HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 7087 Taxation
SPONSOR(S): Appropriations Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Appropriations Committee		Hawkins	Leznoff

SUMMARY ANALYSIS

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

The bill contains several provisions related to sales tax:

- Tax rate reduction for tax on commercial rentals (business rent tax).
- Includes new, extended, or expanded sales tax exemptions for:
  - Sales tax credits for contributions to the Gardiner Scholarship and Florida Tax Credit Scholarship programs;
  - Certain generators for nursing homes and assisted living facilities;
  - Certain purchases of agriculture related fencing materials and building materials for repair of storm damage from Hurricane Irma;
- Sales tax holidays:
  - A ten-day "back-to-school" holiday for clothing, footwear, school supplies, and computers;
  - Three seven-day "disaster preparedness" holiday for sales of specified items related to disaster preparedness.

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

For corporate income tax purposes, the bill provides an additional $13 million for tax credits for fiscal year 2018-19 for voluntary brownfields clean-up and an additional $6.5 million for community contribution tax credits in fiscal year 2019-20 (also may be taken against sales tax and insurance premiums tax).

Further changes include: an 18 percent reduction in certain traffic fines if the driver attends a driver improvement course; exemptions from documentary stamp taxes for certain transfers of property between spouses and for certain notes and mortgages given for loans made in connection with local housing finance authorities; reduction in the tax rate on certain aviation fuel uses; exemption from fuel taxes certain purchases of fuel for export and certain purchases of fuel for agricultural related uses; several changes adding flexibility to the use of tax credits under the Florida Scholarship Tax Credit Program; a requirement for reporting of certain financial information by certain recipients of sales tax and cigarette tax distributions; preemption of local government prohibitions of the sale of tangible personal property subject to sales tax, and a clarification to the uses for which the local infrastructure sales surtax may be used.

The total impact of the bill in fiscal year 2018-19 is -$331.3 million (-$273.9 million recurring). See FISCAL COMMENTS section for details.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Sales Tax

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

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

Current Situation

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

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

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

Florida is the only state to charge sales tax on commercial rentals of real property. The Legislature's Office of Economic and Demographic Research reviewed and issued a report on the business rent tax in 2014.[5]

Proposed Changes

The bill reduces the state sales tax rate on rental of commercial real estate (business rent tax) from 5.8 percent to 5.5 percent, beginning January 1, 2019.

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[1] The Legislature reduced the sales tax rate on commercial rentals to 5.8% effective January 1, 2018. See s. 21, ch. 2017-36, Laws of Fla.
[2] FLORIDA REVENUE ESTIMATING CONFERENCE (REC), 2018 FLORIDA TAX HANDBOOK (2018).
[3] ch. 1969-222, Laws of Fla.
[4] s. 212.031, F.S., and Rule 12A-1.070, F.A.C.
[5] Office of Economic and Demographic Research (EDR), Economic Impact: Sales Tax on the Rental of Real Property (Nov. 15, 2014).

Generators for Nursing Homes and Assisted Living Facilities

Current Situation

In response to electrical outages caused by Hurricane Irma, the Agency for Health Care Administration (AHCA) and the Department of Elder Affairs (DOEA) published Emergency Rules in September 2017 to require nursing homes and assisted living facilities to comply with an emergency power plan.[6] The emergency rules require nursing homes and assisted living facilities to:

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

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

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

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

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

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

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[6] Florida Emergency Rules 58AER17-1 and 59AER17-1.
[7] Florida Emergency Rules 58AER17-2 and 59AER17-2.
[8] See Florida Administrative Register, Volume 43, Number 220, November 14, 2017, pp. 5169-5174, available at: https://www.flrules.org/Faw/FAWDocuments/FAWVOLUMEFOLDERS2017/43220/43220doc.pdf See also AHCA, *AHCA and DOEA Announce New Permanent Generator Rules Have Been Filed*, November 13, 2017, available at: https://ahca.myflorida.com/Executive/Communications/Press_Releases/pdf/AHCAandDOEAAnnouncetheNewPermanentGeneratorRulesHaveBeenFiled.pdf
[9] Proposed Rules Rule 59A-4.1265 and 58A-5.036, F.A.C.

