailer truck combinations, 10,000 pounds on laden straight trucks or straight truck-trailer combinations, or 10,000 pounds on any unladen commercial motor vehicle. If the license plate or registration has not been expired for more than 90 days, the penalty imposed under this paragraph may not exceed $1,000. In the case of special mobile equipment as defined in s. 316.003 ~~316.003(48)~~, which qualifies for the license tax provided for in s. 320.08(5)(b), being operated on the highways of the state with an expired registration or otherwise not properly registered under the applicable provisions of chapter 320, a penalty of $75 shall apply in addition to any other penalty which may apply in accordance with this chapter. A vehicle found in violation of this section may be detained until the owner or operator

produces evidence that the vehicle has been properly registered. Any costs incurred by the retention of the vehicle shall be the sole responsibility of the owner. A person who has been assessed a penalty pursuant to this paragraph for failure to have a valid vehicle registration certificate pursuant to the provisions of chapter 320 is not subject to the delinquent fee authorized in s. 320.07 if such person obtains a valid registration certificate within 10 working days after such penalty was assessed.

(4)(a) No commercial vehicle, as defined in s. 316.003 ~~316.003(66)~~, shall be operated over the highways of this state unless it has been properly registered under the provisions of s. 207.004. Whenever any law enforcement officer identified in s. 207.023(1), upon inspecting the vehicle or combination of vehicles, determines that the vehicle is in violation of s. 207.004, a penalty in the amount of $50 shall be assessed, and the vehicle may be detained until payment is collected by the law enforcement officer.

Section 15. Subsection (2) of section 316.605, Florida Statutes, is amended to read:

316.605 Licensing of vehicles.—

(2) Any commercial motor vehicle, as defined in s. 316.003 ~~316.003(66)~~, operating over the highways of this state with an expired registration, with no registration from this or any other jurisdiction, or with no registration under the applicable provisions of chapter 320 shall be in violation of s. 320.07(3)

and shall subject the owner or operator of such vehicle to the penalty provided. In addition, a commercial motor vehicle found in violation of this section may be detained by any law enforcement officer until the owner or operator produces evidence that the vehicle has been properly registered and that any applicable delinquent penalties have been paid.

Section 16. Subsection (6) of section 316.6105, Florida Statutes, is amended to read:

316.6105 Violations involving operation of motor vehicle in unsafe condition or without required equipment; procedure for disposition.—

(6) This section does not apply to commercial motor vehicles as defined in s. 316.003 ~~316.003(66)~~ or transit buses owned or operated by a governmental entity.

Section 17. Paragraph (a) of subsection (2) of section 316.613, Florida Statutes, is amended to read:

316.613 Child restraint requirements.—

(2) As used in this section, the term "motor vehicle" means a motor vehicle as defined in s. 316.003 that is operated on the roadways, streets, and highways of the state. The term does not include:

(a) A school bus as defined in s. 316.003 ~~316.003(45)~~.

Section 18. Subsection (8) of section 316.622, Florida Statutes, is amended to read:

316.622 Farm labor vehicles.—

(8) The department shall provide to the Department of

Business and Professional Regulation each quarter a copy of each accident report involving a farm labor vehicle, as defined in s. 316.003 ~~316.003(62)~~, commencing with the first quarter of the 2006-2007 fiscal year.

Section 19. Paragraph (b) of subsection (1) of section 316.650, Florida Statutes, is amended to read:

316.650 Traffic citations.—

(1)

(b) The department shall prepare, and supply to every traffic enforcement agency in the state, an appropriate affidavit-of-compliance form that shall be issued along with the form traffic citation for any violation of s. 316.610 and that indicates the specific defect needing to be corrected. However, such affidavit of compliance shall not be issued in the case of a violation of s. 316.610 by a commercial motor vehicle as defined in s. 316.003 ~~316.003(66)~~. Such affidavit-of-compliance form shall be distributed in the same manner and to the same parties as is the form traffic citation.

Section 20. Subsection (1) of section 316.70, Florida Statutes, is amended to read:

316.70 Nonpublic sector buses; safety rules.—

(1) The Department of Transportation shall establish and revise standards to assure the safe operation of nonpublic sector buses, as defined in s. 316.003 ~~316.003(78)~~, which standards shall be those contained in 49 C.F.R. parts 382, 385, and 390-397 and which shall be directed towards assuring that:

(a) Nonpublic sector buses are safely maintained, equipped, and operated.

(b) Nonpublic sector buses are carrying the insurance required by law and carrying liability insurance on the checked baggage of passengers not to exceed the standard adopted by the United States Department of Transportation.

(c) Florida license tags are purchased for nonpublic sector buses pursuant to s. 320.38.

(d) The driving records of drivers of nonpublic sector buses are checked by their employers at least once each year to ascertain whether the driver has a suspended or revoked driver license.

Section 21. Paragraph (a) of subsection (1) of section 320.01, Florida Statutes, is amended to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(1) "Motor vehicle" means:

(a) An automobile, motorcycle, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle operated on the roads of this state, used to transport persons or property, and propelled by power other than muscular power, but the term does not include traction engines, road rollers, special mobile equipment as defined in s. 316.003 ~~316.003(48)~~, vehicles that run only upon a track, bicycles, swamp buggies, or mopeds.

Section 22. Section 320.08, Florida Statutes, is amended

to read:

320.08 License taxes.—Except as otherwise provided herein, there are hereby levied and imposed annual license taxes for the operation of motor vehicles, mopeds, motorized bicycles as defined in s. 316.003(3) ~~316.003(2)~~, tri-vehicles as defined in s. 316.003, and mobile homes, as defined in s. 320.01, which shall be paid to and collected by the department or its agent upon the registration or renewal of registration of the following:

(1) MOTORCYCLES AND MOPEDS.—

(a) Any motorcycle: $10 flat.

(b) Any moped: $5 flat.

(c) Upon registration of a motorcycle, motor-driven cycle, or moped, in addition to the license taxes specified in this subsection, a nonrefundable motorcycle safety education fee in the amount of $2.50 shall be paid. The proceeds of such additional fee shall be deposited in the Highway Safety Operating Trust Fund to fund a motorcycle driver improvement program implemented pursuant to s. 322.025, the Florida Motorcycle Safety Education Program established in s. 322.0255, or the general operations of the department.

(d) An ancient or antique motorcycle: $7.50 flat, of which $2.50 shall be deposited into the General Revenue Fund.

(2) AUTOMOBILES OR TRI-VEHICLES FOR PRIVATE USE.—

(a) An ancient or antique automobile, as defined in s. 320.086, or a street rod, as defined in s. 320.0863: $7.50 flat.

(b) Net weight of less than 2,500 pounds: $14.50 flat.

(c) Net weight of 2,500 pounds or more, but less than 3,500 pounds: $22.50 flat.

(d) Net weight of 3,500 pounds or more: $32.50 flat.

(3) TRUCKS.—

(a) Net weight of less than 2,000 pounds: $14.50 flat.

(b) Net weight of 2,000 pounds or more, but not more than 3,000 pounds: $22.50 flat.

(c) Net weight more than 3,000 pounds, but not more than 5,000 pounds: $32.50 flat.

(d) A truck defined as a "goat," or other vehicle if used in the field by a farmer or in the woods for the purpose of harvesting a crop, including naval stores, during such harvesting operations, and which is not principally operated upon the roads of the state: $7.50 flat. The term "goat" means a motor vehicle designed, constructed, and used principally for the transportation of citrus fruit within citrus groves or for the transportation of crops on farms, and which can also be used for hauling associated equipment or supplies, including required sanitary equipment, and the towing of farm trailers.

(e) An ancient or antique truck, as defined in s. 320.086: $7.50 flat.

(4) HEAVY TRUCKS, TRUCK TRACTORS, FEES ACCORDING TO GROSS VEHICLE WEIGHT.—

(a) Gross vehicle weight of 5,001 pounds or more, but less than 6,000 pounds: $60.75 flat, of which $15.75 shall be

deposited into the General Revenue Fund.

(b) Gross vehicle weight of 6,000 pounds or more, but less than 8,000 pounds: $87.75 flat, of which $22.75 shall be deposited into the General Revenue Fund.

(c) Gross vehicle weight of 8,000 pounds or more, but less than 10,000 pounds: $103 flat, of which $27 shall be deposited into the General Revenue Fund.

(d) Gross vehicle weight of 10,000 pounds or more, but less than 15,000 pounds: $118 flat, of which $31 shall be deposited into the General Revenue Fund.

(e) Gross vehicle weight of 15,000 pounds or more, but less than 20,000 pounds: $177 flat, of which $46 shall be deposited into the General Revenue Fund.

(f) Gross vehicle weight of 20,000 pounds or more, but less than 26,001 pounds: $251 flat, of which $65 shall be deposited into the General Revenue Fund.

(g) Gross vehicle weight of 26,001 pounds or more, but less than 35,000: $324 flat, of which $84 shall be deposited into the General Revenue Fund.

(h) Gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds: $405 flat, of which $105 shall be deposited into the General Revenue Fund.

(i) Gross vehicle weight of 44,000 pounds or more, but less than 55,000 pounds: $773 flat, of which $201 shall be deposited into the General Revenue Fund.

(j) Gross vehicle weight of 55,000 pounds or more, but

less than 62,000 pounds: $916 flat, of which $238 shall be deposited into the General Revenue Fund.

(k) Gross vehicle weight of 62,000 pounds or more, but less than 72,000 pounds: $1,080 flat, of which $280 shall be deposited into the General Revenue Fund.

(l) Gross vehicle weight of 72,000 pounds or more: $1,322 flat, of which $343 shall be deposited into the General Revenue Fund.

(m) Notwithstanding the declared gross vehicle weight, a truck tractor used within a 150-mile radius of its home address is eligible for a license plate for a fee of $324 flat if:

1. The truck tractor is used exclusively for hauling forestry products; or

2. The truck tractor is used primarily for the hauling of forestry products, and is also used for the hauling of associated forestry harvesting equipment used by the owner of the truck tractor.

Of the fee imposed by this paragraph, $84 shall be deposited into the General Revenue Fund.

(n) A truck tractor or heavy truck, not operated as a for-hire vehicle, which is engaged exclusively in transporting raw, unprocessed, and nonmanufactured agricultural or horticultural products within a 150-mile radius of its home address, is eligible for a restricted license plate for a fee of:

1. If such vehicle's declared gross vehicle weight is less

than 44,000 pounds, $87.75 flat, of which $22.75 shall be deposited into the General Revenue Fund.

2. If such vehicle's declared gross vehicle weight is 44,000 pounds or more and such vehicle only transports from the point of production to the point of primary manufacture; to the point of assembling the same; or to a shipping point of a rail, water, or motor transportation company, $324 flat, of which $84 shall be deposited into the General Revenue Fund.

Such not-for-hire truck tractors and heavy trucks used exclusively in transporting raw, unprocessed, and nonmanufactured agricultural or horticultural products may be incidentally used to haul farm implements and fertilizers delivered direct to the growers. The department may require any documentation deemed necessary to determine eligibility prior to issuance of this license plate. For the purpose of this paragraph, "not-for-hire" means the owner of the motor vehicle must also be the owner of the raw, unprocessed, and nonmanufactured agricultural or horticultural product, or the user of the farm implements and fertilizer being delivered.

(5) SEMITRAILERS, FEES ACCORDING TO GROSS VEHICLE WEIGHT; SCHOOL BUSES; SPECIAL PURPOSE VEHICLES.—

(a)1. A semitrailer drawn by a GVW truck tractor by means of a fifth-wheel arrangement: $13.50 flat per registration year or any part thereof, of which $3.50 shall be deposited into the General Revenue Fund.

2. A semitrailer drawn by a GVW truck tractor by means of a fifth-wheel arrangement: $68 flat per permanent registration, of which $18 shall be deposited into the General Revenue Fund.

(b) A motor vehicle equipped with machinery and designed for the exclusive purpose of well drilling, excavation, construction, spraying, or similar activity, and which is not designed or used to transport loads other than the machinery described above over public roads: $44 flat, of which $11.50 shall be deposited into the General Revenue Fund.

(c) A school bus used exclusively to transport pupils to and from school or school or church activities or functions within their own county: $41 flat, of which $11 shall be deposited into the General Revenue Fund.

(d) A wrecker, as defined in s. 320.01, which is used to tow a vessel as defined in s. 327.02, a disabled, abandoned, stolen-recovered, or impounded motor vehicle as defined in s. 320.01, or a replacement motor vehicle as defined in s. 320.01: $41 flat, of which $11 shall be deposited into the General Revenue Fund.

(e) A wrecker that is used to tow any nondisabled motor vehicle, a vessel, or any other cargo unless used as defined in paragraph (d), as follows:

1. Gross vehicle weight of 10,000 pounds or more, but less than 15,000 pounds: $118 flat, of which $31 shall be deposited into the General Revenue Fund.

2. Gross vehicle weight of 15,000 pounds or more, but less

than 20,000 pounds: $177 flat, of which $46 shall be deposited into the General Revenue Fund.

3. Gross vehicle weight of 20,000 pounds or more, but less than 26,000 pounds: $251 flat, of which $65 shall be deposited into the General Revenue Fund.

4. Gross vehicle weight of 26,000 pounds or more, but less than 35,000 pounds: $324 flat, of which $84 shall be deposited into the General Revenue Fund.

5. Gross vehicle weight of 35,000 pounds or more, but less than 44,000 pounds: $405 flat, of which $105 shall be deposited into the General Revenue Fund.

6. Gross vehicle weight of 44,000 pounds or more, but less than 55,000 pounds: $772 flat, of which $200 shall be deposited into the General Revenue Fund.

7. Gross vehicle weight of 55,000 pounds or more, but less than 62,000 pounds: $915 flat, of which $237 shall be deposited into the General Revenue Fund.

8. Gross vehicle weight of 62,000 pounds or more, but less than 72,000 pounds: $1,080 flat, of which $280 shall be deposited into the General Revenue Fund.

9. Gross vehicle weight of 72,000 pounds or more: $1,322 flat, of which $343 shall be deposited into the General Revenue Fund.

(f) A hearse or ambulance: $40.50 flat, of which $10.50 shall be deposited into the General Revenue Fund.

(6) MOTOR VEHICLES FOR HIRE.—

(a) Under nine passengers: $17 flat, of which $4.50 shall be deposited into the General Revenue Fund; plus $1.50 per cwt, of which 50 cents shall be deposited into the General Revenue Fund.

(b) Nine passengers and over: $17 flat, of which $4.50 shall be deposited into the General Revenue Fund; plus $2 per cwt, of which 50 cents shall be deposited into the General Revenue Fund.

(7) TRAILERS FOR PRIVATE USE.—

(a) Any trailer weighing 500 pounds or less: $6.75 flat per year or any part thereof, of which $1.75 shall be deposited into the General Revenue Fund.

(b) Net weight over 500 pounds: $3.50 flat, of which $1 shall be deposited into the General Revenue Fund; plus $1 per cwt, of which 25 cents shall be deposited into the General Revenue Fund.

(8) TRAILERS FOR HIRE.—

(a) Net weight under 2,000 pounds: $3.50 flat, of which $1 shall be deposited into the General Revenue Fund; plus $1.50 per cwt, of which 50 cents shall be deposited into the General Revenue Fund.

(b) Net weight 2,000 pounds or more: $13.50 flat, of which $3.50 shall be deposited into the General Revenue Fund; plus $1.50 per cwt, of which 50 cents shall be deposited into the General Revenue Fund.

(9) RECREATIONAL VEHICLE-TYPE UNITS.—

(a) A travel trailer or fifth-wheel trailer, as defined by s. 320.01(1)(b), that does not exceed 35 feet in length: $27 flat, of which $7 shall be deposited into the General Revenue Fund.

(b) A camping trailer, as defined by s. 320.01(1)(b)2.: $13.50 flat, of which $3.50 shall be deposited into the General Revenue Fund.

(c) A motor home, as defined by s. 320.01(1)(b)4.:

1. Net weight of less than 4,500 pounds: $27 flat, of which $7 shall be deposited into the General Revenue Fund.

2. Net weight of 4,500 pounds or more: $47.25 flat, of which $12.25 shall be deposited into the General Revenue Fund.

(d) A truck camper as defined by s. 320.01(1)(b)3.:

1. Net weight of less than 4,500 pounds: $27 flat, of which $7 shall be deposited into the General Revenue Fund.

2. Net weight of 4,500 pounds or more: $47.25 flat, of which $12.25 shall be deposited into the General Revenue Fund.

(e) A private motor coach as defined by s. 320.01(1)(b)5.:

1. Net weight of less than 4,500 pounds: $27 flat, of which $7 shall be deposited into the General Revenue Fund.

2. Net weight of 4,500 pounds or more: $47.25 flat, of which $12.25 shall be deposited into the General Revenue Fund.

(10) PARK TRAILERS; TRAVEL TRAILERS; FIFTH-WHEEL TRAILERS; 35 FEET TO 40 FEET.—

(a) Park trailers.—Any park trailer, as defined in s. 320.01(1)(b)7.: $25 flat.

(b) A travel trailer or fifth-wheel trailer, as defined in s. 320.01(1)(b), that exceeds 35 feet: $25 flat.

(11) MOBILE HOMES.—

(a) A mobile home not exceeding 35 feet in length: $20 flat.

(b) A mobile home over 35 feet in length, but not exceeding 40 feet: $25 flat.

(c) A mobile home over 40 feet in length, but not exceeding 45 feet: $30 flat.

(d) A mobile home over 45 feet in length, but not exceeding 50 feet: $35 flat.

(e) A mobile home over 50 feet in length, but not exceeding 55 feet: $40 flat.

(f) A mobile home over 55 feet in length, but not exceeding 60 feet: $45 flat.

(g) A mobile home over 60 feet in length, but not exceeding 65 feet: $50 flat.

(h) A mobile home over 65 feet in length: $80 flat.

(12) DEALER AND MANUFACTURER LICENSE PLATES.—A franchised motor vehicle dealer, independent motor vehicle dealer, marine boat trailer dealer, or mobile home dealer and manufacturer license plate: $17 flat, of which $4.50 shall be deposited into the General Revenue Fund.

(13) EXEMPT OR OFFICIAL LICENSE PLATES.—Any exempt or official license plate: $4 flat, of which $1 shall be deposited into the General Revenue Fund.

(14) LOCALLY OPERATED MOTOR VEHICLES FOR HIRE.—A motor vehicle for hire operated wholly within a city or within 25 miles thereof: $17 flat, of which $4.50 shall be deposited into the General Revenue Fund; plus $2 per cwt, of which 50 cents shall be deposited into the General Revenue Fund.

(15) TRANSPORTER.—Any transporter license plate issued to a transporter pursuant to s. 320.133: $101.25 flat, of which $26.25 shall be deposited into the General Revenue Fund.

Section 23. Subsection (1) of section 320.0801, Florida Statutes, is amended to read:

320.0801 Additional license tax on certain vehicles.—

(1) In addition to the license taxes specified in s. 320.08 and in subsection (2), there is hereby levied and imposed an annual license tax of 10 cents for the operation of a motor vehicle, as defined in s. 320.01, and moped, as defined in s. 316.003 ~~316.003(77)~~, which tax shall be paid to the department or its agent upon the registration or renewal of registration of the vehicle. Notwithstanding the provisions of s. 320.20, revenues collected from the tax imposed in this subsection shall be deposited in the Emergency Medical Services Trust Fund and used solely for the purpose of carrying out the provisions of ss. 395.401, 395.4015, 395.404, and 395.4045 and s. 11, chapter 87-399, Laws of Florida.

Section 24. Section 320.38, Florida Statutes, is amended to read:

320.38 When nonresident exemption not allowed.—The

provisions of s. 320.37 authorizing the operation of motor vehicles over the roads of this state by nonresidents of this state when such vehicles are duly registered or licensed under the laws of some other state or foreign country do not apply to any nonresident who accepts employment or engages in any trade, profession, or occupation in this state, except a nonresident migrant or seasonal farm worker as defined in s. 316.003 ~~316.003(61)~~. In every case in which a nonresident, except a nonresident migrant or seasonal farm worker as defined in s. 316.003 ~~316.003(61)~~, accepts employment or engages in any trade, profession, or occupation in this state or enters his or her children to be educated in the public schools of this state, such nonresident shall, within 10 days after the commencement of such employment or education, register his or her motor vehicles in this state if such motor vehicles are proposed to be operated on the roads of this state. Any person who is enrolled as a student in a college or university and who is a nonresident but who is in this state for a period of up to 6 months engaged in a work-study program for which academic credits are earned from a college whose credits or degrees are accepted for credit by at least three accredited institutions of higher learning, as defined in s. 1005.02, is not required to have a Florida registration for the duration of the work-study program if the person's vehicle is properly registered in another jurisdiction. Any nonresident who is enrolled as a full-time student in such institution of higher learning is also exempt for the duration

of such enrollment.

Section 25. Subsection (2) of section 322.0261, Florida Statutes, is amended to read:

322.0261 Driver improvement course; requirement to maintain driving privileges; failure to complete; department approval of course.—

(2) With respect to an operator convicted of, or who pleaded nolo contendere to, a traffic offense giving rise to a crash identified in paragraph (1)(a) or paragraph (1)(b), the department shall require that the operator, in addition to other applicable penalties, attend a department-approved driver improvement course in order to maintain his or her driving privileges. The department shall include in the course curriculum instruction specifically addressing the rights of vulnerable ~~road~~ users as defined in s. 316.003 ~~316.027~~ relative to vehicles on the roadway. If the operator fails to complete the course within 90 days after receiving notice from the department, the operator's driver license shall be canceled by the department until the course is successfully completed.

Section 26. Subsection (1) of section 322.031, Florida Statutes, is amended to read:

322.031 Nonresident; when license required.—

(1) In each case in which a nonresident, except a nonresident migrant or seasonal farm worker as defined in s. 316.003 ~~316.003(61)~~, accepts employment or engages in a trade, profession, or occupation in this state or enters his or her

children to be educated in the public schools of this state, such nonresident shall, within 30 days after beginning such employment or education, be required to obtain a Florida driver license if such nonresident operates a motor vehicle on the highways of this state. The spouse or dependent child of such nonresident shall also be required to obtain a Florida driver license within that 30-day period before operating a motor vehicle on the highways of this state.

Section 27. Subsection (3) of section 450.181, Florida Statutes, is amended to read:

450.181 Definitions.—As used in part II, unless the context clearly requires a different meaning:

(3) The term "migrant laborer" has the same meaning as migrant or seasonal farm workers as defined in s. 316.003 ~~316.003(61)~~.

Section 28. Subsection (5) of section 559.903, Florida Statutes, is amended to read:

559.903 Definitions.—As used in this act:

(5) "Motor vehicle" means any automobile, truck, bus, recreational vehicle, motorcycle, motor scooter, or other motor powered vehicle, but does not include trailers, mobile homes, travel trailers, trailer coaches without independent motive power, watercraft or aircraft, or special mobile equipment as defined in s. 316.003 ~~316.003(48)~~.

Section 29. Subsection (1) of section 655.960, Florida Statutes, is amended to read:

655.960 Definitions; ss. 655.960-655.965.—As used in this section and ss. 655.961-655.965, unless the context otherwise requires:

(1) "Access area" means any paved walkway or sidewalk which is within 50 feet of any automated teller machine. The term does not include any street or highway open to the use of the public, as defined in s. 316.003(75)(a) or (b) ~~316.003(53)(a) or (b)~~, including any adjacent sidewalk, as defined in s. 316.003 ~~316.003(47)~~.

Section 30. Paragraph (b) of subsection (2) of section 732.402, Florida Statutes, is amended to read:

732.402 Exempt property.—

(2) Exempt property shall consist of:

(b) Two motor vehicles as defined in s. 316.003 ~~316.003(21)~~, which do not, individually as to either such motor vehicle, have a gross vehicle weight in excess of 15,000 pounds, held in the decedent's name and regularly used by the decedent or members of the decedent's immediate family as their personal motor vehicles.

Section 31. Subsection (1) of section 860.065, Florida Statutes, is amended to read:

860.065 Commercial transportation; penalty for use in commission of a felony.—

(1) It is unlawful for any person to attempt to obtain, solicit to obtain, or obtain any means of public or commercial transportation or conveyance, including vessels, aircraft,

railroad trains, or commercial vehicles as defined in s. 316.003 ~~316.003(66)~~, with the intent to use such public or commercial transportation or conveyance to commit any felony or to facilitate the commission of any felony.

Section 32. For the purpose of incorporating the amendment made by this act to section 316.1925, Florida Statutes, in a reference thereto, paragraph (b) of subsection (4) of section 316.072, Florida Statutes, is reenacted to read:

316.072 Obedience to and effect of traffic laws.—

(4) PUBLIC OFFICERS AND EMPLOYEES TO OBEY CHAPTER; EXCEPTIONS.—

(b) Unless specifically made applicable, the provisions of this chapter, except those contained in ss. 316.192, 316.1925, and 316.193, shall not apply to persons, teams, or motor vehicles and other equipment while actually engaged in work upon the surface of a highway, but shall apply to such persons and vehicles when traveling to or from such work.

Section 33. For the purpose of incorporating the amendment made by this act to sections 316.083 and 316.084, Florida Statutes, in references thereto, subsection (5) of section 316.1923, Florida Statutes, is reenacted to read:

316.1923 Aggressive careless driving.—"Aggressive careless driving" means committing two or more of the following acts simultaneously or in succession:

(5) Improperly passing as defined in s. 316.083, s. 316.084, or s. 316.085.

Section 34. For the purpose of incorporating the amendment made by this act to section 318.19, Florida Statutes, in a reference thereto, subsection (2) of section 318.14, Florida Statutes, is reenacted to read:

318.14 Noncriminal traffic infractions; exception; procedures.—

(2) Except as provided in ss. 316.1001(2) and 316.0083, any person cited for a violation requiring a mandatory hearing listed in s. 318.19 or any other criminal traffic violation listed in chapter 316 must sign and accept a citation indicating a promise to appear. The officer may indicate on the traffic citation the time and location of the scheduled hearing and must indicate the applicable civil penalty established in s. 318.18. For all other infractions under this section, except for infractions under s. 316.1001, the officer must certify by electronic, electronic facsimile, or written signature that the citation was delivered to the person cited. This certification is prima facie evidence that the person cited was served with the citation.

Section 35. For the purpose of incorporating the amendment made by this act to section 316.2065, Florida Statutes, in a reference thereto, paragraph (b) of subsection (1) of section 318.18, Florida Statutes, is reenacted to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(1) Fifteen dollars for:

(b) All infractions of s. 316.2065, unless otherwise specified.

Section 36. This act shall take effect October 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 411 Farm Vehicles
SPONSOR(S): Highway & Waterway Subcommittee; Beshears
TIED BILLS: **IDEN./SIM. BILLS:** SB 1046

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Highway & Waterway Safety Subcommittee	13 Y, 0 N, As CS	Johnson	Smith
2) Transportation & Economic Development Appropriations Subcommittee	9 Y, 0 N	Cobb	Davis
3) Economic Affairs Committee		Johnson	Pitts

SUMMARY ANALYSIS

Current state and federal law contain requirements relating to interstate and intrastate operation of commercial motor vehicles (CMVs). Both federal and state law also contain a number of exemptions specifically applied to agricultural-related CMV operation. The federal Moving Ahead for Progress in the 21st Century Act (MAP-21) exempts "covered farm vehicles" (CFVs) and their drivers from specified federal regulations. These exemptions are not currently authorized in state law.

The bill exempts "covered farm vehicles," under specified conditions, from federal regulations relating to controlled substances and alcohol use and testing; commercial driver licenses; physical qualifications and examinations; hours of service of drivers; and vehicle inspection, repair, and maintenance. These exemptions were authorized in MAP-21 in June 2012, but are not included in state law.

The Department of Highway Safety and Motor Vehicles (DHSMV) estimates approximately 176 programming hours or $10,040 in FTE and contracted resources will be required to implement the bill, which can be absorbed within existing resources. See fiscal comments.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Current state and federal law, the former of which is heavily but not entirely predicated on the latter, contain requirements relating to interstate and intrastate operation of commercial motor vehicles (CMVs).[1] Both federal and state law also contain a number of exemptions specifically applied to agricultural-related CMV operation. The federal MAP-21 Act exempts "covered farm vehicles" (CFVs) and their drivers from specified federal regulations. These exemptions are not currently authorized in state law.

State Application of Federal Law and Relevant State Exemptions

Generally, CMVs operated in interstate or intrastate commerce are subjected to various provisions of federal law in state statute, specifically:

- Part 382, Controlled Substance and Alcohol Use and Testing.
- Part 383, Commercial Driver's License Standards.
- Part 385, Safety Fitness Procedures.
- Part 390, General Federal Motor Carrier Safety Regulations.
- Part 391, Physical Qualifications and Examinations.[2, 3]
- Part 392, Driving of Commercial Motor Vehicles.
- Part 393, Parts and Accessories Necessary for Safe Operation.
- Part 395, Hours of Service of Drivers.[4]
- Part 396, Inspection, Repair, and Maintenance.
- Part 397, Transportation of Hazardous Materials; Driving and Parking Rules.[5]

Driver Licensing and Agricultural-Related Exemptions

Every person driving a motor vehicle[6] must hold a valid driver license.[7] However, a person is exempt from this requirement while driving or operating any road machine, farm tractor,[8] or implement of husbandry[9] temporarily operated or moved on a highway.[10]

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[1] *See* s. 316.302, F.S.

[2] Except that a person operating a CMV solely in intrastate commerce not transporting hazard materials that require placarding need not comply with 49 C.F.R., Subpart G, s. 391.11(b)(1) , which generally requires a CMV driver to be at least 21 years of age. Section 316.302(2)(a), F.S.

[3] Section 316.302 (3), F.S., authorizes a person who has not attained 18 years of age to operate a CMV with a gross vehicle weight of less than 26,001 pounds while transporting agricultural products, including horticultural or forestry products, from farm or harvest place to storage or market.

[4] Except that a person operating a CMV solely in intrastate commerce not transporting hazard materials that require placarding need not comply with 49 C.F.R. s. 395.3(a) and (b), relating to maximum driving times for property carrying vehicles. Section 316.302(2)(a), F.S. Such operators also need not comply with the duty status record-keeping ("log book") requirements of 49 C.F.R. s. 395.8. Section 316.302(2)(d), F.S.

[5] *Supra* note 2. While s. 316.302(1)(a), F.S., does not expressly apply 49 C.F.R. Part 383, relating to CDLs, to interstate CMV drivers, federal CDL requirements are enforced in state law through Chapter 322, F.S.

[6] Defined for purposes of Chapter 322, F.S, as any self-propelled vehicle, including a motor vehicle combination, not operated upon rails or guideway, excluding vehicles moved solely by human power, motorized wheelchairs, and motorized bicycles as defined in s. 316.003. Section 322.01(27), F.S.

[7] Section 322.03, F.S.

[8] Defined for purposes of Ch. 322, F.S., as a motor vehicle that is operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and that is operated on the roads of this state only incidentally for transportation between the owner's or operator's headquarters and the farm, grove, or orchard or between one farm, grove, or orchard and another OR designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry. Section 322.01(20), F.S.

[9] The term is not defined in Ch. 322, F.S., but is defined in s. 316.003(16), F.S., as any vehicle designed and adapted exclusively for agricultural, horticultural, or livestock-raising operations or for lifting or carrying an implement of husbandry *and in either case not subject to registration if used upon the highways.*

Every person driving a CMV in this state is required to hold a valid commercial driver license (CDL),[11] with certain exceptions. Farmers transporting agricultural products, farm supplies, or farm machinery to or from their farms and within 150 miles of their farms are exempt from the CDL requirement if the transporting vehicle is not used in the operations of a common or contract motor carrier.[12]

Hours of Service and Agricultural-Related Exemptions

In addition, with specified exceptions, *intrastate* CMV operators not transporting hazardous materials that require placarding[13] may not drive:

- More than 12 hours following 10 consecutive hours off duty, or for any period after the end of the 16th hour after coming on duty following 10 consecutive hours off duty;[14] or
- After having been on duty more than 70 hours in any period of seven consecutive days, or more than 80 hours in any period of eight consecutive days if the motor carrier operates every day of the week, with 34 consecutive hours off duty constituting the end of any such period of seven or eight consecutive days.[15]

The latter weekly limit does not apply to a person operating solely within the state while transporting during harvest periods any unprocessed agricultural products or unprocessed food or fiber that is subject to seasonal harvesting, from place of harvest to the first place of processing or storage or from place of harvest directly to market or while transporting livestock, livestock feed, or farm supplies directly related to growing or harvesting agricultural products.[16]

Further, a person who operates a CMV solely within the state is generally exempt from compliance with parts 382, 385, and 390 through 397 of Title 49 while transporting agricultural products from farm or harvest place to the first place of processing or storage, or from farm or harvest place directly to market.[17] However, such person must comply with parts 382, 392,[18] and 393,[19] and with ss. 396.3(a)(1)[20] and 396.9.[21]

Vehicle Registration and Agricultural-Related Exemptions

Chapter 320, F.S., generally requires every owner or person in charge of a motor vehicle to register the vehicle, pay license taxes, and display a license plate. However, exempt from these requirements are:

- Motor vehicles operated principally on a farm, grove, or orchard in agricultural or horticultural pursuits and which are operated on the roads of this state only incidentally in going from the owner's or operator's headquarters to such farm, grove, or orchard and returning therefrom or in going from one farm, grove, or orchard to another.
- Vehicles without motive power which are used principally for the purpose of transporting plows, harrows, fertilizer distributors, spray machines, and other farm or grove equipment and which uses the roads of this state only incidentally.[22]

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[10] Section 322.04(1)(b), F.S.

[11] Section 322.53, F.S.

[12] *See* also s. 322.53(3), F.S., which requires all drivers of for-hire CMVs to hold a valid CDL.

[13] The Code of Federal Regulations lists and classifies those materials which the U.S.D.O.T. has designated as hazardous materials for purposes of transportation. Any person who offers a hazardous material for transportation, and each carrier by air, highway, rail, or water who transports a hazardous material, is required to comply with requirements for shipping papers, package marking, labeling, and *transport vehicle placarding* applicable to the shipment and transportation of those hazardous materials. *See* 49 C.F.R. part 172.

[14] Section 316.302(2)(b), F.S.

[15] Section 316.302(2)(c), F.S.

[16] *Id.*

[17] Section 316.302(2)(e), F.S.

[18] Relating to matters such as driving CMVs at railroad crossings, emergency signals for stopped CMVs, fueling precautions, and prohibited practices.

[19] Relating to parts and accessories necessary for safe operation.

[20] Relating to systematic inspection, repair, and maintenance requirements for motor carriers and intermodal equipment providers.

[21] Containing additional requirements relating to inspection of motor vehicles and intermodal equipment in operation.

[22] Section 320.51, F.S. This description of the exempt vehicles is virtually identical to the definition of "farm tractor" for purposes of driver licensing in Chapter 322, F.S.

Maximum Width, Height, and Length Limitations/Implements of Husbandry and Farm Equipment, Agricultural Trailers, Forestry Equipment

Generally, the total outside width of any vehicle or the load thereon may not exceed 102 inches, exclusive of safety devices determine to be necessary for safe and efficient operation. A vehicle may generally not exceed a height of 13 feet, 6 inches, inclusive of the load carried. General vehicle length limitations vary depending on the type of vehicle; i.e., straight trucks, semitrailers, and tandem trailer trucks.[23]

However, a person engaged in the production of such products, or a custom hauler, is authorized to transport peanuts, grains, soybeans, citrus, cotton, hay, straw, or other perishable farm products from their point of production to the first point of change of custody or of long-term storage, and for the purpose of returning to such point of production, or for the purpose of moving tractors, movers, and implements from one point of agricultural production to another, by means of the following vehicles, if such vehicles otherwise comply with the requirements of s. 316.515, F.S.:

- Straight trucks, agricultural tractors, citrus harvesting equipment, citrus fruit loaders, and cotton module movers, not exceeding 50 feet in length.
- Any combination of up to and including three implements of husbandry, including the towing power unit.
- Any single agricultural trailer with a load thereon.
- Any agricultural implements attached to a towing power unit.
- A self-propelled agricultural implement.
- An agricultural tractor.[24]

In addition, a person engaged in the harvesting of forestry products is authorized to transport from one point of harvest to another point of harvest equipment not exceeding 136 inches in width if the equipment is:

- Not capable of exceeding 20 miles per hour.
- Not transported more than 10 miles in distance.
- Used exclusively for harvesting forestry products, not to exceed 10 miles.
- Operated during daylight hours only, and with specified safety requirements.[25]

Further, the width and height limitations of s. 316.515, F.S., do not apply to farming or agricultural equipment, whether self-propelled, pulled, or hauled, when temporarily operated during daylight hours on a non-limited access facility, which limitations may be exceeded by such equipment without a special permit if the equipment is operated within a 50-mile radius of the real property owned, rented, managed, harvested, or leased by the equipment owner.[26]

MAP-21 Exemptions

Federal MAP-21 Act defined a new category of vehicles, "covered farm vehicles," (CFVs) and authorized driver operation of such vehicles under certain circumstances. If the required provisions of the definition are met, and if the driver operates a CFV as specified, the CFV and the driver are exempt from federal regulations relating to controlled substances and alcohol use and testing; commercial driver licenses; physical qualifications and examinations; hours of service of drivers; and vehicle inspection, repair, and maintenance.[27] A "covered farm vehicle" is:

- A straight truck[28] or articulated vehicle[29] that is:

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[23] *See* s. 316.515, F.S.

[24] Section 316.515(5)(a), F.S.

[25] Section 316.515(5)(b), F.S.

[26] Section 316.515(5)(c), F.S.

[27] 49 C.F.R. Parts 382; 383; 391, subpart E; 395; and 396, respectively.

[28] Straight trucks include commonly recognized vehicles such as pick-up trucks, flat-bed trucks, box trucks, and the like. The truck's power unit and cargo unit are located on the same vehicle frame. *See* also s. 316.003(70), F.S.

- Registered in a state with a license plate or other designation issued by the *state of registration* that allows law enforcement officials to identify it as a farm vehicle.
- Operated by the owner or operator of a farm or ranch, or an employee or family member of an owner or operator of a farm or ranch.
- Used to transport agricultural commodities, livestock, machinery or supplies to or from a farm or ranch.
- Not used in for-hire motor carrier operations, except that a tenant's use of a vehicle pursuant to a crop share farm lease agreement to transport the landlord's share of crops under that agreement is not treated as "for-hire motor carrier operations."

Drivers of vehicles meeting the above definition and having a gross vehicle weight or gross vehicle weight rating, *whichever is greater*, of:

- 26,001 pounds or less may operate anywhere in the United States.
- More than 26,001 pounds may operate anywhere in the state of registration or across state lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated.

Florida law does not currently authorize the new federal exemptions.

Proposed Changes

The bill creates s. 316.003(94), F.S., defining "covered farm vehicle" in a manner that is virtually identical to the federal definition and has the same result.

The bill creates s. 316.302(3), F.S., providing that with respect to CFVs, notwithstanding any contrary provision in subsections (1) and (2).[30] This section of the bill exempts from the previously identified federal regulations a driver of a CFV and the CFV, as defined in s. 316.003, F.S., registered with a license plate or other designation issued by the state of registration when operating:

- Anywhere in this state if the CFV has a gross vehicle weight or gross vehicle weight rating, whichever is greater, of 26,001 pounds or less.
- Anywhere in the state of registration, or across state lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated, if the CFV has a gross vehicle weight or gross vehicle weight rating, whichever is greater, of more than 26,001 pounds.

The bill, consistent with Federal Motor Carrier Safety Administration's final rule on the matter,[31] does not allow the federal exemptions if the vehicle is transporting hazardous materials in amounts that require placarding.[32]

In some cases, vehicles used for agricultural-related purposes may qualify for more than one exemption. For example, a vehicle meeting the CFV requirements and qualifying for the MAP-21 federal exemptions might also qualify for the exemption for a person operating a CMV solely within the state from compliance with parts 382, 385, and 390 through 397 of Title 49, while transporting agricultural products from farm or harvest place to the first place of processing or storage, or from farm or harvest place directly to market.[33] On the other hand, a person qualifying for the latter exemption would not be able to qualify for the federal exemptions if, for example, that person is not an owner or operator of a farm or ranch, or an employee or family member of such owner or operator.

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[29] Articulated vehicles, in contrast to straight trucks, include those having a power unit coupled to the cargo-carrying unit. *See* also s. 316.003(60) and (71), F.S.

[30] The MAP-21 exemptions do not include exemption from, for example, parts 392 and 393 of Title 49 of the C.F.R.; thus, CFVs must remain subject to those parts to retain compliance with federal law. As both subsections (1) and (2) of s. 316.302, F.S., require compliance with those parts, only *contrary* provisions in subsections (1) and (2) should be withstood.

[31] *See* the Federal Register, Vol. 78, No. 50, Thursday, March 14, 2013, at p. 16190.

[32] *Supra* note 14.

[33] *Supra* note 18.

The bill amends s. 322.53(2), F.S., exempting the driver of a CFV, as defined in s. 316.003, F.S., from the requirement to hold a valid CDL.

The bill also corrects cross-references in ss. 316.302(9)(a), and 316.3025(3)(e), F.S.

The bill has an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1 Amends s. 316.003, F.S., providing definitions.

Section 2 Amends s. 316.302, F.S., relating to commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement.

Section 3 Amends s. 322.53, F.S., relating to license required; exceptions.

Section 4 Amends s. 316.3025, F.S., relating to penalties.

Section 5 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

   The Department of Highway Safety and Motor Vehicles (DHSMV) estimates approximately 176 programming hours or $10,040 in FTE and contracted resources will be required to implement the bill, which can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have a fiscal impact on the private sector.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2016, the Highway & Waterway Safety Subcommittee adopted a strike all amendment. The strike all amendment:

- Deleted section 2 of the original bill to retain compliance with federal law.
- Created a new s. 316.302(3), F.S., to address CFVs, notwithstanding contrary provisions of ss. 316.302 (1) and (2), F.S., retaining compliance with federal law.
- Revised language to conform to federal language relating to CFV operation.
- Corrected cross-references.
- Changed the effective date to July 1, 2016.

The analysis is written to the committee substitute as reported favorably by the Highway & Waterway Safety Subcommittee.

A bill to be entitled

An act relating to farm vehicles; amending s. 316.003, F.S.; defining the term "covered farm vehicle" for purposes of the Florida Uniform Traffic Control Law; amending s. 316.302, F.S.; providing exemptions for covered farm vehicles and the operators of such vehicles from specified federal regulations relating to controlled substances and alcohol use and testing, commercial driver licenses, physical qualifications and examinations, hours of service of drivers, and inspection, repair, and maintenance when operating under certain conditions, notwithstanding specified statutory provisions; providing applicability; conforming a cross-reference; amending s. 322.53, F.S.; exempting the driver of a covered farm vehicle from commercial driver license requirements; amending ss. 316.3025 and 316.3026, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsection (94) is added to section 316.003, Florida Statutes, to read:

316.003 Definitions.—The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, except where the context

otherwise requires:

(94) COVERED FARM VEHICLE.—A straight truck, or an articulated vehicle, which is all of the following:

(a) Registered in a state with a license plate, or any other designation issued by that state, which allows law enforcement officers to identify it as a farm vehicle.

(b) Operated by the owner or operator of a farm or ranch or by an employee or a family member of an owner or operator of a farm or ranch in accordance with s. 316.302(3).

(c) Used to transport agricultural commodities, livestock, machinery, or supplies to or from a farm or ranch.

(d) Not used in for-hire motor carrier operations; however, for-hire motor carrier operations do not include the operation of a vehicle meeting the requirements of paragraphs (a)-(c) by a tenant pursuant to a crop-share farm lease agreement to transport the landlord's portion of the crops under that agreement.

Section 2. Present subsections (3) through (12) of section 316.302, Florida Statutes, are renumbered as subsections (4) through (13), respectively, a new subsection (3) is added to that section, and paragraph (a) of present subsection (8) is amended, to read:

316.302 Commercial motor vehicles; safety regulations; transporters and shippers of hazardous materials; enforcement.—

(3) Notwithstanding any contrary provision in subsections (1) and (2), a covered farm vehicle, as defined in s. 316.003,

and the operator of such vehicle are exempt from the requirements relating to controlled substances and alcohol use and testing in 49 C.F.R. part 382; commercial driver licenses in 49 C.F.R. part 383; physical qualifications and examinations in 49 C.F.R. part 391, subpart E; hours of service of drivers in 49 C.F.R. part 395; and inspection, repair, and maintenance in 49 C.F.R. part 396, when operating:

(a) Anywhere in this state if the covered farm vehicle has a gross vehicle weight or gross vehicle weight rating, whichever is greater, of 26,001 pounds or less.

(b) Anywhere in the state of registration, or across state lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated, if the covered farm vehicle has a gross vehicle weight or gross vehicle weight rating, whichever is greater, of more than 26,001 pounds.

The provisions in this subsection do not apply to a vehicle transporting hazardous materials in amounts that require placarding pursuant to 49 C.F.R. part 172.

(9)~~(8)~~ For the purpose of enforcing this section, any law enforcement officer of the Department of Highway Safety and Motor Vehicles or duly appointed agent who holds a current safety inspector certification from the Commercial Vehicle Safety Alliance may require the driver of any commercial vehicle operated on the highways of this state to stop and submit to an inspection of the vehicle or the driver's records. If the

vehicle or driver is found to be operating in an unsafe condition, or if any required part or equipment is not present or is not in proper repair or adjustment, and the continued operation would present an unduly hazardous operating condition, the officer may require the vehicle or the driver to be removed from service pursuant to the North American Standard Out-of-Service Criteria, until corrected. However, if continuous operation would not present an unduly hazardous operating condition, the officer may give written notice requiring correction of the condition within 14 days.

(a) Any member of the Florida Highway Patrol or any law enforcement officer employed by a sheriff's office or municipal police department authorized to enforce the traffic laws of this state pursuant to s. 316.640 who has reason to believe that a vehicle or driver is operating in an unsafe condition may, as provided in subsection (11) ~~(10)~~, enforce the provisions of this section.

Section 3. Paragraph (c) of subsection (2) of section 322.53, Florida Statutes, is amended to read:

322.53 License required; exemptions.—

(2) The following persons are exempt from the requirement to obtain a commercial driver license:

(c)1. Farmers transporting agricultural products, farm supplies, or farm machinery to or from their farms and within 150 miles of their farms, if the vehicle operated under this exemption is not used in the operations of a common or contract

motor carrier.

2. Drivers of covered farm vehicles, as defined in s. 316.003, if the vehicles are operated in accordance with s. 316.302(3).

Section 4. Paragraph (e) of subsection (3) of section 316.3025, Florida Statutes, is amended to read:

316.3025 Penalties.—

(3)

(e) A civil penalty not to exceed $5,000 in the aggregate may be assessed for violations found in the conduct of compliance reviews pursuant to s. 316.302(6) ~~s. 316.302(5)~~. A civil penalty not to exceed $25,000 in the aggregate may be assessed for violations found in a followup compliance review conducted within a 24-month period. A civil penalty not to exceed $25,000 in the aggregate may be assessed and the motor carrier may be enjoined pursuant to s. 316.3026 if violations are found after a second followup compliance review within 12 months after the first followup compliance review. Motor carriers found to be operating without insurance required by s. 627.7415 may be enjoined as provided in s. 316.3026.

Section 5. Subsection (1) of section 316.3026, Florida Statutes, is amended to read:

316.3026 Unlawful operation of motor carriers.—

(1) The Office of Commercial Vehicle Enforcement may issue out-of-service orders to motor carriers, as defined in s. 320.01, who, after proper notice, have failed to pay any penalty

or fine assessed by the department, or its agent, against any owner or motor carrier for violations of state law, refused to submit to a compliance review and provide records pursuant to s. 316.302(6) ~~s. 316.302(5)~~ or s. 316.70, or violated safety regulations pursuant to s. 316.302 or insurance requirements in s. 627.7415. Such out-of-service orders have the effect of prohibiting the operations of any motor vehicles owned, leased, or otherwise operated by the motor carrier upon the roadways of this state, until the violations have been corrected or penalties have been paid. Out-of-service orders must be approved by the director of the Division of the Florida Highway Patrol or his or her designee. An administrative hearing pursuant to s. 120.569 shall be afforded to motor carriers subject to such orders.