According to AHCA, as of December 1, 2017:[10]

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

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

There is currently no sales tax exemption for the purchase of generators for nursing homes or assisted living facilities.[12]

Proposed Changes

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

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

Fencing Materials used in Agriculture

Current Situation

Current law exempts from the sales and use tax certain items used for agricultural purposes and nets used by commercial fisheries.[13] The exemption is not allowed unless the purchaser or lessee signs a certificate stating that the item to be exempted is for the exclusive use designated in s. 212.08(5)(a), F.S.

Hurricane Irma's path coincided with some of Florida's most productive agricultural landscapes, and consequently it caused major losses to all segments of agriculture production, including crop losses and damaged infrastructure (such as destroyed fences, shade structures, and ground cover for row crops). Preliminary estimates for total losses (crops and infrastructure) reported by the Department of Agriculture and Consumer Services (DACS) to Florida's agricultural sectors are over $2 billion.[14]

[10] AHCA, *104 Nursing Homes Have Reported Compliance with the Nursing Home Emergency Generator Rule*, December 1, 2017, available at: http://ahca.myflorida.com/Executive/Communications/Press_Releases/pdf/AHCA_NHandALFrelease12.1.2017.pdf
[11] AHCA, *104 Nursing Homes Have Reported Compliance with the Nursing Home Emergency Generator Rule*, December 1, 2017, available at: http://ahca.myflorida.com/Executive/Communications/Press_Releases/pdf/AHCA_NHandALFrelease12.1.2017.pdf
[12] However, generators used farms are exempt. See s. 212.08(5)(a), F.S., and Rule 12A-1.087(6), F.A.C.
[13] s. 212.08(5)(a), F.S.
[14] Florida Department of Agriculture and Consumer Services (DACS), *Hurricane Irma's Damage to Florida Agriculture*, October 7, 2017, available at: https://www.freshfromflorida.com/content/download/77515/2223098/FDACS+Irma+Agriculture+Assessment.pdf

Proposed Changes

The bill provides an exemption from the sales and use tax for the purchase of certain fencing materials used to repair agricultural fencing that was damaged as a direct result of Hurricane Irma. The exemption is available through a refund of previously paid taxes and applies to purchases made between September 10, 2017, and May 31, 2018. For purposes of this exemption, "fencing materials" means hog wire and nylon mesh netting used on a farm for protection from predatory or destructive animals; and barbed wire fencing, including gates and materials used to construct or repair such fencing, used on a beef or dairy cattle farm.

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

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

Building Materials for Nonresidential Farm Buildings

Current Situation

Current law defines a "nonresidential farm building" as any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(10)(c) or that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461, F.S., and is not intended to be used as a residential dwelling.[15] The term includes barns, greenhouses, shade houses, farm offices, storage buildings, and poultry houses.

Generally, sales and use tax are currently levied on the purchase of tangible personal property that is used in the construction or repair of buildings and other projects, unless specifically exempted under current law.[16] There is currently no general sales tax exemption for the purchase of tangible personal property used in the construction or repair of nonresidential farm buildings.

Similar to the discussion above regarding fencing materials used in agriculture, Hurricane Irma caused major losses to Florida's agricultural landscapes, and damage to nonresidential farm building is a part of the agricultural infrastructure losses.[17]

Proposed Changes

The bill provides an exemption from the sales and use tax for the purchase of certain building materials used to repair nonresidential farm buildings that were damaged as a direct result of Hurricane Irma. The exemption is available through a refund of previously paid taxes and applies to purchases made

[15] s. 604.50, F.S.
[16] For example, s. 212.08(7)(r), F.S., exempts the sale of building materials that are used in new construction located in a rural area of opportunity.
[17] DACS, Hurricane Irma's Damage to Florida Agriculture, October 7, 2017, available at: https://www.freshfromflorida.com/content/download/77515/2223098/FDACS+Irma+Agriculture+Assessment.pdf

between September 10, 2017, and May 31, 2018. The exempt building materials are broadly defined as tangible personal property that becomes a component part of a nonresidential farm building.