Section 6. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 487 Persons Who Are Deaf
SPONSOR(S): Highway & Waterway Safety Subcommittee, Torres, Jr. and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 740

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Highway & Waterway Safety Subcommittee	13 Y, 0 N, As CS	Whittaker	Smith
2) Transportation & Economic Development Appropriations Subcommittee	12 Y, 0 N	Cobb	Davis
3) Economic Affairs Committee		Whittaker	Pitts

SUMMARY ANALYSIS

The Department of Highway Safety and Motor Vehicles (DHSMV) will be required to issue to certain applicants an identification card or driver license exhibiting the international symbol for the Deaf and Hard of Hearing upon the applicant's payment of an additional fee and providing sufficient proof that they are deaf or hard of hearing as determined by DHSMV.

An individual who wishes to add the designation when issued an original or renewal identification card or driver license must pay an additional $1 fee. An individual who surrenders and replaces his or her identification card or driver license before its expiration date for the purpose of adding the international symbol for the Deaf and Hard of Hearing must pay an additional $2 fee to be deposited into the Highway Safety Operating Trust Fund (HSOTF). If the applicant is not conducting any other transaction affecting the identification card or driver license, the standard $25 replacement fee is waived.

The changes made by the bill shall apply upon implementation of new designs for the driver license and identification card by DHSMV.

The bill may have a positive but insignificant fiscal impact to the HSOTF. Additionally, the bill may have a negative but insignificant fiscal impact to DHSMV's expenditures, and can be absorbed within existing resources. See fiscal comments.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Deaf or Hard of Hearing

In Florida, drivers applying for a license who are deaf or cannot hear conversation spoken in a normal tone of voice are restricted to driving with an outside rearview mirror which should be mounted on the left side of the vehicle, or with a hearing aid.[1]

There is a restriction currently on a driver license to indicate the requirement to wear a hearing aid. The restriction appears as "K – Hearing Aid" on the back of the driver license. There were 2,001 driver licenses with this restriction as of December 31, 2015.[2]

One in eight people in the United States (13 percent, or 30 million) ages 12 years and older has hearing loss in both ears, based on standard hearing examinations.[3]

Proposed Changes

The bill amends ss. 322.051 and 322.14, F.S., requiring DHSMV to issue to certain applicants an identification card or driver license exhibiting the international symbol for the Deaf and Hard of Hearing upon the applicant's payment of an additional fee and providing sufficient proof that they are deaf or hard of hearing as determined by DHSMV.

The international symbol for the Deaf and Hard of Hearing is depicted below:

An individual who wishes to add the designation when issued an original or renewal identification card or driver license must pay an additional $1 fee. An individual who surrenders and replaces his or her identification card or driver license before its expiration date for the purpose of adding the international symbol for the Deaf and Hard of Hearing must pay an additional $2 fee to be deposited into the HSOTF. If the applicant is not conducting any other transaction affecting the identification card or driver license, the standard $25 replacement fee is waived.

The changes made by the bill shall apply upon implementation of new designs for the driver license and identification card by DHSMV.

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[1] Florida Administrative Rule 15A-1.003(2)

[2] Email from the Department of Highway Safety and Motor Vehicles (January 27, 2016) on file with the Economic Affairs Committee.

[3] National Institute on Deafness and Other Communication Disorders (NIDCD), *Statistics about Hearing, Ear Infections, and Deafness,* http://www.nidcd.nih.gov/health/statistics/Pages/quick.aspx (last visited January 26, 2016)

B. SECTION DIRECTORY:

Section 1 Amends s. 322.051, F.S., authorizing the international symbol for the Deaf and Hard of Hearing to be exhibited on the identification card of a person who is deaf.

Section 2 Amends s. 322.14, authorizing the international symbol for the Deaf and Hard of Hearing to be exhibited on the driver license of a person who is deaf or hard of hearing.

Section 3 Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The additional $1 fee when adding the designation for a renewal or original identification card or driver license may have a positive but insignificant fiscal impact to the HSOTF, although it is unknown how many individuals may apply for the designation upon original issuance or renewal of an identification card or driver license.

   For identification card and driver license replacement transactions, the bill allows DHSMV to collect a $2 fee when adding the designation. When the replacement transaction is performed for the sole purpose of adding the designation, the standard $25 replacement fee will be waived, and the $2 fee will offset the cost of printing an identification card or driver license. Though the bill allows for the waiver of the $25 fee in this particular circumstance, the individuals who replace their identification cards and licenses for the sole purpose of adding the designation would otherwise have no reason to replace their cards, therefore the waivers should not directly result in any lost revenue.

2. Expenditures:

   The provisions of the bill do not take effect until the implementation of the new driver license and identification card design, therefore DHSMV will be able to incorporate this requirement into the new design, and the impact of doing so should be minimal and can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals can add the international symbol for the Deaf and Hard of Hearing to their identification card or driver license upon payment of an additional $1 fee when being issued a renewal or original identification card or driver license.

An individual who surrenders and replaces his or her identification card or driver license before its expiration date for the purpose of adding the international symbol for the Deaf and Hard of Hearing is required to pay a $2 fee. If the applicant is not conducting any other transaction affecting the identification card or driver license, the standard $25 replacement fee will be waived.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2016, the Highway & Waterway Safety Subcommittee adopted a proposed committee substitute and reported the bill favorably as a committee substitute. The bill as originally filed:

- Required DHSMV to create a form that an individual must complete for an identification card and a placard that indicates the individual is deaf and required DHSMV to design and develop such cards and placards along with developing and adopting rules.
- Required a law enforcement officer to seek the services of an interpreter before arresting or interrogating a deaf person for an alleged criminal violation, providing for an exception in the case of an emergency, and prohibiting a family member from being considered a qualified interpreter under certain circumstances.
- Provided for the establishment of a database of individuals who are deaf, requiring the Department of Law Enforcement to include information from the forms in the database, and authorizing a law enforcement officer to use the database before detaining or arresting an individual who is suspected of violating a criminal law in this state.
- Required the Criminal Justice Standards and Training Commission to provide training for law enforcement officers to interact with the deaf.
- Required a law enforcement agency to have at least one on-call officer who is trained in or knows American Sign Language or to contract with qualified interpreters, and defined the term "law enforcement agency."

This analysis is written to the committee substitute as adopted by the Highway & Waterway Safety Subcommittee.

A bill to be entitled

An act relating to persons who are deaf; amending ss. 322.051 and 322.14, F.S.; authorizing the international symbol for the deaf and hard of hearing to be exhibited on the driver license or identification card of a person who is deaf or hard of hearing; providing applicability; providing an effective date.

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

Section 1. Paragraph (c) is added to subsection (8) of section 322.051, Florida Statutes, to read:

322.051 Identification cards.—

(8)

(c) The international symbol for the deaf and hard of hearing shall be exhibited on the identification card of a person who is deaf or hard of hearing upon the payment of an additional $1 fee for the identification card and the presentation of sufficient proof that the person is deaf or hard of hearing as determined by the department. Until a person's identification card is next renewed, the person may have the symbol added to his or her identification card upon surrender of his or her current identification card, payment of a $2 fee to be deposited into the Highway Safety Operating Trust Fund, and presentation of sufficient proof that the person is deaf or hard

of hearing as determined by the department. If the applicant is not conducting any other transaction affecting the identification card, a replacement identification card may be issued with the symbol without payment of the fee required in s. 322.21(1)(f)3. For purposes of this paragraph, the international symbol for the deaf and hard of hearing is substantially as follows:

Section 2. Paragraph (c) of subsection (1) of section 322.14, Florida Statutes, is redesignated as paragraph (d), and a new paragraph (c) is added to that subsection to read:

322.14 Licenses issued to drivers.—

(1)

(c) The international symbol for the deaf and hard of hearing provided in s. 322.051(8)(c) shall be exhibited on the driver license of a person who is deaf or hard of hearing upon the payment of an additional $1 fee for the license and the presentation of sufficient proof that the person is deaf or hard of hearing as determined by the department. Until a person's license is next renewed, the person may have the symbol added to his or her license upon the surrender of his or her current

license, payment of a $2 fee to be deposited into the Highway Safety Operating Trust Fund, and presentation of sufficient proof that the person is deaf or hard of hearing as determined by the department. If the applicant is not conducting any other transaction affecting the driver license, a replacement license may be issued with the symbol without payment of the fee required in s. 322.21(1)(e).

Section 3. The amendments made by this act to ss. 322.051 and 322.14, Florida Statutes, shall apply upon implementation of new designs for the driver license and identification card by the Department of Highway Safety and Motor Vehicles.

Section 4. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 627 Community Contribution Tax Credits
SPONSOR(S): Economic Development and Tourism Subcommittee; Moraitis, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** SB 868

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	12 Y, 0 N, As CS	Lukis	Duncan
2) Finance & Tax Committee	13 Y, 0 N	Pewitt	Langston
3) Economic Affairs Committee		Lukis AL	Pitts TR

SUMMARY ANALYSIS

The Florida Legislature created the Community Contribution Tax Credit Program (CCTCP) to encourage private sector participation in community revitalization and housing projects. The CCTCP offers a corporate income tax credit, an insurance premium tax credit, or a refund against sales tax to businesses or persons (donor) that contribute to eligible projects undertaken by approved CCTCP sponsors. The credit or refund is calculated as 50 percent of the donor's annual contribution, but a donor may not receive more than $200,000 in credits or refunds in any one year.

Eligible CCTCP sponsors under the program include a wide variety of community development organizations, housing organizations, and units of state and local government. An eligible project includes activity undertaken by an eligible sponsor that is designed to:

- construct, improve or substantially rehabilitate housing that is affordable to low or very-low income households;
- provide housing opportunities for persons with special needs;
- provide commercial, industrial, or public resources and facilities; or
- improve entrepreneurial and job-development opportunities for low-income persons.

Contributions to eligible sponsor projects may only be in the following forms:

- cash or other liquid assets;
- real property;
- goods or inventory; or
- other physical resources as identified by the Department of Economic Opportunity (DEO or department).

The bill specifies that the donation of "real property" in the CCTCP includes the transfer of "100 percent ownership of a real property holding company." The bill defines "real property holding company" to mean a Florida entity, such as a Florida limited liability company, that must meet four requirements:

1) is wholly owned by the donor;
2) is the sole owner of the real property;
3) is a disregarded entity for federal income tax purposes; and
4) at the time of contribution to an eligible sponsor, has no material assets other than the real property and any other property that qualifies as a community contribution.

See FISCAL COMMENTS.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 1980, the Legislature established the Community Contribution Tax Credit Program (CCTCP) to encourage private sector participation in community revitalization and housing projects. Broadly, the CCTCP offers tax credits to businesses or persons (donor) that make certain contributions to eligible projects undertaken by approved CCTCP sponsors.[1]

Eligible sponsors under the CCTCP include a wide variety of organizations and entities, including community development agencies, housing organizations, historic preservation organizations, units of state and local government, regional workforce boards, and any other agency that the Department of Economic Opportunity (department or DEO) designates by rule.[2] There are currently 122 approved sponsors in Florida.[3]

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

- to construct, improve, or substantially rehabilitate housing that is affordable to low-income or very-low-income households as defined in s. 420.9071(19) and (28), F.S.;
- to provide housing opportunities for persons with special needs as defined in s. 420.0004, F.S.;
- to provide commercial, industrial, or public resources and facilities; or
- to improve entrepreneurial and job-development opportunities for low-income persons.[4]

Additionally, eligible projects must be located in an area previously designated as an enterprise zone pursuant to Ch. 290, F.S., as of May 1, 2015, or a Front Porch Florida Community.[5] However, the law permits the following three exceptions:

- any project designed to construct or rehabilitate housing for low-income households or very-low-income households as those terms are defined in s. 420.9071, F.S;[6]
- any project designed to construct or rehabilitate housing opportunities for persons with special needs as defined in s. 420.0004, F.S.;[7] and
- any project designed to provide increased access to high-speed broadband capabilities that includes coverage of an area designated as a rural enterprise zone as of May 1, 2015.[8]

Any eligible sponsor wishing to participate in the program must submit a proposal to DEO, which sets forth the sponsor, the project, the area in which the project is located, and any supporting information as may be prescribed by rule.[9] The proposal must also contain a resolution from the local governmental unit in which it is located certifying that the project is consistent with local plans and regulations.[10]

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[1] *See* ss. 212.08(5)(p); 220.183; and 624.5105, F.S. The contributing taxpayer may not have a financial interest in the eligible sponsor.
[2] *See* ss. 212.08(5)(p)2.c.; 220.183(2)(c); and 624.5105(2)(c), F.S.
[3] Department of Economic Opportunity, 2016 Agency Legislative Bill Analysis for HB 627, page 3, December 2, 2015.
[4] Sections 212.08(5)(p)2.b.; 220.183(2)(b); 624.5105(2)(b); and 220.03(1)(t), F.S.
[5] Sections 212.08(p)2.d.; 220.183(2)(d); and 624.5102(2)(d), F.S.
[6] *Id.*
[7] *Id.*
[8] *Id.* The infrastructure of such projects may be located in any area of a rural county (inside or outside of the zone).
[9] Sections 212.08(5)(p)3.a.; 220.183(3)(a); and 624.5105(3)(a), F.S.
[10] *Id.*

Contributions to eligible sponsor projects may only be in the form of cash or other liquid assets, real property, goods or inventory, or other physical resources as identified by DEO.[11] If the donation is of real property, it must be made directly from the donor to the eligible sponsor via a deed.[12]

Donors wishing to participate in the program must submit an application for a tax credit to DEO.[13] The application sets forth the sponsor, project, and the type, value, and purpose of the contribution.[14] The sponsor must verify the terms of the application and indicate its receipt of the contribution, which verification must be in writing and accompany the application for tax credit.[15]

Once DEO approves a taxpayer's application for a community contribution tax credit under the program, the donor must claim the credit from the Department of Revenue.[16] The credit is calculated as 50 percent of the donor's annual contribution, but a taxpayer may not receive more than $200,000 in credits in any one year.[17] The donor may use the credit against corporate income tax, insurance premium tax, or as a refund against sales tax.[18] Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years.[19] Unused credits against sales taxes may be carried forward for three years.[20]

The department may approve credits totaling $18.4 million in Fiscal Year (FY) 2015-16; $21.4 million in FY 2016-17; and $21.4 million in FY 2017-18 for projects that provide housing opportunities for persons with special needs or homeownership opportunities for low or very-low income households. The department may approve $3.5 million in those same FYs for all other types of eligible projects.[21]

As of December 2015, in FY 2015-16, DEO has approved approximately $11.2 million of the $18.4 million available for tax credits for homeownership projects and housing projects for persons with special needs.[22] Approximately $3.6 million worth of tax credits were requested for all other projects, resulting in a pro-rata approval rate of 95% of each tax credit application.[23]

The CCTCP expires June 30, 2018.[24]

Effect of Proposed Changes

The bill specifies that the donation of "real property" in the CCTCP includes the transfer of "100 percent ownership of a real property holding company." The bill defines "real property holding company" to mean a Florida entity, such as a Florida limited liability company, that must meet four requirements:

1) is wholly owned by the donor;
2) is the sole owner of the real property;
3) is a disregarded entity for federal income tax purposes; and

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[11] Sections 212.08(5)(p)2.a.; 220.183(2)(a); 624.5105(5)(a); and 220.03(1)(d), F.S.
[12] *See* s. 192.001(12), F.S.
[13] Sections 212.08(5)(p)3.b.; 220.183(3)(b); and 624.5105(3)(b), F.S. Taxpayers must submit separate applications for each individual contribution that it makes to each individual project. [13] Sections 212.08(5)(p)3.c.; 220.183(3)(c); and 624.5105(3)(c), F.S.
[14] *Id.*
[15] *Id.*
[16] Sections 212.08(5)(p)4.; 220.183(4); and 624.5105(4), F.S.
[17] Sections 212.08(5)(p)1.; 220.183 (1)(a) and (b); and 624.5105(1), F.S.
[18] *See* ss. 212.08(5)(p); 220.183; and 624.5105, F.S. A donor may only apply the credits toward one tax obligation.
[19] Sections 220.183(1)(e); and 624.5105(e), F.S.
[20] Section 212.08(5)(p)1.b. and f., F.S.
[21] Sections 212.08(5)(p)1.e.; 220.183(1)(c); and 624.5105(1)(c), F.S.
[22] Department of Economic Opportunity, 2016 Agency Bill Analysis for HB 627, December 2, 2015. Analysis on file with House staff.
[23] *Id.*
[24] Sections 212.08(5)(p)5.; 220.183(5); and 624.5105(6), F.S.

4) at the time of contribution to an eligible sponsor, has no material assets other than the real property and any other property that qualifies as a community contribution.

B. SECTION DIRECTORY:

Section 1: Amends s. 220.03(1)(d), F.S., relating to corporate income taxes, allowing the transfer of "ownership interests in a real property holding company" as an eligible donation under the CCTCP and defining "real property holding company."

Section 2: Amends s. 212.08(5)(p), F.S., relating to sales and use taxes, allowing the transfer of "ownership interests in a real property holding company" as an eligible donation under the CCTCP and defining "real property holding company."

Section 3: Amends s. 624.5105(5)(a), F.S., relating to insurance premium taxes, allowing the transfer of "ownership interests in a real property holding company" as an eligible donation under the CCTCP and defining "real property holding company."

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:

The Revenue Estimating Conference (REC) estimated that the bill would have no fiscal impact on state funds.[25] The REC analysis on the bill notes that the proposed language "does not affect eligibility or restrict access to the credits, which were already assumed to reach the allotted cap in each of the two respective fiscal years for which they are authorized under current law. As such, the result of the language would be to possibly shift credits between otherwise eligible entities but would not have an impact in the aggregate."[26]

[25] Revenue Estimating Conference Analysis, HB 627/SB 868, 12/2/2015. Analysis on file with House staff.
[26] *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 13, 2016, the Economic Development and Tourism Subcommittee adopted one amendment to the bill. The amendment specifies that a donation of a "real property holding company" as prescribed in the bill must be a transfer of 100 percent of the ownership of the holding company.

This analysis has been updated to reflect the amendment.

A bill to be entitled

An act relating to community contribution tax credits; amending s. 220.03, F.S.; providing definitions related to community contribution tax credits that may apply to business firms against certain income tax liabilities; amending s. 212.08, F.S.; providing definitions related to community contribution tax credits that may apply against sales and use tax liabilities; amending s. 624.5105, F.S.; providing definitions related to community contribution tax credits that may apply against certain premium tax liabilities; providing an effective date.

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

Section 1. Paragraph (d) of subsection (1) of section 220.03, F.S., is amended to read:

220.03 Definitions.—

(1) SPECIFIC TERMS.—When used in this code, and when not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the following terms shall have the following meanings:

(d) "Community Contribution" means the grant by a business firm of any of the following items:

1. Cash or other liquid assets.

2. Real property, which for purposes of this subparagraph

includes 100 percent ownership of a real property holding company. The term "real property holding company" means a Florida entity, such as a Florida limited liability company, that:

a. Is wholly owned by the business firm.

b. Is the sole owner of real property, as defined in s. 192.001(12), located in the state.

c. Is disregarded as an entity for federal income tax purposes pursuant to 26 C.F.R. s. 301.7701-3(b)(1)(ii).

d. At the time of contribution to an eligible sponsor, has no material assets other than the real property and any other property that qualifies as a community contribution.

3. Goods or inventory.

4. Other physical resources as identified by the department.

This paragraph expires June 30, 2018.

Section 2. Paragraph (p) of subsection (5) of section 212.08, Florida Statutes, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(p) Community contribution tax credit for donations.—

1. Authorization.—Persons who are registered with the department under s. 212.18 to collect or remit sales or use tax and who make donations to eligible sponsors are eligible for tax credits against their state sales and use tax liabilities as provided in this paragraph:

a. The credit shall be computed as 50 percent of the person's approved annual community contribution.

b. The credit shall be granted as a refund against state sales and use taxes reported on returns and remitted in the 12 months preceding the date of application to the department for the credit as required in sub-subparagraph 3.c. If the annual credit is not fully used through such refund because of insufficient tax payments during the applicable 12-month period, the unused amount may be included in an application for a refund made pursuant to sub-subparagraph 3.c. in subsequent years against the total tax payments made for such year. Carryover credits may be applied for a 3-year period without regard to any time limitation that would otherwise apply under s. 215.26.

c. A person may not receive more than $200,000 in annual tax credits for all approved community contributions made in any one year.

d. All proposals for the granting of the tax credit require the prior approval of the Department of Economic Opportunity.

e. The total amount of tax credits which may be granted

for all programs approved under this paragraph, s. 220.183, and s. 624.5105 is $18.4 million in the 2015-2016 fiscal year, $21.4 million in the 2016-2017 fiscal year, and $21.4 million in the 2017-2018 fiscal year for projects that provide housing opportunities for persons with special needs or homeownership opportunities for low-income households or very-low-income households and $3.5 million annually for all other projects. As used in this paragraph, the term "person with special needs" has the same meaning as in s. 420.0004 and the terms "low-income person," "low-income household," "very-low-income person," and "very-low-income household" have the same meanings as in s. 420.9071.

f. A person who is eligible to receive the credit provided in this paragraph, s. 220.183, or s. 624.5105 may receive the credit only under one section of the person's choice.

2. Eligibility requirements.—

a. A community contribution by a person must be in the following form:

(I) Cash or other liquid assets;

(II) Real property<u>, including 100 percent ownership of a real property holding company</u>;

(III) Goods or inventory; or

(IV) Other physical resources identified by the Department of Economic Opportunity.

<u>For purposes of this subparagraph, the term "real property</u>

holding company" means a Florida entity, such as a Florida limited liability company, that is wholly owned by the person; is the sole owner of real property, as defined in s. 192.001(12), located in the state; is disregarded as an entity for federal income tax purposes pursuant to 26 C.F.R. s. 301.7701-3(b)(1)(ii); and at the time of contribution to an eligible sponsor, has no material assets other than the real property and any other property that qualifies as a community contribution.

b. All community contributions must be reserved exclusively for use in a project. As used in this sub-subparagraph, the term "project" means activity undertaken by an eligible sponsor which is designed to construct, improve, or substantially rehabilitate housing that is affordable to low-income households or very-low-income households; designed to provide housing opportunities for persons with special needs; designed to provide commercial, industrial, or public resources and facilities; or designed to improve entrepreneurial and job-development opportunities for low-income persons. A project may be the investment necessary to increase access to high-speed broadband capability in a rural community that had an enterprise zone designated pursuant to chapter 290 as of May 1, 2015, including projects that result in improvements to communications assets that are owned by a business. A project may include the provision of museum educational programs and materials that are directly related to a project approved between January 1, 1996,

and December 31, 1999, and located in an area which was in an enterprise zone designated pursuant to s. 290.0065 as of May 1, 2015. This paragraph does not preclude projects that propose to construct or rehabilitate housing for low-income households or very-low-income households on scattered sites or housing opportunities for persons with special needs. With respect to housing, contributions may be used to pay the following eligible special needs, low-income, and very-low-income housing-related activities:

(I) Project development impact and management fees for special needs, low-income, or very-low-income housing projects;

(II) Down payment and closing costs for persons with special needs, low-income persons, and very-low-income persons;

(III) Administrative costs, including housing counseling and marketing fees, not to exceed 10 percent of the community contribution, directly related to special needs, low-income, or very-low-income projects; and

(IV) Removal of liens recorded against residential property by municipal, county, or special district local governments if satisfaction of the lien is a necessary precedent to the transfer of the property to a low-income person or very-low-income person for the purpose of promoting home ownership. Contributions for lien removal must be received from a nonrelated third party.

c. The project must be undertaken by an "eligible sponsor," which includes:

(I) A community action program;

(II) A nonprofit community-based development organization whose mission is the provision of housing for persons with specials needs, low-income households, or very-low-income households or increasing entrepreneurial and job-development opportunities for low-income persons;

(III) A neighborhood housing services corporation;

(IV) A local housing authority created under chapter 421;

(V) A community redevelopment agency created under s. 163.356;

(VI) A historic preservation district agency or organization;

(VII) A regional workforce board;

(VIII) A direct-support organization as provided in s. 1009.983;

(IX) An enterprise zone development agency created under s. 290.0056;

(X) A community-based organization incorporated under chapter 617 which is recognized as educational, charitable, or scientific pursuant to s. 501(c)(3) of the Internal Revenue Code and whose bylaws and articles of incorporation include affordable housing, economic development, or community development as the primary mission of the corporation;

(XI) Units of local government;

(XII) Units of state government; or

(XIII) Any other agency that the Department of Economic

Opportunity designates by rule.

A contributing person may not have a financial interest in the eligible sponsor.

d. The project must be located in an area which was in an enterprise zone designated pursuant to chapter 290 as of May 1, 2015, or a Front Porch Florida Community, unless the project increases access to high-speed broadband capability in a rural community that had an enterprise zone designated pursuant to chapter 290 as of May 1, 2015, but is physically located outside the designated rural zone boundaries. Any project designed to construct or rehabilitate housing for low-income households or very-low-income households or housing opportunities for persons with special needs is exempt from the area requirement of this sub-subparagraph.

e.(I) If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects that provide housing opportunities for persons with special needs or homeownership opportunities for low-income households or very-low-income households are received for less than the annual tax credits available for those projects, the Department of Economic Opportunity shall grant tax credits for those applications and grant remaining tax credits on a first-come, first-served basis for subsequent eligible applications received before the end of the state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for

projects that provide housing opportunities for persons with special needs or homeownership opportunities for low-income households or very-low-income households are received for more than the annual tax credits available for those projects, the Department of Economic Opportunity shall grant the tax credits for those applications as follows:

(A) If tax credit applications submitted for approved projects of an eligible sponsor do not exceed $200,000 in total, the credits shall be granted in full if the tax credit applications are approved.

(B) If tax credit applications submitted for approved projects of an eligible sponsor exceed $200,000 in total, the amount of tax credits granted pursuant to sub-sub-sub-subparagraph (A) shall be subtracted from the amount of available tax credits, and the remaining credits shall be granted to each approved tax credit application on a pro rata basis.

(II) If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide housing opportunities for persons with special needs or homeownership opportunities for low-income households or very-low-income households are received for less than the annual tax credits available for those projects, the Department of Economic Opportunity shall grant tax credits for those applications and shall grant remaining tax credits on a first-come, first-served basis for subsequent eligible

applications received before the end of the state fiscal year. If, during the first 10 business days of the state fiscal year, eligible tax credit applications for projects other than those that provide housing opportunities for persons with special needs or homeownership opportunities for low-income households or very-low-income households are received for more than the annual tax credits available for those projects, the Department of Economic Opportunity shall grant the tax credits for those applications on a pro rata basis.

3. Application requirements.—

a. An eligible sponsor seeking to participate in this program must submit a proposal to the Department of Economic Opportunity which sets forth the name of the sponsor, a description of the project, and the area in which the project is located, together with such supporting information as is prescribed by rule. The proposal must also contain a resolution from the local governmental unit in which the project is located certifying that the project is consistent with local plans and regulations.

b. A person seeking to participate in this program must submit an application for tax credit to the Department of Economic Opportunity which sets forth the name of the sponsor, a description of the project, and the type, value, and purpose of the contribution. The sponsor shall verify, in writing, the terms of the application and indicate its receipt of the contribution, and such verification must accompany the

application for tax credit. The person must submit a separate tax credit application to the Department of Economic Opportunity for each individual contribution that it makes to each individual project.

c. A person who has received notification from the Department of Economic Opportunity that a tax credit has been approved must apply to the department to receive the refund. Application must be made on the form prescribed for claiming refunds of sales and use taxes and be accompanied by a copy of the notification. A person may submit only one application for refund to the department within a 12-month period.

4. Administration.—

a. The Department of Economic Opportunity may adopt rules necessary to administer this paragraph, including rules for the approval or disapproval of proposals by a person.

b. The decision of the Department of Economic Opportunity must be in writing, and, if approved, the notification shall state the maximum credit allowable to the person. Upon approval, the Department of Economic Opportunity shall transmit a copy of the decision to the department.

c. The Department of Economic Opportunity shall periodically monitor all projects in a manner consistent with available resources to ensure that resources are used in accordance with this paragraph; however, each project must be reviewed at least once every 2 years.

d. The Department of Economic Opportunity shall, in

consultation with the statewide and regional housing and financial intermediaries, market the availability of the community contribution tax credit program to community-based organizations.

5. Expiration.—This paragraph expires June 30, 2018; however, any accrued credit carryover that is unused on that date may be used until the expiration of the 3-year carryover period for such credit.

Section 3. Paragraph (a) of subsection (5) of section 624.5105, Florida Statutes, is amended to read:

624.5105 Community contribution tax credit; authorization; limitations; eligibility and application requirements; administration; definitions; expiration.—

(5) DEFINITIONS.—As used in this section, the term:

(a) "Community contribution" means the grant by an insurer of any of the following items:

1. Cash or other liquid assets.

2. Real property, including 100 percent ownership of a real property holding company.

3. Goods or inventory.

4. Other physical resources which are identified by the department.

For purposes of this paragraph, the term "real property holding company" means a Florida entity, such as a Florida limited liability company, that is wholly owned by the insurer; is the

sole owner of real property, as defined in s. 192.001(12), located in the state; is disregarded as an entity for federal income tax purposes pursuant to 26 C.F.R. s. 301.7701-3(b)(1)(ii); and at the time of contribution to an eligible sponsor, has no material assets other than the real property and any other property that qualifies as a community contribution.

Section 4. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 775 Emergency Preparedness and Response
SPONSOR(S): Finance & Tax Committee, Ingram
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	13 Y, 0 N	Pewitt	Langston
2) Economic Affairs Committee		Johnson SAJ	Pitts TP
3) Appropriations Committee			

SUMMARY ANALYSIS

Currently, Florida does not provide a state certification for individuals or employers who assist in delivering essential goods or restoring utilities during times of emergency. Each local jurisdiction may impose identification requirements and credentials beyond that which the division suggests for persons travelling into disaster areas.

The bill directs the Division of Emergency Management to establish a statewide system to facilitate the transportation and distribution of essentials and restoration of utilities throughout the state during times of emergency. The term "essentials" means any goods that are consumed or used as a direct result of an emergency or that are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being.

The division must develop a system to certify persons who transport or distribute essentials in commerce or who assist in restoring utility services.

The system may allow for certification of persons both before and after a declaration of emergency. If requested by the employer, a certification of the employer constitutes a certification of the employer's employees. The division may certify only a person who routinely transports or distributes essentials or assists in restoring utility services.

The division is directed to create an easily recognizable indicium of certification to assist local officials' efforts in determining who has access to an area. Each certification may last no longer than 1 year, but may be renewed so long as criteria for certification continue to be met.

Any person certified by the division may not be required to obtain any additional certifications or meet any other requirements in order to transport essentials or assist in restoring utility services. Certified individuals will move throughout the state and throughout local communities at times of emergency. During times of curfew, certified persons are permitted to enter or remain in the curfew area for the limited purpose of distributing or assisting in the distribution of essentials.

The bill also states that law enforcement officers are not prohibited from specifying the permissible route of ingress or egress of certified individuals.

The bill will be effective upon becoming law.

The bill has no fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Currently, Florida does not provide a state certification for individuals or employers who assist in delivering essential goods or restoring utilities during times of emergency.

Each local jurisdiction may impose identification requirements and credentials beyond that which the division suggests.[1] Over the past few years, the division's Office of Private Sector Coordination "formulated a working group to discuss...private sector re-entry."[2] Statements at meetings and survey responses indicated that most local jurisdictions would allow access to disaster stricken areas if private sector employees and businesses possess three of the following items:[3]

- A corporate identification card.
- A letter of authorization.
- A bill of lading/work order.
- A valid driver's license.

The items listed above are only a recommended list and each county may require additional documentation from persons who travel into disaster areas.

Proposed Changes

The bill directs the Division of Emergency Management to establish a statewide system to facilitate the transportation and distribution of essentials and restoration of utilities throughout the state during times of emergency. The term "essentials" means any goods that are consumed or used as a direct result of an emergency or that are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being.

The division must develop a system to certify persons who transport or distribute essentials in commerce or who assist in restoring utility services.

The system may allow for certification of persons both before and after a declaration of emergency. If requested by the employer, a certification of the employer constitutes a certification of the employer's employees. The division may certify only a person who routinely transports or distributes essentials or assists in restoring utility services.

The division is directed to create an easily recognizable indicium of certification to assist local officials' efforts in determining who has access to an area. Each certification may last no longer than 1 year, but may be renewed so long as criteria for certification continue to be met.

Any person certified by the division may not be required to obtain any additional certifications or meet any other requirements in order to transport essentials or assist in restoring utility services. Certified individuals will move throughout the state and throughout local communities at times of emergency. During times of curfew, certified persons are permitted to enter or remain in the curfew area for the limited purpose of distributing or assisting in the distribution of essentials.

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[1] Department of Emergency Management, *Senate Bill 608 Fiscal Analysis* (Nov. 2, 2016)(on file with the House Finance and Tax Committee).

[2] Florida Division of Emergency Management, *Statewide Re-entry Information, available at* http://www.floridadisaster.org/PublicPrivateSector/reentry_information.html (last visited Nov 18, 2015).

[3] *Id.*

The bill also states that law enforcement officers are not prohibited from specifying the permissible route of ingress or egress of certified individuals.

B. SECTION DIRECTORY:

Section 1 creates s. 252.359, F.S., requiring the Division of Emergency Management to create a certification program for people that transport essentials or help restore utility services in areas affected by a disaster.

Section 2 provides that the bill will be effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Division of Emergency Management has stated that these requirements can be met with existing technology and staff and that no additional expenditures will be required.[4]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private sector distributors or essentials and utility companies will have an easier time providing services in counties across the state.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

[4] Department of Emergency Management, Senate Bill 608 Fiscal Analysis (Nov. 2, 2016)(on file with the House Finance and Tax Committee). The provisions of this proposed committee substitute are substantially similar to those in SB 608.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to emergency preparedness and response; creating s. 252.359, F.S.; directing the Division of Emergency Management to create a statewide system to facilitate the transport and distribution of essentials and the restoration of utility services throughout the state during a declared emergency; defining the term "essentials"; directing the division to create a certification system for persons transporting or distributing essentials or assisting in restoring utility services; providing requirements and conditions for the certification system; permitting certain activities by certified persons during a curfew; authorizing a law enforcement officer to specify a permissible route of ingress or egress for a certified person; providing an effective date.

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

Section 1. Section 252.359, Florida Statutes, is created to read:

252.359 Ensuring availability of emergency supplies.—

(1) In order to meet the needs of residents affected during a declared emergency and to ensure the continuing economic resilience of communities impacted by disaster, the division shall establish a statewide system to facilitate the

transport and distribution of essentials in commerce and the restoration of utility services in the state.

(2) As used in this section, the term "essentials" means goods that are consumed or used as a direct result of a declared emergency, or that are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being.

(3) The division shall develop a system to certify each person who facilitates the transport or distribution of essentials in commerce or who assists in restoring utility services. The division may not certify a person other than a person who routinely transports or distributes essentials or assists in restoring utility services. In developing the system, the division:

(a) May provide for a preemergency or postemergency declaration certification.

(b) Shall allow the certification of an employer, if requested by the employer, to constitute a certification of the employer's employees.

(c) Shall create an easily recognizable indicium of certification to assist local officials' efforts in determining which persons have been certified under this subsection.

(d) Shall limit the duration of each certificate to no more than 1 year. Each certificate may be renewed so long as the criteria for certification are met.

(4) A person or employer certified under subsection (3) is not required to obtain any additional certification or fulfill

any additional requirement to transport or distribute essentials or assist in restoring utility services.

(5) Notwithstanding any curfew, a person or employer certified under subsection (3) may enter or remain in the curfew area for the limited purpose of facilitating the transport or distribution of essentials or assisting in restoring utility services and may provide service that exceeds otherwise applicable hours of service maximums to the extent authorized by a duly executed declaration of a state of emergency.

(6) This section does not prohibit a law enforcement officer from specifying the permissible route of ingress or egress for a person certified under subsection (3).

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 929 Peril of Flood
SPONSOR(S): Insurance & Banking; Ahern
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 584

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 0 N, As CS	Peterson	Luczynski
2) Economic Affairs Committee		Johnson	Pitts

SUMMARY ANALYSIS

The National Flood Insurance Program (NFIP) is a federal program that offers federally-subsidized flood insurance to property owners and promotes land-use controls in floodplains. The Federal Emergency Management Agency (FEMA) administers the NFIP. The Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters Act) made major changes to the NFIP, including an increase in rates charged by the NFIP for flood insurance, starting in 2013. However, starting October 1, 2013, some NFIP policies that were subsidized moved directly to full-risk rates, resulting in dramatic flood insurance rate increases for some homeowners. In March 2014, federal legislation was enacted to moderate some of the rate increases resulting from the Biggert-Waters Act.

Anticipating substantial rate increases in the NFIP, the 2014 Legislature enacted s. 627.715, F.S., to provide a framework for a private, personal lines flood insurance market in Florida. The section originally provided for four types of flood insurance: *standard flood insurance* (which is equivalent to a standard policy under the NFIP), *preferred flood insurance, customized flood insurance*, and *supplemental flood insurance*. In 2015, the Legislature amended the state-authorized flood insurance program to include a fifth category of insurance, "flexible flood insurance." Insurers who wish to provide Florida-authorized coverage may develop rates for flood coverage, by either filing the rate with the Office of Insurance Regulation (OIR) and obtaining approval, or, until October 1, 2019, using a rate without the OIR's approval, so long as the rate is not excessive, inadequate, or unfairly discriminatory. In addition, current law authorizes a surplus lines agent to export a policy without having to determine that coverage is unavailable from an admitted carrier. This exemption is scheduled for repeal July 1, 2017.

The bill extends to October 1, 2025 the period in which insurers may develop and use rates without first obtaining approval from the OIR. It also extends and broadens the exemption permitting the export of coverage to a surplus lines carrier without meeting statutory conditions. The exemption is extended to July 1, 2020. The exemption is broadened to eliminate the conditions related to comparability of premiums, policy contents, and deductibles, and the condition related to notifying a policyholder of the availability of coverage from Citizens Property Insurance Corporation (Citizens) (Citizens is prohibited by law from offering flood coverage).

The bill has no fiscal impact on state government revenues and an indeterminate fiscal impact on state and local expenditures. The bill may have a positive impact on the private sector.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

National Flood Insurance Program

The National Flood Insurance Program (NFIP or program) was created by the passage of the National Flood Insurance Act of 1968 to offer federally-subsidized flood insurance to property owners and to promote land-use controls in floodplains. The NFIP is administered by the Federal Emergency Management Agency (FEMA). The federal government will make flood insurance available within a community, if that community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains.[1]

Nationally, the NFIP insured almost $1.3 trillion in assets in 2014. Total earned premium for NFIP coverage for 2014 was $3.56 billion.[2]

The Biggert-Waters Flood Insurance Reform Act of 2012

Following flood losses from the 2005 hurricanes Katrina, Rita, and Wilma, the NFIP borrowed $21 billion from the U.S. Treasury in order to remain solvent. However, flood losses in 2012 from Super-storm Sandy increased the NFIP's deficit. In 2012, the United States Congress passed the Biggert-Waters Flood Insurance Reform Act (Biggert-Waters Act).[3] The Biggert-Waters Act reauthorized the National Flood Insurance Program for five years. Key provisions of the legislation require the NFIP to raise rates to reflect true flood risk, make the program more financially stable, and change how Flood Insurance Rate Map updates impact policyholders. These changes by Congress have resulted in premium rate increases for approximately 20 percent of NFIP policyholders nationwide.

The Biggert-Waters Act increases flood insurance premiums purchased through the program for second homes, business properties, severe repetitive loss properties, and substantially improved damaged properties by requiring premium increases of 25 percent per year until premiums meet the full actuarial cost of flood coverage. Most residences immediately lose their subsidized rates if the property is sold, the policy lapses, repeated and severe flood losses occur, or a new policy is purchased. Some flood maps used by FEMA have not been updated since the 1980s. Policyholders whose communities adopt a new, updated Flood Insurance Rate Map (FIRM) that results in higher rates will experience a five year phase in of rate increases to achieve rates that incorporate the full actuarial cost of coverage.

The Biggert-Waters Act also requires most NFIP policyholders to pay a 5 percent assessment on their policy to create a reserve fund for catastrophic losses.[4] Additional changes to premium rates, including those paid by the 80 percent of NFIP policyholders with non-subsidized rates, can occur upon remapping. Current law limits rate increases due to remapping to 10 percent per year; the Biggert-Waters Act allows a larger annual rate increase for remapped properties. However, federal action in the 2014 federal omnibus spending bill has delayed rate increases associated with remapping for 12-18 months, as described below.

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[1] FEMA, *National Flood Insurance Program, Program Description*, (Aug. 1, 2002), https://www.fema.gov/media-library/assets/documents/1150?id=1480 (last visited Jan. 14, 2016).

[2] FEMA, *Total Coverage by Calendar Year,* http://www.fema.gov/statistics-calendar-year (last visited Jan. 14, 2016).

[3] FEMA, *Flood Insurance Reform*, https://www.fema.gov/national-flood-insurance-program/flood-insurance-reform (last visited Jan. 14,, 2016).

[4] For those NFIP policies with a 25 percent rate increase, the 5 percent assessment is not on top of the 25 percent rate increase. In other words, 5 percent of the 25 percent increase will be allocated to the Reserve Fund.

2014 Federal Flood Reform Bills

The Consolidated Appropriations Act of 2014 and the Homeowner Flood Insurance Affordability Act of 2014[5] repealed or modified some provisions of the Biggert-Waters Act. The new law reduced the mandatory rate increases for subsidized properties from 25 percent annually to no less than 5 percent, generally not to increase more than 18 percent annually.[6] Properties that remain subject to the 25 percent annual increase include older business properties, older non-primary residences, severe repetitive loss properties, and pre-FIRM properties. The 20 percent annual phase-in of premium increases after adoption of a new or updated flood insurance rate map was reduced to a maximum of no more than an 18 percent annual premium increase. For property not currently at a full-risk rate, a minimum increase of 5 percent per year is required for flood policies on primary residences built on or before December 31, 1994, or before the effective date of the initial flood insurance rate map for the community was adopted.[7]

Private Market Flood Insurance in Florida

In response to the changes to the NFIP, the 2014 Legislature enacted s. 627.715, F.S., governing the sale of personal lines residential flood insurance.[8] Flood is defined in the standard NFIP policy as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties from:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source;
- Mudflow; or
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.

Under the 2014 law, authorized insurers could sell four different types of flood insurance products:

- Standard coverage, which covers only losses from the peril of flood as defined in the bill, which is the definition used by the NFIP. The policy must be the same as coverage offered from the NFIP regarding the definition of flood, coverage, deductibles, and loss adjustment.
- Preferred coverage, which includes the same coverage as standard flood insurance and also must cover flood losses caused by water intrusion from outside the structure that are not otherwise covered under the definition of flood in the bill.
- Customized coverage, which is coverage that is broader than standard flood coverage.
- Supplemental coverage, which supplements an NFIP flood policy or a standard or preferred policy from a private market insurer. Supplemental coverage may provide coverage for jewelry, art, deductibles, and additional living expenses. It does not include excess flood coverage over other flood policies.

The 2015 Legislature amended the program to add a fifth category, "flexible flood coverage."[9] "Flexible flood coverage" is defined as the coverage for the peril of flood that may include water intrusion coverage, and includes or excludes specified provisions, including the authority to limit coverage to only the outstanding mortgage on the property and to allow dwelling loss to be adjusted only on the actual cash value of the property.

An insurer may establish flood rates through the standard process in s. 627.062, F.S. Alternatively, rates filed before October 1, 2019, may be established through a rate filing with the OIR that is not required to be

[5] Homeowner Flood Insurance Affordability Act of 2014, H.R. 3370, 113th Cong. (2014) (Pub. L. No. 113-89) .
[6] FEMA, *Changes to the National Flood Insurance Program – What to Expect, available at* https://www.fema.gov/media-library/assets/documents/96449, (last visited Jan. 14, 2016).
[7] Homeowner Flood Insurance Affordability Act of 2014, at s. 5, H.R. 3370, 113th Cong. (2014).
[8] Ch. 2014-80, Laws of Fla.
[9] Ch. 2015-69, Laws of Fla.

reviewed by the OIR before implementation of the rate ("file and use" review) or shortly after implementation of the rate ("use and file" review). Specifically, the flood rate is exempt from the "file and use" and "use and file" requirements of s. 627.062(2)(a), F.S. Such filings are also exempt from the requirement to provide information necessary to evaluate the company and the reasonableness of the rate. The OIR may, however, examine a rate filing at its discretion. To enable the office to conduct such examinations, insurers must maintain actuarial data related to flood coverage for two years after the effective date of the rate change. Upon examination, the OIR will use actuarial techniques and the standards of the rating law to determine if the rate is excessive, inadequate or unfairly discriminatory. The law allows projected flood losses for personal residential property insurance to be a rating factor. Flood losses may be estimated using a model or straight average of models found reliable by the Florida Commission on Hurricane Loss Projection Methodology.

A surplus lines agent can export a contract or endorsement for flood insurance without the obligation to conduct the due diligence required in s. 626.916(1)(a), F.S. That paragraph requires an agent to determine that the insurance is not available from a company currently writing in the state and limits any amount that may be exported to the amount in excess of the amount that can be procured in the state. The agent must document that he or she has made a diligent effort to procure the coverage from an admitted insurer.[10] This is one of five conditions currently applicable to agents who seek to export other lines of insurance. The four others relate to premium, the policy form, deductible amounts, and notice to an applicant of the availability of coverage from Citizens.[11] In general, the conditions prevent a surplus lines insurer, which is subject to substantially less regulation than an admitted carrier, from offering policies with terms and conditions that are more favorable than can be offered by an admitted insurer. This exemption is scheduled for repeal July 1, 2017.

Effect of the Bill

The bill extends to October 1, 2025 the period in which insurers may develop and use rates without first obtaining approval from the OIR. It also extends and broadens the exemption permitting the export of coverage to a surplus lines carrier without meeting statutory conditions. The exemption is extended to July 1, 2020. The exemption is broadened to eliminate the conditions related to comparability of premiums, policy contents, and deductibles, and the condition related to notifying a policyholder of the availability of coverage from Citizens. In addition, the bill makes a technical correction, adding the word "flexible," to the introductory language in s. 627.715, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.715, F.S., relating to flood insurance.
Section 2: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[10] Section 626.914, F.S., defines "diligent effort" as seeking and being denied coverage from at least three authorized insurers in the admitted market, unless the cost to replace the property insured is $1 million or more. In that case, diligent effort is seeking and being denied coverage from at least one authorized insurer in the admitted market.
[11] Current law prohibits Citizens from offering flood coverage. s. 626.916(6), F.S.

1. Revenues:

   None.

2. Expenditures:

   Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill encourages more private insurers to provide coverage for flood loss, consumers may ultimately benefit from increased competition. Relaxing the standards for placing flood insurance coverage in the surplus lines market may increase access to coverage for property owners, but could negatively affect the development of the Florida flood insurance market by creating an unlevel playing field for competition.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None provided by the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 25, 2016, the Insurance & Banking Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS removed all of the provisions of the bill which did not relate to insurance, clarified the language related to the exemption permitting the export of coverage to a surplus lines carrier, and revised the extension of exemption expiration from 2025 to 2020.

The staff analysis is drafted to reflect the committee substitute.

A bill to be entitled

An act relating to the peril of flood; amending s. 627.715, F.S.; authorizing an insurer to issue flood insurance policies on a flexible basis; extending the date by which an insurer may use certain statutory rate standards for establishing and using flood coverage rates; authorizing a surplus lines agent to export a contract or endorsement providing flood coverage to an eligible surplus lines insurer without satisfying specified conditions; extending the date by which a surplus lines agent may export such contract or endorsement; providing an effective date.

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

Section 1. Section 627.715, Florida Statutes, is amended to read:

627.715 Flood insurance.—An authorized insurer may issue an insurance policy, contract, or endorsement providing personal lines residential coverage for the peril of flood on any structure or the contents of personal property contained therein, subject to this section. This section does not apply to commercial lines residential or commercial lines nonresidential coverage for the peril of flood. This section also does not apply to coverage for the peril of flood that is excess coverage over any other insurance covering the peril of flood. An insurer

may issue flood insurance policies, contracts, or endorsements on a standard, preferred, customized, flexible, or supplemental basis.

(1)(a)1. Standard flood insurance must cover only losses from the peril of flood, as defined in paragraph (b), equivalent to that provided under a standard flood insurance policy under the National Flood Insurance Program. Standard flood insurance issued under this section must provide the same coverage, including deductibles and adjustment of losses, as that provided under a standard flood insurance policy under the National Flood Insurance Program.

2. Preferred flood insurance must include the same coverage as standard flood insurance but:

a. Include, within the definition of "flood," losses from water intrusion originating from outside the structure that are not otherwise covered under the definition of "flood" provided in paragraph (b).

b. Include coverage for additional living expenses.

c. Require that any loss under personal property or contents coverage that is repaired or replaced be adjusted only on the basis of replacement costs up to the policy limits.

3. Customized flood insurance must include coverage that is broader than the coverage provided under standard flood insurance.

4. Flexible flood insurance must cover losses from the peril of flood, as defined in paragraph (b), and may also

include coverage for losses from water intrusion originating from outside the structure which is not otherwise covered by the definition of flood. Flexible flood insurance must include one or more of the following provisions:

a. An agreement between the insurer and the insured that the flood coverage is in a specified amount, such as coverage that is limited to the total amount of each outstanding mortgage applicable to the covered property.

b. A requirement for a deductible in an amount authorized under s. 627.701, including a deductible in an amount authorized for hurricanes.

c. A requirement that flood loss to a dwelling be adjusted in accordance with s. 627.7011(3) or adjusted only on the basis of the actual cash value of the property.

d. A restriction limiting flood coverage to the principal building defined in the policy.

e. A provision including or excluding coverage for additional living expenses.

f. A provision excluding coverage for personal property or contents as to the peril of flood.

5. Supplemental flood insurance may provide coverage designed to supplement a flood policy obtained from the National Flood Insurance Program or from an insurer issuing standard or preferred flood insurance pursuant to this section. Supplemental flood insurance may provide, but need not be limited to, coverage for jewelry, art, deductibles, and additional living

expenses.

(b) "Flood" means a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties, at least one of which is the policyholder's property, from:

1. Overflow of inland or tidal waters;

2. Unusual and rapid accumulation or runoff of surface waters from any source;

3. Mudflow; or

4. Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined in this paragraph.

(2) Flood coverage deductibles and policy limits pursuant to this section must be prominently noted on the policy declarations page or face page.

(3)(a) An insurer may establish and use flood coverage rates in accordance with the rate standards provided in s. 627.062.

(b) For flood coverage rates filed with the office before October 1, 2025 ~~2019~~, the insurer may also establish and use such rates in accordance with the rates, rating schedules, or rating manuals filed by the insurer with the office which allow the insurer a reasonable rate of return on flood coverage written in this state. Flood coverage rates established pursuant

to this paragraph are not subject to s. 627.062(2)(a) and (f). An insurer shall notify the office of any change to such rates within 30 days after the effective date of the change. The notice must include the name of the insurer and the average statewide percentage change in rates. Actuarial data with regard to such rates for flood coverage must be maintained by the insurer for 2 years after the effective date of such rate change and is subject to examination by the office. The office may require the insurer to incur the costs associated with an examination. Upon examination, the office, in accordance with generally accepted and reasonable actuarial techniques, shall consider the rate factors in s. 627.062(2)(b), (c), and (d), and the standards in s. 627.062(2)(e), to determine if the rate is excessive, inadequate, or unfairly discriminatory. If the office determines that a rate is excessive or unfairly discriminatory, the office shall require the insurer to provide appropriate credit to affected insureds or an appropriate refund to affected insureds who no longer receive coverage from the insurer.

(4) A surplus lines agent may export a contract or endorsement providing flood coverage to an eligible surplus lines insurer without satisfying the conditions set forth in ~~making a diligent effort to seek such coverage from three or more authorized insurers under~~ s. 626.916(1) ~~626.916(1)(a)~~. This subsection expires July 1, 2020 ~~2017~~.

(5) In addition to any other applicable requirements, an insurer providing flood coverage in this state must:

(a) Notify the office at least 30 days before writing flood insurance in this state; and

(b) File a plan of operation and financial projections or revisions to such plan, as applicable, with the office.

(6) Citizens Property Insurance Corporation may not provide insurance for the peril of flood.

(7) The Florida Hurricane Catastrophe Fund may not provide reimbursement for losses proximately caused by the peril of flood, including losses that occur during a covered event as defined in s. 215.555(2)(b).

(8) An agent must, upon receiving an application for flood coverage from an authorized or surplus lines insurer for a property receiving flood insurance under the National Flood Insurance Program, obtain an acknowledgment signed by the applicant before placing the coverage with the authorized or surplus lines insurer. The acknowledgment must notify the applicant that, if the applicant discontinues coverage under the National Flood Insurance Program which is provided at a subsidized rate, the full risk rate for flood insurance may apply to the property if the applicant later seeks to reinstate coverage under the program.

(9) With respect to the regulation of flood coverage written in this state by authorized insurers, this section supersedes any other provision in the Florida Insurance Code in the event of a conflict.

(10) If federal law or rule requires a certification by a

state insurance regulatory official as a condition of qualifying for private flood insurance or disaster assistance, the Commissioner of Insurance Regulation may provide the certification, and such certification is not subject to review under chapter 120.

(11)(a) An authorized insurer offering flood insurance may request the office to certify that a policy, contract, or endorsement provides coverage for the peril of flood which equals or exceeds the flood coverage offered by the National Flood Insurance Program. To be eligible for certification, such policy, contract, or endorsement must contain a provision stating that it meets the private flood insurance requirements specified in 42 U.S.C. s. 4012a(b) and may not contain any provision that is not in compliance with 42 U.S.C. s. 4012a(b).

(b) The authorized insurer or its agent may reference or include a certification under paragraph (a) in advertising or communications with an agent, a lending institution, an insured, or a potential insured only for a policy, contract, or endorsement that is certified under this subsection. The authorized insurer may include a statement that notifies an insured of the certification on the declarations page or other policy documentation related to flood coverage certified under this subsection.

(c) An insurer or agent who knowingly misrepresents that a flood policy, contract, or endorsement is certified under this subsection commits an unfair or deceptive act under s. 626.9541.

Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1017 Reemployment Assistance Fraud
SPONSOR(S): Economic Development & Tourism Subcommittee, La Rosa
TIED BILLS: **IDEN./SIM. BILLS:** SB 1216

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	11 Y, 0 N, As CS	White	Duncan
2) Transportation & Economic Development Appropriations Subcommittee	11 Y, 0 N	Proctor	Leznoff
3) Economic Affairs Committee		White	Pitts

SUMMARY ANALYSIS

The bill creates the "Department of Economic Opportunity Cybercrime Prevention Act." The bill permits the Florida Department of Highway Safety and Motor Vehicles to disclose to DEO, pursuant to an interagency agreement, images of licensees that it maintains, for the purpose of facilitating the validation of reemployment assistance claims by DEO and to assist DEO in the identification of fraudulent or false claims for benefits.

The bill modifies the disqualification period imposed on claimants who make false or fraudulent representations for the purpose of obtaining benefits. A claimant found to have committed fraud would be disqualified from benefits for up to one year after DEO discovers the false or fraudulent representation, as provided by current law. However, if the false or fraudulent representation is made in furtherance of any state or federal felony crime relating to identity theft or inappropriate use of personally identifying information, then the claimant would be disqualified from benefits for five years for the first such act; and 10 years for subsequent acts.

The bill amends the definition of "racketeering activity," as it relates to Florida's Racketeer Influenced and Corrupt Organization Act, to include crimes that are chargeable as reemployment assistance fraud. Although current law includes the creation of fictitious employer schemes as "racketeering activity," the bill would make each false statement or representation or failure to disclose a material fact a separate, prosecutable offense.

The bill may have an indeterminate, but likely insignificant fiscal impact on the state. On January 29, 2016, the Criminal Justice Impact Conference met on the Senate companion measure, SB 1216. Regarding the provision expanding the definition of racketeering activity, the conference adopted a positive insignificant prison bed impact on the Department of Corrections (an increase of ten or fewer beds). See fiscal comments.

The bill provides that it takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Reemployment Assistance

The Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of state law.[1] The program is administered as a partnership of the federal government and the states.[2] States are permitted to set benefit eligibility requirements, the amount and duration of benefits and the state tax structure, as long as state law does not conflict with the Federal Unemployment Tax Act (FUTA) or the Social Security Act requirements.[3]

Florida's unemployment insurance program was created by the Legislature in 1937,[4] and rebranded as the "reemployment assistance" program in 2012.[5] The Florida Department of Economic Opportunity (DEO) is responsible for administering Florida's reemployment assistance (RA) laws, primarily through its Division of Workforce Services (Division). The DEO contracts with the Florida Department of Revenue (DOR) to provide unemployment tax collection services.[6]

Collection of Taxes Associated with Reemployment Assistance

Individual states collect payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service (IRS) collects an annual federal payroll tax under FUTA.[7] FUTA collections go to the states for costs related to the administration of state unemployment insurance and job service programs. Additionally, FUTA pays one-half the cost of extended unemployment benefits (during periods of high unemployment) and provides for a fund from which states may borrow, if necessary, to pay benefits.[8] The IRS charges each liable employer a federal unemployment tax of 6.0 percent.[9] If, however, a state program meets the federal requirements and has no delinquent federal loans, employers are eligible for up to a 5.4 percent tax credit, making the net tax rate 0.6 percent.[10]

In Florida, RA benefits are financed solely through contributions by employers.[11] The calculation for determining each employer's tax rate is statutorily set, and takes into consideration an employer's "experience," the balance of the Unemployment Compensation Trust Fund (UCTF), and other factors.

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[1] United States Department of Labor, Employment and Training Administration, State Unemployment Insurance Benefits, *available at* http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp (Last visited Jan. 26, 2016).
[2] There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia. Social Security Office of Retirement and Disability Policy, Annual Statistical Supplement, *available at* https://www.ssa.gov/policy/docs/statcomps/supplement/2014/unemployment.html (Last visited Jan., 26, 2016).
[3] *Id.*
[4] Chapter 18402, L.O.F.
[5] Chapter 2012-30, L.O.F.
[6] Section 443.1316, F.S.
[7] FUTA is codified at 26 U.S.C. ss. 3301-3311.
[8] United States Department of Labor, Employment and Training Administration, "Unemployment Insurance Tax Topic," *available at* http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp (Last visited Jan. 26, 2016).
[9] 26 U.S.C. s. 3301.
[10] *Supra* note 8.
[11] As of Jan. 2015, contributing employers pay taxes on the first $7,000 of each employee's wages, instead of $8,000. *See* s. 443.1217(2)(a), F.S. While most employers are "contributory employers," state and local governments are "reimbursing employers." As such, they pay into the UCTF on a dollar-for-dollar basis for benefits paid to former employees. *See* s. 443.1312, F.S.

The employer's experience rating is based on the employer's own employment records,[12] and serves to stabilize the UCTF, as well as ensure that all employers pay their fair share based on their own experience rating. An employer's tax rate is adjusted annually, and may vary from the maximum rate of 5.4 percent to the minimum rate, which varies each year based on adjustment factors.[13]

Recovery of Overpayments for Non-Fraudulent Claims

State laws generally differ in their identification, establishment, and collection of overpayments. Like most states, Florida's recovery of non-fraudulent overpayments includes several options, such as wage garnishment, deducting any outstanding balance from future unemployment benefits or lottery winnings, and forwarding any unpaid balance to a contracted debt collection agency.[14]

Upon discovering an overpayment, DEO makes a determination of the amount of overpayment and attempts to make recovery of the overpayment. However, DEO must obtain a final judgment through the civil court system before it may utilize the wage garnishment process provided for in ch. 77, F.S.[15] Interest is not assessed, unless and until a civil judgement is entered. For both fraudulent and non-fraudulent cases, the commencement of collections must be initiated within seven years.[16]

Fraudulent Claims

When an unemployed individual files a claim for unemployment assistance,[17] DEO validates their identity based on daily cross matches with external entities, obtained through inter-agency agreements.[18] A cross match with the Social Security Administration (SSA) is conducted for all new claims to establish that the social security number used to file a claim is the number assigned to that individual. To further validate identity, a secondary cross match is conducted against the driver license records maintained by the Department of Highway Safety and Motor Vehicles (HSMV). Because DEO does not have access to the full databases of these external partners, DEO must complete additional verification procedures when exceptions occur.[19] The Fraud Initiative and Rules Rating Engine (FIRRE) unit, within DEO, uses specially-developed "algorithms to identify falsely filed claims and block them from receiving benefits."[20] In its first year of operation, FIRRE identified nearly 70,000 fraudulent claims.[21]

In addition to recovery of overpayments, a case in which fraud is established subjects the claimant to disqualification from receiving benefits for up to one year from the date DEO discovers the false or fraudulent representation, and until the overpayment has been repaid in full.[22] Additionally, DEO may refer the case to the state attorney for prosecution as a third degree felony.[23]

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[12] Florida DOR, "Employer Guide to Reemployment Tax," *available at* http://dor.myflorida.com/dor/forms/current/rt800002.pdf (Last visited Jan. 26, 2016).
[13] *Id.*, at 14.
[14] For state laws on over payments, *see* US Dept. of Labor, Comparison of State Unemployment Laws, *Chapter 6 Overpayments*, *available at* http://www.unemploymentinsurance.doleta.gov/unemploy/comparison2015.asp (Last visited Jan. 28, 2016).
[15] Section 443.151(6)(e), F.S.
[16] Section 443.151(6)(a), F.S.
[17] Section 443.151(2), F.S., requires claims to be filed using the Internet.
[18] In 2013, DEO implemented a new Reemployment Assistance Claims and Benefits Information System pursuant to the requirements of s. 443.1113, F.S.
[19] DEO has limited access to HSMV's Driver and Vehicle Information Database (DAVID) through an inter-agency agreement.
[20] DEO analysis, 2016 Agency Legislative Bill Analysis, HB 1017, at 3 (Jan. 7, 2016).
[21] Letter to Thomas Perez, US Secretary of Labor, from Jesse Panuccio, Exe. Dir. Fla. DEO, RE: Identity Theft and Fraud in Public Benefit Systems (Mar. 13, 2015).
[22] Section 443.101(6), F.S.
[23] Section 443.071, F.S. makes it a third degree felony to make "a false statement or representation, knowing it to be false, or knowingly fails to disclose a material fact to obtain or increase any benefits or other payment..."

The duration of disqualification for fraud in other states is comparable to Florida's, with the majority of states setting it at 52 weeks. Some states further penalize subsequent offenses, such as Alabama which provides a 104 week disqualification for second and subsequent offenses, or Maine which penalizes a third offense with a disqualification to be set by the commissioner of the state RA program. Kansas appears to have the strictest duration of disqualification, which it sets at the latter of five years after commission of the fraudulent act, or after the first day following the last week for which benefits were paid. No states have imposed, in law, a lifetime disqualification.[24]

Identity Fraud

Chapter 817, F.S., prohibits and punishes various fraudulent acts or practices. In general terms, fraud is the willful act of misrepresenting the truth to someone or concealing an important fact from them for the purpose of inducing that person to act to his or her detriment.[25] Identity fraud, which is also known as identity theft, is a criminal act that occurs when a person illegally obtains someone else's personal information and uses that information to commit fraud or theft.[26] According to the Federal Trade Commission's most recent Consumer Sentinel Network Data Book, "Florida is the state with the highest per capita rate of reported identity theft complaints...."[27] Identity thieves often take names, Social Security numbers (coupled with birth dates), bank account and credit card numbers, and passwords to obtain credit and credit cards, drain money from bank accounts, establish new accounts, apply for loans using the victims' names, and commit other crimes to enrich themselves.[28]

Racketeering

Section 895.02, F.S., defines a racketeering activity to include the creation of fictitious employer schemes, by reference to s. 443.071(4), F.S. However, the definition of racketeering does not encompass employment benefit fraud, a third degree felony. Instead, s. 443.071(1), F.S., makes employment benefit fraud punishable by a possible combination of penalties, fines, and mandatory minimum prison terms set out in ss. 775.082-084, F.S.

DEO has stated that increased amounts of fraudulent claims have their origin in "organized criminal enterprises... attacking public-benefit systems."[29] When benefits are obtained by an individual who is using a stolen identity to obtain benefits, DEO cannot investigate the individual making the fraudulent claim, but instead refers such cases to the Florida Department of Law Enforcement and the Inspector General of the U.S. Department of Labor.[30]

Effect of Proposed Changes

The bill creates the "Department of Economic Opportunity Cybercrimes Prevention Act."

In order to facilitate the validation of reemployment assistance claims by DEO and to assist DEO in the identification of fraudulent or false claims for benefits, the bill authorizes HSMV to disclose images and signatures of licensees to DEO, pursuant to an interagency agreement. The images and signatures of licensees maintained by HSMV are not public records and are exempt from the provisions of s. 119.07(1), F.S.

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[24] Information for this paragraph is summarized from tables by the US Dept. of Labor. *Supra* note 14.
[25] Black's Law Dictionary (9th ed. 2009).
[26] Federal Bureau of Investigation, *Identity Theft Overview, available at* http://www.fbi.gov/about-us/investigate/cyber/identity_theft/identity-theft-overview (last visited Feb. 1, 2016).
[27] Federal Trade Commission, *Consumer Sentinel Network Data Book for January-December 2013* (February 2014) p. 3, *available at* http://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2013/sentinel-cy2013.pdf (last visited on Feb. 1, 2016).
[28] Florida Office of the Attorney General, *About Identity Theft Crimes, available at* http://myfloridalegal.com/pages.nsf/Main/932BC47213C29D3385256DBB0048479D?OpenDocument (last visited Feb. 1, 2016).
[29] Letter to Thomas Perez, US Secretary of Labor, from Jesse Panuccio, Exec. Dir. FL DEO, RE: Identity Theft and Fraud in Public Benefit Systems (Mar. 13, 2015).
[30] DEO analysis, 2016 Agency Legislative Bill Analysis, HB 1017 (Jan. 7, 2016).

The bill modifies the duration of disqualification for reemployment assistance benefits obtained by false or fraudulent representation. A claimant found to have committed fraud, continues to be subject to a disqualification from benefits for up to one year after the date DEO discovers the false or fraudulent representation was made. However, a claimant making a false or fraudulent representation, in furtherance of any state or federal felony crime relating to identity theft or inappropriate use of personally identifying information would be subject to:

- Five years disqualification from unemployment benefits for the first such act; and
- 10 years disqualification from unemployment benefits for subsequent acts.

The bill amends the definition of "racketeering activity," as it relates to Florida's Racketeer Influenced and Corrupt Organization Act, to include crimes that are chargeable as reemployment assistance fraud. Although current law includes the creation of fictitious employer schemes as "racketeering activity," the bill would make each false statement or representation or failure to disclose a material fact a separate, prosecutable offense.

Lastly, the bill provides that it becomes effective upon becoming law.

B. SECTION DIRECTORY:

Section 1: Creates the "Department of Economic Opportunity Cybercrimes Prevention Act."

Section 2: Amends chapter 322.142, F.S., authorizing HSMV to provide DEO with the color photographic or digital imaged licenses and signatures of licensees that they maintain.

Section 3: Amends s. 443.101(6), F.S., providing additional disqualifications for reemployment assistance benefits for claimants making false or fraudulent representations in furtherance of crimes related to identity theft.

Section 4: Amends s. 895.02(1)(a)7, F.S., to provide that 'racketeering activity' includes a crime that is chargeable under ss. 443.071(1), F.S., relating to reemployment assistance fraud.

Section 5: Provides that the bill becomes effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an insignificant impact due to the data sharing option provided with the Department of Highway Safety and Motor Vehicles. The Department of Economic Opportunity is already engaged in activities to prevent fraud in the reemployment assistance claims process using existing resources.

   On January 29, 2016, the Criminal Justice Impact Conference met on the Senate companion measure, SB 1216. Regarding the provision expanding the definition of racketeering activity, the conference adopted a positive insignificant prison bed impact on the Department of Corrections (an increase of ten or fewer beds).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have an indeterminate insignificant fiscal impact related to any reduction in the payment of unemployment taxes as a result of any reduction achieved in fraudulent RA claims.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2016, the Economic Development & Tourism Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Removed provisions authorizing DEO to hire law enforcement officer.
- Altered the duration of disqualification for fraudulent claims linked to identity theft.
- Removed provisions authorizing DEO to recover overpayments of reemployment assistance benefits through attachment and garnishment proceedings.

This analysis has been updated to reflect the amendment.

A bill to be entitled

An act relating to reemployment assistance fraud; providing a short title; amending s. 322.142, F.S.; adding the Department of Economic Opportunity as an entity that may be issued reproductions from certain files or digital records for specified reasons; amending s. 443.101, F.S.; providing for disqualification from eligibility for reemployment benefits for a specified period of time determined by the number of incidents of false or fraudulent representation; extending such disqualification period if such representation is made in furtherance of a specified felony; amending s. 895.02, F.S.; expanding the definition of the term "racketeering activity" to include knowingly making false statements or representations or knowingly failing to disclose a material fact to obtain or increase benefits or other payments under ch. 443, F.S., and other specified laws; providing an effective date.

WHEREAS, the incidence of identity theft and resulting fraud has reached a crisis level, and

WHEREAS, identity theft is especially problematic in this state, which the Federal Trade Commission reports has the highest per capita rate of identity theft in the nation, and

WHEREAS, stolen identities are used to commit an ever-

expanding range of fraud, including public assistance fraud, and

WHEREAS, identity theft and related fraud harm those whose identities are stolen, rob the social safety net of precious resources, impose unwarranted costs on taxpayers, and undermine public confidence in government, and

WHEREAS, the Department of Economic Opportunity's efforts to detect, prevent, and prosecute fraud have revealed that thousands of fraudulent claims for reemployment assistance are being filed, and

WHEREAS, the Department of Economic Opportunity has made prevention, detection, and prosecution of reemployment assistance fraud a top priority and has identified additional resources and tools necessary to effectively combat fraud, NOW, THEREFORE,

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

Section 1. This act may be cited as the "Department of Economic Opportunity Cybercrime Prevention Act."

Section 2. Paragraphs (k) and (l) of subsection (4) of section 322.142, Florida Statutes, are redesignated as paragraphs (l) and (m), respectively, and a new paragraph (k) is added to that subsection to read:

322.142 Color photographic or digital imaged licenses.—

(4) The department may maintain a film negative or print file. The department shall maintain a record of the digital

image and signature of the licensees, together with other data required by the department for identification and retrieval. Reproductions from the file or digital record are exempt from the provisions of s. 119.07(1) and may be made and issued only:

(k) To the Department of Economic Opportunity pursuant to an interagency agreement to facilitate the validation of reemployment assistance claims and the identification of fraudulent or false reemployment assistance claims.

Section 3. Subsection (6) of section 443.101, Florida Statutes, is amended to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(6) For making any false or fraudulent representation for the purpose of obtaining benefits contrary to this chapter, constituting a violation under s. 443.071.

(a) The disqualification imposed under this subsection begins ~~shall begin with~~ the week in which the false or fraudulent representation is made and continues ~~shall continue~~ for a period not to exceed 1 year after the date the Department of Economic Opportunity discovers the false or fraudulent representation and until any overpayment of benefits resulting from such representation has been repaid in full. However, if the false or fraudulent representation is made in furtherance of any state or federal felony relating to identity theft or inappropriate use of personal identifying information, the disqualification imposed under this subsection begins the week

in which such representation is made and continues for a period of 5 years after the date of a first felony conviction or for a period of 10 years after the date of a second or subsequent felony conviction.

(b) The ~~This~~ disqualification in paragraph (a) may be appealed in the same manner as any other disqualification imposed under this section. A conviction by any court of competent jurisdiction in this state of the offense prohibited or punished by s. 443.071 is conclusive upon the appeals referee and the commission of the making of the false or fraudulent representation for which disqualification is imposed under this section.

Section 4. Paragraph (a) of subsection (1) of section 895.02, Florida Statutes, is amended to read:

895.02 Definitions.—As used in ss. 895.01-895.08, the term:

(1) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or

eluding.

3. Section 403.727(3)(b), relating to environmental control.

4. Section 409.920 or s. 409.9201, relating to Medicaid fraud.

5. Section 414.39, relating to public assistance fraud.

6. Section 440.105 or s. 440.106, relating to workers' compensation.

7. Section 443.071(1) or (4) ~~Section 443.071(4)~~, relating to ~~creation of a fictitious employer scheme to commit~~ reemployment assistance fraud.

8. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.

9. Section 499.0051, relating to crimes involving contraband and adulterated drugs.

10. Part IV of chapter 501, relating to telemarketing.

11. Chapter 517, relating to sale of securities and investor protection.

12. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

13. Chapter 550, relating to jai alai frontons.

14. Section 551.109, relating to slot machine gaming.

15. Chapter 552, relating to the manufacture, distribution, and use of explosives.

16. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.

17. Chapter 562, relating to beverage law enforcement.

18. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c)1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.

19. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.

20. Chapter 687, relating to interest and usurious practices.

21. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.

22. Section 775.13(5)(b), relating to registration of persons found to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

23. Section 777.03, relating to commission of crimes by accessories after the fact.

24. Chapter 782, relating to homicide.

25. Chapter 784, relating to assault and battery.

26. Chapter 787, relating to kidnapping or human trafficking.

27. Chapter 790, relating to weapons and firearms.

28. Chapter 794, relating to sexual battery, but only if such crime was committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purpose of

increasing a criminal gang member's own standing or position within a criminal gang.

29. Former s. 796.03, former s. 796.035, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.

30. Chapter 806, relating to arson and criminal mischief.

31. Chapter 810, relating to burglary and trespass.

32. Chapter 812, relating to theft, robbery, and related crimes.

33. Chapter 815, relating to computer-related crimes.

34. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, and credit card crimes.

35. Chapter 825, relating to abuse, neglect, or exploitation of an elderly person or disabled adult.

36. Section 827.071, relating to commercial sexual exploitation of children.

37. Section 828.122, relating to fighting or baiting animals.

38. Chapter 831, relating to forgery and counterfeiting.

39. Chapter 832, relating to issuance of worthless checks and drafts.

40. Section 836.05, relating to extortion.

41. Chapter 837, relating to perjury.

42. Chapter 838, relating to bribery and misuse of public office.

43. Chapter 843, relating to obstruction of justice.

44. Section 847.011, s. 847.012, s. 847.013, s. 847.06, or

s. 847.07, relating to obscene literature and profanity.

45. Chapter 849, relating to gambling, lottery, gambling or gaming devices, slot machines, or any of the provisions within that chapter.

46. Chapter 874, relating to criminal gangs.

47. Chapter 893, relating to drug abuse prevention and control.

48. Chapter 896, relating to offenses related to financial transactions.

49. Sections 914.22 and 914.23, relating to tampering with or harassing a witness, victim, or informant, and retaliation against a witness, victim, or informant.

50. Sections 918.12 and 918.13, relating to tampering with jurors and evidence.

Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1087 Protection of Motor Vehicle Dealers' Consumer Data
SPONSOR(S): Highway & Waterway Safety Subcommittee; Rooney, Jr. and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 960

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Highway & Waterway Safety Subcommittee	13 Y, 0 N, As CS	Johnson	Smith
2) Judiciary Committee	16 Y, 0 N	Aziz	Havlicak
3) Economic Affairs Committee		Johnson	Pitts

SUMMARY ANALYSIS

Since 1970, Florida has substantially regulated the relationship between motor vehicle manufacturers and motor vehicle dealers. Manufacturers, distributors, and importers, collectively referred to as licensees, enter into contractual agreements with dealers to sell particular vehicles that the licensee manufactures, distributes, or imports. Chapter 320, F.S., provides, in part, for the regulation of the relationship between manufacturers and dealers. Existing law requires the licensing of manufacturers, and regulates numerous aspects of the contracts between manufacturers and dealers.

The bill requires a licensee or third party acting on behalf of a licensee to comply with certain restrictions on sharing or reusing consumer data provided by motor vehicle dealers. Specifically, the bill requires a licensee:

- Comply with all laws on the reuse or disclosure of data, not knowingly cause a dealer to violate any applicable restrictions on the reuse or disclosure of consumer data, and, if requested by the dealer, provide a written statement specifying established procedures to safeguard consumer data;
- Provide a written list of consumer data obtained by a dealer and all persons who the data has been provided to during the previous six months, if requested by the dealer, exempting certain individuals who need not be included in the list;
- May not require that a dealer grant the licensee or third party acting on behalf of the licensee direct access to the dealer's data management system to collect consumer data;
- Must allow a dealer to furnish consumer data in a widely accepted file format and through a third-party dealer selected by the dealer; and
- Must compensate the dealer for any third-party claims asserted against or damages incurred by the dealer from the licensee's or third party's access, use, or disclosure of the consumer data.

The bill also provides that any cause of action against a licensee for a violation of the prohibitions or requirements established in the bill, the person bringing the action has the burden of proving that the violation was willful or with sufficient frequency to establish a pattern of wrongdoing.

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

The bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Since 1970, Florida has substantially regulated the relationship between motor vehicle manufacturers and motor vehicle dealers. Manufacturers, distributors, and importers, collectively referred to as licensees, enter into contractual agreements with dealers to sell particular vehicles that the licensee manufactures, distributes, or imports. Chapter 320, F.S., provides, in part, for the regulation of the relationship between manufacturers and dealers. Existing law requires the licensing of manufacturers, and regulates numerous aspects of the contracts between manufacturers and dealers.

Florida Automobile Dealers Act

A manufacturer, factory branch, distributor, or importer must be licensed to engage in business in this state.[1] The requirements regulating the contractual business relationship between a dealer and a manufacturer are primarily found in ss. 320.60 through 320.70, F.S., known as the Florida Automobile Dealers Act.[2] These sections of law specify, in part:

- The conditions and situations under which the Department of Highway Safety and Motor Vehicles (DHSMV) may deny, suspend, or revoke a license;
- The process, timing, and notice requirements for licensees wanting to discontinue, cancel, modify, or otherwise replace a franchise agreement with a dealer, and the conditions under which DHSMV may deny such a change;
- The procedures a licensee must follow if it wants to add a dealership in an area already served by a franchised dealer, the protest process, and DHSMV's role in these circumstances;
- Amounts of damages that can be assessed against a licensee in violation of Florida Statutes; and
- The DHSMV's authority to adopt rules to implement these sections of law.

Applicability

Section 320.6992, F.S., provides that ss. 320.60 through 320.70, F.S., applies to all presently existing or hereafter established systems of distribution of motor vehicles in this state, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. The provisions do not apply to any judicial or administrative proceeding pending as of October 1, 1988, but all agreements renewed, amended, or entered into subsequent to October 1, 1988, shall be governed by ss. 320.60 through 320.70, F.S, including amendments, unless specifically providing otherwise.[3]

In 2009, DHSMV held, in an administrative proceeding, amendments to the Florida Automobile Dealers Act do not apply to dealers having franchise agreements which were signed prior to the effective date of various amendments to that Act.[4]

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[1] Section 320.61(1), F.S.

[2] Walter E. Forehand and John W. Forehand, *Motor Vehicle Dealer and Motor Vehicle Manufacturers: Florida Reacts to Pressures in the Marketplace,* 29 Fla. St. Univ. Law Rev. 1058 (2002) (No section of the statute provides a short title; however, many courts have referred to the provisions as such.), http://law-wss-01.law.fsu.edu/journals/lawreview/downloads/293/Forehand.pdf (last visited Feb. 8, 2016).

[3] Section 320.6992, F.S.

[4] *See Motorsports of Delray, LLC v. Yamaha Motor Corp., U.S.A.*, Case No. 09-0935 (Fla. DOAH Dec. 9, 2009). The DHSMV ruled that a 2006 amendment to the Florida Automobile Dealers Act does not apply to a dealer terminated in 2008 because the dealer's franchise agreement was entered into prior to the effective date of the amendment. This Final Order was initially appealed but was later voluntarily dismissed. *See also, In re Am. Suzuki Motor Corp.*, 494 B.R. 466, 480 (Bankr. C.D. Cal. 2013).

Civil Damages
Section 320.697, F.S., provides that any person who has suffered pecuniary loss or who has been otherwise affected because of a violation by a licensee, notwithstanding any other remedies under the Florida Automobile Dealers Act, has a cause of action against the licensee for damages and may recover damages in the amount of three times the loss, with costs and a reasonable attorney's fee to be assessed by the court. The licensee has the burden of proving that such violation did not occur upon a prima facie showing by the person bringing the action.

Consumer Data Protection
Consumer data can refer to a variety of information, including, but not limited to data such as one's:

- Personal-identifying data: name, address, telephone number, or email address;
- Demographic data: age, race, occupation, income, or education;
- Retail data: purchase history, credit card numbers, or bank account information; and
- Government data: social security or driver license numbers.

In the United States there are no all-encompassing laws regulating the acquisition, storage, or use of consumer data in general terms. However, partial regulations do exist in state and federal law, including in the Federal Trade Commission (FTC) Privacy and Safeguards Rule, the Gramm-Leach-Bliley Act, and state law.

Gramm-Leach Bliley Act (GLBA)[5]
The GLBA, also known as the Financial Services Modernization Act of 1999, implemented laws regarding the protection and disclosure of nonpublic personal information obtained by financial institutions, limits on reuse of information, and privacy notice requirements. The GLBA gave the FTC the authority to prescribe rules necessary to carry out certain purposes of the Act.

The FTC is the chief federal agency on privacy policy and enforcement. The FTC's Privacy Rule (*The Financial Privacy Rule*) is a principle part of the GLBA, and applies to vehicle dealers who extend credit to someone, arrange for someone to finance or lease a car, or provide financial advice or counseling to individuals.[6] Personal information collected by a dealer to provide these services is covered under the Privacy Rule, which outlines when privacy notices are required to be given to consumers, information to be included in the privacy notices, limits on the disclosure and reuse of non-public personal information, and opt out requirements.[7]

The FTC's Safeguards Rule, also part of the GLBA, outlines standards for safeguarding customer information.[8] The rule requires service providers who handle or are permitted access to customer information through its services directly to a financial institution must have a written security plan to protect the confidentiality and integrity of customer data.[9]

Florida Information Protection Act of 2014[10]
The Florida Information Protection Act of 2014 provides the procedure for protection and security of confidential personal information[11] in the possession of covered entities.[12] Covered entities,

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[5] 15 U.S.C. ss. 6801 *et. seq.*
[6] Federal Trade Commission, *FTC's Privacy Rule and Auto Dealers: FAQ*, (January 2005), https://www.ftc.gov/tips-advice/business-center/guidance/ftcs-privacy-rule-auto-dealers-faqs (last visited Feb. 8, 2016).
[7] *See* 16 C.F.R. part 313.
[8] *See* 16 C.F.R. part 314
[9] *Id.*
[10] Section 501.171, F.S.
[11] "Personal information" includes an individual's first name or first initial and last name in combination with one of the following: a social security number; driver license or identification card number, passport number, military identification number, or other number issued by a governmental entity used to verify identity; a financial account number or credit or debit card number, in combination with any required security code, access code, or password needed to permit access to the financial account; an individual's medical history, mental or physical condition, or medical treatment or diagnosis; or an individual's health insurance policy number or subscriber identification number and any unique identifier used by a health insurer. A user name or e-mail address, in combination with a

governmental entities, and third-party agents are required to take reasonable measures to protect and secure electronic data containing personal information. When the security of a data system is breached, a covered entity must provide notice to the Department of Legal Affairs and effected individuals unless an investigation and consultation with relevant law enforcement agencies determines the breach has not and will not likely result in identity theft or financial harm to the individuals whose personal information has been accessed.[13] If a covered entity fails to provide the required notices, it may face civil penalties.

Proposed Changes

The bill creates, s. 320.646,F.S., within the "Florida Automobile Dealers Act" to address consumer data protection.

The bill defines "consumer data" as "nonpublic personal information" as such term is defined in 15 U.S.C. s. 6809(4)[14] collected by a motor vehicle dealer and which is provided by the motor vehicle dealer directly to a licensee or third party acting on behalf of a licensee. Consumer data does not include the same or similar data which is obtained by a licensee from any other source.

The bill defines "data management system" as a computer hardware or software system that is owned, leased, or licensed by a motor vehicle dealer, including a system of web-based applications, computer software, or computer hardware, whether located at the motor vehicle dealership or hosted remotely, and that stores and provides access to consumer data collected or stored by a motor vehicle dealer. The term includes, but is not limited to, dealership management systems and customer relations management systems.

The bill provides that notwithstanding the provisions of any franchise agreement, a licensee that receives consumer data from a motor vehicle dealer or requires that a motor vehicle dealer provide consumer data to a third party:

- Shall comply with all, and not knowingly cause a motor vehicle dealer to violate any, applicable restrictions on reuse or disclosure of data established by federal and state law and must provide a written statement to the motor vehicle dealer upon request describing the established procedures adopted by the licensee or a third party acting on behalf of the licensee which meet or exceed any federal or state requirements to safeguard consumer data, including, but not limited to, those established in the Gramm-Leach-Bliley Act.[15]
- Shall, upon the written request of the motor vehicle dealer, provide a written list of the consumer data obtained from a motor vehicle dealer and all persons to whom any of the consumer data has been provided by the licensee or a third party acting on behalf of the licensee, during the preceding six months. The dealer may make such a request no more than once every six months. The list must indicate the specific fields of the consumer data which were provided to each person. Notwithstanding the foregoing, the list need not include:
    - A person to whom consumer data was provided, or the specific consumer data provided to such person, if the person was, at the time the consumer data was provided, one of the licensee's service providers, subcontractors or consultants acting in the course of such person's performance of services on behalf of or for the benefit of the licensee or motor vehicle dealer, provided that the licensee has entered into an agreement with such person requiring that the person comply with the safeguard requirements of

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password or security question and answer is also considered "personal information." Information that is publicly available from a federal, state, or local governmental entity or information that is encrypted, secured, or modified by a method or technology that removes personally identifiable information is not considered "personal information." *See* s. 501.171(1)(g), F.S.

[12] A "covered entity" is a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. *See* s. 501.171(1)(b), F.S.

[13] Section 501.171(4), F.S.

[14] "Nonpublic personal information" means "personally identifiable financial information provided by a consumer to a financial institution; resulting from any transaction with the consumer or any service performed for the consumer; or otherwise obtained by the financial institution." 15 U.S.C. s. 6809(4).

[15] 15 U.S.C. ss. 6801 et. seq.

applicable state and federal law, including, but not limited to, those established in the Gramm-Leach-Bliley Act, or
    - A person to whom consumer data was provided, or the specific consumer data provided to such person, if the motor vehicle dealer has previously consented in writing to such person receiving the consumer data provided and the motor vehicle dealer has not withdrawn such consent in writing.
- May not require that a motor vehicle dealer grant the licensee or a third party direct or indirect access to the dealer's data management system to collect consumer data. A licensee must permit a motor vehicle dealer to furnish consumer data in a widely accepted file format, such as comma delimited, and through a third-party vendor selected by the motor vehicle dealer. However, a licensee may access or obtain consumer data directly from a motor vehicle dealer's data management system with the express consent of the dealer. The consent is required to be in the form of a written document that is separate from the parties' franchise agreement, is executed by the motor vehicle dealer, and may be withdrawn by the dealer upon 30 days' written notice to the licensee.
- Must indemnify the motor vehicle dealer for any third party claims asserted against or damages incurred by the motor vehicle dealer as a result of the licensee's or a third party's access to, use of, or disclosure of the consumer data in violation of s. 320.646,F.S., by the licensee, a third party acting on behalf of the licensee, or a third party to whom the licensee has provided consumer data.

The bill provides that in any action against a licensee pursuant to the provisions above, the person bringing the action has the burden of proving that the violation was willful or with sufficient frequency to establish a pattern of wrongdoing with respect to such person's consumer data.

The bill also reenacts s. 320.6992, F.S., incorporating the newly created section.

The bill takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1 Creates s. 320.646, F.S, relating to consumer data protection.

Section 2 Reenacts s. 320.6992, F.S., relating to application.

Section 3 Provides an 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:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill could positively impact motor vehicle dealers who will be compensated by a licensee for any damages incurred as a result of the licensee's or a third party's access, use, or disclosure of consumer data. For that reason, the bill could also have a negative impact to the licensees.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

While the bill does not specifically provide rulemaking authority, s. 320.69, F.S., provides rulemaking authority to DHSMV for ss. 320.60 through 320.70, F.S., which includes the newly created statute.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2016, the Highway & Waterway Safety Subcommittee adopted a strike-all amendment. The amendment:

- Changed the definition of "consumer data" from information collected or record created by a motor vehicle dealer which contains personal information from which the consumer's identity could be derived, to the definition of "nonpublic personal information" as defined in 15 U.S.C. s. 6809(4), collected by the dealer and provided to the licensee or third party acting on behalf of the licensee.
- Added that the definition of "consumer data" does not include the same or similar data obtained by a licensee from any source other than the dealer.
- Clarified in the bill that the consumer data restrictions apply to a third party *acting on behalf of the licensee*.
- Added that a licensee may not *knowingly* cause a dealer to violate any applicable restrictions on the reuse or disclosure of consumer data.
- Added *upon request* from the dealer, the licensee or third party acting on behalf on the licensee must provide a written statement describing the established procedures to safeguard consumer data.
- Regarding the dealer requesting a list of consumer data obtained by the licensee and all persons the dealer's consumer data has been provided to by the licensee or third party acting on behalf of the licensee, the amendment lowered the preceding period of time the list must include, from 12 to 6 months.

- Added that the list need not include a licensee's service providers, subcontractors or consultants acting in the course of his or her performance of services on behalf of or for the benefit of the licensee or dealer, or the data provided, if the person also has agreed to comply with applicable consumer data laws. The list also need not include persons or the data provided to a person if the dealer has consented in writing that such person may receive consumer data.
- Made a technical change regarding widely accepted file formats, from comma delineated to comma delimited.
- Concerning a dealer granting a licensee access to the dealer's data management system to obtain consumer data, the amendment added that the dealer must provide the licensee 30 days' written notice to withdraw such consent.
- Added a section to the bill providing in any cause of action against a licensee for prohibitions or requirements within the bill, the person bringing the action has the burden of proving that the violation was willful or with sufficient frequency to establish a pattern of wrongdoing.

The analysis is written to the committee substitute as reported favorably by the Highway & Waterway Safety Subcommittee.

A bill to be entitled

An act relating to protection of motor vehicle dealers' consumer data; creating s. 320.646, F.S.; defining the terms "consumer data" and "data management system"; requiring that a licensee or a third party comply with certain restrictions on reuse or disclosure of consumer data received from a motor vehicle dealer; requiring that such person provide a written statement to the motor vehicle dealer delineating the established procedures adopted by the person which meet or exceed certain requirements to safeguard consumer data; requiring that upon request of a motor vehicle dealer a licensee provide a list of the consumer data obtained and all persons to whom any of the data has been disclosed, subject to certain requirements; prohibiting a licensee from requiring a motor vehicle dealer to grant the licensee or third party access to the dealer's data management system; requiring a licensee to permit a motor vehicle dealer to furnish consumer data in a widely accepted file format and through a third-party vendor selected by the motor vehicle dealer; authorizing a licensee to access or obtain consumer data from a motor vehicle dealer's data management system with the dealer's express written consent, subject to certain requirements; requiring the licensee to indemnify the

motor vehicle dealer for certain claims or damages; providing that a person bringing a specified cause of action for certain violations must meet certain requirements; reenacting s. 320.6992, F.S., relating to the provisions that apply to established systems of distribution of motor vehicles in this state, to incorporate s. 320.646, F.S., as created by the act, in a reference thereto; providing an effective date.

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

Section 1. Section 320.646, Florida Statutes, is created to read:

320.646 Consumer data protection.—

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

(a) "Consumer data" means "nonpublic personal information" as such term is defined in 15 U.S.C. s. 6809(4) collected by a motor vehicle dealer and which is provided by the motor vehicle dealer directly to a licensee or third party acting on behalf of a licensee. Consumer data does not include the same or similar data which is obtained by a licensee from any other source.

(b) "Data management system" means a computer hardware or software system that is owned, leased, or licensed by a motor vehicle dealer, including a system of web-based applications, computer software, or computer hardware, whether located at the motor vehicle dealership or hosted remotely, and that stores and

provides access to consumer data collected or stored by a motor vehicle dealer. The term includes, but is not limited to, dealership management systems and customer relations management systems.

(2) Notwithstanding the provisions of any franchise agreement, with respect to consumer data a licensee or a third party acting on behalf of a licensee:

(a) Shall comply with all, and not knowingly cause a motor vehicle dealer to violate any, applicable restrictions on reuse or disclosure of the consumer data established by federal or state law and must provide a written statement to the motor vehicle dealer upon request describing the established procedures adopted by the licensee or third party acting on behalf of the licensee which meet or exceed any federal or state requirements to safeguard the consumer data, including, but not limited to, those established in the Gramm-Leach-Bliley Act, 15 U.S.C. ss. 6801 et seq.

(b) Shall, upon the written request of the motor vehicle dealer, provide a written list of the consumer data obtained from the motor vehicle dealer and all persons to whom any consumer data has been provided by the licensee or a third party acting on behalf of a licensee during the preceding 6 months. The dealer may make such a request no more than once every 6 months. The list must indicate the specific fields of consumer data which were provided to each person. Notwithstanding the foregoing, such a list need not include:

1. A person to whom consumer data was provided, or the specific consumer data provided to such person, if the person was, at the time the consumer data was provided, one of the licensee's service providers, subcontractors or consultants acting in the course of such person's performance of services on behalf of or for the benefit of the licensee or motor vehicle dealer, provided that the licensee has entered into an agreement with such person requiring that the person comply with the safeguard requirements of applicable state and federal law, including, but not limited to, those established in the Gramm-Leach-Bliley Act, 15 U.S.C. ss. 6801 et seq.; or

2. A person to whom consumer data was provided, or the specific consumer data provided to such person, if the motor vehicle dealer has previously consented in writing to such person receiving the consumer data provided and the motor vehicle dealer has not withdrawn such consent in writing.

(c) May not require that a motor vehicle dealer grant the licensee or a third party direct or indirect access to the dealer's data management system to obtain consumer data. A licensee must permit a motor vehicle dealer to furnish consumer data in a widely accepted file format, such as comma delimited, and through a third-party vendor selected by the motor vehicle dealer. However, a licensee may access or obtain consumer data directly from a motor vehicle dealer's data management system with the express consent of the dealer. The consent must be in the form of a written document that is separate from the

parties' franchise agreement, is executed by the motor vehicle dealer, and may be withdrawn by the dealer upon 30 days' written notice to the licensee.

(d) Must indemnify the motor vehicle dealer for any third-party claims asserted against or damages incurred by the motor vehicle dealer to the extent caused by access to, use of, or disclosure of consumer data in violation of this section by the licensee, a third party acting on behalf of the licensee, or a third party to whom the licensee has provided consumer data.

(3) In any cause of action against a licensee pursuant to s. 320.697 for a violation of paragraph (2)(a), paragraph (2)(b), or paragraph (2)(c), the person bringing the action has the burden of proving that the violation was willful or with sufficient frequency to establish a pattern of wrongdoing with respect to such person's consumer data.