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

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

Local Government Infrastructure Sales Surtax

Current Situation

Discretionary Sales Surtaxes

There are nine discretionary sales surtaxes that serve as potential revenue sources for county and municipal governments and school districts.[18] They are:

- The charter county and regional transportation system surtax;[19]
- The local government infrastructure surtax;[20]
- The small county surtax;[21]
- The indigent care and trauma center surtax;[22]
- The county public hospital surtax;[23]
- The school capital outlay surtax;[24]
- The voter-approved indigent care surtax;[25]
- The emergency fire rescue services and facilities surtax; [26] and
- The pension liability surtax.[27]

The Local Government Infrastructure Surtax

A county may levy a discretionary sales surtax of 0.5 percent or one percent pursuant to ordinance enacted by a majority of the members of the county and approved by a majority of the electors of the county voting in a referendum on the surtax.[28] Surtax proceeds are distributed to the county and the municipalities within the county according to an interlocal agreement between the county governing authority and the governing bodies of the municipalities representing a majority of the county's

[18] s. 212.055, F.S.
[19] s. 212.055(1), F.S.
[20] s. 212.055(2), F.S.
[21] s. 212.055(3), F.S.
[22] s. 212.055(4), F.S.
[23] s. 212.055(5), F.S.
[24] s. 212.055(6), F.S.
[25] s. 212.055(7), F.S.
[26] s. 212.055(8), F.S.
[27] s. 212.055(9), F.S.
[28] s. 212.055(2)(a)1., F.S.

municipal population. If there is no interlocal agreement, the proceeds are distributed according to the formula in s. 218.62, F.S.[29]

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

- Finance, plan, and construct infrastructure;
- Acquire land for public recreation, conservation, or protection of natural resources;
- Provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing the use is approved by referendum; or
- Finance the closure of county-owned or municipally owned solid waste landfills that are closed or are required to be closed by order of the Department of Environmental Protection.[30]

The term "infrastructure" includes any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of five or more years, any related land acquisition, land improvement, design, and engineering costs, and all other professional and related costs required to bring the public facilities into service[31].

In 2016, the Legislature amended the local government infrastructure surtax by, among other things, establishing a definition of "public facilities,"[32] which was previously undefined in that section of law. The 2016 law change defined the term "public facilities" to mean facilities as defined in three other sections of law (ss. 163.3164(38), 163.3221(13), and 189.012(5), F.S.), regardless of whether the facilities are owned by the local taxing authority or another governmental entity. Generally, the three incorporated sections define "public facilities" as major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational facilities (two of the three sections also include health system facilities). However, under a narrow interpretation of the 2016 law change, the incorporation of the specific statutory definitions into the definition of "public facilities" may have the unintended consequence of limiting the authorized use of the surtax revenues to only the listed facilities.

Proposed Changes

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

Sales Tax Holidays

Current Situation

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

Back-to-School Holidays--Florida has enacted a "back to school" sales tax holiday sixteen times since 1998. The length of the exemption periods has varied from three to 10 days. The type and value of exempt items has also varied. Clothing and footwear have always been exempted at various thresholds, most recently $60. Books valued at $50 or less were exempted in six periods. School

[29] s. 212.055(2)(c)1., F.S. The agreement may include a school district with the consent of the county governing authority and the governing bodies of the municipalities.
[30] s. 212.055(2)(d), F.S.
[31] s. 212.055(2)(d)1.a., F.S.
[32] ch. 2016-225, Laws of Fla (CS/CS/HB 447 (2016)).

supplies have been included starting in 2001, with the value threshold increasing from $10 to $15. In 2013 and 2017, personal computers and related accessories purchased for noncommercial home or personal use with a sales price of $750 or less were exempted. In 2014 and 2015, the first $750 of the sales price of personal computers and related accessories purchased for noncommercial home or personal use were exempted. The following table describes the history of back-to-school sales tax holidays in Florida.