Section 2. For the purpose of incorporating section 320.646, Florida Statutes, as created by this act, in a reference thereto, section 320.6992, Florida Statutes, is reenacted to read:

320.6992 Application.—Sections 320.60-320.70, including amendments to ss. 320.60-320.70, apply to all presently existing or hereafter established systems of distribution of motor vehicles in this state, except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution. Sections 320.60-320.70 do not apply to any judicial or

administrative proceeding pending as of October 1, 1988. All agreements renewed, amended, or entered into subsequent to October 1, 1988, shall be governed by ss. 320.60-320.70, including any amendments to ss. 320.60-320.70 which have been or may be from time to time adopted, unless the amendment specifically provides otherwise, and except to the extent that such application would impair valid contractual agreements in violation of the State Constitution or Federal Constitution.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1133 Emergency Management
SPONSOR(S): Finance & Tax Committee and Economic Development & Tourism Subcommittee; Young
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1262

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	11 Y, 0 N, As CS	White	Duncan
2) Finance & Tax Committee	12 Y, 0 N, As CS	Pewitt	Langston
3) Economic Affairs Committee		White SAW	Pitts TP

SUMMARY ANALYSIS

CS/HB1133 creates the "Facilitating Business Rapid Response to State Declared Disasters Act," defines terms, and provides that out-of-state businesses are not considered to have established a level of presence that would require a business to register, file, and remit state or local taxes or fees, or be subject to any registration, licensing, or filing requirements, when the out-of-state businesses are:

- conducting operations within the state solely to perform disaster-related work or emergency-related work during a disaster-response period, or
- in the state pursuant to a mutual aid agreement.

The bill lists specific taxes for which these out-of-state businesses are not subject to registration, filing or remittance requirements:

- Reemployment assistance taxes;
- State or local professional or occupational licensing requirements or related fees;
- Local business taxes;
- Taxes on the operation of commercial motor vehicles;
- Corporate income tax; and
- Tangible personal property tax and use tax on equipment the out-of-state business brings into the state, uses for disaster-related or emergency-related work during the disaster-response period, and then removes.

The bill provides that an out-of-state business or out-of-state employee remaining in the state after the disaster-response period is not entitled to the procedures provided in this act and is subject to the state's normal standards for establishing presence or residency or doing business in the state.

On February 5, 2016 the Revenue Estimating Conference determined the bill has no recurring state or local revenue impact, but may have a negative indeterminate impact in any given year, depending in part on the occurrence and severity of declared states of emergency.

The bill provides that the act is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Declaration of a State Emergency

The process for declaring a state of emergency is as follows:[1]

- The public is alerted to and/or warned of an imminent or actual event.
- The Division of Emergency Management (DEM) initiates response plans of the Comprehensive Emergency Management Plan (CEMP) to manage the emergency or disaster.
- A county declares a local state of emergency.
- The Director of DEM determines that a state of emergency is required, and recommends that the Governor declare a state of emergency.
- Through executive order or proclamation, the Governor declares a state of emergency.[2] The Governor may then direct or delegate operational control over any or all parts of the emergency management functions within the state. The Governor may additionally use all resources of the state government, and of each political subdivision of the state, which are necessary to manage the emergency.[3]

A declared State of Emergency is limited to 60 days, unless renewed by the Governor or terminated by the Legislature.[4]

Stabilization of Disaster-Related Impacts for Businesses

All state agencies and volunteer organizations, that comprise the State Emergency Response Team (SERT), are grouped into 18 Emergency Support Functions (ESFs).[5] ESF #18 is the unit that consolidates multiple agencies that perform functions that ensure business, industry, and economic stabilization.[6] ESF 18 is tasked with identification and solicitation of resources to meet identified needs, and also supports SERT efforts by facilitating and coordinating intermediate and long term economic impact statements.[7]

Taxes

Reemployment Assistance Taxes

The Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of state law.[8] The program is administered as a partnership of the

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[1] Florida Division of Emergency Management (DEM), Comprehensive Emergency Management Plan, p. 28, *available at*: http://floridadisaster.org/cemp.htm.
[2] Section 252.36(2) F.S.
[3] Section 252.36(5) F.S.
[4] Section 252.36(2) F.S.
[5] DEM, Emergency Support Functions, *available at*: http://www.floridadisaster.org/emtools/esf.htm ; DEM, Comprehensive Emergency Management Plan, pg. 40-41, *available at*: http://floridadisaster.org/cemp.htm (Last visited Jan. 27, 2016.)
[6] DEM, Comprehensive Emergency Management Plan Appendix XVIII, *available at*: http://floridadisaster.org/documents/CEMP/2014/2014%20Finalized%20ESFs/2014%20ESF%2018%20Appendix_finalized.pdf.
[7] *Id.*
[8] United States Department of Labor, Employment and Training Administration, State Unemployment Insurance Benefits, *available at* http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp (Last visited Jan. 26, 2016.).

federal government and the states.[9] In general, states are permitted to set eligibility conditions for benefit recipients, the amount and duration of benefits, and the state tax structure, so long as state provisions are not in conflict with FUTA or the Social Security Act.[10]

Florida's Reemployment Assistance (RA) Program is funded solely by employers who pay quarterly state reemployment taxes provided in ch. 443, F.S., and annual payroll taxes under the Federal Unemployment Tax Act (FUTA).[11] State reemployment taxes are deposited into the Unemployment Compensation Trust Fund (UC Trust Fund), which are then used to pay reemployment benefits at no cost to eligible workers. Taxes collected from employers pursuant to FUTA fund the administrative costs of the RA Program. A portion of these funds is also used to finance the federal share of the Extended Benefits program, which is available during periods of high unemployment.

Program Administration

Florida's unemployment insurance program was created by the Legislature in 1937,[12] and rebranded as the "reemployment assistance" program in 2012.[13] The Department of Economic Opportunity (DEO) is the agency responsible for administering the RA program.[14] DEO contracts with the Department of Revenue (DOR) to provide reemployment tax collection services.[15] The United States Department of Labor (USDOL) provides DEO with administrative resource grants from the taxes collected from employers pursuant to FUTA. These funds finance the processing of claims by DEO, state reemployment tax collections performed by DOR, appeals conducted by DEO and the Unemployment Appeals Commission, and related administrative functions.

Tax Structure

Through the FUTA, the IRS levies an unemployment tax of 6.0% on employers.[16] This tax is applied to a taxable wage base of $7,000 per employee. Federal law provides employers up to a 5.4%, credit against that tax.[17] If a state has outstanding loan balances on January 1 for two consecutive years, and does not repay the full amount of its loans by November 10 of the second year, the FUTA credit rate for employers in that state will be reduced until the loan is repaid. Due to having outstanding federal advances for more than two years, Florida had its FUTA tax credit reduced by 0.3% for the 2011 calendar year, and 0.6% for the 2012 calendar year.[18]

In addition to FUTA, Florida employers pay a state reemployment tax which funds the UC Trust Fund, an account used to pay weekly benefits. Currently, employers pay quarterly state reemployment taxes on the first $7,000 of each employee's annual wages.[19] An employer's initial state tax rate is 2.7 percent.[20] After an employer is subject to benefit charges for 8-calendar quarters, the standard tax rate is 5.4 percent, but may be adjusted down to a low of 1.0 percent.[21] The adjustment in the tax rate is determined by calculating a statutory formula that incorporates an employer's experience rating,[22] size of the UC Trust Fund, and other socialized costs.

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[9] There are 53 programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia. Social Security Office of Retirement and Disability Policy, Annual Statistical Supplement, *available at* https://www.ssa.gov/policy/docs/statcomps/supplement/2014/unemployment.html (Last visited Jan., 26, 2016.).

[10] Title III, Title IX, and Title XII of the Social Security Act.

[11] Federal Unemployment Tax Act is codified at 26 U.S.C. 3301-3311.

[12] Chapter 18402, L.O.F.

[13] Chapter 2012-30, L.O.F.

[14] Sections 20.60(5)(c)(3) and 443.171, F.S.

[15] Section 443.1316, F.S.

[16] IRS, FUTA Credit Reduction, *available at* https://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/FUTA-Credit-Reduction (Last visited Jan. 28, 2016.).

[17] *Id.*

[18] For Florida, there have been no FUTA credit reductions due to outstanding federal advances, since 2012. US DOL, Historical FUTA Credit Reductions, *available at* http://workforcesecurity.doleta.gov/unemploy/finance.asp (Last visited Jan. 28, 2016.).

[19] Section 443.1217(2), F.S.

[20] Section 443.131(2)(a), F.S.

[21] Section 443.131(2)(b), F.S.

[22] Section 443.131(3)(b), F.S.

State or Local Professional or Occupational Licenses

The Florida Department of Business and Professional Regulation (DBPR) was established in 1993 with the merger of the Department of Business Regulation and the Department of Professional Regulation.[23] The DBPR is the agency charged with licensing and regulating various businesses and professionals in the state, including but not limited to, electrical contractors, the construction industry, building code administrators and inspectors, cosmetologists, veterinarians, real estate agents and pari-mutuel wagering facilities.[24] Section 455.213, F.S., provides the general provisions for issuance of professional licensure by the DBPR.

There are 22 professions regulated by DBPR. Cumulatively, there are more than 450 fees associated with the regulation of these professions. The fees range from five dollars to $2,500.[25]

Local Business Taxes

The local business tax represents the taxes charged and the method by which a local government grants the privilege of engaging in or managing any business, profession, and occupation within its jurisdiction. Counties and municipalities may levy a business tax, and the tax proceeds are considered general revenue for the local government. This tax does not refer to any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection.[26]

State law does not prohibit a county or municipality from decreasing or repealing any authorized local business tax, and a county or municipal governing body may adopt an ordinance by majority vote that repeals a local business tax or establishes new rates that decrease local business taxes and do not result in an increase in local business taxes for a taxpayer.[27] State law exempts, or allows local governments to exempt, certain individuals from all or some portion of local business taxes.[28] State law also regulates the issuance of local business tax receipts to certain individuals or businesses.

State law provides that if any person engaging in or managing a business, profession, or occupation regulated by the DBPR has paid a business tax for the current year to the county or municipality in the state where the person's permanent business location or branch is maintained, no other local governing authority may levy a business tax, or any registration or regulatory fee equivalent to the business tax, on the person for performing work or services on a temporary or transitory basis in another county or municipality.[29] For the purposes of the Local Business Tax Act, work or services performed in a place other than the county or municipality where the permanent business location or branch office is maintained may not be construed as creating a separate business location or branch office of that person.[30]

Taxes on the Operation of Commercial Motor Vehicles

The Department of Highway Safety and Motor Vehicles (HSMV) administers rules related to the taxes levied for the privilege of operating a commercial motor vehicle on public highways in Florida. Section 207.002, F.S., defines a "Commercial motor vehicle" as any vehicle not owned or operated by a governmental entity, using diesel or motor fuel on public highways, and weighing over 26,000 pounds. The taxes due are those motor and diesel fuel taxes found in parts I, II, and IV of Ch. 206, F.S.

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[23] Chapter 93-220, L.O.F.
[24] Department of Business and Professional Regulation, *available at*: http://www.myfloridalicense.com/dbpr/index.html (Last visited January 28, 2016.).
[25] Florida Estimating Conference, 2016 Florida Tax Handbook, p. 148, *available at*: http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2016.pdf .
[26] Florida Legislature, Office of Economic and Demographic Research, 2015 Local Government Financial Information Handbook, December 2015, p. 148, *available at* http://edr.state.fl.us/Content/local-government/reports/index.cfm#local-government (Last visited Jan. 28, 2016.).
[27] Section s. 205.0535(5), F.S.
[28] *See* ch. 205, F.S., relating to local business taxes.
[29] Section 205.065, F.S.
[30] *Id.*

Penalties[31] with interest[32] exist for delinquent taxes, as well as the possibility of suspension of registration and punishments for third degree felony if a fraudulent report is filed.[33]

The Division of Motor Vehicles (DMV) within HSMV ensures commercial carriers are properly registered and pay the appropriate gasoline tax for intrastate and interstate commerce. The Office of Motor Carrier Size and Weight within the HSMV is staffed by regulatory weight inspectors that perform commercial vehicle safety and weight enforcement. These inspectors weigh trucks and check registration and fuel tax compliance at 20 fixed-scale locations along major highways, and statewide by using portable scales. Over 20 million vehicles are weighed annually.[34]

Corporate Income Taxes

Florida levies a corporate income tax on corporations at 5.5 percent of income earned in Florida.[35] The calculation of Florida corporate income tax starts with a corporation's federal taxable income.[36] After certain addbacks and subtractions to federal taxable income, as required by chapter 220, F.S., the amount of adjusted federal income attributable to Florida is determined by the application of an apportionment formula.[37] The Florida corporate income tax uses a three-factor apportionment formula consisting of property – 25%, payroll -25%, and sales – 50% (which is double-weighted) to measure the portion of a multistate corporation's business activities attributable to Florida.[38] Income that is apportioned to Florida using this formula is then subject to the Florida income tax. The first $50,000 of net income is exempt.[39]

Tangible Personal Property

"Tangible Personal Property" means all goods, chattels, and other articles of value (excluding some vehicular items) capable of manual possession and whose chief value is intrinsic to the article itself. Inventory and household goods are excluded.[40]

In Florida property taxes (i.e., "ad valorem taxes") are levied by local governments on real and tangible personal property. In order for tangible personal property to be subject to ad valorem tax in a given year it must have been present in the state for at least one month as of January 1 of the tax year.

Florida's sales and use tax is a six percent levy on retail sales of most tangible personal property, admissions, transient lodgings, commercial rentals, and motor vehicles.[41] There are currently more than 250 different exemptions, exclusions, deductions, and credits from sales and use tax.[42] Sales tax is added to the price of taxable goods or services and the tax is collected from the purchaser at the time of sale. If tangible personal property is imported to Florida for use in Florida it may, under some circumstances, be subject to a "use tax" at the same rate as the sales tax.

Effect of Proposed Changes

The bill creates the "Facilitating Business Rapid Response to State Declared Disasters Act."

Definitions

The bill defines the following terms as follows:

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[31] Sections 207.007(1), 207.012, 207.013, and 207.014, F.S.
[32] Section 207.007(2), F.S.
[33] Section 207.007(3), F.S.
[34] FDOT, Motor Carrier Size and Weight, *available at* http://www.dot.state.fl.us/statemaintenanceoffice/motorcarrier.shtm (Last visited Jan. 28, 2016.).
[35] s. 220.11, F.S.
[36] s. 220.12, F.S.
[37] *See* s. 220.15, F.S.
[38] s. 220.15, F.S. *See* Florida Revenue Estimating Conference, 2016 Florida Tax Handbook, p. 62, *available at* http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2016.pdf.
[39] Section 220.14, F.S.
[40] Section 192.001(11)(d), F.S.
[41] *See* ch. 212, F.S.
[42] *Supra* note 25 at 164-167.

- "Emergency-related work" means repairing, renovating, installing, building, rendering services, or other business activities that relate to infrastructure that has been damaged, impaired, or destroyed by an event that has resulted in a declaration of a state of emergency.

- "Disaster-response period" means:
  - A period that begins 10 calendar days before the first day of a declared state of emergency and ends on the 60th calendar day after the end of the declared state of emergency; or
  - A period that begins on the date that an out-of-state business enters this state in good faith under a mutual aid agreement and in anticipation of a disaster, regardless of whether a state of emergency is declared, and ends on the date that the work is concluded, or 7 calendar days after the out-of- state business enters this state, whichever occurs first.
- "Infrastructure" means public roads; public bridges; property and equipment owned or used by communication networks, electric generating systems, electric transmission and distribution systems, gas distribution systems, or water pipelines; and related support facilities that serve multiple persons which include, but are not limited to, buildings, offices, power and communication lines and poles, pipes, structures, and equipment.

- "Mutual aid agreement" means an agreement to which one or more business entities are parties and under which a public utility, municipally owned utility, electric cooperative, or joint agency owning, operating, or owning and operating infrastructure used for electric generation, transmission, or distribution in this state may request that an out-of-state business perform work in this state in anticipation of a disaster or an emergency.

- "Out-of-state business" means a business entity that:
  - Does not have a presence in this state, except with respect to the performance of emergency-related work, and conducts no business in this state, and whose services are requested by a registered business or by a unit of state or local government for purposes of performing emergency-related work in this state; and
  - Is not registered and does not have tax filings or presence sufficient to require the collection or payment of a tax in this state in the tax year before the disaster-response period.

  The term also includes a business entity that is affiliated with a registered business solely through common ownership.
- "Out-of-state employee" means an employee who does not work in this state, except for emergency-related work during a disaster-response period.

- "Registered business" means a business entity that is registered to do business in this state before the disaster-response period begins.

Insufficient level of presence for Out-of-State Businesses and Employees

The bill provides that an out-of-state business conducting operations within the state solely to perform emergency-related work during a disaster-response period or pursuant to a mutual aid agreement is not considered to have established a level of presence that would require that business to register, file, and remit state or local taxes or fees or require that business to be subject to any registration, licensing, or filing requirements in this state.

The bill further provides that for purposes of any state or local tax on or measured, in whole or in part, by net or gross income or receipts, the activity of the out-of-state business conducted in this state during the disaster-response period must be disregarded with respect to any filing requirements for such tax, including the filing required for a consolidated group of which the out-of-state business is a subsidiary.

The bill lists specific taxes that the above provisions apply to:

- Reemployment assistance taxes.
- State or local professional or occupational licensing requirements or related fees.
- Local business taxes.
- Taxes on the operation of commercial motor vehicles.
- Corporate income tax.
- Tangible personal property tax and use tax on equipment that is brought into the state by the out-of-state business, used by the out-of-state business only to perform emergency-related work during the disaster-response period, and removed from the state by the out-of-state business following the disaster-response period.

An out-of-state employee whose only employment in this state is for the performance of emergency-related work during a disaster-response period is not required to: register, file, or remit state or local taxes; and comply with state or local occupational licensing requirements or related fees.

Obligations after Disaster-Response Period

An out-of-state employee or out-of-state business that remains in the state after the disaster-response period is not entitled to the aforementioned procedures for any activities performed after the disaster-response period ends, and is subject to the state's normal standards for establishing presence or residency or doing business in the state.

The bill provides that it is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1: Creates s. 252.64, F.S., the "Facilitating Business Rapid Response to State Declared Disasters Act."

Section 2: Provides that the bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   On February 5, 2016 the Revenue Estimating Conference determined the bill has no recurring state revenue impact, but may have a negative indeterminate impact in any given year, depending in part on the occurrence and severity of declared states of emergency.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   On February 5, 2016 the Revenue Estimating Conference determined the bill has no recurring local revenue impact, but may have a negative indeterminate impact in any given year, depending in part on the occurrence and severity of declared states of emergency.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that out-of-state businesses respond to emergencies in Florida and are exempt from paying the enumerated taxes during declared state emergencies, these businesses may operate at lower costs. If, as a result of the bill, out-of-state businesses can respond to Florida emergencies faster, then the private sector may resume normal operations faster than they would have been able to otherwise.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipal mandates provision of Art. VII, section 18 of the Florida Constitution may apply because the bill may result in occasional reductions in authority to raise certain revenue through the local business tax and ad valorem tax on tangible personal property. However, an exemption may apply because the frequency of the reductions is unknown and likely insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2016, the Economic Development & Tourism Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Relocates the bill language from ch. 252, F.S., relating emergency management, to ch. 213, F.S., relating to state revenue laws.
- Replaces the term "disaster-related work," with "emergency-related work."
- Removes the provisions requiring notification to the Division of Emergency Management.
- Removes a provision providing that, during a disaster-response period, out-of-state employees and out-of-state businesses performing disaster-related or emergency-related work are still subject to motor and other fuel taxes imposed pursuant to ch. 206, F.S, and sales and use taxes imposed pursuant to ch. 212, F.S.

On February 9, 2016, the Finance & Tax Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment added the word "electric" before the phrase "transmission and distribution systems" in the definition of infrastructure.

This analysis has been updated to reflect the amendments.

A bill to be entitled

An act relating to emergency management; amending s. 213.055, F.S.; providing definitions; providing exemptions from certain registration and licensing requirements and taxes for out-of-state businesses and employees that enter the state in response to a disaster or an emergency; specifying the applicability of certain transaction taxes and fees; specifying the obligations of an out-of-state business or employee after the disaster-response period; providing an effective date.

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

Section 1. Subsection (3) is added to section 213.055, Florida Statutes, to read:

213.055 Declared emergency; waiver or suspension of specified revenue laws.—The following actions to waive or suspend a revenue law may be implemented only when the Governor has declared a state of emergency pursuant to s. 252.36.

(3)(a) As used in this subsection, the term:

1. "Disaster-response period" means:

a. A period that begins 10 calendar days before the first day of a declared state of emergency and ends on the 60th calendar day after the end of the declared state of emergency; or

b. A period that begins on the date that an out-of-state business enters this state in good faith under a mutual aid agreement and in anticipation of a disaster, regardless of whether a state of emergency is declared, and ends on the date that the work is concluded, or 7 calendar days after the out-of-state business enters this state, whichever occurs first.

2. "Emergency-related work" means repairing, renovating, installing, building, rendering services, or other business activities that relate to infrastructure that is damaged, impaired, or destroyed by an event resulting in a declaration of a state of emergency.

3. "Infrastructure" means public roads; public bridges; property and equipment owned or used by communication networks, electric generating systems, electric transmission and distribution systems, gas distribution systems, or water pipelines; and related support facilities that serve multiple persons which include, but are not limited to, buildings, offices, power and communication lines and poles, pipes, structures, and equipment.

4. "Mutual aid agreement" means an agreement to which one or more business entities are parties and under which a public utility, municipally owned utility, electric cooperative, or joint agency owning, operating, or owning and operating infrastructure used for electric generation, transmission, or distribution in this state may request that an out-of-state business perform work in this state in anticipation of a

disaster or an emergency.

5. "Out-of-state business" means a business entity that:

a. Does not have a presence in this state, except with respect to the performance of emergency-related work, and conducts no business in this state, and whose services are requested by a registered business or by a unit of state or local government for purposes of performing emergency-related work in this state; and

b. Is not registered and does not have tax filings or presence sufficient to require the collection or payment of a tax in this state during the tax year immediately before the disaster-response period. The term also includes a business entity that is affiliated with a registered business solely through common ownership.

6. "Out-of-state employee" means an employee who does not work in this state, except for emergency-related work during a disaster-response period.

7. "Registered business" means a business entity that is registered to do business in this state before the disaster-response period begins.

(b)1. Notwithstanding any other provision of law, an out-of-state business that is conducting operations within this state during a disaster-response period solely for purposes of performing emergency-related work or pursuant to a mutual aid agreement is not considered to have established a level of presence that would require that business to register, file, and

remit state or local taxes or fees or require that business to be subject to any registration, licensing, or filing requirements in this state. For purposes of any state or local tax on or measured, in whole or in part, by net or gross income or receipts, the activity of the out-of-state business conducted in this state during the disaster-response period must be disregarded with respect to any filing requirements for such tax, including the filing required for a consolidated group of which the out-of- state business may be a part. This includes the following:

a. Reemployment assistance taxes.

b. State or local professional or occupational licensing requirements or related fees.

c. Local business taxes.

d. Taxes on the operation of commercial motor vehicles.

e. Corporate income tax.

f. Tangible personal property tax and use tax on equipment that is brought into the state by the out-of-state business, used by the out-of-state business only to perform emergency-related work during the disaster-response period, and removed from the state by the out-of-state business after the disaster-response period.

2. Notwithstanding any other provision of law, an out-of-state employee whose only employment in this state is for the performance of emergency-related work or pursuant to a mutual aid agreement during a disaster-response period is not required

to:

a. Register, file, or remit state or local taxes.

b. Comply with state or local occupational licensing requirements or related fees.

(c) An out-of-state business or out-of-state employee that remains in this state after the disaster-response period is not entitled to the procedures provided in this subsection for activities performed after the disaster-response period ends and is subject to the state's normal standards for establishing presence or residency or doing business in the state.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1169 Emergency Management
SPONSOR(S): Powell
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1288

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	13 Y, 0 N	Hancock	Duncan
2) Appropriations Committee	24 Y, 0 N	Delaney	Leznoff
3) Economic Affairs Committee		Hancock	Pitts

SUMMARY ANALYSIS

The Division of Emergency Management (DEM), located within the Executive Office of the Governor, is responsible for administering programs to rapidly apply all available aid to communities stricken by an emergency and preparing a state comprehensive emergency management plan (CEMP). The CEMP is integrated into and coordinated with the federal government's emergency management plans. Both the state and federal government have established processes to prepare for, respond to, recover from, and mitigate natural, technological, or manmade disasters.

Although Florida's CEMP establishes three levels of activation for the SERT to effectively monitor and respond to threats or emergency situations, the term "activate" is not defined in statute. The bill clarifies the process utilized by DEM's State Emergency Response Team (SERT) to effectively mobilize resources and conduct activities to guide and support local emergency management efforts.

The bill clarifies the definition of the term "activate" as "the execution and implementation of the necessary plans and activities required to mitigate, respond to, or recover from a potential or actual state of emergency or disaster declared pursuant to this chapter and the state comprehensive emergency management plan which specifies levels of activation,"

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

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation:

State Emergency Management Act

The State Emergency Management Act[1] created the Florida Division of Emergency Management (DEM), conferred emergency powers upon the Governor, and provided for the rendering of mutual aid among political subdivisions of the state, other states, and with the Federal Government.[2] It was enacted with a declaration of state policy "that all emergency management functions of the state be coordinated to the maximum extent with comparable functions of the Federal Government... to the end that the most effective preparation and use may be made of the workforce, resources, and facilities of the nation for dealing with any emergency that may occur."[3]

Florida Division of Emergency Management's Comprehensive Emergency Management Plan

DEM is tasked with administering programs to rapidly apply all available aid to communities stricken by an emergency.[4] In order to do so, DEM is responsible for preparing a state comprehensive emergency management plan (CEMP), "which shall be integrated into and coordinated with the emergency management plans and programs of the Federal Government."[5] The CEMP serves as the framework for disaster and emergency preparedness, response, recovery and mitigation activities.[6]

Florida Emergency Process

When an imminent or actual event threatens the state, the Director of DEM activates the State Emergency Response Team (SERT) and recommends that the Governor declare a state of emergency.[7] The SERT provides management of response and recovery activities from the State Emergency Operations Center (SEOC), a permanent facility located in Tallahassee.[8] The SEOC operates 24 hours a day, 7 days a week, but the level of staffing varies with the activation level.

The CEMP establishes three levels of activation as follows:

- Level 3 – Monitoring Activation
  This level is a "monitoring" phase. Notification is made to those state agencies and Emergency Support Functions (ESFs) needed to take action as part of everyday responsibilities. The State Emergency Operation Center is staffed with State Warning Point Communicators and DEM staff.
- Level 2 – Partial Activation of SERT
  This level is limited activation with all primary or lead ESFs notified. The State Emergency Operations Center will be staffed by DEM personnel and necessary ESFs.
- Level 1 – Full Activation

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[1] Sections 252.31-60, F.S.
[2] Section 252.32(1), F.S.
[3] Section 252.32(2), F.S.
[4] Section 14.2016, F.S.
[5] Section 252.35(2)(a), F.S.
[6] *See* Florida Division of Emergency Management (DEM), *State of Florida 2014 Comprehensive Emergency Management Plan (2014 CEMP), available at*: http://floridadisaster.org/cemp.htm (last visited January, 11, 2016).
[7] *Id.*, at 18. Alternatively, the SERT can be activated by the Governor, or the SERT Chief. *See* 2014 CEMP, Section IV H, Activation of Emergency Facilities.
[8] *Id.*, at 12-17.

This level is full scale activation and all primary and support agencies under the state plan are notified. The State Emergency Operations Center is staffed by DEM personnel and all ESFs. [9]

In order to receive federal assistance, the Governor of the state requesting funding must demonstrate direct execution of the State's emergency plan.[10] The Federal Coordinating Officer (FCO) works in unison with the State Coordinating Officer (SCO) to coordinate the federal response to a state affected by a disaster or emergency.[11]

Federal Emergency Declaration Process

When state and local resources are inadequate to effectively respond to a disaster or emergency, a state governor may request federal assistance.[12] The Governor's written request for federal assistance is made through the regional Federal Emergency Management Agency (FEMA) office after a preliminary damage assessment (PDA) has been completed.[13] The PDA assesses the costs associated with emergency protective measures, debris removal, and damage to infrastructure.[14] . In the case of an emergency, Florida sends its PDA to Region IV, located in Atlanta, Georgia.[15] However, if a severe or catastrophic event occurs, the Governor's request may be submitted prior to the PDA.

The Governor's request for federal assistance must demonstrate that appropriate action has occurred under state law and that the state's emergency plan has been initiated, among other things. After completion of the Governor's request, the President may activate federal programs to assist in the response and recovery effort. Not all federal programs are activated for every disaster.

These federal programs providing assistance are organized within the Emergency Support Functions (ESF) framework. The ESF provides the structure and coordination of federal interagency support in the event of an incident.[16] The ESF is structured upon fifteen annexes. Within each annex, federal agencies that engage in work within that functional area are labeled as primary or support agencies. Primary agencies have significant roles, resources, or capabilities necessary for emergency support within the ESF annex. Support agencies assist primary agencies in responding to an incident or providing necessary resources.[17]

The needs of the state requesting assistance determine which federal programs are activated within the ESF framework.[18] There are three activation levels and a "watch steady state" recognized by FEMA for the National Response Coordination Center. The federal levels of activation are described as follows:

- Watch Steady State
  - No event or incident anticipated.
- Level III
  - Requires moderate direct federal assistance.
  - Typically a recovery effort with minimal response requirements.

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[9] DEM, *State Emergency Operations Center Activation Levels, available at*: http://www.floridadisaster.org/eoc/eoclevel.htm (last visited Dec. 1, 2015).
[10] FEMA, *The Declaration Process, available at:* https://www.fema.gov/declaration-process (last visited Dec. 3, 2015).
[11] *Supra*, note 10 at 21-22.
[12] Public Law No: 100-707.
[13] *Supra*, note 14.
[14] DEM, *Public Assistance Program, available at*: http://www.floridadisaster.org/Recovery/PublicAssistance/Index.htm (last visited Dec. 3, 2015).
[15] DEM, *Declaration Process – Request for Presidential Disaster Declaration, available at*: http://www.floridadisaster.org/Recovery/IndividualAssistance/DeclarationProcess/Index.htm (last visited Dec. 3, 2015).
[16] FEMA, *EMERGENCY SUPPORT FUNCTION ANNEXES: INTRODUCTION, available at*: www.fema.gov/pdf/emergency/nrf/nrf-esf-intro.pdf
[17] FEMA, *Primary and Support Agencies, available at*: https://emilms.fema.gov/IS293/MAO0103070text.htm
[18] *Supra*, note 14.

- Federal assistance may be limited to activation of only one or two ESF primary agencies.

- Level II
  - Requires a high amount of federal assistance.
  - Significant involvement of FEMA, and other federal agencies.
  - Possible deployment of initial response resources are required to support the needs of the affected state.
- Level II
  - An incident of such magnitude that has caused the response at the local, regional, or national-level to be completely overwhelmed or broken.
  - Requires an extreme amount of direct federal assistance for response and recovery efforts.
  - Major involvement of FEMA, other Federal agencies, and all primary ESF agencies are activated.[19]

Effect of Proposed Changes

This bill clarifies the term "activate" as it relates to the activation of the State Emergency Response Team (SERT) within the State Emergency Operations Center (SEOC) or at an alternate facility pursuant to the State Emergency Management Act. "Activate" is defined as "the execution and implementation of the necessary plans and activities required to mitigate, respond to, or recover from a potential or actual state of emergency or disaster declared pursuant to this chapter and the state comprehensive emergency management plan which specifies levels of activation."

The federal declaration process requires the state to 'execute' the state emergency plan in response to a disaster. Florida guidelines do not require the entire SEOC to be activated in order to respond to a disaster, portions of the SERT can be activated to provide assistance under the Comprehensive Emergency Management Plan (CEMP). The definition is intended to clarify that activating portions of the SERT constitutes execution of the state emergency plan to aid in the federal reimbursement process.

B. SECTION DIRECTORY:

Section 1: Amends s. 252.34, F.S., relating to definition under the State Emergency Management Act, defining the term "activate."

Section 2: Amends s. 163.360(10), F.S., relating to community redevelopment plans, conforming a statutory cross-reference.

Section 3: Amends s. 474.2125(1), F.S., relating to the issuance of a temporary license to a licensed veterinarian, conforming a statutory cross-reference.

Section 4: Amends s. 627.659(4), F.S., relating to blanket health insurance, conforming a statutory cross-reference.

Section 5: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[19] FEMA, *National Incident Support Manual, available at:* https://www.fema.gov/media-library/assets/documents/24921 (last visited Dec. 9, 2015).

1. Revenues:

   None.

2. Expenditures:

   The Division of Emergency Management notes that they are not aware of any fiscal impact on the state due to the bill.[20]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The Division of Emergency Management notes that they are not aware of any fiscal impact on local governments due to the bill.[21]

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 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[20] DEM bill analysis of HB 1169. On file with the Appropriation Committee.
[21] *Id.*

A bill to be entitled

An act relating to emergency management; amending s. 252.34, F.S.; defining the term "activate" for purposes of part I of ch. 252, F.S.; amending ss. 163.360, 474.2125, and 627.659, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (1) through (9) of section 252.34, Florida Statutes, are renumbered as subsections (2) through (10), respectively, and a new subsection (1) is added to that section, to read:

252.34 Definitions.—As used in this part, the term:

(1) "Activate" means the execution and implementation of the necessary plans and activities required to mitigate, respond to, or recover from a potential or actual state of emergency or disaster declared pursuant to this chapter and the state comprehensive emergency management plan which specifies levels of activation.

Section 2. Subsection (10) of section 163.360, Florida Statutes, is amended to read:

163.360 Community redevelopment plans.—

(10) Notwithstanding any other provisions of this part, when the governing body certifies that an area is in need of redevelopment or rehabilitation as a result of an emergency

under s. 252.34(4) ~~s. 252.34(3)~~, with respect to which the Governor has certified the need for emergency assistance under federal law, that area may be certified as a "blighted area," and the governing body may approve a community redevelopment plan and community redevelopment with respect to such area without regard to the provisions of this section requiring a general plan for the county or municipality and a public hearing on the community redevelopment.

Section 3. Subsection (1) of section 474.2125, Florida Statutes, is amended to read:

474.2125 Temporary license.—

(1) The board shall adopt rules providing for the issuance of a temporary license to a licensed veterinarian of another state for the purpose of enabling her or him to provide veterinary medical services in this state for the animals of a specific owner or, as may be needed in an emergency as defined in s. 252.34(4) ~~s. 252.34(3)~~, for the animals of multiple owners, provided the applicant would qualify for licensure by endorsement under s. 474.217. No temporary license shall be valid for more than 30 days after its issuance, and no license shall cover more than the treatment of the animals of one owner except in an emergency as defined in s. 252.34(4) ~~s. 252.34(3)~~. After the expiration of 30 days, a new license is required.

Section 4. Subsection (4) of section 627.659, Florida Statutes, is amended to read:

627.659 Blanket health insurance; eligible groups.—Blanket

health insurance is that form of health insurance which covers special groups of individuals as enumerated in one of the following subsections:

(4) Under a policy or contract issued in the name of a volunteer fire department, first aid group, local emergency management agency as defined in s. 252.34(6) ~~s. 252.34(5)~~, or other group of first responders as defined in s. 112.1815, which is deemed the policyholder, covering all or any grouping of the members or employees of the policyholder or covering all or any participants in an activity or operation sponsored or supervised by the policyholder.

Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1361 Growth Management
SPONSOR(S): Local Government Affairs Subcommittee; La Rosa
TIED BILLS: **IDEN./SIM. BILLS:** SB 1190

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	12 Y, 1 N	Lukis	Duncan
2) Local Government Affairs Subcommittee	12 Y, 0 N, As CS	Darden	Miller
3) Economic Affairs Committee		Lukis AL	Pitts TP

SUMMARY ANALYSIS

The bill seeks to alter various provisions within four areas of the state's growth management laws: administrative challenges to comprehensive plan amendments; Developments of Regional Impact (DRIs); sector plans; and annexation of enclaves.

Administrative Challenges to Comprehensive Plan Amendments

- The bill provides that a recommended order submitted to the Department of Economic Opportunity (DEO) by an administrative law judge regarding a challenged comprehensive plan amendment becomes final within 90 days without agency action.
- The bill requires a 45 day time limit for certain expedited administrative proceedings.

Developments of Regional Impact

- The bill authorizes reductions in height, density, or intensity in DRIs without losing vested rights.
- The bill specifies that a proposed development or changes thereto that would otherwise require DRI review must follow the state coordinated review process, but only if the development or changes to the development require an amendment to the comprehensive plan.
- The bill allows a developer, DEO, and local government, to amend their agreement that a development is essentially built-out without a notification of proposed change necessary for a substantial deviation.
- The bill provides that certain unbuilt land uses specified in an agreement establishing that a development is "essentially built out," may be substituted for another land use.
- The bill provides that phase date extensions are not substantial deviations under certain circumstances.
- The bill provides that previously developed lands acquired for development as part of an existing DRI are not subject to aggregation under certain circumstances.
- The bill authorizes DRIs to rescind their DRI development order.

Sector Plans

- The bill decreases the minimum required acreage of sector plans from 15,000 acres to 5,000 acres.

Annexation of Enclaves

- The bill authorizes enclaves that are 110 acres in size to be annexed on an expedited basis.

See FISCAL COMMENTS.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Administrative Challenges to Comprehensive Plan Amendments

Comprehensive Plan Background and the Comprehensive Plan Amendment Process

In 1985, the Florida Legislature passed the landmark Growth Management Act, which required every city and county to create and implement a comprehensive plan to guide future development.[1] A locality's comprehensive plan lays out the locations for future public facilities, including roads, water and sewer facilities, neighborhoods, parks, schools, and commercial and industrial developments. A development that does not conform to the comprehensive plan may not be approved by a local government unless the local government amends its comprehensive plan first.[2]

State law requires a proposed comprehensive plan amendment to receive three public hearings, the first held by the local planning board.[3] The local commission (city or county) must then hold an initial public hearing regarding the proposed amendment and subsequently transmit it to several statutorily identified reviewing agencies,[4] including the Department of Economic Opportunity (DEO), the relevant Regional Planning Council (RPC), and adjacent local governments that request to participate.

Upon receipt of the proposed plan amendment, state agencies review the proposed amendment for impacts related to their statutory purview.[5] The RPC reviews the amendment specifically for "extra-jurisdictional impacts that would be inconsistent with the comprehensive plan of any affected local government within the region" as well as adverse effects on regional resources or facilities. The affected state agencies and the RPC then issue a report of their review to the local government, which then holds a second public hearing at which the governing body votes to approve the amendment or not.[6] If the amendment receives a favorable vote it is transmitted to DEO for final review.[7] The DEO then has either 31 days or 45 days (depending on the review process to which the amendment is subject) to determine whether the proposed comprehensive plan amendment is in compliance with all relevant agency rules and laws.[8]

The Expedited State Review Process vs. the State Coordinated Review Process

In 2011, the Florida Legislature bifurcated the process for approving comprehensive plan amendments.[9] Most plan amendments were placed into the Expedited State Review Process, while plan amendments relating to large-scale developments were placed into the State Coordinated Review Process.[10] The two processes operate in much the same way; however, the State Coordinated Review Process provides a longer review period and requires all agency comments to be coordinated by DEO, rather than communicated directly to the permitting local government by each individual reviewing agency.[11]

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[1] Chapter 85-55, Laws of Fla.
[2] *See* s. 163.3163, F.S.
[3] Sections 163.3184 and 163. 3181, F.S.
[4] Section 163.3184, F.S.
[5] Section 163.3184(3), (4), F.S.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] Ch. 2011-139, s. 17, Laws of Fla.
[10] *Id.*
[11] Section 163.3184(3), (4), F.S.

Administrative Challenges to Plan Amendments

Any "affected person" as defined in s. 163.3184(1)(a), F.S., may file a petition with the Division of Administrative Hearings (Division), to request a formal hearing to challenge whether a plan amendment is "in compliance" with law.[12] The petition must be filed with the Division within 30 days after the local government adopts the amendment.[13]

The state land planning agency (DEO) may also file a petition with the Division to request a formal hearing to challenge whether the plan amendment is in compliance.[14] Under the expedited state review process, this petition must be filed with the Division within 30 days after the DEO notifies the local government that the plan amendment package is complete. Under the state coordinated review process, this petition must be filed with the division within 45 days after DEO notifies the local government that the plan amendment package is complete.[15]

Once filed, an administrative law judge (ALJ) must hold a hearing on the petition in the affected local jurisdiction to determine whether to make a recommendation that the challenged plan amendment is in compliance or not in compliance.[16] In challenges filed by an affected person, the ALJ must determine a plan amendment to be in compliance if the local government's determination of compliance is "fairly debatable."[17] Conversely, in challenges filed by DEO, a plan amendment is presumed to be in compliance and will only be found not in compliance by a preponderance of the evidence.[18] Absent a showing of extraordinary circumstances, the ALJ must issue the recommended order, within 30 days after filing of the transcript, unless the parties agree in writing to a longer time.[19]

If the ALJ recommends that the amendment be found *not* in compliance, the ALJ must submit the recommended order to the Administration Commission for final agency action.[20] Upon submittal of the recommended order, the Administration Commission must enter a final order within 90 days.[21] Conversely, if the ALJ recommends that the amendment be found *in* compliance, the ALJ must submit its recommended order to DEO.[22]

If DEO determines that the plan amendment should be found in compliance, it must enter its final order within 90 days.[23] If DEO determines that the plan amendment should be found not in compliance, it must submit its recommended order to the Administration Commission for final action within 90 days.[24]

If the Administration Commission finds that the plan amendment is not in compliance with law, the Commission must specify remedial actions that would bring the plan amendment into compliance.[25] The Commission may also specify certain sanctions to which the local government will be subject if it elects to make the amendment effective notwithstanding the Commission's determination of noncompliance.[26]

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[12] Section 163.3184(5)(a), F.S. See definition of "in compliance" in s. 163.3184(1)(b), F.S.
[13] Section 163.3184(5)(a), F.S. At any time after the filing of a challenge, the state land planning agency and the local government may voluntarily enter into a compliance agreement to resolve one or more of the issues raised in the proceedings. Section 163.3184(6), F.S.
[14] Section 163.3184(5)(b), F.S.
[15] *Id.*
[16] Section 163.3184(5)(c), F.S.
[17] *Id.*
[18] *Id.*
[19] Section 163.3184(7)(c), F.S.
[20] Section 163.3184(5)(d), F.S. The Administration Commission consists of the Governor and Cabinet. S. 14.202, F.S.
[21] *Id.;* s. 120.569(2)(l), F.S.
[22] Section 163.3184(5)(e), F.S.
[23] *Id.*
[24] *Id.*
[25] Section 163.3184(8)(a), F.S.
[26] Section 163.3184(8)(b), F.S.

Mediation and Expedited Challenges

Challenges to comprehensive plans may also go through mediation or an expedited process.[27] At any time after the matter has been forwarded to the Division, the local government proposing the amendment may demand formal mediation.[28] Additionally, any time after the matter has been forwarded to the Division, the local government proposing the amendment or an affected person who is a party to the proceeding may demand informal mediation or expeditious resolution of the proceedings.[29] In either case, the party demanding mediation or expedited review must serve written notice on all other parties to the proceeding and the ALJ.

Upon receipt of the notice, the ALJ must set the matter for final hearing within 30 days.[30] Once a final hearing has been set, no continuance in the hearing, and no additional time for post-hearing submittals, may be granted without the written agreement of the parties absent a finding by the administrative law judge of extraordinary circumstances.[31]

Absent a showing of extraordinary circumstances, the ALJ must issue a recommended order within 30 days after filing of the transcript, unless the parties agree in writing to a longer time.[32] Absent a showing of extraordinary circumstances, the Administration Commission, upon receiving a recommended order of not in compliance (from the ALJ or DEO), must issue a final order within 45 days unless the parties agree in writing to a longer time.[33]

Developments of Regional Impact

Developments of Regional Impact Background

Section 380.06, F.S., defines a Development of Regional Impact (DRI) as "any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county." Given their size, DRIs are subject to a special review process and often require an amendment to a comprehensive plan.

The Legislature initially created the DRI program in 1972 as an interim program intended to be replaced by comprehensive planning and permitting programs.[34] However, the DRI program remained until 2015. In 2015,[35] the Legislature determined that *new* developments that would otherwise require DRI review must adhere to the state coordinated review process.[36] Accordingly, although there would be no additional DRIs, existing DRIs would remain intact and must adhere to existing DRI laws and review requirements.

DRI Review

Florida law requires all developments that meet the DRI thresholds and standards provided by statute and rules adopted by the Administration Commission to undergo DRI review, unless an exemption applies.[37] The developments that are exempt from DRI review include the following:

- particular types of developments for which the Legislature has provided an exemption (e.g., hospitals are exempt from DRI review);

[27] Section 163.3184(7)(a), F.S.
[28] *Id.*
[29] *Id.*
[30] Section 163.3184(7)(b), F.S.
[31] *Id.*
[32] Section 163.3184(7)(c), F.S.
[33] Section 163.3184(7)(d), F.S.
[34] The Florida Senate, Committee on Community Affairs, Interim Report 2012-114, September 2011, citing: Thomas G. Pelham, *A Historical Perspective for Evaluating Florida's Evolving Growth Management Process*, in Growth Management in Florida: Planning for Paradise, 8 (Timothy S. Chapin, Charles E. Connerly, and Harrison T.Higgins eds. 2005).
[35] Chapter 2015-30, Laws of Fla.
[36] Section 380.06(30), F.S.
[37] Section 380.06(24), (28), (29), F.S.

- developments that are located within a "dense urban land area" (DULA)[38]; and
- developments that are located in a planning area receiving a legislative exemption such as a sector plan or a rural land stewardship area.[39]

The types of developments required to undergo DRI review may include attraction and recreation facilities, office developments, retail and service developments, mixed-use developments, residential developments, schools, or recreational vehicle developments. Over the years, the Legislature has enacted new exemptions and increased the thresholds that projects must surpass in order to trigger DRI review.[40]

The review process is a joint effort between Florida's 11 Regional Planning Councils (RPCs), the Department of Economic Opportunity (DEO or department), other state agencies, and local governments.[41]

A DRI review begins by a developer contacting the appropriate RPC to arrange a pre-application conference.[42] The developer or the RPC may request that other affected state and regional agencies participate in the conference to identify issues raised by the proposed project and the level of information that the agency will require in the application to assess those issues.[43] At the pre-application conference, the RPC provides the developer with information about the DRI process and uses the pre-application conference to identify issues and to coordinate the appropriate state and local agency requirements.[44]

The RPC and developer may reach an agreement regarding assumptions and methodology to be used in the application for development approval.[45] If an agreement is reached, the reviewing agencies may not later object to the agreed upon assumptions and methodologies unless the project changes or subsequent information makes the assumptions or methodologies no longer relevant.[46]

Upon completion of the pre-application conference with all parties, the developer files an application for development approval with the local government, the RPC, and the state land planning agency.[47] The RPC reviews the application for sufficiency and may request additional information (no more than twice) if the application is deemed insufficient.[48]

Once the RPC determines the application is sufficient or the developer declines to provide additional information, the local government must hold a public hearing on the application for development within 90 days.[49] Within 50 days after receiving notice of the public hearing, the RPC is required to prepare and submit to the local government a report and recommendations on the regional impact of the proposed development.[50] The RPC is required to identify regional issues specifically examining the following:

- whether the development will have a favorable or unfavorable impact on state or regional resources or facilities identified in the applicable state (state comprehensive plan) or regional (strategic regional policy plan) plans;

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[38] Dense urban land areas are characterized by certain population densities. Section 380.06(29), F.S.
[39] *Id.*
[40] The Florida Senate, Committee on Community Affairs, Interim Report 2012-114, at 2. September 2011.
[41] *See* s. 380.06, F.S.
[42] Section 380.06(6)-(9), F.S.
[43] Section 380.06(7)-(8), F.S.
[44] Section 380.06(7), F.S.
[45] Section 380.06(8), F.S.
[46] *Id.*
[47] Section 380.06(7)-(10), F.S.
[48] Section 380.06(10), F.S.
[49] Section 380.06(11), F.S.
[50] Section 380.06(12), F.S.