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

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

Hurricanes and Disasters in Florida--In 2017, the Florida Office of Insurance Regulation estimated a gross probable loss of over $7 billion due to Hurricane Irma in 2017, $1 billion due to hurricanes Hermine and Mathew in 2016,[33] $25 billion due to four hurricanes in 2004, and $10.8 billion due to four hurricanes in 2005.[34] Tropical Storm Fay was estimated to have resulted in $242 million of damage in 2008.[35] The Florida Division of Emergency Management recommends having a disaster supply kit with items such as a battery operated radio, flashlight, batteries, and first-aid kit.[36]

[33] Florida Office of Insurance Regulation, Catastrophe Report, available at: https://www.floir.com/Office/HurricaneSeason/HurricaneIrmaClaimsData.aspx (last visited Feb. 15, 2018).
[34] Florida Office of Insurance Regulation, *Florida Office of Insurance Regulation Hurricane Summary Data*, available at: http://www.floir.com/siteDocuments/HurricaneSummary20042005.pdf
[35] Florida Office of Insurance Regulation, *Florida Office of Insurance Regulation Hurricane Summary Data*, available at: http://www.floir.com/siteDocuments/HurricaneSummary2008.pdf.
[36] Florida Division of Emergency Management, *Disaster Supply Kit*, https://www.floridadisaster.org/plan--prepare/disaster-supply-kit/ (last visited Feb. 15, 2018).

Proposed Changes

The bill establishes three temporary disaster preparedness sales tax holidays in 2018 and a temporary back-to-school sales tax holiday in fiscal year 2018-19.

Back-to-School Holiday--The bill provides for a 10-day sales tax holiday from August 3, 2018, through August 12, 2018. During the holiday, the following items that cost $60 or less are exempt from the state sales tax and county discretionary sales surtaxes:

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

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

The bill also exempts the first $1,000 of the sales price of personal computers and related accessories purchased for noncommercial home or personal use. This would include tablets, laptops, monitors, input devices, and non-recreational software. Cell phones, furniture and devices or software intended primarily for recreational use are not exempted.

Disaster Preparedness Sales Tax Holiday-- The bill provides for three seven-day sales tax holidays from May 4, 2018, through May 10, 2018; from June 1, 2018, through June 7, 2018; and from July 6, 2018 through July 12, 2018 for specified items related to disaster preparedness. During the holiday, the following items are exempt from the state sales tax and county discretionary sales surtaxes:

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

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

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

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

Sales Tax Distribution Reporting

Current Situation

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

- $166,667 monthly to professional sports franchise facilities certified pursuant to s. 288.1162, F.S., and $41,667 monthly to spring training franchise facilities certified pursuant to s. 288.11621, F.S.[37]
- $166,667 monthly to the professional golf hall of fame certified pursuant to s. 288.1168, F.S.[38]
- $83,333 monthly to certain spring training franchise facilities certified pursuant to s. 288.11631, F.S.[39]
- Monthly distributions of an amount to be determined by DEO to each local government that is certified pursuant to s. 288.11625, F.S., for the public purpose of constructing, reconstructing, renovating, or improving a sports facility.[40]

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

Proposed Changes

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

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

Corporate Income Tax

Florida levies corporate income tax on corporations of 5.5 percent for income earned in Florida.[41] The calculation of Florida corporate income tax starts with a corporation's federal taxable income.[42] After certain addbacks and subtractions to federal taxable income required by ch. 220, F.S., the amount of adjusted federal income attributable to Florida is determined by the application of an apportionment formula.[43] The Florida corporate income tax uses a three-factor apportionment formula consisting of property, payroll, and sales (which is double-weighted) to measure the portion of a multistate