- whether the development will significantly impact adjacent jurisdictions; and
- in reviewing the first two issues, whether the development will favorably or adversely affect the ability of people to find adequate housing reasonably accessible to their places of employment.[51]

If the proposed project will have impacts within the purview of other state agencies, those agencies will also prepare reports and recommendations on the issues raised by the project and within their statutorily-prescribed jurisdiction.[52] These reports become part of the RPC's report, but the RPC may attach dissenting views.[53] When water management district and Department of Environmental Protection permits have been issued pursuant to Ch. 373, F.S., or Ch. 403, F.S., the RPC may comment on the regional implications of the permits but may not offer conflicting recommendations.[54] Finally, the state land planning agency (DEO) also reviews DRIs for compliance with state laws and to identify regional and state impacts and to make recommendations to local governments for approving, not approving, or suggesting mitigation conditions.[55]

At the local public hearing on the proposed DRI, concurrent comprehensive plan amendments associated with the proposed DRI must be heard as well.[56] When considering whether the development is approved, denied, or approved subject to conditions, restrictions, or limitations, the local government considers the following:

- whether the development is consistent with its comprehensive plan and land development regulations;
- whether the development is consistent with the report and recommendations of the RPC; and
- whether the development is consistent with the state comprehensive plan.[57]

Within 30 days of the public hearing on the application for development approval, the local government must decide whether to issue a development order or not.[58] Within 45 days after a development order is or is not rendered, the owner or developer of the property or the state land planning agency may appeal the order to the Governor and Cabinet, sitting as the Florida Land and Water Adjudicatory Commission. An "aggrieved or adversely affected party" may appeal and challenge the consistency of a development order with the local comprehensive plan.[59]

DRI review requires significant time and expense. Moreover, because DRIs (like all developments) must maintain consistency with the local government's comprehensive plan, changes to the DRI development order may meet further delay and expense if a change to the DRI triggers the need for a plan amendment.[60]

Local Government Development Order: Buildout Date and "Essentially Built Out"

Local government development orders, at a minimum, must include the following:

- the monitoring procedures and the local official responsible for assuring compliance with the development order;

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[51] *Id.*
[52] Section 380.06(9),(12), F.S.
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] Section 380.06(10)-(11), F.S.
[57] *Id.*
[58] Section 380.06(15), F.S.
[59] *Id.*
[60] *Bay Point Club, Inc. v. Bay County*, 820 So. 2d 256 (Fla. 1st DCA 2004).

- compliance dates for the development order, including a deadline for commencing physical development and for compliance with conditions of approval or phasing requirements, and a buildout date that reasonably reflects the time anticipated to complete the development;
- a date until which the local government agrees that the approved DRI is not subject to downzoning, unit density reduction, or intensity reduction, unless the local government can demonstrate that substantial changes in the conditions underlying the approval of the development order have occurred or the development order was based on substantially inaccurate information provided by the developer or that the change is clearly established by local government to be essential to the public health, safety, or welfare; and
- a legal description of the property.[61]

A local government may only issue permits for development subsequent to the buildout date under certain circumstances.[62] One of those circumstances includes when a project has been determined to be an "essentially built out" DRI through an agreement executed by the developer, DEO, and the local government.[63] An "essentially built-out" development of regional impact means the developers are in compliance with all applicable terms and conditions of the development order except the buildout date and either:

- the amount of development that remains to be built is less than the substantial deviation threshold for each individual land use category, or, for a multiuse development, the sum total of all unbuilt land uses as a percentage of the applicable substantial deviation threshold is equal to or less than 100 percent; or
- DEO and the local government have agreed in writing that the amount of development to be built does not create the likelihood of any additional regional impact not previously reviewed.[64]

If the project is determined to be essentially built out, development may proceed after the termination or expiration date contained in the development order without further DRI review subject to the local government comprehensive plan and land development regulations or subject to a modified development-of-regional-impact analysis.[65]

Substantial Deviation

Any proposed change to a previously approved DRI development order that creates a reasonable likelihood of additional regional impact, or any type of regional impact created by the change not previously reviewed by the regional planning agency, constitutes a "substantial deviation" and requires such proposed change to be subject to further DRI review.[66] To determine whether a proposed change requires further DRI review, Florida law establishes the following:

- certain threshold criteria beyond which a change constitutes a substantial deviation;[67]
- certain changes in development that do not amount to a substantial deviation;[68]
- scenarios in which a substantial deviation is presumed;[69] and
- scenarios in which a change is presumed not to create a substantial deviation.[70]

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[61] Section 380.06(15)(c), F.S.
[62] Section 380.06(15)(g), F.S.
[63] *Id.*
[64] *Id.*
[65] *Id.*
[66] Section 380.06(19)(a), F.S.
[67] Section 380.06(19)(b), F.S.
[68] Section 380.06(19)(e), F.S.
[69] Section 380.06(19)(c), F.S.
[70] Section 380.06(19)(d), F.S.

In addition, Florida law directs DEO to establish by rule standard forms for submittal of proposed changes to a previously approved DRI development order.[71] At a minimum, the form must require the developer to provide the precise language that the developer proposes to delete or add as an amendment to the development order.[72] The developer must submit the form to the local government, the regional planning agency, and DEO.[73]

After the developer submits the form, the appropriate regional planning agency or DEO must review the proposed change and, no later than 45 days after submittal of the proposed change, must advise the local government in writing whether it objects to the proposed change, specifying the reasons for its objection, and must provide a copy to the developer.[74]

In addition, the local government must give 15 days' notice and schedule a public hearing to consider the change.[75] This public hearing must be held within 60 days after submittal of the proposed changes, unless the developer wishes to extend the time.[76]

At the public hearing, the local government must determine whether the proposed change requires further DRI review based on the thresholds and standards set out in law.[77] The local government may also deny the proposed change based on matters relating to local issues, such as if the land on which the change is sought is plat restricted in a way that would be incompatible with the proposed change, and the local government does not wish to change the plat restriction as part of the proposed change.[78]

If the local government determines that the proposed change does not require further DRI review and is otherwise approved, the local government must issue an amendment to the development order incorporating the approved change and conditions of approval relating to the change.[79] If, however, the local government determines that proposed change does require further DRI review, the local government must determine whether to approve, approve with conditions, or deny the proposed change as it relates to the entire development.[80]

Aggregation of Developments

Section 380.0651, F.S., directs the Administration Commission to adopt statewide guidelines and standards for developments to undergo DRI review. As part of such guidelines and standards, the law provides for when two or more developments must be "aggregated" and treated as a single development.[81]

Specifically, two or more developments must be aggregated when they are determined to be part of a unified plan of development and are physically proximate to one other.[82] Three of the following four criteria must be met to determine that a "unified plan of development" exists:

- the same person has retained or shared control of the developments, the same person has ownership or a significant legal interest in the developments, or the developments share common management controlling the form of physical development or disposition of parcels of the development;

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[71] Section 380.06(19)(f), F.S.
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.*
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] Section 380.06(19)(g), F.S.
[81] Section 380.0651(4), F.S.
[82] *Id.*

- there is a reasonable proximity in time between the completion of 80 percent or less of one development and the submission to a governmental agency of plans or drawings for the other development which is indicative of a common development effort;
- plans or drawings exist covering the developments sought to be aggregated which have been submitted to certain government bodies; and
- there is a common advertising scheme or promotional plan in effect for the developments.[83]

However, despite the finding of physical proximity and the existence of a unified plan, Florida law provides for the following circumstances in which aggregation is not applicable:

- developments which are otherwise subject to aggregation with a DRI, which has received approval through the issuance of a final development order may not be aggregated with the approved DRI;
- two or more developments, each of which is independently a DRI that has or will obtain a development order;
- completion of any development that has been vested;
- the developments sought to be aggregated were authorized to commence development prior to September 1, 1988, and could not have been required to be aggregated under the law existing prior to that date; and
- any development that qualifies for an exemption as a DULA.[84]

Rescission

Certain developments or portions of developments that have received a DRI development order may subsequently not be required to undergo DRI-impact review. This may occur on account of a change in statutory guidelines and standards, because the DRI has reduced its size below certain legal thresholds, or because a development becomes exempt from DRI review, for example in the case of a DULA.[85]

If one of these scenarios ensues, the development must continue to be governed by the DRI development order and may be completed pursuant to the development order unless the developer or landowner has followed the procedures for rescission.[86] Upon request by the developer or landowner, the DRI development order must be rescinded by the local government having jurisdiction "upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed or will be completed" under an existing permit or some other equivalent authorization.[87]

Sector Plans

Background and History

Sector planning is a tool for large-area planning through which one or more local governments engage in long-term planning for areas of at least 15,000 acres.[88] Sector plans are intended to promote and encourage long-term planning for conservation, development, and agriculture on a landscape scale, to further support innovative and flexible planning and development strategies, to facilitate and emphasize protection of regionally significant resources, and to avoid duplication of effort in terms of the level of data and analysis required for a DRI.[89]

[83] Section 380.0615(4)(a), F.S.
[84] Section 380.0615(4)(c), F.S.
[85] Section 380.115(1), F.S.
[86] Section 380.115(1)(a), F.S.
[87] Section 380.115(1)(b), F.S.
[88] Section 163.3245(1), F.S.
[89] *Id.*

Prior to the creation of sector planning, such large scale plans were primarily left to DRIs and traditional comprehensive plans.[90] However, once Florida's population, and thus development began to dramatically increase in the 1990s, planners and lawmakers sought new approaches for a more long term and flexible approach to planning that maintained a principled focus on conservation.[91] This brought about the advent of sector plans in 1998.[92]

Sector Plan Process

The sector planning process encompasses two levels: adoption in the local government's comprehensive plan of a long-term master plan and subsequent adoption by local development order of two or more detailed specific area plans (DSAP) that implement the master plan.[93] Both levels require review and approval by affected local governments, and appropriate regional and state authorities.[94]

In addition to other requirements, a long-term master plan must include maps, illustrations, data, and analysis to address the following:

- a framework map that, at a minimum, generally depicts conservation land use, identifies allowed uses in the planning area, specifies maximum and minimum densities and intensities of use, and provides the general framework for the development pattern;
- a general identification of the water supplies needed and available sources of water, including water resource development and water supply development projects, and water conservation measures needed to meet the projected demand of the future land uses in the long-term master plan;
- a general identification of the transportation facilities to serve the future land uses in the long-term master plan;
- a general identification of other regionally significant public facilities necessary to support the future land uses;
- a general identification of regionally significant natural resources within the planning area and policies setting forth the procedures for protection or conservation of specific resources consistent with the overall conservation and development strategy for the planning area;
- general principles and guidelines addressing, among other things, future land uses, the use of lands identified for permanent preservation through recordation of conservation easements, achieving a healthy environment, limiting urban sprawl, enhancing the prospects for the creation of jobs, and providing housing types; and
- identification of general procedures and policies to facilitate intergovernmental coordination to address extra-jurisdictional impacts from the future land uses.[95]

Additionally, a long-term master plan may be based upon a planning period longer than the generally applicable planning period of the local comprehensive plan, and may include a phasing or staging schedule that allocates a portion of the local government's future growth to the planning area through the planning period.[96] A long-term master plan must specify the projected population within the planning

[90] David L. Powell, Gary K. Hunter, Jr., & Robert M. Rhodes, *Sector Plans*, Florida Environmental and Land Use Law, The Florida Bar, June 2014. Page 33.1-1 to 33.1-2. Article on file with House Economic Development & Tourism Subcommittee staff.
[91] *Id.*
[92] Section 163.3245, F.S.
[93] Section 163.3245(3), F.S.
[94] Section 163.3245, F.S.
[95] Section 163.3245(3)(a), F.S.
[96] *Id.*

area during the chosen planning period but is not required to demonstrate need based upon projected population growth or on any other basis.[97]

The DSAPs must be consistent with the long-term master plan and generally must include conditions and commitments that provide for the following:

- development or conservation of an area of at least 1,000 acres;
- detailed identification and analysis of the maximum and minimum densities and intensities of use and the distribution, extent, and location of future land uses;
- detailed identification of plans to address water needs of development in the DSAP;
- detailed identification of the transportation facilities to serve the future land uses in the DSAP;
- detailed identification of other regionally significant public facilities;
- detailed identification of public facilities necessary to serve development in the DSAP;
- detailed analysis and identification of specific measures to ensure the protection, restoration and management of lands within the boundary of the DSAP identified for permanent preservation through recordation of conservation easements;
- detailed principles and guidelines addressing, among other things, the future land uses, achieving a healthy environment, limiting urban sprawl, providing a range of housing types, protecting wildlife and natural areas, and advancing the efficient use of resources; and
- identification of specific procedures to facilitate intergovernmental coordination to address extra-jurisdictional impacts from the DSAP.[98]

A landowner, developer, or the state land planning agency may appeal a local government development order implementing a DSAP to the Florida Land and Water Adjudicatory Commission.[99] In addition, any owner of property within the planning area of a proposed long-term master plan may withdraw his or her consent to the master plan at any time prior to local government adoption, and the local government must exclude such parcels from the adopted master plan.[100] Thereafter, the long-term master plan and any DSAP do not apply to the subject parcels. After adoption of a long-term master plan, an owner may withdraw his or her property from the master plan only with the approval of the local government by plan amendment.[101]

As of July 1, 2014 there are seven approved sector plans in Florida:

- the Bay County (West Bay Area Vision) Sector Plan;
- the Orange County (Horizon West) Sector Plan;
- the City of Bartow (Clear Springs) Sector Plan;
- the Escambia County Sector Plan;
- the Nassau County (East Nassau County) Sector Plan;
- the Hendry County (Rodina) Sector Plan; and

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[97] *Id.*

[98] Section 163.3245(3)(b), F.S. Like a long-term master plan, a DSAP may be based upon a planning period longer than the generally applicable planning period of the local comprehensive plan. Again, like a long term master plan, a DSAP must specify the projected population within the specific planning area during the chosen planning period but is not required to demonstrate need based upon projected population growth or on any other basis.

[99] Section 163.3245(3)(e), F.S.

[100] Section 163.3245(8), F.S.

[101] *Id.*

- the Osceola County (Northeast District) Sector Plan.[102]

Annexation of Enclaves

Annexation Background

Florida law defines annexation as the adding of real property to the boundaries of an incorporated municipality.[103] The purpose of annexation varies. Historically, annexation was typically used to provide rural communities with access to municipal services—a proposition grounded in the notion that only cities could effectively deliver essential services such as police, fire, and water and sewer.[104] Presently, in addition to seeking out appropriate levels of service, annexation is often used either by developers to find the most favorable laws and regulations for a development, or by a municipality to increase its tax base.[105]

There are three threshold requirements to annex land: the annexed land must be unincorporated, "contiguous", and "compact."[106] Under Florida law, "contiguous" means that "a substantial part of a boundary of the territory sought to be annexed by a municipality is coterminous with a part of the boundary of the municipality."[107] "Compactness" means "concentration of a piece of property in a single area and precludes any action which would create enclaves (discussed below), pockets, or finger areas in serpentine patterns."[108]

Assuming the land to be annexed is contiguous and compact, there are two primary methods of annexation procedures—involuntary and voluntary—and one exceptional method—expedited annexation of certain enclaves.[109] All three methods are discussed below; however, it is important to note that Florida law may allow certain special acts to supersede general laws related to annexation, and charter counties may have special annexation procedures.[110]

Involuntary Annexation

Involuntary annexation originates from a municipality wishing to annex unincorporated territory. The process begins with the municipality adopting an ordinance proposing to annex an area of contiguous, compact, and unincorporated territory.[111] Once the governing body of the municipality adopts the ordinance, a majority of the electors in the area to be annexed must vote in favor of the annexation in a referendum.[112]

The referendum must be conducted and paid for by the municipality seeking annexation and may not take place sooner than 30 days following the final adoption of the annexation ordinance.[113] Further, the governing body of the annexing municipality must publish notice of the referendum at least once each week for two consecutive weeks immediately preceding the date of the referendum in a newspaper of general circulation in the area in which the referendum is to be held.[114] The notice must contain several

[102] Department of Economic Opportunity, *Sector Planning Program*, available at http://www.floridajobs.org/community-planning-and-development/programs/community-planning-table-of-contents/sector-planning-program (last visited January 21, 2016).
[103] Section 171.031(1), F.S.
[104] Alison Yurko, *A Practical Perspective About Annexation in Florida*, 25 Stetson L. Rev. 669 (1996).
[105] *Id.*
[106] Section 171.043, F.S. Florida law also lays out many "prerequisites to annexation" in s. 171.042, F.S.
[107] Section 171.031(11), F.S.
[108] Section 171.031(12), F.S.
[109] Section 171.046, F.S.
[110] Sections 171.0413(4) and s. 171.044(4), F.S.
[111] Section 171.0413(1), F.S.
[112] Section 171.0413(2), F.S. If there are no electors in the area, there is no need for a referendum, but owners of more than 50 percent of the parcels of land in the area proposed to be annexed must consent to annexation. Section 171.0413(6), F.S.
[113] Section 171.0413(2), F.S.
[114] *Id.*

details including the ordinance number, the time and places for the referendum, and a general description of the area proposed to be annexed with an illustrating map.[115]

If more than 70 percent of the land to be annexed is owned by individuals, corporations, or legal entities which are not registered electors of such area, such area shall not be annexed unless the owners of more than 50 percent of the land consent to the annexation.[116] Otherwise, the annexation will become effective upon a simple majority vote in the referendum.

Voluntary Annexation

Voluntary annexation, in contrast to involuntary annexation, is born out of petition by the owner or owners of real property.[117] That is, the owner or owners of real property in an unincorporated area of a county which is contiguous to a municipality and reasonably compact may petition the governing body of said municipality that said property be annexed to the municipality.[118]

Typically, upon determination by the governing body of the municipality that the petition bears the signatures of all owners of property in the area proposed to be annexed, the governing body may, at any regular meeting, adopt a nonemergency ordinance to annex said property and redefine the boundary lines of the municipality to include said property.[119]

However, the process for voluntary annexation may differ as the laws relating to voluntary annexation in the Florida statutes are supplemental to any other procedure provided in general or special law.[120] Moreover, charter counties may provide (in their charter) for an exclusive method of municipal annexation.[121]

Annexation of Enclaves

The other method of annexation provided for in the Florida statutes deals with the annexation of "enclaves."[122] Florida law defines "enclave" as follows:

- any unincorporated improved or developed area that is enclosed within and bounded on all sides by a single municipality; or
- any unincorporated improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality.[123]

The Legislature expressly recognizes in s. 171.046, F.S., that, "enclaves can create significant problems in planning, growth management, and service delivery, and therefore declare that it is the policy of the state to eliminate enclaves."[124] Accordingly, the Legislature authorizes two expedited methods of annexing enclaves of less than 10 acres into the municipality in which they exist:

- a municipality may annex such an enclave by interlocal agreement with the county having jurisdiction over the enclave; or

[115] *Id.*
[116] Section 171.0413(5), F.S.
[117] Section 171.044(1), F.S.
[118] *Id.*
[119] Section 171.044(2), F.S.
[120] Section 171.044(4), F.S.
[121] *Id.*
[122] Section 171.046, F.S.
[123] Section 171.031(13), F.S.
[124] Section 171.046(1), F.S.

- a municipality may annex such an enclave with fewer than 25 registered voters by municipal ordinance when the annexation is approved in a referendum by at least 60 percent of the registered voters who reside in the enclave.[125]

Effect of Proposed Changes

The bill seeks to alter various provisions within four areas of the State's growth management laws: administrative challenges to comprehensive plan amendments; Developments of Regional Impact (DRIs); sector plans; and annexation of enclaves.

Administrative Challenges to Comprehensive Plan Amendments

- The bill provides that a recommended order to DEO by an administrative law judge that a challenged comprehensive plan amendment be found in compliance with law becomes a final order within 90 days after issuance unless:
  - DEO finds the plan amendment to be in compliance and issues its final order;
  - DEO finds the plan amendment not in compliance and it refers the recommended order to the Administration Commission for final action; or
  - all parties consent in writing to an extension of the 90 day period.
- The bill also specifies that a recommended order issued under expedited proceedings that recommends a plan amendment to be in compliance, becomes a final order 45 days after issuance unless all parties agree in writing to extend the 45 day period.

Developments of Regional Impact

- The bill specifies that a person does not lose his or her right to proceed with a development authorized as a DRI if a change is made to the development that has the effect only of reducing the height, density, or intensity of the originally approved development.
- The bill specifies that a proposed development or amendments thereto that would otherwise require DRI review must follow the state coordinated review process if the development or amendment to the development requires an amendment to the comprehensive plan.
- The bill allows a developer, DEO, and local government, to amend their agreement that a development is essentially built-out without the submission, review, or approval of a notification of proposed change necessary for a substantial deviation.
- The bill provides that unbuilt land uses specified in an agreement establishing that a development is essentially built out, may be developed in a manner by which one approved land use is substituted for another approved land use at a ratio that ensures there will be no increase in impacts on public facilities and will meet all applicable requirements of the comprehensive plan and land development code. Further, at the time of building permit issuance, the developer must demonstrate to the local government that the exchange ratio will not result in an increase in net impact on public facilities and will meet all applicable requirements of the comprehensive plan and land development code. The local government is required to consult with the Department of Transportation on any development previously determined to impact strategic intermodal facilities.
- The bill provides that the following is not a substantial deviation: a phase date extension, if DEO, in consultation with the appropriate regional planning council and subject to the written concurrence of the Department of Transportation, agrees that the traffic impact is not significant and adverse under applicable state agency rules.

[125] *See id.*

- The bill provides that previously developed lands acquired for development as part of an existing DRI are not subject to aggregation if the newly acquired lands comprise an area that is equal to or less than 10 percent of the total acreage subject to the existing DRI development order.
- The bill authorizes DRIs to rescind their DRI development order. Such rescission would be subject to local government oversight as to what form of substituted entitlement replaces the DRI development order.

Sector Plans

- The bill decreases the minimum required acreage of sector plans from 15,000 acres to 5,000 acres.

Annexation of Enclaves

- The bill increases the size of enclaves which can be annexed on an expedited basis from 10 acres to 110 acres.

The bill provides an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1: Amends s. 163.3184, F.S., clarifying when certain developments are subject to the state coordinated review process; and establishing time limits related to challenges to proposed plan amendments.

Section 2: Amends s. 163.3245, F.S., increasing the minimum required acreage for creating sector plans.

Section 3: Amends s. 171.046, F.S., increasing the maximum size of enclaves eligible for expedited annexation.

Section 4: Amends s. 380.06, F.S., providing for the ability to avoid the notice of proposed change requirements necessary for a substantial deviation when amending an agreement that a development is essentially built-out; allowing for the substitution of an approved land use for another in a development that is essentially built out in certain circumstances; providing that a phase date extension is not a substantial deviation in certain circumstances; and clarifying when certain developments are subject to the state coordinated review process.

Section 5: Amends s. 380.0651, F.S., providing that previously developed land acquired for development as a part of an existing DRI is not subject to aggregation in certain circumstances.

Section 6: Amends s. 380.115, F.S., expanding the projects subject to certain statutory vested rights protections and development order rescission procedures, to include developments that elect to rescind the development order.

Section 7: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

   See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

In its analysis of the bill, DEO stated that "[t]he bill should have a minimal impact to expenditures due to reduction in the number and types of situations that result in DRI amendments or extensive review of amendments."[126]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2016, the Local Government Affairs Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment removes language creating a rebuttal presumption concerning substantial deviations and makes clarifying changes to the revised language.

This analysis is drawn to the bill as amended.

[126] Department of Economic Opportunity, 2016 Agency Legislative Bill Analysis, page 7. January 14, 2016. Analysis on file with House Economic Development & Tourism Subcommittee staff.

A bill to be entitled

An act relating to growth management; amending s. 163.3184, F.S.; specifying that certain developments must follow the state coordinated review process; providing timeframes within which the Division of Administrative Hearings must transmit certain recommended orders to the Administration Commission; establishing deadlines for the state land planning agency to take action on recommended orders relating to certain plan amendments; providing a procedure for issuing a final order if the state land planning agency fails to act; amending s. 163.3245, F.S.; revising the acreage thresholds for sector plans; amending s. 171.046, F.S.; revising the size of an enclave that a municipality may annex on an expedited basis; amending s. 380.06, F.S.; authorizing certain changes to approved developments of regional impact; authorizing parties to amend certain development agreements without submittal, review, or approval of a notification of proposed change; providing criteria under which one approved land use may be substituted for another approved land use in certain land development agreements under certain circumstances; providing a rebuttable presumption that certain proposed changes to certain developments are a substantial deviation; specifying that such

developments must undergo further development-of-regional-impact review; providing that certain phase date extensions to amend a development order are not substantial deviations under certain circumstances; specifying conditions under which certain proposed developments are not required to undergo the state coordinated review process; amending s. 380.0651, F.S.; providing that lands acquired for development are not subject to aggregation under certain circumstances; amending s. 380.115, F.S.; providing the procedures to be used by a development that elects to rescind a development order; providing an effective date.

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

Section 1. Paragraph (c) of subsection (2), paragraph (e) of subsection (5), and paragraph (d) of subsection (7) of section 163.3184, Florida Statutes, are amended to read:

163.3184 Process for adoption of comprehensive plan or plan amendment.—

(2) COMPREHENSIVE PLANS AND PLAN AMENDMENTS.—

(c) Plan amendments that are in an area of critical state concern designated pursuant to s. 380.05; propose a rural land stewardship area pursuant to s. 163.3248; propose a sector plan pursuant to s. 163.3245 or an amendment to an adopted sector

plan; update a comprehensive plan based on an evaluation and appraisal pursuant to s. 163.3191; propose a development that is subject to the state coordinated review process ~~qualifies as a development of regional impact~~ pursuant to s. 380.06; or are new plans for newly incorporated municipalities adopted pursuant to s. 163.3167, must ~~shall~~ follow the state coordinated review process in subsection (4).

(5) ADMINISTRATIVE CHALLENGES TO PLANS AND PLAN AMENDMENTS.—

(e) If the administrative law judge recommends that the amendment be found in compliance, the judge shall submit the recommended order to the state land planning agency.

1. If the state land planning agency determines that the plan amendment should be found not in compliance, the agency shall make every effort to refer the recommended order and its determination expeditiously to the Administration Commission for final agency action, but at a minimum within the time period provided by s. 120.569.

2. If the state land planning agency determines that the plan amendment should be found in compliance, the agency shall make every effort to enter its final order expeditiously, but at a minimum within the time period provided by s. 120.569.

3. The recommended order submitted under this paragraph becomes a final order 90 days after issuance unless the state land planning agency acts as provided in subparagraph 1. or subparagraph 2. or all parties consent in writing to an

extension of the 90-day period.

(7) MEDIATION AND EXPEDITIOUS RESOLUTION.—

(d) For a case following the procedures under this subsection, absent written consent of the parties or a showing of extraordinary circumstances, if the administrative law judge recommends that the amendment be found not in compliance, the Administration Commission shall issue a final order~~, in a case proceeding under subsection (5),~~ within 45 days after ~~the~~ issuance of the recommended order~~, unless the parties agree in writing to a longer time~~. If the administrative law judge recommends that the amendment be found in compliance, the state land planning agency shall issue a final order within 45 days after issuance of the recommended order. If the state land planning agency fails to timely issue a final order, the recommended order finding the amendment to be in compliance immediately becomes the final order.

Section 2. Subsection (1) of section 163.3245, Florida Statutes, is amended to read:

163.3245 Sector plans.—

(1) In recognition of the benefits of long-range planning for specific areas, local governments or combinations of local governments may adopt into their comprehensive plans a sector plan in accordance with this section. This section is intended to promote and encourage long-term planning for conservation, development, and agriculture on a landscape scale; to further support innovative and flexible planning and development

strategies, and the purposes of this part and part I of chapter 380; to facilitate protection of regionally significant resources, including, but not limited to, regionally significant water courses and wildlife corridors; and to avoid duplication of effort in terms of the level of data and analysis required for a development of regional impact, while ensuring the adequate mitigation of impacts to applicable regional resources and facilities, including those within the jurisdiction of other local governments, as would otherwise be provided. Sector plans are intended for substantial geographic areas that include at least 5,000 ~~15,000~~ acres of one or more local governmental jurisdictions and are to emphasize urban form and protection of regionally significant resources and public facilities. A sector plan may not be adopted in an area of critical state concern.

Section 3. Subsection (2) of section 171.046, Florida Statutes, is amended to read:

171.046 Annexation of enclaves.—

(2) In order to expedite the annexation of enclaves of 110 ~~10~~ acres or less into the most appropriate incorporated jurisdiction, based upon existing or proposed service provision arrangements, a municipality may:

(a) Annex an enclave by interlocal agreement with the county having jurisdiction of the enclave; or

(b) Annex an enclave with fewer than 25 registered voters by municipal ordinance when the annexation is approved in a referendum by at least 60 percent of the registered voters who

reside in the enclave.

Section 4. Subsection (14), paragraph (g) of subsection (15), paragraphs (b) and (e) of subsection (19), and subsection (30) of section 380.06, Florida Statutes, are amended to read:

380.06 Developments of regional impact.—

(14) CRITERIA OUTSIDE AREAS OF CRITICAL STATE CONCERN.— If the development is not located in an area of critical state concern, in considering whether the development is ~~shall be~~ approved, denied, or approved subject to conditions, restrictions, or limitations, the local government shall consider whether, and the extent to which:

(a) The development is consistent with the local comprehensive plan and local land development regulations.~~;~~

(b) The development is consistent with the report and recommendations of the regional planning agency submitted pursuant to subsection (12).~~; and~~

(c) The development is consistent with the State Comprehensive Plan. In consistency determinations, the plan shall be construed and applied in accordance with s. 187.101(3).

However, a local government may approve a change to a development authorized as a development of regional impact if the change has the effect of reducing the originally approved height, density, or intensity of the development and if the revised development would have been consistent with the comprehensive plan in effect when the development was originally

approved. If the revised development is approved, the developer may proceed as provided in s. 163.3167(5).

(15) LOCAL GOVERNMENT DEVELOPMENT ORDER.—

(g) A local government may ~~shall~~ not issue a permit ~~permits~~ for a development subsequent to the buildout date contained in the development order unless:

1. The proposed development has been evaluated cumulatively with existing development under the substantial deviation provisions of subsection (19) after ~~subsequent to~~ the termination or expiration date;

2. The proposed development is consistent with an abandonment of development order that has been issued in accordance with ~~the provisions of~~ subsection (26);

3. The development of regional impact is essentially built out, in that all the mitigation requirements in the development order have been satisfied, all developers are in compliance with all applicable terms and conditions of the development order except the buildout date, and the amount of proposed development that remains to be built is less than 40 percent of any applicable development-of-regional-impact threshold; or

4. The project has been determined to be an essentially built-out development of regional impact through an agreement executed by the developer, the state land planning agency, and the local government, in accordance with s. 380.032, which will establish the terms and conditions under which the development may be continued. If the project is determined to be essentially

built out, development may proceed pursuant to the s. 380.032 agreement after the termination or expiration date contained in the development order without further development-of-regional-impact review subject to the local government comprehensive plan and land development regulations ~~or subject to a modified development-of-regional-impact analysis~~. The parties may amend the agreement without submission, review, or approval of a notification of proposed change pursuant to subsection (19). For the purposes of ~~As used in~~ this paragraph, a ~~an "essentially built-out"~~ development of regional impact is considered essentially built out, if ~~means~~:

a. The developers are in compliance with all applicable terms and conditions of the development order except the buildout date; and

b.(I) The amount of development that remains to be built is less than the substantial deviation threshold specified in paragraph (19)(b) for each individual land use category, or, for a multiuse development, the sum total of all unbuilt land uses as a percentage of the applicable substantial deviation threshold is equal to or less than 100 percent; or

(II) The state land planning agency and the local government have agreed in writing that the amount of development to be built does not create the likelihood of any additional regional impact not previously reviewed.

The single-family residential portions of a development may be

considered "essentially built out" if all of the workforce housing obligations and all of the infrastructure and horizontal development have been completed, at least 50 percent of the dwelling units have been completed, and more than 80 percent of the lots have been conveyed to third-party individual lot owners or to individual builders who own no more than 40 lots at the time of the determination. The mobile home park portions of a development may be considered "essentially built out" if all the infrastructure and horizontal development has been completed, and at least 50 percent of the lots are leased to individual mobile home owners. In order to accommodate changing market demands and achieve maximum land use efficiency in an essentially built out project, when a developer is building out a project, a local government, without the concurrence of the state land planning agency, may adopt a resolution authorizing the developer to exchange one approved land use for another approved land use as specified in the agreement. Before the issuance of a building permit pursuant to an exchange, the developer must demonstrate to the local government that the exchange ratio will not result in a net increase in impacts to public facilities and will meet all applicable requirements of the comprehensive plan and land development code. For developments previously determined to impact strategic intermodal facilities as defined in s. 339.63, the local government shall consult with the Department of Transportation before approving the exchange.

(19) SUBSTANTIAL DEVIATIONS.—

(b) Any proposed change to a previously approved development of regional impact or development order condition which, either individually or cumulatively with other changes, exceeds any of the ~~following~~ criteria in subparagraphs 1.-11. constitutes ~~shall constitute~~ a substantial deviation and shall cause the development to be subject to further development-of-regional-impact review through the notice of proposed change process under this section. ~~without the necessity for a finding of same by the local government:~~

1. An increase in the number of parking spaces at an attraction or recreational facility by 15 percent or 500 spaces, whichever is greater, or an increase in the number of spectators that may be accommodated at such a facility by 15 percent or 1,500 spectators, whichever is greater.

2. A new runway, a new terminal facility, a 25 percent lengthening of an existing runway, or a 25 percent increase in the number of gates of an existing terminal, but only if the increase adds at least three additional gates.

3. An increase in land area for office development by 15 percent or an increase of gross floor area of office development by 15 percent or 100,000 gross square feet, whichever is greater.

4. An increase in the number of dwelling units by 10 percent or 55 dwelling units, whichever is greater.

5. An increase in the number of dwelling units by 50

percent or 200 units, whichever is greater, provided that 15 percent of the proposed additional dwelling units are dedicated to affordable workforce housing, subject to a recorded land use restriction that shall be for a period of not less than 20 years and that includes resale provisions to ensure long-term affordability for income-eligible homeowners and renters and provisions for the workforce housing to be commenced before ~~prior to~~ the completion of 50 percent of the market rate dwelling. For purposes of this subparagraph, the term "affordable workforce housing" means housing that is affordable to a person who earns less than 120 percent of the area median income, or less than 140 percent of the area median income if located in a county in which the median purchase price for a single-family existing home exceeds the statewide median purchase price of a single-family existing home. For purposes of this subparagraph, the term "statewide median purchase price of a single-family existing home" means the statewide purchase price as determined in the Florida Sales Report, Single-Family Existing Homes, released each January by the Florida Association of Realtors and the University of Florida Real Estate Research Center.

6. An increase in commercial development by 60,000 square feet of gross floor area or of parking spaces provided for customers for 425 cars or a 10 percent increase, whichever is greater.

7. An increase in a recreational vehicle park area by 10

percent or 110 vehicle spaces, whichever is less.

8. A decrease in the area set aside for open space of 5 percent or 20 acres, whichever is less.

9. A proposed increase to an approved multiuse development of regional impact where the sum of the increases of each land use as a percentage of the applicable substantial deviation criteria is equal to or exceeds 110 percent. The percentage of any decrease in the amount of open space shall be treated as an increase for purposes of determining when 110 percent has been reached or exceeded.

10. A 15 percent increase in the number of external vehicle trips generated by the development above that which was projected during the original development-of-regional-impact review.

11. Any change that would result in development of any area which was specifically set aside in the application for development approval or in the development order for preservation or special protection of endangered or threatened plants or animals designated as endangered, threatened, or species of special concern and their habitat, any species protected by 16 U.S.C. ss. 668a-668d, primary dunes, or archaeological and historical sites designated as significant by the Division of Historical Resources of the Department of State. The refinement of the boundaries and configuration of such areas shall be considered under sub-subparagraph (e)2.j.

The substantial deviation numerical standards in subparagraphs 3., 6., and 9., excluding residential uses, and in subparagraph 10., are increased by 100 percent for a project certified under s. 403.973 which creates jobs and meets criteria established by the Department of Economic Opportunity as to its impact on an area's economy, employment, and prevailing wage and skill levels. The substantial deviation numerical standards in subparagraphs 3., 4., 5., 6., 9., and 10. are increased by 50 percent for a project located wholly within an urban infill and redevelopment area designated on the applicable adopted local comprehensive plan future land use map and not located within the coastal high hazard area.

(e)1. Except for a development order rendered pursuant to subsection (22) or subsection (25), a proposed change to a development order which individually or cumulatively with any previous change is less than any numerical criterion contained in subparagraphs (b)1.-10. and does not exceed any other criterion, or which involves an extension of the buildout date of a development, or any phase thereof, of less than 5 years is not subject to the public hearing requirements of subparagraph (f)3., and is not subject to a determination pursuant to subparagraph (f)5. Notice of the proposed change shall be made to the regional planning council and the state land planning agency. Such notice must include a description of previous individual changes made to the development, including changes previously approved by the local government, and must include

appropriate amendments to the development order.

2. The following changes, individually or cumulatively with any previous changes, are not substantial deviations:

a. Changes in the name of the project, developer, owner, or monitoring official.

b. Changes to a setback which do not affect noise buffers, environmental protection or mitigation areas, or archaeological or historical resources.

c. Changes to minimum lot sizes.

d. Changes in the configuration of internal roads which do not affect external access points.

e. Changes to the building design or orientation which stay approximately within the approved area designated for such building and parking lot, and which do not affect historical buildings designated as significant by the Division of Historical Resources of the Department of State.

f. Changes to increase the acreage in the development, if no development is proposed on the acreage to be added.

g. Changes to eliminate an approved land use, if there are no additional regional impacts.

h. Changes required to conform to permits approved by any federal, state, or regional permitting agency, if these changes do not create additional regional impacts.

i. Any renovation or redevelopment of development within a previously approved development of regional impact which does not change land use or increase density or intensity of use.

j. Changes that modify boundaries and configuration of areas described in subparagraph (b)11. due to science-based refinement of such areas by survey, by habitat evaluation, by other recognized assessment methodology, or by an environmental assessment. In order for changes to qualify under this sub-subparagraph, the survey, habitat evaluation, or assessment must occur before the time that a conservation easement protecting such lands is recorded and must not result in any net decrease in the total acreage of the lands specifically set aside for permanent preservation in the final development order.

k. Changes that do not increase the number of external peak hour trips and do not reduce open space and conserved areas within the project except as otherwise permitted by sub-subparagraph j.

l. A phase date extension, if the state land planning agency, in consultation with the regional planning council and subject to the written concurrence of the Department of Transportation, agrees that the traffic impact is not significant and adverse under applicable state agency rules.

m.~~l.~~ Any other change that the state land planning agency, in consultation with the regional planning council, agrees in writing is similar in nature, impact, or character to the changes enumerated in sub-subparagraphs a.-l. ~~a.-k.~~ and that does not create the likelihood of any additional regional impact.

This subsection does not require the filing of a notice of proposed change but requires an application to the local government to amend the development order in accordance with the local government's procedures for amendment of a development order. In accordance with the local government's procedures, including requirements for notice to the applicant and the public, the local government shall either deny the application for amendment or adopt an amendment to the development order which approves the application with or without conditions. Following adoption, the local government shall render to the state land planning agency the amendment to the development order. The state land planning agency may appeal, pursuant to s. 380.07(3), the amendment to the development order if the amendment involves sub-subparagraph g., sub-subparagraph h., sub-subparagraph j., sub-subparagraph k., or sub-subparagraph m.~~l.~~ and if the agency believes that the change creates a reasonable likelihood of new or additional regional impacts.

3. Except for the change authorized by sub-subparagraph 2.f., any addition of land not previously reviewed or any change not specified in paragraph (b) or paragraph (c) shall be presumed to create a substantial deviation. This presumption may be rebutted by clear and convincing evidence.

4. Any submittal of a proposed change to a previously approved development must include a description of individual changes previously made to the development, including changes previously approved by the local government. The local

government shall consider the previous and current proposed changes in deciding whether such changes cumulatively constitute a substantial deviation requiring further development-of-regional-impact review.

5. The following changes to an approved development of regional impact shall be presumed to create a substantial deviation. Such presumption may be rebutted by clear and convincing evidence:~~.~~

a. A change proposed for 15 percent or more of the acreage to a land use not previously approved in the development order. Changes of less than 15 percent shall be presumed not to create a substantial deviation.

b. Notwithstanding any provision of paragraph (b) to the contrary, a proposed change consisting of simultaneous increases and decreases of at least two of the uses within an authorized multiuse development of regional impact which was originally approved with three or more uses specified in s. 380.0651(3)(c) and (d) and residential use.

6. If a local government agrees to a proposed change, a change in the transportation proportionate share calculation and mitigation plan in an adopted development order as a result of recalculation of the proportionate share contribution meeting the requirements of s. 163.3180(5)(h) in effect as of the date of such change shall be presumed not to create a substantial deviation. For purposes of this subsection, the proposed change in the proportionate share calculation or mitigation plan may

not be considered an additional regional transportation impact.

(30) ~~NEW~~ PROPOSED DEVELOPMENTS.—A ~~new~~ proposed development otherwise subject to the review requirements of this section shall be approved by a local government pursuant to s. 163.3184(4) in lieu of proceeding in accordance with this section. However, if the proposed development is consistent with the comprehensive plan as provided in s. 163.3194(3)(b), the development is not required to undergo review pursuant to s. 163.3184(4) or this section. This subsection does not apply to amendments to a development order governing an existing development of regional impact.

Section 5. Paragraph (c) of subsection (4) of section 380.0651, Florida Statutes, is amended to read:

380.0651 Statewide guidelines and standards.—

(4) Two or more developments, represented by their owners or developers to be separate developments, shall be aggregated and treated as a single development under this chapter when they are determined to be part of a unified plan of development and are physically proximate to one other.

(c) Aggregation is not applicable when the following circumstances and provisions of this chapter apply ~~are applicable~~:

1. Developments that ~~which~~ are otherwise subject to aggregation with a development of regional impact which has received approval through the issuance of a final development order may ~~shall~~ not be aggregated with the approved development

of regional impact. However, ~~nothing contained in~~ this subparagraph does not ~~shall~~ preclude the state land planning agency from evaluating an allegedly separate development as a substantial deviation pursuant to s. 380.06(19) or as an independent development of regional impact.

2. Two or more developments, each of which is independently a development of regional impact that has or will obtain a development order pursuant to s. 380.06.

3. Completion of any development that has been vested pursuant to s. 380.05 or s. 380.06, including vested rights arising out of agreements entered into with the state land planning agency for purposes of resolving vested rights issues. Development-of-regional-impact review of additions to vested developments of regional impact shall not include review of the impacts resulting from the vested portions of the development.

4. The developments sought to be aggregated were authorized to commence development before ~~prior to~~ September 1, 1988, and could not have been required to be aggregated under the law existing before ~~prior to~~ that date.

5. Any development that qualifies for an exemption under s. 380.06(29).

6. Newly acquired lands intended for development in coordination with a developed and existing development of regional impact are not subject to aggregation if the newly acquired lands comprise an area that is equal to or less than 10 percent of the total acreage subject to an existing development-

of-regional-impact development order.

Section 6. Subsection (1) of section 380.115, Florida Statutes, is amended to read:

380.115 Vested rights and duties; effect of size reduction, changes in guidelines and standards.—

(1) A change in a development-of-regional-impact guideline and standard does not abridge or modify any vested or other right or any duty or obligation pursuant to any development order or agreement that is applicable to a development of regional impact. A development that has received a development-of-regional-impact development order pursuant to s. 380.06~~,~~ but is no longer required to undergo development-of-regional-impact review by operation of a change in the guidelines and standards, a development that ~~or~~ has reduced its size below the thresholds as specified in s. 380.0651, ~~or~~ a development that is exempt pursuant to s. 380.06(24) or (29), or a development that elects to rescind the development order are governed ~~shall be governed~~ by the following procedures:

(a) The development shall continue to be governed by the development-of-regional-impact development order and may be completed in reliance upon and pursuant to the development order unless the developer or landowner has followed the procedures for rescission in paragraph (b). Any proposed changes to ~~those~~ developments which continue to be governed by a development order must ~~shall~~ be approved pursuant to s. 380.06(19) as it existed before a change in the development-of-regional-impact

guidelines and standards, except that all percentage criteria are ~~shall be~~ doubled and all other criteria are ~~shall be~~ increased by 10 percent. The development-of-regional-impact development order may be enforced by the local government as provided in ~~by~~ ss. 380.06(17) and 380.11.

(b) If requested by the developer or landowner, the development-of-regional-impact development order shall be rescinded by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed or will be completed under an existing permit or equivalent authorization issued by a governmental agency as defined in s. 380.031(6), if ~~provided~~ such permit or authorization is subject to enforcement through administrative or judicial remedies.

Section 7. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1379 Airport Zoning Law of 1945
SPONSOR(S): Miller
TIED BILLS: **IDEN./SIM. BILLS:** SB 1508

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Ports Subcommittee	12 Y, 0 N	Willson	Vickers
2) Transportation & Economic Development Appropriations Subcommittee	12 Y, 0 N	Davis	Davis
3) Economic Affairs Committee		Willson MW	Pitts AP

SUMMARY ANALYSIS

This bill updates and revises chapter 333, F.S., the "Airport Zoning Law of 1945", which governs land use and airspace management at or around airports. Originally enacted in 1945, it contains many outdated provisions and internal inconsistencies, as well as provisions that are inconsistent with current federal regulations. Likewise, stakeholders found that the local government airport protection zoning process as it currently exists is often cumbersome and confusing.

The bill implements the recommendations of a stakeholder working group, in effect modernizing the regulation of airspace and land use for affected areas and transitioning from an antiquated variance process to a more streamlined permitting process for certain structures.

The bill does not appear to have a fiscal impact on the state, and may have an indeterminate but likely insignificant impact on local governments related to structural permitting and enforcement.

The bill has an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The bill revises Chapter 333, F.S., governing land use and airspace management at or around airports. For ease of understanding, the analysis is arranged by section.

Current Situation
In 2012, DOT created a stakeholder working group to address problems with the state's airport zoning law and to update it to reflect current federal requirements and industry standards. The group consisted of representatives from airports, local planning/zoning departments, the Florida Defense Alliance, the Florida League of Cities, the Florida Airports Council, the real estate development community, and DOT. The group met three times between June and September 2012.

The working group determined that the law, which originally passed in 1945,[1] contains provisions that are outdated and inconsistent with federal regulations, has internal inconsistencies, and requires a local government airport protection zoning process that can be cumbersome and confusing.

Definitions (s. 333.01, F.S.)

Current Situation
Current law defines various terms as they relate to airport zoning.

Proposed Changes
The bill implements numerous changes to definitions related to airport zoning to reflect improved consistency with federal regulations and guidance. Specifically, the bill adds the following definitions to s. 333.01, F.S.:

- Aeronautical study - a Federal Aviation Administration (FAA) review conducted pursuant to 14 C.F.R. Part 77, concerning the effect of proposed construction or alteration on the use of air navigation facilities or navigable airspace by aircraft.
- Airport master plan - a comprehensive plan of an airport that describes the immediate and long-term development plans to meet future aviation demand.
- Airport protection zoning regulations- airport zoning regulations governing airport hazards.
- Department - Department of Transportation as created under s. 20.23, F.S.
- Educational facility - any structure, land, or use thereof that includes a public or private kindergarten through twelfth grade school, charter school, magnet school, college campus, or university campus. For the purposes of Ch. 333, F.S. the term "educational facility" does not include space utilized for educational purposes within a multi-tenant building.
- Landfill - has the same meaning as in s. 403.703, F.S.[2]
- Public-use airport - an airport,[3] publicly or privately owned, licensed by the state, which is open for use by the public.

[1] Ch. 23079, Laws of Fla.
[2] section 403.703(17), F.S., defines "landfill" as "any solid waste land disposal area for which a permit, other than a general permit, is required by s. 403.707 and which receives solid waste for disposal in or upon land. The term does not include a land-spreading site, an injection well, a surface impoundment, or a facility for the disposal of construction and demolition debris."
[3] The bill defines "airport" as "any area of land or water designed and set aside for the landing and taking off of aircraft and utilized or to be utilized in the interest of the public for such purpose."

- Substantial modification - any repair, reconstruction, rehabilitation, or improvement of a structure when the actual cost of repair, reconstruction, rehabilitation, or improvement of the structure equals or exceeds 50 percent of the market value of the structure.

The bill also amends the following definitions:

- Airport hazard
- Airport hazard area
- Airport land use compatibility zoning
- Airport layout plan
- Obstruction
- Political subdivision
- Runway protection zone
- Structure

The bill also deletes the definition of "aeronautics" since the term is not being used. It also deletes the definition of "tree" and replaces the term with "obstruction" throughout Ch. 333, F.S., as applicable.

Permit Required for Structures Exceeding Federal Obstruction Standards (s. 333.025, F.S.)

Current Situation

Current law provides that in order to prevent structures[4] dangerous to air navigation from being erected, each person[5] must secure permit from DOT to erect, alter, or modify a structure exceeding the federal obstruction standards.[6] However, permits are only required within an airport hazard area[7] where federal standards are exceeded and if the proposed construction is within a 10-nautical-mile radius of the geographical center of the airport.

Current law provides that affected airports are considered having those facilities which are shown on the airport master plan, or an airport layout plan,[8] or in comparable military documents, and those facilities will be protected. Planned or proposed public-use airports which are the subject of a notice or proposal submitted to the FAA or to DOT will also be protected.

Current law provides that permit requirements do not apply if the project received construction permits from the Federal Communications Commission (FCC) prior to May 20, 1975;[9] nor do permit requirements apply to previously approved structures now existing, or any necessary replacement or repairs to existing structures, provided that there is no change to the height and location of the structure.

Current law provides that when political subdivisions[10] have adopted adequate airspace protections, which are on file with DOT, a DOT permit for the structure is not required.

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[4] The bill defines "structure" as "any object, constructed, erected, altered, or installed, including, but without limitation thereof, buildings, towers, smokestacks, utility poles, power generation equipment and overhead transmission lines."

[5] The bill defines "person" as "any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof."

[6] The federal obstruction standards are contained in 14 C.F.R. §§ 77.15, 77.17, 77.19, 77.21, and 77.23.

[7] The bill defines "airport hazard area" as "any area of land or water upon which an airport hazard might be established."

[8] The bill defines "airport layout plan" as "a scaled drawing, or set of drawings, in either paper or electronic form, of existing and planned airport facilities that provide a graphic representation of the existing and long-term development plan for the airport and demonstrates the preservation and continuity of safety, utility, and efficiency of the airport."

[9] This is provided that these structures now exist.

[10] The bill defines "political subdivision" as "the local government any county, city, town, village, or other subdivision or agency thereof, or any district or special district, port commission, port authority, or other such agency authorized to establish or operate airports in the state."

Upon receipt of a permit application, DOT has 30 days to issue or deny a permit to erect, alter, or modify any structure that would exceed federal obstruction standards.

Current law provides that in determining whether to issue or deny a permit, DOT considers the following:

- The nature of the terrain and height of existing structures.
- Public and private interests and investments.
- The character of flying operations and planned developments of airports.
- Federal airways as designated by the FAA.
- Whether the construction of the proposed structure would cause an increase in the minimum descent altitude or the decision height at the affected airport.
- Technological advances.
- The safety of persons on the ground and in the air.
- Land use density.
- The safe and efficient use of navigable airspace.
- The cumulative effects on navigable airspace of all existing structures, proposed structures identified in the applicable jurisdictions' comprehensive plans, and all other known proposed structures in the area.

Current law provides that when issuing a permit, DOT shall require the obstruction[11] marking and lighting of the permitted obstruction.

Current law prohibits DOT from approving a permit to erect a structure unless the applicant submits documentation showing compliance with both federal notification requirements and a valid aeronautical evaluation. DOT shall not approve a permit solely on the basis that such proposed structure will not exceed federal obstruction standards or any other federal aviation regulation.

Proposed Changes

The bill replaces the term "geographic center" with "airport reference point", which is defined as the approximate geometric center of all usable runways at a public airport. The bill also removes a redundant reference to FAA rules governing federal obstruction standards.

The bill provides that existing, planned, and proposed facilities at public-use airports contained in an airport master plan, on an airport layout plan, or in comparable military documents will be protected from airport hazards. The bill also removes the provision that certain planned or proposed public-use airports are also protected.

The bill replaces the term "project" with "existing structures" in s. 333.025(3), F S. and removes the conditional reference to the existence of certain structures that were permitted by the FCC prior to May 20, 1975.

The bill provides that a DOT permit is not required for a structure in a political subdivision that has adequate airport protection zoning regulations on file with DOT, and the political subdivision has established a permitting process. The bill creates a 15-day period, concurrent with the permitting process, for DOT to evaluate the permit for technical consistency. Cranes, construction equipment, and other temporary structures, in use or in place for a period not exceeding 18 consecutive months are exempt from DOT review, unless review is requested by DOT.

[11] The bill defines "obstruction" as any object of natural growth or terrain or permanent or temporary construction or alteration, including equipment or materials used and any permanent or temporary apparatus, or alteration of any permanent or temporary existing structure by a change in its height, including appurtenances, or lateral dimensions, including equipment or material used therein, existing or proposed, which exceeds the standards contained in 14 C.F.R.§§ 77.15, 77.17, 11.19, 77.21, and 77.23.

The bill provides that DOT has 30 days after receiving an application to issue or deny a permit for the construction or alteration of an obstruction. The bill requires DOT to review permit applications in conformity with s. 120.60, F.S.[12]

The bill adds the following criteria for DOT to consider when granting or denying a permit:

- The effect of the construction or alteration of an obstruction on the state licensing standards for a public-use airport.[13]

The bill modifies the following criteria for DOT to consider in granting or denying a permit:

- The character of existing and planned flight operations and developments at public-use airports.
- Federal airways, visual flight rules, flyways and corridors, and instrument approaches as designated by the FAA.
- The cumulative effects on navigable airspace of all existing obstructions and all other known proposed obstructions in the area.

The bill deletes the following criteria for DOT to consider in granting or denying a permit:

- Technological advances
- Land use density.

The bill provides that when issuing a permit, DOT must require the owner of the obstruction to install, operate, and maintain, at his or her own expense, marking and lighting in conformance with FAA standards.

The bill provides that DOT shall not approve the construction or alteration of an obstruction unless documentation is submitted that it is in compliance with certain standards. The bill changes the term "aeronautical evaluation" to "aeronautical study," which the bill defines.

The bill creates s. 333.025(9), F.S., providing that the denial of a permit is subject to the administrative review under the Florida Administrative Procedures Act.[14]

Power to Adopt Airport Zoning Regulations (s. 333.03, F.S.)

Current Situation

Current law provides that every political subdivision with an airport hazard[15] area has until October 1, 1977, to adopt, administer, and enforce airport zoning regulations for the airport hazard area.

Current law provides where an airport is owned or controlled by a political subdivision and any airport hazard area related to the airport is located in whole or in part outside of the political subdivision, the political subdivision owning or controlling the airport and the political subdivision where the airport hazard area is located, shall either:

- By interlocal agreement, adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area; or
- create a joint airport zoning board, with the same power to adopt, administer, and enforce airport zoning regulations applicable to the airport hazard area.

Current law provides that airport zoning regulations shall, as a minimum, require:

- A variance for the erection, alteration, or modification of any structure that would cause the structure to exceed the federal obstruction standards;

[12] section 120.60, F.S., relates to licensing.

[13] The state licensing standards for a public-use airport are contained in Ch. 330, F.S., and Rule 14-60, F.A.C.

[14] Ch. 120, F.S.

[15] The bill defines "airport hazard" as "any obstruction to air navigation that affects the safe and efficient use of navigable airspace or the operation of planned or existing air navigation and communication facilities."

- obstruction marking and lighting for structures;
- documentation showing compliance with the federal requirement for notification of proposed construction and a valid aeronautical evaluation submitted by each person applying for a variance;
- consideration of the criteria in s. 333.025(6), F.S., when determining whether to issue or deny a variance; and
- that no variance shall be approved solely on the basis that such proposed structure will not exceed federal obstruction standards or any other federal aviation regulation.

Current law requires DOT to issue copies of the federal obstruction standards to each political subdivision with an airport hazard area. Additionally, DOT must, in cooperation with political subdivisions, issue appropriate airport zoning maps depicting within each county the maximum allowable height of any structure or tree.

Current law provides that interim airport land use compatibility zoning[16] regulations shall be adopted. When political subdivisions have land development regulations addressing land use consistent with Ch. 333, F.S, the political subdivision is not required to adopt airport land use compatibility regulations. Interim land use compatibility regulations are required to consider the following:

- Whether sanitary landfills are located within the following areas:
  - Within 10,000 feet from the nearest point of any runway used or planned to be used by turbojet or turboprop aircraft.
  - Within 5,000 feet from the nearest point of any runway used only by piston-type aircraft.
  - Outside the perimeters defined above, but still within the lateral limits of the civil airport imaginary surfaces. Current law advises a case-by-case review of such landfills.
- Whether any landfill is located and constructed so that it attracts or sustains hazardous bird movements. The political subdivision shall request a report from the airport on such bird feeding or roosting areas that are known to the airport. In preparing its report, the airport, considers whether the landfill will incorporate bird management techniques or other practices to minimize bird hazards to airborne aircraft. The airport has 30 days to respond to the request.
- Where an airport authority or other governing body has conducted a noise study[17] neither residential construction nor any educational facility[18] with the exception of aviation school facilities, shall be permitted within the area contiguous to the airport defined by an outer noise contour that is considered incompatible with that type of construction.
- Where an airport authority or other governing body operating an airport has not conducted a noise study, neither residential construction nor any educational facility except for of aviation school facilities, shall be permitted within an area contiguous to the airport measuring one-half the length of the longest runway on either side of and at the end of each runway centerline.

Current law requires airport zoning regulations restricting new incompatible uses, activities, or construction within runway clear zones, including uses, activities, or construction in runway clear zones which are incompatible with normal airport operations or endanger public health, safety, and welfare by resulting in congregations of people, emissions of light or smoke, or attraction of birds. These regulations shall prohibit the construction of an educational facility at either end of a runway of an airport within an area which extends five miles in a direct line along the centerline of the runway, and which has a width measuring one-half the length of the runway. Exceptions approving construction of an educational facility within the delineated area shall only be granted when the political subdivision administering the zoning regulations makes specific findings detailing how the public policy reasons for allowing the construction outweigh health and safety concerns.

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[16] The bill defines "airport land use compatibility zoning" as "airport zoning regulations governing the use of land on, adjacent to, or in the immediate vicinity of airports."

[17] A noise study is conducted in accordance with 14 C.F.R. § 150.

[18] section 1013.01(6), F.S., defines "educational facilities" as "the buildings and equipment, structures, and special educational use areas that are built, installed, or established to serve primarily the educational purposes and secondarily the social and recreational purposes of the community and which may lawfully be used as authorized by the Florida Statutes and approved by boards."

Current law requires DOT to provide technical assistance to any political subdivision requesting assistance in preparing an airport zoning code. A copy of all local airport zoning codes, rules, and regulations, and amendments and proposed and granted variances, must be filed with DOT.

Current law provides that nothing shall be construed to require the removal, change, or to interfere with the continued use or adjacent expansion of any educational structure or site in existence on July 1, 1993, or be construed to prohibit the construction of any new structure for which a site has been determined as provided in former s. 235.19, F.S., as of July 1, 1993.

Proposed Changes

The bill amends the title of s. 333.03, F.S., to "Airport protection zoning regulations."

The bill amends s. 333.03(1)(a), F.S., removing the October 1, 1977 deadline, clarifying language, and specifying airport protection zoning regulations.

The bill amends s. 333.03(1)(b), F.S., removing antiquated legal phrasing, providing clarity and specificity, and deleting unnecessary statutory references.

The bill amends s. 333.03(1)(c), F.S., reflecting the conversion from a variance process to a permitting process. The bill also removes references to FAA rules.

The bill amends s. 333.03(1)(d), F.S., removing the requirement that DOT issue copies of the federal obstruction standards. The paragraph now provides that DOT is available to assist political subdivisions with regard to federal obstruction standards.

The bill amends s. 333.03(2), F.S., modifying the text to require political subdivisions adopt, administer, and enforce airport land use compatibility zoning regulations.

The bill amends s. 333.03(2)(a), F.S., prohibiting any new and restricting any existing landfills in the areas above. The text is also modified to reflect current aviation terminology regarding the types of aircraft and to update a C.F.R. reference.

The bill amends s. 333.03(2)(b), F.S., eliminating statutory redundancy.

The bill amends s. 333.03(2)(c), F.S., allowing for alternative noise studies approved by the FAA in lieu of a noise study provided for in 14 C.F.R. Part 150.

The bill amend s. 333.03(2)(d), F.S., removing the term "publicly-owned" and a reference to a definition for educational facility in Ch. 1013, F.S.

The bill redesignates the previous s. 333.03(3), F.S., as s. 333.03(2)(e), F.S., and amends this provision to reflect revised statutory intent, removing redundancy and antiquated aviation terminology and reflecting the purpose of runway protection zones[19] as defined and described in FAA AC 15-5300-13A.[20]

The bill repeals s. 333.03(4), F.S., preventing redundancy due to changes to the permitting process.

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[19] The bill defines "runway protection zone" as an area at ground level beyond the runway end to enhance the safety and protection of people and property on the ground.

[20] FAA AC 15-5300-13A is available at: http://www.faa.gov/airports/resources/advisory_circulars/index.cfm/go/document.current/documentNumber/150_5300-13 (last visited January 7, 2016).

The bill redesignates the previous s. 333.03(5), F.S., as s. 333.03(3), F.S., providing clarity and specificity and to reflect a conversion to a permitting process by requiring all updates and amendments to local airport zoning codes, rules, and regulations to be filed with DOT within 30 days after adoption.

The bill redesignates the previous s. 333.03(6), F.S., as s. 333.03(4), F.S., removing the provision prohibiting the construction of a new site as determined by the former s. 235.19, F.S., as of July 1, 1993.

The bill creates a new s. 333.03(5), F.S., providing that nothing precludes another governing body operating a public-use airport from establishing airport zoning regulations stricter than provided in state law in order to protect the health, safety and welfare of the public in the air and on the ground.

Comprehensive Zoning Regulations; Most Stringent to Prevail Where Conflicts Occur (s. 333.04, F.S.)

Current Situation

Incorporation
Current law provides that if a political subdivision has a comprehensive zoning ordinance regulating, among other things, the height of buildings, structures, and natural objects, and uses of property, any airport zoning regulations applicable to the same area or portion of the area may be incorporated in and made a part of such comprehensive zoning regulations, and be administered and enforced in connection with the comprehensive zoning regulations.

Conflict
Current law provides that if there is a conflict between any airport zoning regulations and any other regulations applicable to the same area, the more stringent limitation or requirement governs and prevails.

Proposed Changes
The bill amends s. 333.04(1), F.S., changing zoning ordinance to "zoning plan or policy." The bill also adds "protection" to the phrase "airport zoning regulations."

The bill amends s. 333.04(2), F.S., providing that it refers to "airport protection zoning" and to change the word "trees" to "vegetation."

Procedure for Adoption of Zoning Regulations (s. 333.05, F.S.)

Current Situation

Notice and Hearing
Current law provides that airport zoning regulations shall not be adopted, amended, or changed except by action of the legislative body of the political subdivision, or the joint board after a public hearing where interested parties and citizens may be heard.

Airport Zoning Commission
Current law provides that prior to the initial zoning of any airport area, the political subdivision or joint airport zoning board appoints an airport zoning commission. The airport zoning commission recommends the boundaries of the various zones to be established and the regulations to be adopted. Where a city plan commission or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

Proposed Changes
The bill amends s. 333.05, F.S., providing internal consistency with definitions and to reflect correct community planning terminology.

Airport Zoning Requirements (s. 333.06, F.S.)

Current Situation

Reasonableness
Current law provides that all airport zoning regulations shall be reasonable and not impose any requirement or restriction which is not reasonably necessary. In determining what regulations it may adopt, the following must be considered:

- The character of the flying operations expected to be conducted at the airport;
- the nature of the terrain within the airport hazard area and runway clear zones;
- the character of the neighborhood;
- the uses to which the property to be zoned is put and adaptable; and
- the impact of any new use, activity, or construction on the airport's operating capability and capacity.

Independent Justification
Current law provides that the purpose of all airport zoning regulations is to provide both airspace protection and land use compatible with airport operations. Each aspect requires independent justification in order to promote the public interest in safety, health, and general welfare. Specifically, construction in a runway clear zone which does not exceed airspace height restrictions is not evidence per se that such use, activity, or construction is compatible with airport operations.

Nonconforming Uses
Current law prohibits airport zoning regulations from requiring the removal, lowering, or other change of any structure or tree not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in s. 333.07(1) and (3), F.S.

Adoption of Airport Master Plan and Notice to Affected Local Governments
Current law requires that an each public airport licensed by DOT prepare an airport master plan.

Proposed Changes
The bill amends s. 333.06, F.S. deleting the term "runway clear zone" and replacing it with "runway protection zone."[21] The bill also modifies the statute for internal consistency with definitions.

Guidelines Regarding Land Use Near Airports (s. 333.065, F.S.)

Current Situation
Current law provides that DOT, after consultation with the Department of Economic Opportunity, local governments, and other interested persons, is required to adopt by rule recommended guidelines regarding compatible land uses in the vicinity of airports.

Proposed Changes
The bill repeals s. 333.065, F.S. According to DOT, this is due to the completion of its Airport Compatibility Land Use Guidebook.[22]

Permits and Variances (s. 333.07, F.S.)

Current Situation

[21] According to DOT, this is consistent with FAA AC 150/5300-13A.
[22] A copy of DOT's Airport Compatibility Land Use Guidebook is available at: http://www.dot.state.fl.us/aviation/compland.shtm (last visited January 6, 2016).

Permits

Current law provides that any airport zoning regulations may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure is substantially changed or substantially altered or repaired. All such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations. A permit may not be granted that would allow the establishment or creation of an airport hazard or would permit a nonconforming structure or tree or nonconforming use to be made or become higher or to become a greater hazard to air navigation than it was when the applicable regulation was adopted or than it is when the application for a permit is made.

Current law provides that whenever the administrative agency determines that a nonconforming use or nonconforming structure or tree has been abandoned or is more than 80 percent torn down, destroyed, deteriorated, or decayed, it may not grant a permit that would allow the structure or tree to exceed the applicable height limit or otherwise deviate from the zoning regulations. Whether application is made for a permit or not, the agency may by appropriate action, compel the owner of the nonconforming structure or tree, at his or her own expense, to lower, remove, reconstruct, or equip such object as may be necessary to conform to the regulations. If the owner of the nonconforming structure or tree does not comply with the order within 10 days, the agency may report the violation to the political subdivision involved, who, through its appropriate agency, may proceed to have the object lowered, removed, reconstructed, or equipped, and assess its cost and expense thereof upon the object or the land where it is or was located, and, unless such an assessment is paid within 90 days from the service of notice on the owner or the owner's agent, of such object or land, the sum shall be a lien on said land, and shall bear interest at an annual rate of six percent, and shall be collected in the same manner as the political subdivision collects property taxes, or, the political subdivision may enforce the lien in the manner provided for enforcement of liens.[23]

Current law provides that except as provided, applications for permits shall be granted, provided the matter applied for meets the provisions Ch. 333, F.S., and the regulations adopted and in force.

Variances

Current law provides that any person desiring use his or her property in violation of airport zoning regulations or any land development regulation adopted pertaining to airport land use compatibility, may apply to the board of adjustment for a variance from the zoning regulations. When filing the application, the applicant forwards a copy to DOT. DOT has 45 days to comment or waive the right to comment to the applicant and the board of adjustment. DOT must include in its comments its explanation for any objections. If DOT fails to comment within 45 days, it waives its right to comment. The board of adjustment may proceed with its consideration of the application only after it receives DOT's comments or DOT waives its right to comment. Noncompliance is grounds to appeal and to apply for judicial relief. Such variances may only be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and where the relief granted would not be contrary to the public interest but would do substantial justice and be in accordance with the spirit of airport zoning regulations and Ch. 333, F.S. However, any variance may be allowed subject to any reasonable conditions that the board of adjustment deems necessary.

Current law allows DOT to appeal any variance granted and apply for judicial relief.

Current law provides that in granting any permit or variance the administrative agency or board of adjustment shall require the owner of the structure or tree to install, operate, and maintain, at his or her own expense, marking and lighting as may be necessary to indicate to aircraft pilots the presence of an obstruction.

Obstruction marking and lighting

[23] The enforcement of statutory liens is provided for in Ch. 85, F.S.

Current law provides that marking and lighting shall conform to the specific standards established in DOT rule.

Current law provides that existing structures not in compliance on October 1, 1988, shall be required to comply the earliest of whenever the existing lighting requires replacement, or within 5 years of October 1, 1988.

Proposed Changes
The bill amends the title of s. 333.07, F.S., to "Local government permitting of airspace obstructions".

Permits
The bill amends ss. 333.07(1)(a) and (b), F.S., reflecting the conversion from a variance to a permitting process, for internal consistency with definitions, and removing antiquated legal phrasing.

The bill deletes s. 333.07(1)(c), F.S., removing statutory redundancy.

Variances
The bill deletes s. 333.07(2), F.S., reflecting the conversion from a variance process to a permitting process.

Considerations when issuing or denying permits
The bill creates s. 333.07(2), F.S. relating to considerations when issuing or denying a permit. In determining whether to issue or deny a permit, the political subdivision or its administrative agency considers the impact of the following, as applicable:

- The safety of persons on the ground and in the air.
- The safe and efficient use of navigable airspace.
- The nature of the terrain and height of existing structures.
- The effect of the construction or alteration on the state licensing standards for a public-use airport contained in Ch. 330, F.S., and rules adopted thereunder..
- The character of existing and planned flight operations and developments at public-use airports.
- Federal airways, visual flight rules, flyways and corridors, and instrument approaches as designated by the FAA.
- Effect of the construction or alteration of the proposed structure on the minimum descent altitude or the decision height at the affected airport.
- The cumulative effect on navigable airspace of all existing structures, and all other known proposed structures in the area.
- Additional requirements adopted by the political subdivision pertinent to evaluation and protection of airspace and airport operations.

Obstruction marking and lighting
The bill amends ss. 333.07(3)(a) and (b), F.S., for internal consistency with definitions and with FAA AC 70/7460-1K.[24] The bill removes s. 333.07(3)(b), F.S., requiring such marking and lighting to conform to DOT standards established by rule. The bill also removes s. 333.07(3)(c), F.S., which contains an obsolete date.

Appeals (s. 333.08, F.S.)

Current Situation
Current law provides that any person aggrieved, or taxpayer affected, by any decision of an administrative agency in the administration of airport zoning regulations; or any governing body of a political subdivision, or DOT, or any joint airport zoning board, which believes that an administrative

[24] A copy of FAA AC 70/7460-1K is available at: http://www.faa.gov/regulations_policies/advisory_circulars/index.cfm/go/document.current/documentNumber/70_7460-1 (last visited January 6, 2016).

agency's decision is an improper application of airport zoning regulations of concern to the governing body or board, may appeal to the board of adjustment authorized to hear and decide appeals from the decisions of such administrative agency.

Current law provides that all appeals are to be taken within a reasonable time, by filing a notice of appeal with the agency from which appeal is taken and with the board. The notice of appeal must specify the grounds of the appeal.

Current law provides that an appeal stays all proceedings in furtherance of the action appealed from, unless the agency from which the appeal is taken certifies to the board, after the notice of appeal has been filed, that by reason of the facts stated in the certification that a stay would, in its opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed otherwise than by an order of the board on notice to the agency from which the appeal is taken and on due cause shown.

Current law provides that the board shall fix a reasonable time for the hearing of appeals, give public notice and due notice to the parties, and make its decision within a reasonable time.

Current law provides that the board may reverse or affirm wholly or partly, or modify, the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the administrative agency from which the appeal is taken.

Proposed Changes
The bill repeals s. 333.08, F.S., and moves the text into a new s. 333.09(3), F.S.

Administration of Airport Zoning Regulations (s. 333.09, F.S.)

Current Situation
Current law requires that all airport zoning regulations provide for their administration and enforcement by an administrative agency. The administrative agency may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or of one of the political subdivisions which participated in the creation of the joint airport zoning board. Such administrative agency may not be or include any member of the board of adjustment. The duties of any administrative agency include hearing and deciding all permits, deciding all matters under s. 333.07(3), F.S., as they pertain to the agency, and all other matters under the state's airport zoning law, which applies to the agency, but the agency shall not have or exercise any of the powers delegated to the board of adjustment.

Proposed Changes

Administration
The bill provides that all airport zoning regulations shall provide for the administration and enforcement of those regulations by the political subdivision or its administrative agency. The duties of any administrative agency shall include that of hearing and deciding all permits, as they pertain to such agency, and all other matters under Ch. 333, F.S. applying to the agency.

Local Government Process
The bill creates s. 333.09(2), F S., providing for a local government permitting process. Any political subdivision required to adopt airport zoning regulations must provide a process to:

- Issue and deny permits.
- Provide DOT with a copy of a complete application.
- Enforce the issuance or denial a permit or other determination made by the administrative agency with respect to airport zoning regulations.

Where a political subdivision already has a zoning board or permitting body, the existing zoning board or permitting body may implement the permitting and appeals process.

Appeals
The bill moves the substance of s. 333.08, F.S. to a newly created s. 333.09(3), F.S., relating to appeals. The language is modified to reflect the conversion from the variance process to a permitting process and to clean-up and update various provisions.

Board of Adjustment (s. 333.10, F.S.)

Current Situation
Current law provides that all airport zoning regulations must provide for a board of adjustment having and exercising the following powers:

- To hear and decide appeals from any order, requirement, decision, or determination made by the administrative agency in the enforcement of the airport zoning regulations.
- To hear and decide any special exceptions to the terms of the airport zoning regulations upon which such board may be required to pass under such regulations.
- To hear and decide specific variances.

An existing zoning board may be appointed as the board of adjustment.

The majority vote of the board's members is sufficient to reverse any order, requirement, decision, or determination of the administrative agency, or to decide in favor of the applicant on any matter upon which it is required to pass under the airport zoning regulations, or to effect any variation in such regulations.

The board of adjustment is required to adopt rules in accordance with the ordinance or resolution creating it.

Proposed Changes
The bill repeals s. 333.10, F.S., reflecting the conversion from the variance process to a permitting process.

Judicial Review (s. 333.11, F.S.)

Current Situation
Current law provides that any person aggrieved, or taxpayer affected, by any decision of a board of adjustment, or any governing body of a political subdivision or DOT or any joint airport zoning board, or of any administrative agency, may apply for judicial relief. The appeal must be filed within 30 days after the board of adjustment renders its decision. Review shall be by petition for writ of certiorari, governed by the Florida Rules of Appellate Procedure.

Upon presentation of such petition to the court, the court may allow a writ of certiorari, directed to the board of adjustment, to review the board's decision. The allowance of the writ does not stay the proceedings upon the decision appealed from, but the court may, under certain circumstances, grant a restraining order.

The court has exclusive jurisdiction to affirm, modify, or set aside the decision brought up for review and if need be, order further proceedings by the board of adjustment. The findings of fact by the board of adjustment, if supported by substantial evidence, shall be accepted by the court as conclusive, and no objection to a board of adjustment decision shall be considered by the court unless such objection shall have been urged before the board of adjustment, or, if it was not so urged, unless there were reasonable grounds for failure to do so.

If airport zoning regulations, although generally reasonable, are held by a court to interfere with the use and enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the State Constitution or the Constitution of the United States, such holding does not affect the application of the regulations to other structures and parcels of land, or other regulations that are not involved in the particular decision.

Current law provides that no appeal is permitted to any courts, save and except an appeal from a decision of the board of adjustment, the appeal provided being from such final decision of the board of adjustment. The appellant is required to exhaust his or her remedies of application for permits, exceptions and variances, and appeal to the board of adjustment, and gaining a determination by said board, before being permitted to appeal to the court.

Proposed Changes
The bill amends s. 333.11(1), F.S., removing references to the board of adjustment and DOT. The bill also changes one reference to the board of adjustment to political subdivision to reflect other changes being made to Ch. 333, F.S.

The bill repeals ss. 333.11(2) and (3), F.S., reflecting the conversion from a variance process to a permitting process.

The bill amends s. 333.011(4), F.S., modifying it for clarity and specificity and for consistency with Ch. 163, F.S.

The bill amends s. 333.011(5), F.S., removing the phrase "although generally reasonable."

The bill amends s. 311.11(6), F.S., providing that a judicial appeal may not be permitted to any courts, until the appellant has exhausted all of its remedies through the application for political subdivision permits, exceptions, and appeals.

Acquisition of Air Rights (s. 333.12, F.S.)

Current Situation
Current law provides that when it is desired to remove, lower, or otherwise terminate a nonconforming structure or use; or the approach protection necessary cannot, due to constitutional limitations, be provided by airport regulations; or it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property or nonconforming use is located, or the political subdivision owning or operating the airport or being served by it, may acquire, by purchase, grant, or condemnation such air right, navigation easement, or other estate, portion or interest in the property or nonconforming structure or use or such interest in the air above such property, tree, structure, or use, in question, as may be necessary to effectuate the purposes of Ch. 333, F.S., and in so doing, if by condemnation, to have the right to take immediate possession of the property, interest in property, air right, or other right sought to be condemned. In the case of the purchase of any property or any easement or estate or interest therein or the acquisition by the power of eminent domain the political subdivision making such purchase or exercising such power shall in addition to the damages for the taking, injury or destruction of property also pay the cost of the removal and relocation of any structure or any public utility which is required to be moved to a new location.

Proposed Changes
The bill amends s. 333.12, F.S. for clarity, specificity, and internal consistency with definitions, including the replacement of "navigation easement" with the more accurate term "avigation easement."[25]

[25] An avigation easement is the conveyance of airspace over another property for use by the airport.

Enforcement and Remedies (s. 333.13, F.S.)

Current Situation
Current law provides for the enforcement of Ch. 333, F.S., and appropriate remedies.

Proposed Changes
The bill amends s. 333.13(3), F S., changing a reference to the Department of Transportation to "the department" for internal consistency with the definitions provided in s. 333.01, F.S.

Transition Provisions (s. 333.135, F.S)

Current Situation
Currently Ch. 333, F.S., does not contain any transition provisions.

Proposed Changes
The bill creates s. 333.135, F.S., providing transition provisions regarding the changes made to Ch. 333, F.S. The bill provides that any airport zoning regulation in effect on July 1, 2016, which include provisions conflicting with Ch. 333, F.S., shall be amended to conform to the requirements of Ch. 333, F.S., by July 1, 2017.

Any political subdivisions having an airport within its territorial limits, which have not adopted airport zoning regulations, shall by July 1, 2017, adopt airport zoning regulations for such airport. The regulations must be consistent with Ch. 333, F.S.

For those political subdivisions that have not yet adopted airport protection zoning regulations, DOT will administer the permitting process as provided in s. 333.025, F.S.

Short Title (s. 333.14, F.S.)

Current Situation
Current law provides the short title "Airport Zoning Law of 1945."

Proposed Changes
The bill repeals s. 333.14, F.S., eliminating a short title for Ch. 333., F.S.

Statute Reenactment / Florida Transportation Code (s. 350.81(6), F.S.)
The bill reenacts s. 350.81(6), F.S., relating to communication services offered by local governments to incorporate the changes made by the bill to s. 333.01, F.S.

The bill has an effective date of July 1, 2016.

B. SECTION DIRECTORY:

Section 1 Amends s. 333.01, F.S., relating to definitions.

Section 2 Amends s. 333.025, F.S., relating to permit required for structures exceeding federal obstruction standards.

Section 3 Amends s. 333.03, F.S., relating to power to adopt airport zoning regulations.

Section 4 Amends s. 333.04, F.S., relating to comprehensive zoning regulations; most stringent to prevail where conflicts occurs.

Section 5 Amends s. 333.05, F.S., relating to procedure for adoption of zoning regulations.

Section 6 Amends s. 333.06, F.S., relating to airport zoning requirements.

Section 7 Amends s. 333.07, F.S., relating to permits and variances.

Section 8 Amends s. 333.09, F.S., relating to administration of airport zoning regulations.

Section 9 Amends s. 333.11, F.S., relating to judicial review.

Section 10 Amends s. 333.12, F.S., relating to acquisition of air rights.

Section 11 Amends s. 333.13, F.S., relating to enforcement and remedies.

Section 12 Creates s. 333.135, F.S., relating to transition provisions.

Section 13 Repeals s. 333.065, F.S., relating to guidelines regarding land use near airports; repeals s. 333.08, F.S., relating to appeals; repeals s. 333.10, F.S., relating to board of adjustment; and repeals s. 333.14, F.S., providing a short title.

Section 14 Reenacts s. 350.81, F.S., relating to communications services offered by governmental entities.

Section 15 Provides an 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:

   None.

2. Expenditures:

   Political subdivisions that have an airport but no airport zoning regulations may see an indeterminate, but likely insignificant, increase to expenditures related to structural permitting and enforcement.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities of counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Chapter 14-60, F.A.C., implements portions of Ch. 333, F.S., relating to airport zoning, as well as other statutes relating to aviation. DOT advises that it is in the process of reviewing and revising its aviation related rules; however, DOT will defer its final revisions, pending the revisions to Ch. 333, F.S., contained in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Airport Zoning Law of 1945; amending s. 333.01, F.S.; revising and providing definitions; amending s. 333.025, F.S.; revising requirements for a permit to construct or alter an obstruction; revising procedures for issuing such permit; revising duties of the Department of Transportation relating to issuance of the permit; providing for administrative review of a denial of a permit; amending s. 333.03, F.S.; revising requirements and procedures for certain local political subdivisions to adopt and enforce airport zoning regulations; directing the department to provide assistance to political subdivisions with regard to federal obstruction standards; providing minimum requirements for airport land use compatibility zoning regulations; directing political subdivisions to provide the department with copies of airport protection zoning regulations and airport land use compatibility zoning regulations; providing applicability and effect; amending s. 333.04, F.S.; revising provisions for incorporation of zoning regulations with a political subdivision's comprehensive regulations; revising provisions for a conflict between airport zoning regulations and other regulations; amending s. 333.05, F.S.; revising

procedure for adoption of zoning regulations; revising provisions relating to an airport zoning commission; amending s. 333.06, F.S.; revising airport zoning regulation requirements; revising requirements for adoption of an airport master plan and amendments thereto; amending s. 333.07, F.S.; requiring a permit to construct, alter, or allow an airport obstruction in an airport hazard area under certain circumstances; providing conditions for issuance or denial of such permit; revising provisions to compel conformance; removing provisions for obtaining a variance to zoning regulations; removing reference to a board of adjustment; revising provisions directing a political subdivision to require an owner to install and maintain certain lighting or marking of obstructions; amending s. 333.09, F.S.; revising requirements for administration of airport protection zoning regulations; requiring the political subdivision to provide a process for permitting, notifications to the department, and enforcement; providing for appeal of decisions made by the political subdivision; amending s. 333.11, F.S.; revising provisions for judicial review of decisions by a political subdivision; revising jurisdiction of the court relating to decisions of the political subdivision; removing reference to a board of adjustment; requiring certain

procedures before an appeal to a court; amending s. 333.12, F.S.; revising provisions for acquisition of property when a nonconforming obstruction is determined to be an airport hazard; amending s. 333.13, F.S.; revising penalty provisions; creating s. 333.135, F.S.; providing a timeframe for compliance by political subdivisions; repealing ss. 333.065, 333.08, 333.10, and 333.14, F.S., relating to guidelines regarding land use near airports, appeals, boards of adjustment, and a short title; reenacting s. 350.81(6), F.S., relating to communications services offered by governmental entities, to incorporate the amendment made by the act to s. 333.01, F.S., in a reference thereto; providing an effective date.

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

Section 1. Section 333.01, Florida Statutes, is amended to read:

333.01 Definitions.—As used in ~~For the purpose of~~ this chapter, the term ~~following words, terms, and phrases shall have the meanings herein given, unless otherwise specifically defined, or unless another intention clearly appears, or the context otherwise requires~~:

(1) "Aeronautical study" means a Federal Aviation Administration study, conducted in accordance with the standards

of 14 C.F.R. part 77, subpart C, and Federal Aviation Administration policy and guidance, on the effect of proposed construction or alteration on the operation of air navigation facilities and the safe and efficient use of navigable airspace ~~"Aeronautics" means transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, restricted landing areas, or other air navigation facilities, and air instruction~~.

(2) "Airport" means any area of land or water designed and set aside for the landing and taking off of aircraft and utilized or to be utilized in the interest of the public for such purpose.

(3) "Airport hazard" means an obstruction to air navigation that affects the safe and efficient use of navigable airspace or the operation of planned or existing air navigation and communication facilities ~~any structure or tree or use of land which would exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29 and which obstructs the airspace required for the flight of aircraft in taking off, maneuvering, or landing or is otherwise hazardous to such taking off, maneuvering, or landing of aircraft and for which no person has previously obtained a permit or variance pursuant to s. 333.025 or s. 333.07~~.

(4) "Airport hazard area" means any area of land or water upon which an airport hazard might be established ~~if not prevented as provided in this chapter~~.

(5) "Airport land use compatibility zoning" means airport zoning regulations governing ~~restricting~~ the use of land on, adjacent to, or in the immediate vicinity of airports ~~in the manner enumerated in s. 333.03(2) to activities and purposes compatible with the continuation of normal airport operations including landing and takeoff of aircraft in order to promote public health, safety, and general welfare~~.

(6) "Airport layout plan" means a set of scaled drawings that provides a graphic representation of the existing and future development plan for the airport and demonstrates the preservation and continuity of safety, utility, and efficiency of the airport ~~detailed, scale engineering drawing, including pertinent dimensions, of an airport's current and planned facilities, their locations, and runway usage~~.

(7) "Airport master plan" means a comprehensive plan of an airport which typically describes current and future plans for airport development designed to support existing and future aviation demand.

(8) "Airport protection zoning regulations" means airport zoning regulations governing airport hazards.

(9) "Department" means the Department of Transportation.

(10) "Educational facility" means any structure, land, or use thereof that includes a public or private K-12 school,

charter school, magnet school, college campus, or university campus. The term does not include space used for educational purposes within a multi-tenant building.

(11) "Landfill" has the same meaning as provided in s. 403.703.

(12) ~~(7)~~ "Obstruction" means any object of natural growth or terrain, or permanent or temporary construction or alteration, including equipment or materials used and any permanent or temporary apparatus, or alteration of any permanent or temporary existing structure by a change in its height, including appurtenances, or lateral dimensions, including equipment or material used therein, existing or proposed, which exceeds ~~manmade object or object of natural growth or terrain that violates~~ the federal obstruction standards contained in 14 C.F.R. part 77, subpart C ~~ss. 77.21, 77.23, 77.25, 77.28, and 77.29~~.

(13) ~~(8)~~ "Person" means any individual, firm, copartnership, corporation, company, association, joint-stock association, or body politic, and includes any trustee, receiver, assignee, or other similar representative thereof.

(14) ~~(9)~~ "Political subdivision" means the local government of any county, city, town, village, or other subdivision or agency thereof, or any district or special district, port commission, port authority, or other such agency authorized to establish or operate airports in the state.

(15) "Public-use airport" means an airport, publicly or

privately owned, licensed by the state, which is open for use by the public.

(16) ~~(10)~~ "Runway protection ~~clear~~ zone" means an area at ground level beyond the runway end to enhance the safety and protection of people and property on the ground ~~a runway clear zone as defined in 14 C.F.R. s. 151.9(b)~~.

(17) ~~(11)~~ "Structure" means any object~~,~~ constructed, erected, altered, or installed ~~by humans~~, including, ~~but~~ without limitation ~~thereof~~, buildings, towers, smokestacks, utility poles, power generation equipment, and overhead transmission lines.

(18) "Substantial modification" means any repair, reconstruction, rehabilitation, or improvement of a structure the actual cost of which equals or exceeds 50 percent of the market value of the structure.

~~(12) "Tree" includes any plant of the vegetable kingdom.~~

Section 2. Section 333.025, Florida Statutes, is amended to read:

333.025 Permit required for obstructions ~~structures exceeding federal obstruction standards~~.—

(1) A person proposing the construction or alteration of an obstruction shall obtain a permit from the department ~~In order to prevent the erection of structures dangerous to air navigation~~, subject to ~~the provisions of~~ subsections (2), (3), and (4)~~, each person shall secure from the Department of Transportation a permit for the erection, alteration, or~~

~~modification of any structure the result of which would exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29~~. However, permits from the department are ~~of Transportation will be~~ required only within an airport hazard area where federal obstruction standards are exceeded and if the proposed construction or alteration is within a 10-nautical-mile radius of the airport reference point, located at the approximate geometric ~~geographical~~ center of all usable runways of a public-use airport or ~~a publicly owned or operated airport,~~ a military airport~~, or an airport licensed by the state for public use~~.

(2) Existing, planned, and proposed ~~Affected airports will be considered as having those~~ facilities on public-use airports contained in an ~~which are shown on the~~ airport master plan, on ~~or~~ an airport layout plan submitted to the Federal Aviation Administration ~~Airport District Office~~, or in comparable military documents shall~~, and will~~ be ~~so~~ protected from airport hazards. ~~Planned or proposed public-use airports which are the subject of a notice or proposal submitted to the Federal Aviation Administration or to the Department of Transportation shall also be protected.~~

(3) A permit is not required for existing structures that ~~requirements of subsection (1) shall not apply to projects which~~ received construction permits from the Federal Communications Commission for structures exceeding federal obstruction standards before ~~prior to~~ May 20, 1975, and a permit is not

required for ~~provided such structures now exist; nor shall it apply to previously approved structures now existing, or~~ any necessary replacement or repairs to such existing structures provided~~, so long as~~ the height and location are ~~is~~ unchanged.

(4) When political subdivisions have, in compliance with this chapter, adopted adequate airport ~~airspace~~ protection zoning regulations, placed ~~in compliance with s. 333.03, and~~ such regulations ~~are~~ on file with the department's Aviation and Spaceports Office ~~Department of Transportation~~, and established a permitting process, a permit for such structure is ~~shall~~ not ~~be~~ required from the department ~~of Transportation~~. Upon receipt of a complete permit application, the local government shall provide a copy of the application to the department's Aviation and Spaceports Office by certified mail, return receipt requested, or by delivery service that provides a receipt evidencing delivery. To evaluate technical consistency with this subsection, the department has a 15-day review period following receipt of the application, which runs concurrently with the local government permitting process. Cranes, construction equipment, and other temporary structures in use or in place for a period not to exceed 18 consecutive months are exempt from department review unless such review is requested by the department.

(5) The department ~~of Transportation~~ shall, within 30 days after ~~of the~~ receipt of an application for a permit, issue or deny a permit for the construction or ~~erection,~~ alteration~~, or~~

~~modification~~ of an obstruction. The department shall review permit applications in conformity with s. 120.60 ~~any structure the result of which would exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29~~.

(6) In determining whether to issue or deny a permit, the department shall consider:

(a) The safety of persons on the ground and in the air.

(b) The safe and efficient use of navigable airspace.

(c)~~(a)~~ The nature of the terrain and height of existing structures.

(d) The effect of the construction or alteration of an obstruction on the state licensing standards for a public-use airport contained in chapter 330 and rules adopted thereunder.

~~(b) Public and private interests and investments.~~

(e)~~(c)~~ The character of existing and planned flight ~~flying~~ operations and ~~planned~~ developments at public-use ~~of~~ airports.

(f)~~(d)~~ Federal airways, visual flight rules, flyways and corridors, and instrument approaches as designated by the Federal Aviation Administration.

(g)~~(e)~~ The effect of ~~Whether~~ the construction or alteration of an obstruction on ~~of the proposed structure would cause an increase in~~ the minimum descent altitude or the decision height at the affected airport.

~~(f) Technological advances.~~

~~(g) The safety of persons on the ground and in the air.~~

~~(h) Land use density.~~

~~(i) The safe and efficient use of navigable airspace.~~

(h)~~(j)~~ The cumulative effects on navigable airspace of all existing obstructions ~~structures, proposed structures identified in the applicable jurisdictions' comprehensive plans,~~ and all other known proposed obstructions ~~structures~~ in the area.

(7) When issuing a permit under this section, the department ~~of Transportation~~ shall~~, as a specific condition of such permit,~~ require the owner of the obstruction to install, operate, and maintain thereon, at the owner's expense, marking and lighting in conformance with the specific standards established by the Federal Aviation Administration ~~of the permitted structure as provided in s. 333.07(3)(b)~~.

(8) The department may ~~of Transportation shall~~ not approve a permit for the construction or alteration of an obstruction ~~erection of a structure~~ unless the applicant submits ~~both~~ documentation showing compliance with the federal requirement for notification of proposed construction or alteration and a valid aeronautical study. A ~~evaluation, and no~~ permit may not ~~shall~~ be approved solely because the Federal Aviation Administration determines that the proposed obstruction is not an airport hazard ~~on the basis that such proposed structure will not exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, or 77.29, or any other federal aviation regulation~~.

(9) The denial of a permit under this section is subject

to administrative review under chapter 120.

Section 3. Section 333.03, Florida Statutes, is amended to read:

333.03 ~~Power to adopt~~ Airport protection zoning regulations.—

(1)(a) ~~In order to prevent the creation or establishment of airport hazards,~~ Every political subdivision having an airport hazard area within its territorial limits shall~~, by October 1, 1977,~~ adopt, administer, and enforce, under the police power and in the manner and upon the conditions ~~hereinafter~~ prescribed in this section, airport protection zoning regulations for such airport hazard area.

(b) When ~~Where~~ an airport is owned or controlled by a political subdivision and any other political subdivision has land upon which an obstruction may be constructed or altered, which land underlies any of the surfaces of the airport described in 14 C.F.R. part 77, subpart C, the political subdivisions ~~airport hazard area appertaining to such airport is located wholly or partly outside the territorial limits of said political subdivision, the political subdivision owning or controlling the airport and the political subdivision within which the airport hazard area is located,~~ shall ~~either~~:

1. By interlocal agreement, ~~in accordance with the provisions of chapter 163,~~ adopt, administer, and enforce a set of airport protection zoning regulations ~~applicable to the airport hazard area in question~~; or

2. By ordinance, regulation, or resolution ~~duly adopted~~, create a joint airport protection zoning board that~~, which board~~ shall ~~have the same power to~~ adopt, administer, and enforce a set of airport protection zoning regulations ~~applicable to the airport hazard area in question as that vested in paragraph (a) in the political subdivision within which such area is located~~. The ~~Each such~~ joint airport protection zoning board shall have as voting members two representatives appointed by each participating political subdivision ~~participating in its creation~~ and ~~in addition~~ a chair elected by a majority of the members ~~so~~ appointed. ~~However,~~ The airport manager or a representative of each airport in ~~managers of~~ the participating ~~affected~~ political subdivisions shall serve on the board in a nonvoting capacity.