[37] s. 212.20(6)(d)6.b., F.S.
[38] s. 212.20(6)(d)6.c., F.S.
[39] s. 212.20(6)(d)6.e., F.S.
[40] s. 212.20(6)(d)6.f., F.S.
[41] s. 220.11, F.S.
[42] s. 220.12, F.S.
[43] s. 220.15, F.S.

corporation's business activities attributable to Florida.[44] 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.[45]

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

Current Situation

In 1980, the Legislature established the Community Contribution Tax Credit Program ("CCTCP") to encourage private sector participation in community revitalization and housing projects.[46] Broadly, the CCTCP offers tax credits to businesses or persons ("taxpayers") anywhere in Florida that contribute[47] to certain projects undertaken by approved CCTCP sponsors.[48]

Eligible sponsors under the CCTCP include a wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards.[49] As of February 2018, the CCTCP had 124 approved sponsors.[50]

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

- To construct, improve, or substantially rehabilitate housing that is affordable to low-income households or very-low-income households as those terms are defined in s. 420.9071;
- To provide commercial, industrial, or public resources and facilities; or
- To improve entrepreneurial and job-development opportunities for low-income persons.[51]

In addition, eligible projects must be located in an area that was designated as an enterprise zone as of May 1, 2015[52] or a Front Porch Florida Community, with two exceptions. First, any project designed to construct or rehabilitate housing for low-income households or very-low-income households as those terms are defined in s. 420.9071, F.S., is exempt from the area requirement. Second, any project designed to provide increased access to high-speed broadband capabilities that includes coverage in a rural community that had an enterprise zone designation as of May 1, 2015, may locate the project's infrastructure in any area of a rural county (inside or outside of the zone).

The Department of Economic Opportunity (DEO) administers the CCTCP, and its responsibilities include reviewing sponsor project proposals and tax credit applications, periodically monitoring projects, and marketing the CCTCP in consultation with the Florida Housing Finance Corporation and other statewide and regional housing and financial intermediaries.[53] Once approved by the DEO, the taxpayer must claim the community contribution tax credit from the DOR.

The credit is calculated as 50 percent of the taxpayer's annual contribution, but a taxpayer may not receive more than $200,000 in credits in any one year.[54] The taxpayer may use the credit against corporate income tax, insurance premiums tax, or as a refund against sales tax.[55] Unused credits

[44] s. 220.15, F.S.
[45] s. 220.14, F.S.
[46] Ch. 80-249, Laws of Fla. The CCTCP is one of the state incentives available under the Florida Enterprise Zone Act, which was partially repealed on December 31, 2015. Sections 290.007(3) and 290.016, F.S.
[47] ss. 212.08(5)(p)2.a., 220.183(2)(a), and 624.5105(5)(a), F.S., require community contributions to be in the form of cash or other liquid assets, real property, goods or inventory, or other physical resources.
[48] *See* ss. 212.08(5)(p); 220.183; and 624.5105, F.S.
[49] *See* ss. 212.08(5)(p)2.c.; 220.183(2)(c); and 624.5105(2)(c), F.S.
[50] Email correspondence with DEO staff, Feb. 8, 2018, on file with the House Ways & Means Committee.
[51] ss. 212.08(5)(p)2.b.; 220.183(2)(d); 624.5105(2)(b); and 220.03(1)(t), F.S.
[52] The Florida Enterprise Zone Act was partially repealed as of December 31, 2015- see ch. 2015-221, Laws of Fla.; s. 290.016, F.S.
[53] ss. 212.08(5)(p)4.; 220.183(4); and 624.5105(4), F.S.
[54] ss. 212.08(5)(p)1.; 220.183 (1)(a) and (b); and 624.5105(1), F.S.
[55] *See* ss. 212.08(5)(p); 220.183; and 624.5105, F.S.

against corporate income taxes and insurance premium taxes may be carried forward for five years.[56] Unused credits against sales taxes may be carried forward for three years.[57]

DOR may approve $10.5 million in annual funding for projects that provide homeownership opportunities for low-income and very-low-income households or housing opportunities for persons with special needs and $3.5 million for all other projects. “Persons with special needs” is defined in current statute to include adults requiring independent living services, young adults formerly in foster care, survivors of domestic violence, and people receiving Social Security Disability Insurance, Supplemental Security Income, or veterans’ disability benefits.[58] During FY 2016-2017, DEO approved 444 tax credit applications submitted by 63 eligible sponsors for eligible projects located in 34 counties. For fiscal year 2017-18, as of February 8, 2018, DEO has approved 358 tax credit applications.[59]

The Legislature extended the CCTCP in 1984, 1994, 2005, 2014, and 2015,[60] and made the program permanent in 2017.[61] It has also amended the annual tax credit allocation of the CCTCP on numerous occasions.[62] The CCTCP cap, which started at $3 million annually, is currently set at $21.4 million for fiscal year 2017-18; for fiscal years after 2017-18, the cap is set at $14 million. The cap has been reached every year since fiscal year 2001-02, except for a few years when 95.9 percent (fiscal year 2014-15) and 99.9 percent of the cap was reached (fiscal years 2011-12, 2012-13, and 2016-17).[63]

Proposed Changes

The bill provides a one-time additional tax credit authorization of $6.5 million for FY 2019-20 for projects that provide homeownership opportunities for low-income and very-low-income households or housing opportunities for persons with special needs. The annual credit authorization for all other projects will remain at $3.5 million. Thus, the tax credit authorization for all projects in FY 2019-20 is $20.5 million.

Voluntary Cleanup Tax Credit Program - Brownfields Tax Credit

Current Situation

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

- A site eligible for state-funded cleanup under the Drycleaning Solvent Cleanup Program;[64]
- A drycleaning solvent contaminated site at which the real property owner undertakes voluntary cleanup, provided that the real property owner has never been the owner or operator of the drycleaning facility; or
- A brownfield site in a designated brownfield area.[65]

Eligible tax credit applicants may receive up to $500,000 per site per year in tax credits. Due to concern that some participants in a voluntary cleanup might only conduct enough work to eliminate or minimize their exposure to third party lawsuits, current law also provides a completion incentive in the form of an additional 25 percent supplemental tax credit for those applicants that completed site rehabilitation and

[56] ss. 220.183(1)(e) and (g); and 624.5105, F.S.
[57] ss. 212.08(5)(p)1.b. and f., F.S.
[58] s. 420.0004(13), F.S.
[59] Email correspondence with DEO staff, March 22, 2017, on file with House Ways & Means Committee.
[60] Chs. 84-356, 94-136, 2005-282, 2014-38, and 2015-221, Laws of Fla.
[61] Ch. 2017-36, Laws of Fla.
[62] *See* Chs. 94-136, 98-219, 99-265, 2005-282, 2006-78, 2008-153, 2015-221, and 2017-36, Laws of Fla.
[63] Email correspondence with DEO staff, Feb. 8, 2018, on file with House Ways & Means Committee.
[64] s. 376.30781, F.S.
[65] s. 220.1845, F.S.

received a Site Rehabilitation Completion Order from the DEP. This additional supplemental credit has a $500,000 cap. Businesses are also allowed a one-time application for an additional 25 percent of the total site rehabilitation costs, up to $500,000, for brownfield sites at which the land use is restricted to affordable housing. They may also submit a one-time application claiming 50 percent of the costs, up to $500,000, for removal, transportation and disposal of solid waste at a brownfield site.