(c) Airport protection zoning regulations adopted under paragraph (a) shall, at ~~as~~ a minimum, require:

1. A permit ~~variance~~ for the construction or ~~erection,~~ alteration~~, or modification~~ of any obstruction ~~structure which would cause the structure to exceed the federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29~~;

2. ~~Obstruction~~ Marking and lighting for obstructions ~~structures as specified in s. 333.07(3)~~;

3. Documentation showing compliance with the federal requirement for notification of proposed construction or alteration of structures and a valid aeronautical study

~~evaluation~~ submitted by each person applying for a permit ~~variance~~;

4. Consideration of the criteria in s. 333.025(6)~~,~~ when determining whether to issue or deny a permit ~~variance~~; and

5. That a permit may not ~~no variance shall~~ be approved solely because the Federal Aviation Administration determines that the proposed obstruction is not an airport hazard ~~on the basis that such proposed structure will not exceed federal obstruction standards as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, or 77.29, or any other federal aviation regulation~~.

(d) The department shall be available to provide assistance to political subdivisions with regard to ~~issue copies of the~~ federal obstruction standards ~~as contained in 14 C.F.R. ss. 77.21, 77.23, 77.25, 77.28, and 77.29 to each political subdivision having airport hazard areas and, in cooperation with political subdivisions, shall issue appropriate airport zoning maps depicting within each county the maximum allowable height of any structure or tree. Material distributed pursuant to this subsection shall be at no cost to authorized recipients~~.

(2) In the manner provided in subsection (1), political subdivisions shall adopt, administer, and enforce ~~interim~~ airport land use compatibility zoning regulations ~~shall be adopted~~. Airport land use compatibility zoning regulations shall, at a minimum, address ~~When political subdivisions have adopted land development regulations in accordance with the~~

~~provisions of chapter 163 which address the use of land in the manner consistent with the provisions herein, adoption of airport land use compatibility regulations pursuant to this subsection shall not be required. Interim airport land use compatibility zoning regulations shall consider~~ the following:

(a) Prohibiting any new landfills and restricting any existing ~~Whether sanitary~~ landfills ~~are located~~ within the following areas:

1. Within 10,000 feet from the nearest point of any runway used or planned to be used by turbine ~~turbojet or turboprop~~ aircraft.

2. Within 5,000 feet from the nearest point of any runway used only by nonturbine ~~piston-type~~ aircraft.

3. Outside the perimeters defined in subparagraphs 1. and 2., but still within the lateral limits of the civil airport imaginary surfaces defined in 14 C.F.R. s. 77.19 ~~part 77.25~~. Case-by-case review of such landfills is advised.

(b) Where ~~Whether~~ any landfill is located and constructed so that it attracts or sustains hazardous bird movements from feeding, water, or roosting areas into, or across, the runways or approach and departure patterns of aircraft. The operator of such a landfill must be required to ~~political subdivision shall request from the airport authority or other governing body operating the airport a report on such bird feeding or roosting areas that at the time of the request are known to the airport. In preparing its report, the authority, or other governing body,~~

~~shall consider whether the landfill will~~ incorporate bird management techniques or other practices to minimize bird hazards to airborne aircraft. ~~The airport authority or other governing body shall respond to the political subdivision no later than 30 days after receipt of such request.~~

(c) Where an airport authority or other governing body operating a ~~publicly owned,~~ public-use airport has conducted a noise study in accordance with ~~the provisions of~~ 14 C.F.R. part 150 or where a public-use airport owner has established noise contours pursuant to another public study approved by the Federal Aviation Administration. Noncompatible land uses, as established in the noise study under Appendix A to 14 C.F.R. part 150 or as a part of an alternative public study approved by the Federal Aviation Administration, are not permitted within the noise contours established by such study, except where such land use is specifically contemplated by such study with appropriate mitigation or similar techniques described in the study~~, neither residential construction nor any educational facility as defined in chapter 1013, with the exception of aviation school facilities, shall be permitted within the area contiguous to the airport defined by an outer noise contour that is considered incompatible with that type of construction by 14 C.F.R. part 150, Appendix A or an equivalent noise level as established by other types of noise studies~~.

(d) Where an airport authority or other governing body operating a ~~publicly owned,~~ public-use airport has not conducted

a noise study.~~, neither~~ Residential construction and ~~nor~~ any educational facility ~~as defined in chapter 1013~~, with the exception of an aviation school facility ~~facilities~~, are not ~~shall be~~ permitted within an area contiguous to the airport measuring one-half the length of the longest runway on either side of and at the end of each runway centerline.

(e)~~(3)~~ Restricting ~~In the manner provided in subsection (1), airport zoning regulations shall be adopted which restrict~~ new incompatible uses, activities, or substantial modifications to existing incompatible uses ~~construction~~ within runway protection ~~clear~~ zones~~, including uses, activities, or construction in runway clear zones which are incompatible with normal airport operations or endanger public health, safety, and welfare by resulting in congregations of people, emissions of light or smoke, or attraction of birds. Such regulations shall prohibit the construction of an educational facility of a public or private school at either end of a runway of a publicly owned, public-use airport within an area which extends 5 miles in a direct line along the centerline of the runway, and which has a width measuring one-half the length of the runway. Exceptions approving construction of an educational facility within the delineated area shall only be granted when the political subdivision administering the zoning regulations makes specific findings detailing how the public policy reasons for allowing the construction outweigh health and safety concerns prohibiting such a location~~.

~~(4) The procedures outlined in subsections (1), (2), and (3) for the adoption of such regulations are supplemental to any existing procedures utilized by political subdivisions in the adoption of such regulations.~~

(3)~~(5)~~ Political subdivisions shall provide ~~The Department of Transportation shall provide technical assistance to any political subdivision requesting assistance in the preparation of an airport zoning code.~~ a copy of all ~~local~~ airport protection zoning ~~codes, rules, and~~ regulations and airport land use compatibility zoning regulations, together with any related amendments, to the department's Aviation and Spaceports Office within 30 days after adoption~~, and amendments and proposed and granted variances thereto, shall be filed with the department~~.

(4)~~(6) Nothing in~~ Subsection (2) does not ~~or subsection (3) shall be construed to~~ require the removal, alteration, sound conditioning, or other change to, or ~~to~~ interfere with the continued use or adjacent expansion of, any educational facility ~~structure~~ or site in existence on July 1, 1993~~, or be construed to prohibit the construction of any new structure for which a site has been determined as provided in former s. 235.19, as of July 1, 1993~~.

(5) This section does not preclude an airport authority, political subdivision or its administrative agency, or other governing body operating a public-use airport from establishing airport zoning regulations more restrictive than prescribed in this section in order to protect the health, safety, and welfare

of the public in the air and on the ground.

Section 4. Section 333.04, Florida Statutes, is amended to read:

333.04 Comprehensive plans or policies ~~zoning regulations~~; most stringent zoning regulations to prevail where conflicts occur.—

(1) INCORPORATION.—If ~~In the event that~~ a political subdivision ~~has adopted, or hereafter~~ adopts~~,~~ a comprehensive plan or policy that regulates ~~zoning ordinance regulating, among other things,~~ the height of buildings, structures, and natural objects~~,~~ and uses of property, any airport zoning regulations applicable to the same area or portion thereof may be incorporated in and made a part of such comprehensive plan or policy ~~zoning regulations,~~ and ~~be~~ administered and enforced in connection therewith.

(2) CONFLICT.—If there is a ~~In the event of~~ conflict between any airport zoning regulations adopted under this chapter and any other regulations applicable to the same area, whether the conflict be with respect to the height of structures or vegetation ~~trees~~, the use of land, or any other matter, and whether such regulations were adopted by the political subdivision that ~~which~~ adopted the airport zoning regulations or by some other political subdivision, the more stringent limitation or requirement shall govern and prevail.

Section 5. Section 333.05, Florida Statutes, is amended to read:

333.05 Procedure for adoption of zoning regulations.—

(1) NOTICE AND HEARING.—~~No~~ Airport zoning regulations may not ~~shall~~ be adopted, amended, or repealed ~~changed~~ under this chapter except by action of the legislative body of the political subdivision or affected subdivisions ~~in question~~, or the joint board provided for in s. 333.03(1)(b)2. ~~333.03(1)(b) by the bodies therein provided and set forth~~, after a public hearing on the adoption, amendment, or repeal ~~in relation thereto,~~ at which parties in interest and citizens shall have an opportunity to be heard. Notice of the hearing shall be published at least once a week for 2 consecutive weeks in a newspaper ~~an official paper, or a paper~~ of general circulation~~,~~ in the political subdivision or subdivisions where ~~in which are located~~ the airport zoning regulations are ~~areas~~ to be adopted, amended, or deleted ~~zoned~~.

(2) AIRPORT ZONING COMMISSION.—Before ~~Prior to~~ the initial zoning of any airport area under this chapter, the political subdivision or joint airport zoning board that ~~which~~ is to adopt, administer, and enforce the regulations shall appoint a commission, to be known as the airport zoning commission, to recommend the boundaries of the various zones to be established and the regulations to be adopted therefor. The ~~Such~~ commission shall make a preliminary report and hold public hearings on the preliminary report ~~thereon~~ before submitting its final report.~~,~~ ~~and~~ The legislative body of the political subdivision or the joint airport zoning board may ~~shall~~ not hold ~~its~~ public

hearings or take any action until it has received the final report of the ~~such~~ commission~~,~~ and at least 15 days have elapsed ~~shall elapse~~ between the receipt of the final report of the commission and the hearing to be held by the legislative body or the ~~latter~~ board. Where a planning ~~city plan~~ commission, airport commission, or comprehensive zoning commission already exists, it may be appointed as the airport zoning commission.

Section 6. Section 333.06, Florida Statutes, is amended to read:

333.06 Airport zoning regulation requirements.—

(1) REASONABLENESS.—All airport zoning regulations adopted under this chapter shall be reasonable and ~~none~~ shall not impose any requirement or restriction that ~~which~~ is not reasonably necessary to effectuate the purposes of this chapter. In determining what regulations it may adopt, each political subdivision and joint airport zoning board shall consider, among other things, the character of the flying operations expected to be conducted at the airport, the nature of the terrain within the airport hazard area and runway protection ~~clear~~ zones, the character of the neighborhood, the uses to which the property to be zoned is put and adaptable, and the impact of any new use, activity, or construction on the airport's operating capability and capacity.

(2) INDEPENDENT JUSTIFICATION.—The purpose of all airport zoning regulations adopted under this chapter is to provide ~~both~~ airspace protection and land uses ~~use~~ compatible with airport

operations. Each aspect of this purpose requires independent justification in order to promote the public interest in safety, health, and general welfare. Specifically, construction in a runway protection ~~clear~~ zone which does not exceed airspace height restrictions is not conclusive ~~evidence per se~~ that such use, activity, or construction is compatible with airport operations.

(3) NONCONFORMING USES.—~~No~~ Airport protection zoning regulations adopted under this chapter may not ~~shall~~ require the removal, lowering, or other change or alteration of any obstruction ~~structure or tree~~ not conforming to the regulations when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in s. 333.07(1) and (3).

(4) ADOPTION OF AIRPORT MASTER PLAN AND NOTICE TO AFFECTED LOCAL GOVERNMENTS.—An airport master plan shall be prepared by each public-use ~~publicly owned and operated~~ airport licensed by the department ~~of Transportation~~ under chapter 330. The authorized entity having responsibility for governing the operation of the airport, when ~~either~~ requesting from or submitting to a state or federal governmental agency with funding or approval jurisdiction a "finding of no significant impact," an environmental assessment, a site-selection study, an airport master plan, or any amendment to an airport master plan, shall submit simultaneously a copy of said request, submittal, assessment, study, plan, or amendments by certified mail to all

affected local governments. For ~~the~~ purposes of this subsection, "affected local government" means ~~is defined as~~ any city or county having jurisdiction over the airport and any city or county located within 2 miles of the boundaries of the land subject to the airport master plan.

Section 7. Section 333.07, Florida Statutes, is amended to read:

333.07 Local government permitting of airspace obstructions ~~Permits and variances~~.—

(1) PERMITS.—

(a) A person proposing to construct, alter, or allow an airport obstruction in an airport hazard area in violation of the airport protection zoning regulations adopted under this chapter shall apply for a permit. A ~~Any airport zoning regulations adopted under this chapter may require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or substantially altered or repaired. In any event, however, all such regulations shall provide that before any nonconforming structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, a permit must be secured from the administrative agency authorized to administer and enforce the regulations, authorizing such replacement, change, or repair. No~~ permit may not ~~shall~~ be issued ~~granted~~ that would allow the establishment or creation of an airport hazard or that would

permit a nonconforming obstruction ~~structure or tree or nonconforming use to be made or become higher or~~ to become a greater hazard to air navigation than ~~it was~~ when the applicable airport protection zoning regulation was adopted that allowed the establishment or creation of the obstruction or than ~~it is~~ when the application for a permit is made.

(b) Whenever the political subdivision or its administrative agency determines that a nonconforming obstruction ~~use or nonconforming structure or tree~~ has been abandoned or that ~~is~~ more than 80 percent of the obstruction is torn down, destroyed, deteriorated, or decayed, a ~~no~~ permit may not ~~shall~~ be granted that would allow the obstruction ~~said structure or tree~~ to exceed the applicable height limit or otherwise deviate from the airport protection zoning regulations.~~; and,~~ Regardless of whether an application is made for a permit under this subsection ~~or not~~, ~~the said agency may by appropriate action, compel~~ the owner of the nonconforming obstruction may be required ~~structure or tree~~, at his or her own expense, to lower, remove, reconstruct, alter, or equip such obstruction ~~object~~ as ~~may be~~ necessary to conform to the current airport protection zoning regulations. If the owner of the nonconforming obstruction fails or refuses ~~structure or tree shall neglect or refuse~~ to comply with such requirement within ~~order for~~ 10 days after notice ~~thereof~~, the administrative ~~said~~ agency may report the violation to the political subdivision involved therein, which subdivision, through its appropriate

agency, may proceed to have the obstruction ~~object~~ so lowered, removed, reconstructed, altered, or equipped~~,~~ and assess the cost and expense thereof upon the owner of the obstruction ~~object~~ or the land whereon it is or was located~~, and, unless such an assessment is paid within 90 days from the service of notice thereof on the owner or the owner's agent, of such object or land, the sum shall be a lien on said land, and shall bear interest thereafter at the rate of 6 percent per annum until paid, and shall be collected in the same manner as taxes on real property are collected by said political subdivision, or, at the option of said political subdivision, said lien may be enforced in the manner provided for enforcement of liens by chapter 85~~.

~~(c) Except as provided herein, applications for permits shall be granted, provided the matter applied for meets the provisions of this chapter and the regulations adopted and in force hereunder.~~

(2) CONSIDERATIONS WHEN ISSUING OR DENYING PERMITS.—In determining whether to issue or deny a permit, the political subdivision or its administrative agency shall consider the following, as applicable:

(a) The safety of persons on the ground and in the air.

(b) The safe and efficient use of navigable airspace.

(c) The nature of the terrain and height of existing structures.

(d) The effect of the construction or alteration on the state licensing standards for a public-use airport contained in

chapter 330 and rules adopted thereunder.

(e) The character of existing and planned flight operations and developments at public-use airports.

(f) Federal airways, visual flight rules, flyways and corridors, and instrument approaches as designated by the Federal Aviation Administration.

(g) The effect of the construction or alteration of the proposed structure on the minimum descent altitude or the decision height at the affected airport.

(h) The cumulative effects on navigable airspace of all existing structures and all other known proposed structures in the area.

(i) Additional requirements adopted by the political subdivision or administrative agency pertinent to evaluation and protection of airspace and airport operations.

~~(2) VARIANCES.—~~

~~(a) Any person desiring to erect any structure, increase the height of any structure, permit the growth of any tree, or otherwise use his or her property in violation of the airport zoning regulations adopted under this chapter or any land development regulation adopted pursuant to the provisions of chapter 163 pertaining to airport land use compatibility, may apply to the board of adjustment for a variance from the zoning regulations in question. At the time of filing the application, the applicant shall forward to the department by certified mail, return receipt requested, a copy of the application. The~~

~~department shall have 45 days from receipt of the application to comment and to provide its comments or waiver of that right to the applicant and the board of adjustment. The department shall include its explanation for any objections stated in its comments. If the department fails to provide its comments within 45 days of receipt of the application, its right to comment is waived. The board of adjustment may proceed with its consideration of the application only upon the receipt of the department's comments or waiver of that right as demonstrated by the filing of a copy of the return receipt with the board. Noncompliance with this section shall be grounds to appeal pursuant to s. 333.08 and to apply for judicial relief pursuant to s. 333.11. Such variances may only be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and where the relief granted would not be contrary to the public interest but would do substantial justice and be in accordance with the spirit of the regulations and this chapter. However, any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purposes of this chapter.~~

~~(b) The Department of Transportation shall have the authority to appeal any variance granted under this chapter pursuant to s. 333.08, and to apply for judicial relief pursuant to s. 333.11.~~

(3) OBSTRUCTION MARKING AND LIGHTING.—

~~(a)~~ When issuing a ~~In granting any~~ permit ~~or variance~~ under this section, the political subdivision or its administrative agency ~~or board of adjustment~~ shall require the owner of the obstruction ~~structure or tree in question~~ to install, operate, and maintain thereon, at the owner's ~~his or her own~~ expense, ~~such~~ marking and lighting in conformance with the specific standards established by the Federal Aviation Administration ~~as may be necessary to indicate to aircraft pilots the presence of an obstruction~~.

~~(b) Such marking and lighting shall conform to the specific standards established by rule by the Department of Transportation.~~

~~(c) Existing structures not in compliance on October 1, 1988, shall be required to comply whenever the existing marking requires refurbishment, whenever the existing lighting requires replacement, or within 5 years of October 1, 1988, whichever occurs first.~~

Section 8. Section 333.09, Florida Statutes, is amended to read:

333.09 Administration of airport zoning regulations.—

(1) ADMINISTRATION.—All airport zoning regulations adopted under this chapter shall provide for the administration and enforcement of such regulations by the political subdivision or its ~~an~~ administrative agency ~~which may be an agency created by such regulations or any official, board, or other existing agency of the political subdivision adopting the regulations or~~

~~of one of the political subdivisions which participated in the creation of the joint airport zoning board adopting the regulations, if satisfactory to that political subdivision, but in no case shall such administrative agency be or include any member of the board of adjustment~~. The duties of an ~~any~~ administrative agency designated pursuant to this chapter shall include ~~that of~~ hearing and deciding all permits under s. 333.07 ~~333.07(1), deciding all matters under s. 333.07(3),~~ as they pertain to such agency~~,~~ and all other matters under this chapter applying to such ~~said~~ agency~~, but such agency shall not have or exercise any of the powers herein delegated to the board of adjustment~~.

(2) LOCAL GOVERNMENT PROCESS.—

(a) A political subdivision required to adopt airport zoning regulations under this chapter shall provide a process to:

1. Issue or deny permits consistent with s. 333.07.

2. Provide the department with a copy of a complete application consistent with s. 333.025(4).

3. Enforce the issuance or denial of a permit or other determination made by the administrative agency with respect to airport zoning regulations.

(b) If a zoning board or permitting body already exists within a political subdivision, the zoning board or permitting body may implement the airport zoning regulation permitting and appeals processes.

(3) APPEALS.—

(a) A person, a political subdivision or its administrative agency, or a joint airport zoning board that contends that a decision made by a political subdivision or its administrative agency is an improper application of airport zoning regulations may use the process established for an appeal.

(b) All appeals taken under this section must be taken within a reasonable time, as provided by the political subdivision or its administrative agency, by filing with the entity from which appeal is taken a notice of appeal specifying the grounds for appeal.

(c) An appeal shall stay all proceedings in the underlying action appealed from, unless the entity from which the appeal is taken certifies, pursuant to the rules for appeal, that by reason of the facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. In such cases, proceedings shall not be stayed except by order of the political subdivision or its administrative agency on notice to the entity from which the appeal is taken and for good cause shown.

(d) The political subdivision or its administrative agency shall set a reasonable time for the hearing of appeals, give public notice and due notice to the parties in interest, and decide the issue within a reasonable time. Upon the hearing, any party may appear in person, by agent, or by attorney.

(e) The political subdivision or its administrative agency may, in conformity with this chapter, affirm, reverse, or modify the decision on the permit or other determination from which the

appeal is taken.

Section 9. Section 333.11, Florida Statutes, is amended to read:

333.11 Judicial review.—

(1) A ~~Any~~ person, ~~aggrieved, or taxpayer affected, by any decision of a board of adjustment, or any governing body of a~~ political subdivision, ~~or the Department of Transportation~~ or ~~any~~ joint airport zoning board affected by a decision of a political subdivision~~,~~ or its ~~of any~~ administrative agency ~~hereunder,~~ may apply for judicial relief to the circuit court in the judicial circuit where the political subdivision ~~board of adjustment~~ is located within 30 days after rendition of the decision ~~by the board of adjustment~~. Review shall be by petition for writ of certiorari, which shall be governed by the Florida Rules of Appellate Procedure.

~~(2) Upon presentation of such petition to the court, it may allow a writ of certiorari, directed to the board of adjustment, to review such decision of the board. The allowance of the writ shall not stay the proceedings upon the decision appealed from, but the court may, on application, on notice to the board, on due hearing and due cause shown, grant a restraining order.~~

~~(3) The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by the writ. The~~

~~return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.~~

(2)~~(4)~~ The court has ~~shall have~~ exclusive jurisdiction to affirm, reverse, or modify~~, or set aside~~ the decision on the permit or other determination from which the appeal is taken ~~brought up for review, in whole or in part,~~ and, if appropriate ~~need be~~, to order further proceedings by the political subdivision or its administrative agency ~~board of adjustment~~. The findings of fact by the political subdivision or its administrative agency ~~board~~, if supported by substantial evidence, shall be accepted by the court as conclusive, and an ~~no~~ objection to a decision of the political subdivision or its administrative agency may not ~~board shall~~ be considered by the court unless such objection was raised in the underlying proceeding ~~shall have been urged before the board, or, if it was not so urged, unless there were reasonable grounds for failure to do so~~.

(3)~~(5)~~ In any case in which airport zoning regulations adopted under this chapter~~, although generally reasonable,~~ are held by a court to interfere with the use and enjoyment of a particular structure or parcel of land to such an extent, or to be so onerous in their application to such a structure or parcel of land, as to constitute a taking or deprivation of that property in violation of the State Constitution or the Constitution of the United States, such holding shall not affect

the application of such regulations to other structures and parcels of land, or such regulations as are not involved in the particular decision.

(4) ~~(6)~~ A judicial ~~No~~ appeal to any court may not ~~shall~~ be ~~or is~~ permitted under this section until the appellant has exhausted all of its remedies through application for local government permits, exceptions, and appeals~~, to any courts, as herein provided, save and except an appeal from a decision of the board of adjustment, the appeal herein provided being from such final decision of such board only, the appellant being hereby required to exhaust his or her remedies hereunder of application for permits, exceptions and variances, and appeal to the board of adjustment, and gaining a determination by said board, before being permitted to appeal to the court hereunder~~.

Section 10. Section 333.12, Florida Statutes, is amended to read:

333.12 Acquisition of air rights.—If ~~In any case which: it is desired to remove, lower or otherwise terminate~~ a nonconforming obstruction is determined to be an airport hazard and the owner will not remove, lower, or otherwise eliminate it ~~structure or use~~; if ~~or~~ the approach protection necessary cannot, because of constitutional limitations, be provided by airport regulations under this chapter; or if it appears advisable that the necessary approach protection be provided by acquisition of property rights rather than by airport zoning regulations, the political subdivision within which the property

or nonconforming obstruction ~~use~~ is located, or the political subdivision owning or operating the airport or being served by it, may acquire~~,~~ by purchase, grant, or condemnation in the manner provided by chapter 73~~,~~ such property, air right, avigation ~~navigation~~ easement, or other estate, portion, or interest in the property or nonconforming obstruction ~~structure or use~~ or such interest in the air above such property~~, tree, structure, or use, in question,~~ as may be necessary to effectuate the purposes of this chapter, and ~~in so doing~~, if by condemnation, may ~~to have the right to~~ take immediate possession of the property, interest in property, air right, or other right sought to be condemned, at the time, ~~and~~ in the manner and form, and as authorized by chapter 74. If the political subdivision acquires any ~~In the case of the purchase of any~~ property, ~~or any~~ easement, or estate or interest therein by purchase or ~~the acquisition of the same~~ by the power of eminent domain, the political subdivision ~~making such purchase or exercising such power~~ shall, in addition to the damages for the taking, injury, or destruction of property, ~~also~~ pay the cost of the removal and relocation of any structure or any public utility that must ~~which is required to~~ be moved to a new location.

Section 11. Section 333.13, Florida Statutes, is amended to read:

333.13 Enforcement and remedies.—

(1) A ~~Each~~ violation of this chapter or ~~of~~ any airport zoning regulations, orders, or rulings adopted ~~promulgated~~ or

made under ~~pursuant to~~ this chapter is ~~shall constitute~~ a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, and each day a violation continues to exist constitutes ~~shall constitute~~ a separate offense.

(2) In addition, the political subdivision or agency adopting the airport zoning regulations under this chapter may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate a ~~any~~ violation of this chapter, any ~~or of~~ airport zoning regulations adopted under this chapter, or ~~of~~ any order or ruling made in connection with their administration or enforcement, and the court shall adjudge to the plaintiff such relief, by way of injunction (which may be mandatory) or otherwise, as may be proper under all the facts and circumstances of the case in order to fully effectuate the purposes of this chapter and of the regulations adopted and orders and rulings made pursuant thereto.

(3) The department ~~of Transportation~~ may institute a civil action for injunctive relief in the appropriate circuit court to prevent violation of ~~any provision of~~ this chapter.

Section 12. Section 333.135, Florida Statutes, is created to read:

333.135 Transition provisions.—

(1) For those political subdivisions that have not adopted airport zoning regulations pursuant to this chapter, the department shall administer the permitting process as provided in s. 333.025.

(2) By July 1, 2017:

(a) Any airport zoning regulation in effect on July 1, 2016, that includes provisions in conflict with this chapter shall be amended to conform to the requirements of this chapter.

(b) Any political subdivision having an airport within its territorial limits which has not adopted airport zoning regulations shall adopt airport zoning regulations consistent with this chapter.

Section 13. Sections 333.065, 333.08, 333.10, and 333.14, Florida Statutes, are repealed.

Section 14. For the purpose of incorporating the amendment made by this act to section 333.01, Florida Statutes, in a reference thereto, subsection (6) of section 350.81, Florida Statutes, is reenacted to read:

350.81 Communications services offered by governmental entities.—

(6) To ensure the safe and secure transportation of passengers and freight through an airport facility, as defined in s. 159.27(17), an airport authority or other governmental entity that provides or is proposing to provide communications services only within the boundaries of its airport layout plan, as defined in s. 333.01(6), to subscribers which are integral and essential to the safe and secure transportation of passengers and freight through the airport facility, is exempt from this section. An airport authority or other governmental entity that provides or is proposing to provide shared-tenant

service under s. 364.339, but not dial tone enabling subscribers to complete calls outside the airport layout plan, to one or more subscribers within its airport layout plan which are not integral and essential to the safe and secure transportation of passengers and freight through the airport facility is exempt from this section. An airport authority or other governmental entity that provides or is proposing to provide communications services to one or more subscribers within its airport layout plan which are not integral and essential to the safe and secure transportation of passengers and freight through the airport facility, or to one or more subscribers outside its airport layout plan, is not exempt from this section. By way of example and not limitation, the integral, essential subscribers may include airlines and emergency service entities, and the nonintegral, nonessential subscribers may include retail shops, restaurants, hotels, or rental car companies.

Section 15. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1437 Port of Palm Beach District, Palm Beach County
SPONSOR(S): Hager and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	11 Y, 1 N	Walker	Miller
2) Economic Affairs Committee		Johnson	Pitts
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

The Port of Palm Beach District (Port) is an independent special taxing district located in Palm Beach County. The most recent financial statement shows that the Board derives most of it revenues from rents and royalties and service changes. In 2014, the gross revenue of the Port was over $26 million.

The Port is governed by the Board of Commissioners of Port of Palm Beach District (Board), which is comprised of five elected members. The most recent adjustment in 1999 set the compensation level for Board members to $9,500.00/year. The bill raises the yearly compensation rate of Board members from $9,500 to $16,000, reflecting an approximate 3% yearly increase from the rate of compensation set in 1999. Thereafter, the salary may be adjusted annually by up to 3 percent by a majority vote of the Board.

One of the functions of the Board is to oversee Foreign-Trade Zone operations associated with the Port. In 2008, the federal government created new regulations expanding the locations and modification flexibility of Foreign-Trade Zone site locations. In 2012, the Port approved a resolution to apply for the new Foreign-Trade Zone status created by the regulations in order to expand their site locations into the neighboring Martin and St. Lucie Counties. This application could not be granted because the Port's current charter did not permit the flexibility for expansion needed under the new regulations. Currently, the Port is limited by its charter to operating within the corporate limits of Palm Beach County. The bill amends the Port's special act to allow the Port to apply for Foreign-Trade Zone site locations outside of Palm Beach County.

The economic impact statement (EIS) for the bill anticipates no increase in revenues or expenses directly to the Port but potential indirect advantages to freight logistics businesses represented by the Port being able to take advantage of the flexibility for expansion of the foreign trade zone under the recent federal regulations.

The bill provides the act is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

The Port of Palm Beach District (Port) is an independent special taxing district located in Palm Beach County. The Port was created by special act in 1915[1] and subsequently amended.[2] The Port is the fourth busiest container port in Florida, the eighteenth busiest in the continental U.S., and is a major shipper of Florida goods such as bulk sugar and produce.[3]

There are 16 port authorities in Florida[4] which collectively generate more than 680,000 direct and indirect jobs and contribute $96 billion in economic value to the state, accounting for approximately 13 percent of Florida's Gross Domestic Product and $2.4 billion in state and local taxes.[5] The most recent financial statement shows that the Port derives most of its revenues from rents, royalties, and service changes.[6] In 2014, the gross revenue of the Port was over $26 million.[7]The Port has not assessed ad valorem taxes in approximately 40 years.[8]

The Port is governed by the Board of Commissioners of Port of Palm Beach District (Board), which is comprised of five members elected by districtwide vote to serve four year terms.[9] The Board was originally compensated at a rate of $2,400.00/year, which has been adjusted periodically by the Legislature. The most recent adjustment in 1999 set the compensation level for Board members to $9,500.00/year.[10] The Board members receive the same retirement and insurance benefits as district employees, including: Health, Dental, Vision, Life Insurance, Short Term Disability, AFLAC, Long Term Life, FRS (Retirement Plan).[11]

The Board governs the operation, maintenance, and management of projects of the Port. These powers and duties include: entering into contracts on behalf of the Port; acquisition of harbor and Port property; construction and repair of Port facilities; establishing trade zones; creating and managing the Port budget; setting rates, tolls, and charges for Port services and use; raising ad valorem taxes as needed; personnel selection and supervision; and providing insurance, pension, and retirement benefits to employees.[12]

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[1] Ch. 7081, Laws of Fla. (1915).
[2] Ch. 74-570, Laws of Fla. (1974); ch. 81-459, Laws of Fla. (1981); ch. 99-457, Laws of Fla. (1999).
[3] PORT OF PALM BEACH, *General Information*, http://www.portofpalmbeach.com/121/General-Information (last visited 01/21/2016).
[4] FLORIDA DEPARTMENT OF ECONOMIC OPPORTUNITY, *Official List of Special Districts Online, available at* http://www.floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program (last accessed Jan. 21, 2016).
[5] FLORIDA PORTS COUNCIL, *The Florida System of Seaports*, http://flaports.org/about/the-florida-system-of-seaports/ (last accessed Jan. 21, 2016).
[6] DEPARTMENT OF FINANCIAL SERVICES, *Local Government General Ad Hoc Report 2010-2015*, available *at* http://www.myfloridacfo.com/Division/AA/LocalGovernments/default.htm (last accessed Jan. 21, 2016).
[7] Id.
[8] Id.; PORT OF PALM BEACH, *General Information*, http://www.portofpalmbeach.com/121/General-Information (last accessed Jan. 26, 2016).
[9] Ch. 74-570, Laws of Fla. (1974).
[10] Ch. 99-457, Laws of Fla. (1999).
[11] PORT OF PALM BEACH, *Human Resources*, http://www.portofpalmbeach.com/238/Human-Resources (last accessed Jan. 26, 2016).
[12] Ch. 74-570, Laws of Fla. (1974).

Foreign-Trade Zones (FTZs) are the United States' version of secure free-trade zones.[13] FTZs are subject to U.S. Customs and Border Protection (CBP) supervision but largely overseen by a designated local board. The authority to establish FTZs was created by Congress in the Foreign-Trade Zones Act of 1934.[14] The Foreign-Trade Zones Act is administered through two sets of regulations,[15] which were revised in 2008[16] to create a new variety of FTZ know as an Alternative Site Framework (ASF). Port entities operating under the revised ASF provisions have a number of operating advantages in terms of increased flexibility and predictability.[17] The ASF allows FTZ sites administered by port authorities to utilize the "minor boundary modification process" in order to extend FTZ benefits to areas outside of existing zones through a shorter streamlined application process. The ASF framework also expands the range of available FTZ sites include locations within 60 miles of the port of entry.

Currently, the Port is limited by its charter to operating within the corporate limits of Palm Beach County.[18] In 2012, the Port approved a resolution to apply for ASF status in order to expand their FTZ site locations into the neighboring Martin and St. Lucie County.[19] In 2013 the Port was informed the application could not advance for the following reasons:

- The Port's charter limited the ability of the Port to sponsor future sites outside of Palm Beach County.
- The Port's charter did not allow expansion outside the immediate port district without approval from the affected county or municipal governments.[20]

EFFECT OF THE BILL

The bill raises the yearly compensation rate of Board members from $9,500 to $16,000, reflecting an approximate 3% yearly increase from the rate of compensation set in 1999. Thereafter, the salary may be adjusted annually by up to 3 percent by a majority vote of the Board.

The bill also authorizes the Port to apply for FTZ site locations outside of Palm Beach County, within 60 miles of the port of entry pursuant to the new ASF regulations implemented in 2008. The bill removes language requiring approval from local governments before establishing FTZ site locations outside of the district but notes all such FTZs remain subject to local codes, ordinances, and laws.

B. SECTION DIRECTORY:

Section 1. Amends that section of the Port charter pertaining to commissioner compensation, raising the yearly compensation of each Board member from $9,500 to $16,000 and allowing subsequent adjustments of up to 3 percent per year by a majority vote of the Board.

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[13] U.S. CUSTOMS AND BORDER PROTECTION, *About Foreign-Trade Zones and Contact Info*, http://www.cbp.gov/border-security/ports-entry/cargo-security/cargo-control/foreign-trade-zones/about (Jan. 26, 2016).
[14] Foreign-Trade Zones Act of 1934, 19 U.S.C. 81a-81u.
[15] The FTZ Regulations (15 CFR Part 400) and CBP Regulations (19 CFR Part 146).
[16] 15 CFR Part 400- FTZ Regulations *available at* http://enforcement.trade.gov/ftzpage/grantee/regs.html (last accessed Jan. 26, 2016).
[17] U.S. CUSTOMS AND BORDER PROTECTION, *Foreign-Trade Zones Manual, available at* https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwi8s_zF68rKAhVH9h4KHdf7D5IQFggcMAA&url=https%3A%2F%2Fwww.cbp.gov%2Fsites%2Fdefault%2Ffiles%2Fdocuments%2FFTZmanual2011.pdf&usg=AFQjCNGMb22sCiQnmpxhGGTY-fzzVAktDA&bvm=bv.112766941,d.dmo (last accessed Jan. 27, 2016).
[18] Ch. 74-570, Laws of Fla. (1974).
[19] PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS, *Executive Brief, available at* http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwi58KDw8crKAhVCWh4KHV9tCjwQFggcMAA&url=http%3A%2F%2Fwww.pbcgov.com%2FpubInf%2FAgenda%2F20130416%2F5a1.pdf&usg=AFQjCNFa0Yju6uN0kXZ-Q6-_AjABetQRDA (last accessed Jan. 27, 2016).
[20] Letter from Andrew McGilvray, Executive Director, The Foreign-Trade Zones Board, U.S. Dept. of Commerce, to Beatrice Greffin, Port of Palm Beach (11/08/2013), a copy of which is retained by staff of the Local Government Affairs Subcommittee.

Section 2. Amends that section of the Port charter pertaining to Foreign Trade Zones, authorizing sites to be located outside of Palm Beach County but remaining subject to all local ordinances and laws.

Section 3. Provides that the act shall take effect upon becoming law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? Oct. 30, 2015

WHERE? The Palm Beach County Post in Palm Beach County, Florida

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

HOUSE OF REPRESENTATIVES

2016 LOCAL BILL AMENDMENT FORM

Prior to consideration of a substantive amendment to a local bill, the chair of the legislative delegation must certify, by signing this Amendment Form, that the amendment is approved by a majority of the legislative delegation. House local bill policy does not require a delegation meeting to formally approve an amendment. All substantive committee, subcommittee, and floor amendments must be accompanied by a completed original Amendment Form which has been provided to and reviewed by Local Government Affairs Subcommittee staff prior to consideration. An Amendment Form is not required for technical amendments.

BILL NUMBER: HB 1437

SPONSOR(S): Rep. Hager

RELATING TO: Port of Palm Beach District, Palm Beach County
[Indicate Area Affected (City, County or Special District) and Subject]

SPONSOR OF AMENDMENT: Rep. Hager

AMENDMENT FOR: (Check One) ☑ **Committee:** Economic Affairs Committee
(Name of Committee or Subcommittee)

☐ **Floor**

CONTACT PERSON: Rachael Ondrus

PHONE NO: (850) 322-7908 **E-MAIL:** Rachael@McNicholas.biz

REVIEWED BY STAFF OF THE LOCAL GOVERNMENT AFFAIRS SUBCOMMITTEE ☑
Must Be Checked

I. **BRIEF DESCRIPTION OF AMENDMENT:**
(Attach additional page(s) if necessary)

The amendment clarifies that Port of Palm Beach Commission salaries will be funded from Port of Palm Beach tenant and user fees and not from ad valorem tax revenues.

II. **REASON/NEED FOR AMENDMENT:**
(Attach additional page(s) if necessary)

It is clarifying which funds will be used to increase Port Commission salary.

III. **NOTICE REQUIREMENTS**

A. Is the amendment consistent with the published notice of intent to seek enactment of the local bill?

YES ☑ NO ☐ NOT APPLICABLE ☐

B. If the amendment is not consistent with the published notice, does the amendment require voter approval in order for the bill to become effective?

YES ☐ NO ☐ NOT APPLICABLE ☑

IV. DOES THE AMENDMENT ALTER THE ECONOMIC IMPACT OF THE BILL?

YES ☐ NO ☑

NOTE: If the amendment alters the economic impact of the bill, a revised Economic Impact Statement describing the impact of the amendment must be submitted to the Local Government Affairs Subcommittee prior to consideration of the amendment.

If yes, was the Revised Economic Impact Statement submitted as follows?

☑ **Committee Amendment**: EIS filed with staff of committee/subcommittee hearing the bill.

☐ **Floor Amendment**: EIS filed with staff of Local Government Affairs Subcommittee.

YES ☐ NO ☐

V. HAS THE AMENDMENT AS DESCRIBED ABOVE BEEN APPROVED BY A MAJORITY OF THE DELEGATION?

YES ☑ NO ☐ UNANIMOUSLY APPROVED ☐

For substantive amendments considered in committee or subcommittee, the properly-executed original of this form must be filed with the committee or subcommittee staff prior to the amendment being heard. [Note to committee staff: after receiving this form the original must be filed with the House Clerk.]

For substantive floor amendments, the properly-executed original of this form must be filed with the House Clerk prior to the amendment being heard.

MMagar

Delegation Chair *(Original Signature)*

2-16-16

Date

Rep. MaryLynn Magar

Print Name of Delegation Chair

PALM BEACH COUNTY LEGISLATIVE DELEGATION

301 NORTH OLIVE AVENUE
SUITE 1101.11
WEST PALM BEACH, FL 33401
561/355-2406
Fax: 561/242-7171

February 16, 2016

Approval to Amend HB 1437, relating to the Port of Palm Beach, Palm Beach County.

Proposed amendment to remove line 20 and insert:

~~($9,500) per annum, payable in monthly installments.~~ These salaries shall be funded from the operating revenues of the port district, and may not be funded from ad valorem tax revenues.

This amendment clarifies that the Port Commission salaries will be funded from Port of Palm Beach tenant and user fees and not from ad valorem tax revenues.

Senator Joseph Abruzzo, District 25

Senator Jeff Clemens, District 27

Senator Joe Negron, District 32

Senator Maria Sachs, District 34

MMagar

Representative Kevin Rader, District 81

Representative MaryLynn Magar, District 82

Representative Pat Rooney, Jr., District 85

Representative Mark Pafford, District 86

Representative Dave Kerner, District 87

Representative Bobby Powell, Jr., District 88

Bill Hager

Representative Bill Hager, District 89

Representative Lori Berman, District 90

Representative Irving Slosberg, District 91

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Representative Bobby Powell, Jr., District 88

Representative Bill Hager, District 89

Representative Lori Berman, District 90

Representative Irving Slosberg, District 91

...Delegation

...the Port of Palm Beach, Palm Beach County...

...Section 20 and insert:

...Those salaries shall be... the port district, and may not be funded from...

...It is the intent that the Port Commission salaries will be funded from Port of... ad valorem tax revenues.

...Senator Joseph Abruzzo, District 25 — Senator Jeff Clemens, District...

...Senator Joe Negron, District 32 — Senator Maria Sachs, District...

Representative Kevin Rader, District 81 — Representative Mary Lynn Magar, District...

Representative Pat Rooney, Jr., District 85 — Representative Mark Pafford, District...

Representative Dave Kerner, District 87 — Representative Bobby Powell, District...

Representative Bill Hager, District 89 — Representative Lori Berman, District...

Representative Irving Slosberg, District 91

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1437 (2016)

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Economic Affairs Committee

Representative Hager offered the following:

Amendment (with title amendment)

Remove line 20 and insert:

~~($9,500) per annum, payable in monthly installments~~. These salaries shall be funded from the operating revenues of the port district, and may not be funded from ad valorem tax revenues.

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

Remove line 5 and insert:

compensation; providing a source for the compensation; prohibiting compensation from coming from certain revenues; revising approval of foreign trade

The Palm Beach Post
REAL NEWS STARTS HERE
Palm Beach Daily News

TO WHOM IT MAY CONCERN: Notice is hereby given of intent to apply to the 2016 Legislature for passage of an act relating to Palm Beach County, Port of Palm Beach District; amending chapter 74-570, Laws of Florida, as amended, setting commissioner compensation; approval of foreign trade zones; providing an effective date.

PUB: The Palm Beach Post
10-30/ 2015 #503318

PORT OF PALM BEACH PROOF OF PUBLICATION
STATE OF FLORIDA COUNTY OF PALM BEACH
Before the undersigned authority personally appeared Tiffani Everett, who on oath says that she is Call Center Legal Advertising Representative of The Palm Beach Post, a daily and Sunday newspaper, published at West Palm Beach in Palm Beach County, Florida; that the attached copy of advertising for a Notice was published in said newspaper on First date of Publication 10/30/2015 and last date of Publication 10/30/2015 Affiant further says that the said The Post is a newspaper published at West Palm Beach, in said Palm Beach County, Florida, and that the said newspaper has heretofore been continuously published in said Palm Beach County, Florida, daily and Sunday and has been entered as second class mail matter at the post office in West Palm Beach, in said Palm Beach County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that she/he has neither paid nor promised any person, firm or corporation any discount rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper. Also published in Martin and St. Lucie Counties.
NOTICE Ad ID: 955395 Ad Cost: 41.28

Signed _____

Sworn to and subscribed before 10/30/2015
Who is personally known to me.

NOTARY PUBLIC STATE OF OHIO

JUSTIN PETERSON, Notary Public
In and for the State of Ohio
My Commission Expires July 31, 2019

HOUSE OF REPRESENTATIVES

2016 LOCAL BILL CERTIFICATION FORM

BILL #: HB 7137

SPONSOR(S): Rep. Bill Hager

RELATING TO: Port of Palm Beach, Palm Beach County

[Indicate Area Affected (City, County, or Special District) and Subject]

NAME OF DELEGATION: Palm Beach County

CONTACT PERSON: Rachael Ondrus

PHONE NO.: (850) 322-7908 **E-Mail:** rachael@mcnicholas.biz

I. ***House local bill policy requires the following steps must occur before a committee or subcommittee of the House considers a local bill:***
(1) The members of the local legislative delegation must certify that the purpose of the bill cannot be accomplished at the local level;
(2) The legislative delegation must hold a public hearing in the area affected for the purpose of considering the local bill issue(s); and
(3) The bill must be approved by a majority of the legislative delegation, or a higher threshold if so required by the rules of the delegation, at the public hearing or at a subsequent delegation meeting.
(4) An Economic Impact Statement for local bills must be prepared at the local level and submitted to the Local Government Affairs Subcommittee. Under House policy, no local bill will be considered by a committee or subcommittee without an Economic Impact Statement.

(1) Does the delegation certify the purpose of the bill cannot be accomplished by ordinance of a local governing body without the legal need for a referendum?

YES ☑ NO ☐

(2) Did the delegation conduct a public hearing on the subject of the bill?

YES ☑ NO ☐

Date hearing held: December 8, 2015

Location: Lakeside Medical Center, 39200 Hooker Hwy, Belle Glade, FL 33430

(3) Was this bill formally approved by a majority of the delegation members?

YES ☑ NO ☐

(4) Was an Economic Impact Statement prepared at the local level and submitted to the Local Government Affairs Subcommittee?

YES ☑ NO ☐

II. ***Article III, Section 10 of the State Constitution prohibits passage of any special act unless notice of intention to seek enactment of the bill has been published as provided by general law (s. 11.02, F. S.) or the act is conditioned to take effect only upon approval by referendum vote of the electors in the area affected.***

Has this constitutional notice requirement been met?

Notice published: YES ☑ NO ☐ **DATE** October 30, 2015

Where? Palm Beach Post **County** Palm Beach

Referendum in lieu of publication: YES ☐ NO ☑

Date of Referendum _____

III. ***Article VII, Section 9(b) of the State Constitution prohibits passage of any bill creating a special taxing district, or changing the authorized millage rate for an existing special taxing district, unless the bill subjects the taxing provision to approval by referendum vote of the electors in the area affected.***

(1) Does the bill create a special district and authorize the district to impose an ad valorem tax?

YES ☐ NO ☑

(2) Does this bill change the authorized ad valorem millage rate for an existing special district?

YES ☐ NO ☑

If the answer to question (1) or (2) is YES, does the bill require voter approval of the ad valorem tax provision(s)?

YES ☐ NO ☐

Please submit this completed, original form to the Local Government Affairs Subcommittee.

MMagar — 1/11/16

Delegation Chair (Original Signature) — Date

Representative MaryLynn Magar

Printed Name of Delegation Chair

HOUSE OF REPRESENTATIVES

2016 ECONOMIC IMPACT STATEMENT FORM

Read all instructions carefully.
House local bill policy requires that no local bill will be considered by a committee or a subcommittee without an Economic Impact Statement. This form must be prepared at the LOCAL LEVEL by an individual who is qualified to establish fiscal data and impacts and has personal knowledge of the information given (for example, a chief financial officer of a particular local government). Please submit this completed, original form to the Local Government Affairs Subcommittee as soon as possible after a bill is filed. Additional pages may be attached as necessary.

BILL #: HB 1437

SPONSOR(S): Representative Bill Hager

RELATING TO: Port of Palm Beach
[Indicate Area Affected (City, County or Special District) and Subject]

I. REVENUES:

These figures are new revenues that would not exist but for the passage of the bill. The term "revenue" contemplates, but is not limited to, taxes, fees and special assessments. For example, license plate fees may be a revenue source. If the bill will add or remove property or individuals from the tax base, include this information as well.

	FY 16-17	FY 17-18
Revenue decrease due to bill:	$ 0	$ 0
Revenue increase due to bill:	$ 0	$ 0

II. COST:

Include all costs, both direct and indirect, including start-up costs. If the bill repeals the existence of a certain entity, state the related costs, such as satisfying liabilities and distributing assets.

Expenditures for Implementation, Administration and Enforcement:

FY 16-17	FY 17-18
$ 0	$ 0

Please include explanations and calculations regarding how each dollar figure was determined in reaching total cost.

The Port of Palm Beach is funded through Port tenants and user-fees - No tax dollars are impacted.

III. FUNDING SOURCE(S):

State the specific sources from which funding will be received, for example, license plate fees, state funds, borrowed funds, or special assessments.

If certain funding changes are anticipated to occur beyond the following two fiscal years, explain the change and at what rate taxes, fees or assessments will be collected in those years.

	FY 16-17	FY 17-18
Local:	$ 0	$ 0
State:	$ 0	$ 0
Federal:	$ 0	$ 0

IV. ECONOMIC IMPACT:

Potential Advantages:

Include all possible outcomes linked to the bill, such as increased efficiencies, and positive or negative changes to tax revenue. If an act is being repealed or an entity dissolved, include the increased or decreased efficiencies caused thereby.

Include specific figures for anticipated job growth.

1. Advantages to Individuals: _____

2. Advantages to Businesses: ~~It will be easier for freight logis~~tics businesses to obtain a FT2 operators license.

3. Advantages to Government: Compensation will be limited to no more than 3% per year increase and will not require legislative action.

Potential Disadvantages:

Include all possible outcomes linked to the bill, such as inefficiencies, shortages, or market changes anticipated.

Include reduced business opportunities, such as reduced access to capital or training.

State any decreases in tax revenue as a result of the bill.

1. Disadvantages to Individuals: None

2. Disadvantages to Businesses: None

3. Disadvantages to Government: None

V. DESCRIBE THE POTENTIAL IMPACT OF THE BILL ON PRESENT GOVERNMENTAL SERVICES:

Will streamline and make more effecient the designation of businesses to utilize foreign trade zone status

VI. SPECIFIC DATA USED IN REACHING ESTIMATES:

Include the type(s) and source(s) of data used, percentages, dollar figures, all assumptions made, history of the industry/issue affected by the bill, and any audits.

N/A

VII. CERTIFICATION BY PREPARER

I hereby certify I am qualified to establish fiscal data and impacts and have personal knowledge of the information given. I have reviewed all available financial information applicable to the substance of the above-stated local bill and confirm the foregoing Economic Impact Statement is a true and accurate estimate of the economic impact of the bill.

PREPARED BY: 

[Must be signed by Preparer]

Print preparer's name: Manny Almira

September 29, 2015

Date

TITLE (such as Executive Director, Actuary, Chief Accountant, or Budget Director):

Port Director

REPRESENTING: Port of Palm Beach

PHONE: (561) 383-4131

E-MAIL ADDRESS: malmira@portofpalmbeach.com

UNITED STATES DEPARTMENT OF COMMERCE
The Foreign-Trade Zones Board
Washington, D.C. 20230

November 8, 2013

Ms. Beatrice Greffin
Manager, Human Resources/Payroll & Foreign Trade Zone
Port of Palm Beach District
P.O. Box 9935
Riviera Beach, Florida 33419

Dear Ms. Greffin:

We have received the pre-docketing application of the Port of Palm Beach District to reorganize FTZ 135 under the alternative site framework (ASF) and to include Palm Beach, Martin and St. Lucie Counties in the proposed service area. Our initial review of the application has raised a key concern that seeking authority from the FTZ Board (through an ASF reorganization) to sponsor a range of potential future sites outside of Palm Beach County may not be consistent with the charter of the Port of Palm Beach District (grantee).

Specifically, in the response to the application's Question 2, you provided the following:

> (5) The establishment of trade zones. To exercise complex and exclusive control over the port and harbor facilities within the port district; and to apply to the proper public authorities of the United States of America for the right to establish, operate and maintain foreign or domestic trade zones or subzones ***within or without the boundaries of the port district***, and to operate and maintain such foreign and domestic trade zones;...(emphasis added).

Based on that language alone, there would be no concern about the grantee's legal authority to sponsor sites outside Palm Beach County. However, as required by our application format, Attachment C of the application which provides the entire section of the grantee's charter, which further states "provided, however, that such foreign trade zones shall comply with Federal laws and regulations applicable to trade zones and shall be located within the corporate limits of Palm Beach County" (emphasis added). That section of the charter also states: "In the event a trade zone site is established outside the boundaries of the port district, the county government, or, if within an incorporated area, the local municipal government, shall have approved the establishment of the trade zone within its jurisdiction, and such trade zone site shall be subject to such local government's applicable codes and ordinances."

In the context of the complete language of the section of the charter in question, we have two specific concerns:

1) It appears that seeking authority (through an ASF reorganization) to sponsor a range of potential future sites beyond Palm Beach County may not be consistent with the grantee's charter.

2) It appears that sites that outside the port district could only be approved with the approval of the county or municipal government (as applicable).

We believe these are threshold matters for an application from FTZ 135 seeking approval of a service area that includes all of Palm Beach, Martin and St. Lucie Counties. We will not be able to docket this application until these concerns are addressed. It appears that options to address these concerns would include the following:

1) modifying the proposed service area to include only the port district;

2) modifying the proposed service area to include only Palm Beach County and providing general letters from the county and any municipalities within the county that fall outside the port district "approving" any future sites of FTZ 135 in their respective jurisdictions;

3) amending the grantee's charter to allow the grantee to sponsor zone sites outside Palm Beach County and providing general letters from each of the counties within the proposed service area and any municipalities within those counties that fall outside the port district "approving" any future sites of FTZ 135 in their respective jurisdictions; and,

4) amending the grantee's charter to a) allow the grantee to sponsor zone sites outside Palm Beach County and b) eliminate the current requirement for the grantee to obtain approval from the relevant county or municipality for sites outside the port district.

We ask that FTZ 135 and its legal advisors review these matters and inform us in writing of the outcome of that review.

The FTZ Staff analyst has also provided the following comments (which appear to be minor in nature) on other parts of the application:

1. Questions 5 and 6. The correct acreage for Site 6 is 282 acres, not 286.
2. Question 10(a). Please describe in detail why this site was chosen for the requested waiver of sunset limits (*e.g.*, publicly-owned).
3. Question 11(a). Please provide Part III of Chapter 288 in its entirety. Per Section 288.38 – Applicability of state laws and rules concerning citrus fruits and products, please include in the application letter (Question 2) a statement that "all laws of this state and rules of the Florida Department of Citrus applicable to citrus fruit and processed citrus products shall equally apply within any foreign trade zone so established."

If you have any questions or additional comments/information you wish to provide, please contact Camille Evans of my staff at (202) 482-2350.

Sincerely,

Andrew McGilvray
Executive Secretary

A bill to be entitled

An act relating to the Port of Palm Beach District, Palm Beach County; amending chapter 74-570, Laws of Florida, as amended; increasing commissioner compensation; revising approval of foreign trade zones; providing an effective date.

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

Section 1. Section 3 of article VI of chapter 74-570, Laws of Florida, as amended by chapter 99-457, Laws of Florida, is amended to read:

ARTICLE VI. ORGANIZATION AND COMPENSATION OF BOARD OF COMMISSIONERS.—

Section 3. Compensation ~~Salary~~ of commissioners.—The initial salary of each commissioner~~, regardless of the office that he or she shall hold,~~ shall be $16,000. Thereafter, the salary may be adjusted annually by up to 3 percent by a majority vote of the commission ~~nine thousand five hundred dollars ($9,500) per annum, payable in monthly installments~~.

Section 2. Subsection (5) of section 1 of article VIII of chapter 74-570, Laws of Florida, as amended by chapter 90-462, Laws of Florida, is amended to read:

ARTICLE VIII. GRANT OF POWERS TO BOARD OF COMMISSIONERS.—

Section 1. General powers.—The Port of Palm Beach District by and through its Board of Commissioners, in addition to powers

set forth elsewhere herein, shall have full and complete power and authority:

(5) The establishment of foreign trade zones.—To exercise complete and exclusive control over the port and harbor facilities within the port district~~; and~~ to apply to the proper public authorities of the United States ~~of America~~ for the right to establish, operate, and maintain foreign ~~or domestic~~ trade zones inside or outside of ~~or subzones within or without~~ the boundaries of the port district, and to operate and maintain such foreign ~~and domestic~~ trade zones.~~; provided,~~ However, ~~that~~ such foreign trade zones must ~~shall~~ comply with federal laws and regulations applicable to foreign trade zones, and such foreign trade zones are subject to all local government codes, ordinances, and other laws ~~shall be located within the corporate limits of Palm Beach County; and provided further that the trade zone, if operating, shall maintain trade zone operations within the boundaries of the port district~~. ~~In the event a trade zone site is established outside the boundaries of the port district, the county government, or, if within an incorporated area, the local municipal government, shall have approved the establishment of the trade zone within its jurisdiction, and such trade zone site shall be subject to such local government's applicable codes and ordinances. In the event the Board of Commissioners of the Port of Palm Beach District approves a grant of the right to operate any portion of a foreign or domestic trade zone to a private owner-operator, such grant~~

~~shall be in writing and shall include the obligation of the owner-operator to provide to and maintain with the Port of Palm Beach District comprehensive general liability insurance with minimum coverage amounts as determined by the Port of Palm Beach District, and indemnity, and hold harmless agreements for any damages, claims, liabilities, losses, fines, demands, and costs which may arise out of the owner-operator's acts or omissions related to such foreign or domestic trade zone.~~

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7081 PCB HWSS 16-03 Issuance of Specialty License Plates
SPONSOR(S): Highway & Waterway Safety Subcommittee, Steube
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1390

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Highway & Waterway Safety Subcommittee	11 Y, 0 N	Whittaker	Smith
1) Transportation & Economic Development Appropriations Subcommittee	11 Y, 2 N	Cobb	Davis
2) Economic Affairs Committee		Whittaker	Pitts

SUMMARY ANALYSIS

The first Florida specialty license plates were enacted in 1986, and included the creation of the Challenger plate and ten Florida collegiate plates.

Presently, there are over 120 specialty license plates available for purchase in Florida. Specialty license plates are available to an owner or lessee of a motor vehicle who is willing to pay an annual use fee, ranging from $15 to $25, paid in addition to required license taxes and service fees. The annual use fees are distributed by the Department of Highway Safety and Motor Vehicles (DHMSV) to statutorily designated organizations in support of a particular cause or charity.

Only the Legislature may create new specialty license plates. If a specialty license plate is created by law, the following requirements must then be met:

- Within 60 days, the organization must submit an art design, in a medium prescribed by DHSMV.
- Within 120 days, DHSMV must establish a method to issue a specialty license plate voucher to allow for the pre-sale of the specialty plate.
- Within 24 months after the voucher is established, the organization must obtain a minimum of 1,000 voucher sales before manufacturing may begin. If this requirement is not met, the plate is deauthorized and DHSMV must discontinue development of the plate and issuance of the vouchers.

DHSMV must discontinue the issuance of an approved specialty license plate if the number of valid specialty plate registrations falls below 1,000 plates for at least 12 consecutive months. A warning letter is mailed to the sponsoring organization following the first month in which the total number of valid specialty plate registrations falls below 1,000 plates (does not apply to collegiate license plates).

The proposed committee bill raises the minimum pre-sale voucher requirement for a specialty plate from 1,000 to 4,000 before manufacturing of that specialty plate can begin.

The proposed committee bill further provides that, effective July 1, 2018, DHSMV must discontinue the issuance of a specialty plate if the number of valid specialty plate registrations falls below 4,000 for at least 12 consecutive months. A warning letter shall be mailed to the sponsoring organization following the first month in which the total number of valid specialty plate registrations falls below 4,000 plates. Collegiate specialty plates continue to be exempt from this requirement.

The bill could have an indeterminate, but likely insignificant negative fiscal impact to the state, local governments, and various private organizations. See fiscal section.

The bill provides that unless otherwise expressly provided, the effective date is July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Specialty License Plates in General

The first Florida specialty license plates were enacted in 1986, and included the creation of the Challenger plate and ten Florida collegiate plates.[1] Today, there are over 120 specialty license plates available to any owner or lessee of a motor vehicle who is willing to pay the additional use fee for the privilege, typically $25 annually.[2] The collected fees are distributed by the Department of Highway Safety and Motor Vehicles (DHSMV) to statutorily designated organizations in support of a particular cause or charity. Vehicles registered under the International Registration Plan, a commercial truck required to display two license plates, or truck tractors are not eligible for specialty license plates.[3]

Only the Legislature may create new specialty license plates. If a specialty license plate is created by law, the following requirements must then be met:

- Within 60 days, the organization must submit an art design, in a medium prescribed by DHSMV.
- Within 120 days, DHSMV must establish a method to issue a specialty license plate voucher to allow for the pre-sale of the specialty plate.
- Within 24 months after the voucher is established, the organization must obtain a minimum of 1,000 voucher sales before manufacturing may begin. If this requirement is not met, the plate is deauthorized and DHSMV must discontinue development of the plate and issuance of the vouchers.

DHSMV must discontinue the issuance of an approved specialty license plate if the number of valid specialty plate registrations falls below 1,000 plates for at least 12 consecutive months. A warning letter is mailed to the sponsoring organization following the first month in which the total number of valid specialty plate registrations falls below 1,000 plates (does not apply to collegiate license plates).[4]

Organizations in receipt of specialty license plate revenue must adhere to certain accountability requirements found in statute. These requirements include an annual attestation document affirming, under penalty of perjury, that funds received have been spent in accordance with applicable statutes.[5]

A moratorium on the issuance of specialty license plates was imposed by lawmakers in 2008, originally set to expire in 2011; it has been extended to July 1, 2016.[6]

Proposed Changes

The bill amends s. 320.08053, F.S., increasing the minimum voucher sales from 1,000 to 4,000 before manufacturing of a specialty license plate may begin.

The bill amends s. 320.08056, F.S., providing that effective July 1, 2018, DHSMV must discontinue the issuance of a specialty license plate if the number of valid specialty plate registrations falls below 4,000 for

[1] Ch. 86-88, Laws of Florida
[2] Florida Department of Highway Safety and Motor Vehicles, *Specialty License Plates Index,* http://www.flhsmv.gov/dmv/specialtytags/ (last visited November 10, 2015)
[3] s. 320.08056(2), F.S.
[4] s. 320.08056 (8)(a), F.S.
[5] s. 320.08062, F. S.
[6] Ch. 2008-176, Laws of Fla., as amended by Ch. 2010-223 and Ch. 2014-216, Laws of Fla.

at least 12 consecutive months. A warning letter shall be mailed to the sponsoring organization following the first month in which the total number of valid specialty plate registrations falls below 4,000 plates.

As of November 6, 2015, there were 28 specialty plates with less than 4,000 active registrations.[7] This count does not include collegiate plates which are exempt from the minimum active plate requirement.

B. SECTION DIRECTORY:

Section 1 Amends s. 320.08053, F.S., increasing the minimum voucher sales from 1,000 to 4,000 before manufacturing of a specialty license plate may begin.

Section 2 Amends s. 320.08056, F.S., providing that effective July 1, 2018, DHSMV must discontinue the issuance of a specialty license plate if the number of valid specialty plate registrations falls below 4,000 for at least 12 consecutive months.

Section 3 Provides that unless otherwise expressly provided, the effective date is July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   While the bill will not have a direct fiscal impact to state revenues, some of the existing specialty plates' annual use fees are distributed to various state entities for specific purposes. To the extent that these plates are deauthorized in the future as a result of this bill, there could be an indeterminate, but likely insignificant negative fiscal impact to various state entities.

2. Expenditures:

   DHSMV states that there may additional programming required for each plate that is deauthorized in the future as a result of the bill, but this effort can be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   While the bill will not have a direct fiscal impact to local governments' revenues, some of the existing specialty plates' annual use fees are distributed to various local governments for specific purposes. To the extent that these plates are deauthorized in the future as a result of this bill, there could be an indeterminate, but likely insignificant negative fiscal impact to various local governments.

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Currently, there are various organizations that receive distributions from specialty plates' annual use fees. To the extent that these plates are deauthorized in the future as a result of this bill, those organizations would no longer receive the annual use fee distributions.

D. FISCAL COMMENTS:

[7] Email from the Florida Department of Highway Safety and Motor Vehicles on file with the Economic Affairs Committee.

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to issuance of specialty license plates; amending s. 320.08053, F.S.; revising presale requirements for issuance of a specialty plate; amending s. 320.08056, F.S.; revising conditions for discontinuing issuance of a specialty plate; providing applicability; providing effective dates.

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

Section 1. Subsection (2) of section 320.08053, Florida Statutes, is amended to read:

320.08053 Establishment of ~~Requirements for requests to establish~~ specialty license plates.—

(2)(a) Within 120 days following the specialty license plate becoming law, the department shall establish a method to issue a specialty license plate voucher to allow for the presale of the specialty license plate. The processing fee as prescribed in s. 320.08056, the service charge and branch fee as prescribed in s. 320.04, and the annual use fee as prescribed in s. 320.08056 shall be charged for the voucher. All other applicable fees shall be charged at the time of issuance of the license plates.

(b) Within 24 months after the presale specialty license plate voucher is established, the approved specialty license plate organization must record with the department a minimum of

4,000 ~~1,000~~ voucher sales before manufacture of the license plate may begin ~~commence~~. If, at the conclusion of the 24-month presale period, the minimum sales requirement has ~~requirements have~~ not been met, the specialty plate is deauthorized and the department shall discontinue development of the plate and discontinue issuance of the presale vouchers. Upon deauthorization of the license plate, a purchaser of the license plate voucher may use the annual use fee collected as a credit towards any other specialty license plate or apply for a refund on a form prescribed by the department.

Section 2. Effective July 1, 2018, paragraph (a) of subsection (8) of section 320.08056, Florida Statutes, is amended to read:

320.08056 Specialty license plates.—

(8)(a) The department must discontinue the issuance of an approved specialty license plate if the number of valid specialty plate registrations falls below 4,000 ~~1,000 plates~~ for at least 12 consecutive months. A warning letter shall be mailed to the sponsoring organization following the first month in which the total number of valid specialty plate registrations is below 4,000 ~~1,000 plates~~. This paragraph does not apply to collegiate license plates established under s. 320.08058(3) or license plates of institutions in the State University System.

Section 3. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2016.

Economic Affairs Committee

Thursday, February 18, 2016
8:00 AM – 10:30 am
Reed Hall (102 HOB)

AMENDMENT PACKET

Steve Crisafulli
Speaker

Jose Oliva
Chair

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Economic Affairs Committee
Representative Passidomo offered the following:

Amendment (with title amendment)

Remove lines 714-957 and insert:

Section 3. Section 316.083, Florida Statutes, is amended to read:

316.083 Overtaking and passing a vehicle.—The following provisions ~~rules shall~~ govern the overtaking and passing of a vehicle ~~vehicles~~ proceeding in the same direction~~, subject to those limitations, exceptions, and special rules hereinafter stated~~:

(1) The driver of a vehicle overtaking another vehicle proceeding in the same direction shall give an appropriate signal as provided for in s. 316.156, shall pass to the left thereof at a safe distance, and shall not again drive to the right side of the roadway until safely clear of the overtaken

vehicle.

(2) The driver of a motor vehicle overtaking a person operating a bicycle or other vulnerable user of a public roadway ~~nonmotorized vehicle~~ must pass the person operating the bicycle or other vulnerable user ~~nonmotorized vehicle~~ at a safe distance of not less than 3 feet between any part of or attachment to the motor vehicle, anything extending from the motor vehicle, or any trailer or other thing being towed by the motor vehicle and the bicycle, the person operating the bicycle, or other vulnerable user ~~nonmotorized vehicle~~.

(3)~~(2)~~ Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle, on audible signal or upon the visible blinking of the headlamps of the overtaking vehicle if such overtaking is being attempted at nighttime, and shall not increase the speed of his or her vehicle until completely passed by the overtaking vehicle.

(4)~~(3)~~ A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318. If a violation of this section contributed to the bodily injury of a vulnerable user of a public roadway or to the damage to a motor vehicle and bodily injury of motor vehicle occupants, the law enforcement officer issuing the citation to the responsible party for the violation shall note such information on the citation.

Section 4. Section 316.084, Florida Statutes, is amended

to read:

316.084 When overtaking on the right is permitted.—

(1) The driver of a vehicle may overtake and pass on the right of another vehicle only under the following conditions:

(a) When the vehicle overtaken is making or about to make a left turn;

(b) Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving traffic in each direction;

(c) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the roadway is free from obstructions and of sufficient width for two or more lines of moving vehicles.

(2) The driver of a vehicle may overtake and pass another vehicle on the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the roadway.

(3) This section does not prohibit a bicycle that is in a bicycle lane or on the shoulder of a roadway or highway from passing another vehicle on the right at their own risk with no liability to other motor vehicle drivers.

(4)~~(3)~~ A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

Section 5. Section 316.0875, Florida Statutes, is amended

Amendment No. 1.

to read:

316.0875 No-passing zones.—

(1) The Department of Transportation and local authorities are authorized to determine those portions of any highway under their respective jurisdiction where overtaking and passing or driving to the left of the roadway would be especially hazardous and may, by appropriate signs or markings on the roadway, indicate the beginning and end of such zones, and, when such signs or markings are in place and clearly visible to an ordinarily observant person, each ~~every~~ driver of a vehicle shall obey the directions thereof.

(2) Where signs or markings are in place to define a no-passing zone as set forth in subsection (1), a ~~no~~ driver may not, ~~shall~~ at any time, drive on the left side of the roadway with such no-passing zone or on the left side of any pavement striping designed to mark such no-passing zone throughout its length.

(3) This section does not apply to a person who safely and briefly drives to the left of the center of the roadway or pavement striping only to the extent necessary to:

(a) Avoid ~~When~~ an obstruction; ~~exists making it necessary to drive to the left of the center of the highway, nor~~

(b) Turn ~~To the driver of a vehicle turning~~ left into or from an alley, private road, or driveway; or

(c) Comply with the requirements regarding a safe distance to pass a vulnerable user, as required by s. 316.083(2).

(4) A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

Section 6. Section 316.151, Florida Statutes, is amended to read:

316.151 Required position and method of turning at intersections.—

(1)(a) Right turn.—The driver of a vehicle intending to turn right at an intersection onto a highway, public or private roadway, or driveway shall do so as follows:

1.~~(a) Right turn.—~~Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the roadway.

2. When overtaking and passing a bicycle or other vulnerable user proceeding in the same direction, the driver of a motor vehicle shall give an appropriate signal as provided for in s. 316.155 and may make the right turn only if the distance from the facility in (1)(a) is at least 20 feet from the bicycle or other vulnerable user.

(b) Left turn.—The driver of a vehicle intending to turn left at an ~~any~~ intersection onto a highway, public or private roadway, or driveway shall do so as follows:

1. The driver shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle. Thereafter, ~~and, after entering the intersection,~~ the left turn shall be made so as to

leave the intersection in a lane lawfully available to traffic moving in such direction upon the roadway being entered.

2. A person riding a bicycle and intending to turn left in accordance with this section is entitled to the full use of the lane from which the turn may legally be made. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.

~~(c) Left turn by bicycle.~~—In addition ~~to the method of making a left turn described in paragraph (b)~~, a person riding a bicycle and intending to turn left may do so as follows ~~has the option of following the course described hereafter~~:

a. The rider shall approach the turn as close as practicable to the right curb or edge of the roadway;

b. After proceeding across the intersecting roadway, the turn shall be made as close as practicable to the curb or edge of the roadway on the far side of the intersection; and~~,~~

c. Before proceeding, the bicyclist shall comply with any official traffic control device or police officer regulating traffic on the highway along which the bicyclist intends to proceed.

(2) The state, county, and local authorities in their respective jurisdictions may cause official traffic control devices to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in this section be traveled by vehicles turning at an intersection. When such devices are so placed, the ~~no~~ driver of

a vehicle may not turn a vehicle at an intersection other than as directed and required by such devices.

(3) A violation of this section is a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318. If a violation of this section contributes to the bodily injury of a vulnerable user of a public roadway or the damage to a motor vehicle and injury of motor vehicle occupants, the law enforcement officer issuing the citation to the responsible party for the violation shall note such information on the citation.

Section 7. Section 316.1925, Florida Statutes, is amended to read:

316.1925 Careless driving.—

(1) A ~~Any~~ person operating a vehicle upon the streets or highways within the state shall drive the same in a careful and prudent manner, having regard for the width, grade, curves, corners, traffic, and all other attendant circumstances, so as not to endanger the life, limb, or property of any person. A person who fails ~~Failure~~ to drive in such manner commits ~~shall constitute~~ careless driving and ~~a violation of this section.~~

~~(2) Any person who violates this section~~ shall be cited for a moving violation, punishable as provided in chapter 318.

(2) If a violation under subsection (1) contributed to the bodily injury of a vulnerable user of a public roadway, the law enforcement officer issuing the citation for the violation shall note such information on the citation.

Section 8. Subsections (1), (5), and (6) of section 316.2065, Florida Statutes, are amended to read:

316.2065 Bicycle regulations.—

(1) A bicycle is a vehicle under Florida law and shall be operated in the same manner as any other vehicle and every person operating a bicycle ~~propelling a vehicle by human power~~ has all of the rights and all of the duties applicable to the driver of any other vehicle under this chapter, except as to special regulations in this chapter, and except as to provisions of this chapter which by their nature can have no application.

(5)(a) Any person operating a bicycle upon a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride in the bicycle lane ~~marked for bicycle use~~ or, if there is no bicycle lane in the roadway ~~is marked for bicycle use~~, as close as practicable to the right-hand curb or edge of the roadway except under any of the following situations:

1. When overtaking and passing another bicycle or vehicle proceeding in the same direction.

2. When preparing for a left turn at an intersection or into a private road or driveway.

3. When reasonably necessary to avoid any condition or potential conflict, including, but not limited to, a fixed or moving object, parked or moving vehicle, bicycle, pedestrian, animal, surface hazard, turn lane, or substandard-width lane, which makes it unsafe to continue along the right-hand curb or

edge or within a bicycle lane. For the purposes of this subsection, a "substandard-width lane" is a lane that is too narrow for a bicycle and another vehicle to travel safely side by side within the lane.

(b) Any person operating a bicycle upon a one-way highway with two or more marked traffic lanes may ride as near the left-hand curb or edge of such roadway as practicable.

(6)(a) Persons riding bicycles upon a roadway or in a bicycle lane may not ride more than two abreast except on bicycle paths or parts of roadways set aside for the exclusive use of bicycles. Persons riding two abreast may not impede traffic when traveling at less than the normal speed of traffic at the time and place and under the conditions then existing and shall ride within a single lane.

(b) When stopping at a stop sign, persons riding bicycles in groups of four or more, after coming to a full stop and obeying all traffic laws, may proceed through the stop sign in a group of 10 or fewer at a time and motor vehicle operators shall allow that group to travel through the intersection before moving forward.

Section 9. Section 318.19, Florida Statutes, is amended to read:

318.19 Infractions requiring a mandatory hearing.—Any person cited for the infractions listed in this section shall not have the provisions of s. 318.14(2), (4), and (9) available to him or her but must appear before the designated official at

the time and location of the scheduled hearing:

(1) Any infraction which results in a crash that causes the death of another;

(2) Any infraction which results in a crash that causes "serious bodily injury" of another as defined in s. 316.1933(1);

(3) Any infraction of s. 316.172(1)(b);

(4) Any infraction of s. 316.520(1) or (2); ~~or~~

(5) Any infraction of s. 316.183(2), s. 316.187, or s. 316.189 of exceeding the speed limit by 30 m.p.h. or more; or

(6) Any infraction of s. 316.083, s. 316.151, or s. 316.1925 which contributes to bodily injury of a vulnerable user of a public roadway as defined in s. 316.003. If an infraction listed in this subsection contributes to the bodily injury of a vulnerable user of a public roadway or the damage to a motor vehicle and injury of motor vehicle occupants, the law enforcement officer issuing the citation to the responsible party for the infraction shall note such information on the citation.

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

Remove lines 26-28 and insert:

under certain circumstances;

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Economic Affairs Committee
Representative Ingram offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 252.359, Florida Statutes, is created to read:

252.359 Ensuring availability of emergency supplies.—

(1) In order to meet the needs of residents affected during a declared emergency and to ensure the continuing economic resilience of communities impacted by disaster, the division shall establish a statewide system to facilitate the transport and distribution of essentials in commerce.

(2) As used in this section, the term "essentials" means goods that are consumed or used as a direct result of a declared emergency, or that are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being.

(3) The division shall develop a system to certify each person who facilitates the transport or distribution of essentials in commerce. The division may not certify a person other than a person who routinely transports or distributes essentials. In developing the system, the division:

(a) May provide for a preemergency or postemergency declaration certification.

(b) Shall allow the certification of an employer, if requested by the employer, to constitute a certification of the employer's employees.

(c) Shall create an easily recognizable indicium of certification to assist local officials' efforts in determining which persons have been certified under this subsection.

(d) Shall limit the duration of each certificate to no more than 1 year. Each certificate may be renewed so long as the criteria for certification are met.

(4) A person or employer certified under subsection (3) is not required to obtain any additional certification or fulfill any additional requirement to transport or distribute essentials or assist in restoring utility services.

(5) Notwithstanding any curfew, a person or employer certified under subsection (3) may enter or remain in the curfew area for the limited purpose of facilitating the transport or distribution of essentials and may provide service that exceeds otherwise applicable hours of service maximums to the extent

authorized by a duly executed declaration of a state of emergency.

(6) This section does not prohibit a law enforcement officer from specifying the permissible route of ingress or egress for a person certified under subsection (3).

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

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

Remove everything before the enacting clause and insert: An act relating to emergency preparedness and response; creating s. 252.359, F.S.; directing the Division of Emergency Management to create a statewide system to facilitate the transport and distribution of essentials throughout the state during a declared emergency; defining the term "essentials"; directing the division to create a certification system for persons transporting or distributing essentials; providing requirements and conditions for the certification system; permitting certain activities by certified persons during a curfew; authorizing a law enforcement officer to specify a permissible route of ingress or egress for a certified person; providing an effective date.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Economic Affairs Committee
Representative Young offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 213.055, Florida Statutes, is amended to read:

213.055 Declared emergency; waiver or suspension of specified revenue laws and other requirements. ~~The following actions to waive or suspend a revenue law may be implemented only when the Governor has declared a state of emergency pursuant to s. 252.36.~~

(1)(a) The Governor and Cabinet may grant refunds of state and local taxes on motor and diesel fuel donated during a ~~declared~~ state of emergency declared pursuant to s. 252.36 for official emergency use in cases in which the state solicits the donation. The refunds may be implemented by a vote of the

majority of the Governor and Cabinet during a public meeting or by a majority jointly signing a written order.

(b) The authorized refunds of state and local taxes on motor and diesel fuel apply to taxes imposed by chapter 206.

(2) Notwithstanding any other provision of law, the executive director of the Department of Revenue may implement the following actions during a ~~declared~~ state of emergency declared pursuant to s. 252.36 for those revenue sources over which the department is granted administrative control pursuant to s. 213.05:

(a) Extend the stipulated due date for tax returns and accompanying tax payments; and

(b) Waive interest that accrues during the period of the state of emergency on taxes due prior to and during the period of the disaster.

(3)(a) As used in this subsection, the term:

1. "Disaster-response period" means:

a. A period that begins 10 calendar days before the first day of a state of emergency declared pursuant to s. 252.36 and ends on the 60th calendar day after the end of the declared state of emergency; or

b. A period that begins on the date that an out-of-state business enters this state in good faith under a mutual aid agreement and in anticipation of a disaster or an emergency, regardless of whether a state of emergency is declared, and ends on the date that the work is concluded, or 7 calendar days after

the out-of-state business enters this state, whichever occurs first.

2. "Emergency-related work" means repairing, renovating, installing, building, rendering services, or other business activities that relate to infrastructure that has been damaged, impaired, or destroyed by an event that has resulted in a declaration of a state of emergency; or rendering such services or performing such activities in anticipation of or in response to a disaster or an emergency, regardless of whether a state of emergency is declared.

3. "Infrastructure" means public roads; public bridges; property, equipment, and related support facilities owned or used by communication networks, electric generating systems, electric transmission and distribution systems, gas transmission and distribution systems, or water pipelines.

4. "Mutual aid agreement" means an agreement to which two or more business entities are parties and under which a public utility, municipally owned utility, electric cooperative, natural gas special district, natural gas transmission pipeline, or joint agency owning, operating, or owning and operating infrastructure used for electric generation, electric or gas transmission, or electric or gas distribution in this state may request that an out-of-state business perform work in this state in anticipation of a disaster or an emergency.

5. "Out-of-state business" means a business entity that:

a. Does not have a presence in this state, except with respect to the performance of emergency-related work, and conducts no business in this state, and whose services are requested by a registered business or by a unit of state or local government for purposes of performing emergency-related work in this state; and

b. Is not registered and does not have tax filings or presence sufficient to require the collection or payment of a tax in this state during the tax year immediately before the disaster-response period. The term also includes a business entity that is affiliated with a registered business solely through common ownership.

6. "Out-of-state employee" means an employee who does not work in this state, except for emergency-related work on infrastructure during a disaster-response period.

7. "Registered business" means a business entity that is registered to do business in this state before the disaster-response period begins.

(b)1. Notwithstanding any other law, an out-of-state business that is conducting operations within this state during a disaster-response period solely for purposes of performing emergency-related work or pursuant to a mutual aid agreement is not considered to have established a level of presence that would require that business to register, file, and remit state or local taxes or fees or require that business to be subject to any registration, licensing, or filing requirements in this

state. For purposes of any state or local tax on or measured, in whole or in part, by net or gross income or receipts, the activity of the out-of-state business conducted in this state during the disaster-response period must be disregarded with respect to any filing requirements for such tax, including the filing required for a consolidated group of which the out-of-state business may be a part. This includes the following:

a. Reemployment assistance taxes.

b. State or local professional or occupational licensing requirements or related fees.

c. Local business taxes.

d. Taxes on the operation of commercial motor vehicles.

e. Corporate income tax.

f. Tangible personal property tax and use tax on equipment that is brought into the state by the out-of-state business, used by the out-of-state business only to perform emergency-related work during the disaster-response period, and removed from the state by the out-of-state business following the disaster-response period.

2. Notwithstanding any other law, an out-of-state employee whose only employment in this state is for the performance of emergency-related work or pursuant to a mutual aid agreement during a disaster-response period is not required to comply with state or local occupational licensing requirements or related fees.

(c) An out-of-state business or out-of-state employee who remains in this state after the disaster-response period is not entitled to the privileges provided in this subsection for activities performed after the disaster-response period ends and is subject to the state's normal standards for establishing presence or residency or for doing business in the state.

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

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

Remove everything before the enacting clause and insert:
An act relating to applicability of revenue laws to out-of-state businesses during disaster-response periods; amending s. 213.055, F.S.; providing definitions; providing exemptions from certain registration and licensing requirements and taxes for out-of-state businesses and employees that enter the state in response to a disaster or an emergency; specifying the applicability of certain transaction taxes and fees; specifying the obligations and privileges of an out-of-state business or employee after the disaster-response period; providing an effective date.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Economic Affairs Committee
Representative La Rosa offered the following:

Amendment (with title amendment)

Between lines 42 and 43, insert:

Section 1. Subsection (6) is added to section 125.045, Florida Statutes, to read:

125.045 County economic development powers.—

(6) The governing body of a county may designate specific areas, not to exceed 300 acres, to employ tax increment financing for the purposes of this section. For any tax increment area created pursuant to this section, the governing body of a county shall administer a separate reserve account in which the tax increment revenues will be deposited. Tax increment revenues, including the proceeds of any revenue bonds secured by, and repaid with, such tax increment revenues, shall be used to fund economic development activities, as referenced

in this section, and infrastructure projects which directly benefit the tax increment area. The funds may not be used for the construction of buildings that are used solely for commercial or retail purposes, ancillary facilities associated with such commercial or retail buildings, or for above ground infrastructure projects where the sole use and sole benefit of the project is for a commercial or retail building. Tax increment funds may only be used for any portion of a below ground infrastructure project, which solely benefits a commercial or retail building and does not generally benefit the tax increment area, if approved by a vote of the governing body of the county in which the tax increment area is located. The tax increment authorized under this section shall be determined annually and shall be the amount equal to a maximum of 95 percent of the difference between:

(a) The amount of ad valorem taxes levied each year by the county, exclusive of any amount from any debt service millage, on taxable real property contained within the geographic boundaries of the tax increment area; and

(b) The amount of ad valorem taxes which would have been produced by the rate upon which the tax is levied each year by or for the county, exclusive of any debt service millage, upon the total of the assessed value of the taxable real property in the tax increment area as shown upon the most recent assessment roll used in connection with the taxation of such property by the county prior to establishment of the tax increment area.

(c) The Department of Transportation or Florida's Turnpike Enterprise may not impose transportation infrastructure fees or any other fees on a commercial or retail development within a tax increment finance area as described in this subsection.

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

Remove line 3 and insert:

125.045, F.S.; authorizing the governing body of a county to employ tax increment financing; preventing the Department of Transportation from implementing certain fees; amending s. 163.3184, F.S.; specifying that certain developments

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Economic Affairs Committee
Representative La Rosa offered the following:

Amendment (with title amendment)

Between lines 131 and 132, insert:

Section 4. Subsection (5), paragraph (b) of subsection (8), and subsection (9) of section 380.0555, Florida Statutes, are amended to read:

380.0555 Apalachicola Bay Area; protection and designation as area of critical state concern.—

(5) APPLICATION OF CHAPTER 380 PROVISIONS.—Section 380.05(1)-(5)~~(6)~~, (8), (9),-(12), (15), (17), and (21), shall not apply to the area designated by this act for so long as the designation remains in effect. Except as otherwise provided in this act, s. 380.045 shall not apply to the area designated by this act. All other provisions of this chapter shall apply, including ss. 380.07 and 380.11, except that the "local

development regulations" in s. 380.05(13) shall include the regulations set forth in subsection (8) for purposes of s. 380.05(13), and the plan or plans submitted pursuant to s. 380.05(14) shall be submitted no later than February 1, 1986. All or part of the area designated by this act may be redesignated pursuant to s. 380.05 as if it had been initially designated pursuant to that section.

(8) COMPREHENSIVE PLAN ELEMENTS AND LAND DEVELOPMENT REGULATIONS.—

(b) Conflicting regulations.—In the event of any inconsistency between subparagraph (a)1. and subparagraphs (a)2.-11., subparagraph (a)1. shall control. Further, in the event of any inconsistency between subsection (7) and paragraph (a) of this subsection and a development order issued pursuant to s. 380.06, which has become final prior to June 18, 1985, or between subsection (7) and paragraph (a) and an amendment to a final development order, which amendment has been requested prior to April 2, 1985, the development order or amendment thereto shall control. However, any modification to paragraph (a) enacted by a local government and approved by the state land planning agency ~~Administration Commission~~ pursuant to subsection (9) may provide whether it shall control over an inconsistent provision of a development order or amendment thereto. A development order or any amendment thereto referred to in this paragraph shall not be subject to approval by the state land

planning agency ~~Administration Commission~~ pursuant to subsection (9).

(9) MODIFICATION TO PLANS AND REGULATIONS.—Any land development regulation or element of a local comprehensive plan in the Apalachicola Bay Area may be enacted, amended, or rescinded by a local government, but the enactment, amendment, or rescission becomes effective only upon the approval thereof by the state land planning agency ~~Administration Commission~~. The state land planning agency shall review the proposed change to determine if it is in compliance with the principles for guiding development specified in s. 380.0555(7) and must approve or reject the requested changes as provided in s. 380.05. Further, the state land planning agency, after consulting with the appropriate local government, may, from time to time, recommend the enactment, amendment, or rescission of a land development regulation or element of a comprehensive plan. Within 45 days following the receipt of such recommendation by the state land planning agency or enactment, amendment, or rescission by a local government the commission shall reject the recommendation, enactment, amendment, or rescission or accept it with or without modification and adopt, by rule, any changes. Any such local land development regulation or comprehensive plan or part of such regulation or plan may be adopted by the commission if it finds that it is in compliance with the principles for guiding development.

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

Remove line 16 and insert:

basis; amending s. 380.0555, F.S.; providing for comprehensive plan amendments and land development regulations in the Apalachicola Bay Area of critical state concern to be reviewed and approved by the state land planning agency; amending s. 380.06, F.S.; authorizing certain

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1437 (2016)

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Economic Affairs Committee

Representative Hager offered the following:

Amendment (with title amendment)

Remove line 20 and insert:

~~($9,500) per annum, payable in monthly installments~~. These salaries shall be funded from the operating revenues of the port district, and may not be funded from ad valorem tax revenues.

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

Remove line 5 and insert:

compensation; providing a source for the compensation; prohibiting compensation from coming from certain revenues; revising approval of foreign trade

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	____	(Y/N)
ADOPTED AS AMENDED	____	(Y/N)
ADOPTED W/O OBJECTION	____	(Y/N)
FAILED TO ADOPT	____	(Y/N)
WITHDRAWN	____	(Y/N)
OTHER		

Committee/Subcommittee hearing bill: Economic Affairs Committee
Representative Steube offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 320.08053, Florida Statutes, is amended to read:

320.08053 Establishment of ~~Requirements for requests to establish~~ specialty license plates.—

(1) If a specialty license plate requested by an organization is approved by law, the organization must submit the proposed art design for the specialty license plate to the department, in a medium prescribed by the department, as soon as practicable, but no later than 60 days after the act approving the specialty license plate becomes a law.

(2)(a) Within 120 days following the specialty license plate becoming law or 120 days after the conditions of

subsection (3) are met, whichever occurs later, the department shall establish a method to issue a specialty license plate voucher to allow for the presale of the specialty license plate. The processing fee as prescribed in s. 320.08056, the service charge and branch fee as prescribed in s. 320.04, and the annual use fee as prescribed in s. 320.08056 shall be charged for the voucher. All other applicable fees shall be charged at the time of issuance of the license plates.

(b) Within 24 months after the presale specialty license plate voucher is established, the approved specialty license plate organization must record with the department a minimum of 4,000 ~~1,000~~ voucher sales before manufacture of the license plate may begin ~~commence~~. If, at the conclusion of the 24-month presale period, the minimum sales requirement has ~~requirements have~~ not been met, the specialty plate is deauthorized and the department shall discontinue development of the plate and discontinue issuance of the presale vouchers. Upon deauthorization of the license plate, a purchaser of the license plate voucher may use the annual use fee collected as a credit towards any other specialty license plate or apply for a refund on a form prescribed by the department.

(3)(a) No more than 100 specialty license plates may be available for issuance at any given time. If the Legislature has approved more than 100 specialty license plates, the department may not make any new specialty license plates available for design, presale, or issuance until a sufficient number of plates

are discontinued pursuant to s. 320.08056(8) such that the number of plates being issued is reduced to fewer than 100.

(b) New specialty license plates that have been approved by law but are awaiting issuance under paragraph (a) shall be issued in the order they appear in s. 320.08056(4). All other provisions of this section must also be met before a plate is issued.

Section 2. Paragraphs (c), (d), and (e) are added to subsection (8) of section 320.08056, Florida Statutes, to read:

320.08056 Specialty license plates.—

(8)

(c) A person issued a specialty license plate that has been discontinued by the department may keep the discontinued specialty license plate for the remainder of the 10-year license plate replacement period and must pay all other applicable registration fees. However, such person is exempt from paying the applicable specialty license plate fee under subsection (4) for the remainder of the 10-year license plate replacement period.

(d) If the department discontinues issuance of a specialty license plate, all annual use fees currently held or collected by the department shall be distributed within 180 days after the date the specialty license plate is discontinued. Of those fees, the department shall retain an amount sufficient to defray the applicable administrative and inventory closeout costs associated with discontinuance of the plate. The remaining funds

shall be distributed to the specified organization or organizations as provided in s. 320.08058.

(e) If an organization that is the intended recipient of the funds pursuant to s. 320.08058 no longer exists, the department shall deposit any undisbursed funds into the Highway Safety Operating Trust Fund.

Section 3. Effective July 1, 2019, paragraph (a) of subsection (8) of section 320.08056, Florida Statutes, is amended to read:

320.08056 Specialty license plates.—

(8)(a) The department must discontinue the issuance of an approved specialty license plate if the number of valid specialty plate registrations falls below 4,000 ~~1,000 plates~~ for at least 12 consecutive months. A warning letter shall be mailed to the sponsoring organization following the first month in which the total number of valid specialty plate registrations is below 4,000 ~~1,000 plates~~. This paragraph does not apply to collegiate license plates established under s. 320.08058(3), license plates of institutions in the State University System, or Florida Professional Sports Team license plates established under s. 320.08058(9).

Section 4. Section 320.08062, Florida Statutes, is amended to read:

320.08062 Audits ~~and attestations~~ required; annual use fees of specialty license plates.—

(1)(a) All organizations that receive annual use fee

proceeds from the department are responsible for ensuring that proceeds are used in accordance with ss. 320.08056 and 320.08058.

(b) Any organization not subject to audit pursuant to s. 215.97 shall annually attest, under penalties of perjury, that such proceeds were used in compliance with ss. 320.08056 and 320.08058. The attestation shall be made annually in a form and format determined by the department. In addition, the department shall audit any such organization every 2 years to ensure proceeds have been used in compliance with ss. 320.08056 and 320.08058.

(c) Any organization subject to audit pursuant to s. 215.97 shall submit an audit report in accordance with rules promulgated by the Auditor General. The annual attestation shall be submitted to the department for review within 9 months after the end of the organization's fiscal year.

(2)(a) Within 120 days after receiving an organization's audit or attestation, the department shall determine which recipients of revenues from specialty license plate annual use fees have not complied with subsection (1). In determining compliance, the department may commission an independent actuarial consultant, or an independent certified public accountant, who has expertise in nonprofit and charitable organizations.

(b) The department must discontinue the distribution of revenues to any organization failing to submit the required

documentation as required in subsection (1), but may resume distribution of the revenues upon receipt of the required information.

(c) If the department or its designee determines that an organization has not complied or has failed to use the revenues in accordance with ss. 320.08056 and 320.08058, the department must discontinue the distribution of the revenues to the organization. The department shall notify the organization of its findings and direct the organization to make the changes necessary in order to comply with this chapter. If the officers of the organization sign an affidavit under penalties of perjury stating that they acknowledge the findings of the department and attest that they have taken corrective action and that the organization will submit to a followup review by the department, the department may resume the distribution of revenues.

(d) If an organization fails to comply with the department's recommendations and corrective actions as outlined in paragraph (c), the revenue distributions shall be discontinued until completion of the next regular session of the Legislature. The department shall notify the President of the Senate and the Speaker of the House of Representatives by the first day of the next regular session of any organization whose revenues have been withheld as a result of this paragraph. If the Legislature does not provide direction to the organization and the department regarding the status of the undistributed revenues, the department shall deauthorize the plate and the

undistributed revenues shall be immediately deposited into the Highway Safety Operating Trust Fund.

(3) The department or its designee has the authority to examine all records pertaining to the use of funds from the sale of specialty license plates.

Section 5. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2016.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to issuance of specialty license plates; amending s. 320.08053, F.S.; revising presale requirements for issuance of a specialty plate; amending s. 320.08056, F.S.; revising provisions for discontinuing issuance of a specialty plate; providing applicability; amending s. 320.08062, F.S.; directing the Department of Highway Safety and Motor Vehicles to audit certain organizations that receive funds from the sale of specialty license plates; providing effective dates.