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

Since 1998, the VCTC Program has approved $81.7 million in VCTCs[66]. Total requests for tax credits have met or exceeded the annual authorization since 2007.[67] Since 2012, the approved tax credits have averaged more than $8.3 million per year. In 2015, the Legislature approved a one-time tax credit authorization of $21.6 million, which allowed the DEP to issue certificates for all tax credits that were approved but had not received funding. In 2016, DEP received 99 tax credit applications and approved $10.8 million in VCTCs for site rehabilitation work completed in 2015. As of July 1, 2016, there were $10.8 million in approved tax credits; after the authorization was used to issue certificates, $5.8 million was carried over as the backlog. Effective July 1, 2017[68], the Legislature again increased the annual authorization to $10 million. DEP received 136 VCTC applications for 2016 calendar year expenses, and the approved tax credits totaled $14.4 million. Of this total, $14 million—approximately 97 percent—was allocated for tax credits for 119 brownfield sites.[69] DEP received 139 VCTC applications for 2017 calendar year expenses totaling $12.8 million.[70] As of February 1, 2018, DEP had a backlog of $10.2 million in approved tax credits that have not been funded[71]. On July 1, 2018, the $10 million annual authorization for FY 2018-19 becomes available which will reduce the current backlog to $200,000. However, the $12.8 million in tax credits applied for 2017 costs when added to the $200,000 tax credits outstanding will create a backlog of approximately $13 million[72] that will be partially funded when the $10 million annually authorized credit amount becomes available on July 1, 2019.

Proposed Changes

The bill provides a one-time additional tax credit authorization of $13 million for FY 2018-19.

Property Taxation in Florida

Local governments, including counties, school districts, and municipalities have the constitutional authority to levy ad valorem taxes. Special districts may also be given this authority by law.[73] Ad valorem taxes are collected on the fair market value of the property, adjusting for any exclusions, differentials or exemptions.

[66] Florida Brownfields Redevelopment Program, 2016-17 Annual Report, on file with House Ways & Means staff. Unavailable online as of Feb. 1, 2018.
[67] DEP, Florida Brownfields Redevelopment Program, 2016 Annual Report, no longer available at: http://www.dep.state.fl.us/Waste/quick_topics/publications/wc/brownfields/AnnualReport/2016/2015-16_FDEP_Annual.pdf (last visited March 22, 2017).
[68] See ss. 32 and 41, ch. 2017-36, Laws of Fla. (HB 7109).
[69] Florida Brownfields Redevelopment Program, 2016-17 Annual Report, on file with House Ways & Means staff. Unavailable online as of Feb. 1, 2018.
[70] Email correspondence with DEP staff, Feb. 1, 2018, on file with House Ways and Means Committee.
[71] Email correspondence with DEP staff, Feb. 1, 2018, on file with House Ways and Means Committee.
[72] Note that, for various reasons, not all of the $12.8 million in tax credits applied for will be approved.
[73] FLA. CONST. art VII, s. 9.

All ad valorem taxation must be at a uniform rate within each taxing unit, subject to certain exceptions with respect to intangible personal property.[74] However, the Florida constitutional provision requiring that taxes be imposed at a uniform rate refers to the application of a common rate to all taxpayers within each taxing unit – not variations in rates between taxing units.[75]

Federal, state, and county governments are immune from taxation but municipalities are not subdivisions of the state and may be subject to taxation absent an express exemption.[76] The Florida Constitution grants property tax relief in the form of certain valuation differentials,[77] assessment limitations,[78] and exemptions,[79] including the exemptions relating to municipalities and exemptions for educational, literary, scientific, religious or charitable purposes.

Assessment of Citrus Packing and Processing Equipment

Current Situation

Taxation of Tangible Personal Property

"Tangible personal property" means all goods, chattels, and other articles of value (not including vehicles) capable of manual possession and whose chief value is intrinsic to the article itself.[80] All tangible personal property is subject to ad valorem taxation unless expressly exempted.[81] Household goods and personal effects,[82] items of inventory,[83] and up to $25,000 of assessed value for each tangible personal property tax return[84] are exempt from ad valorem taxation.

Anyone who owns tangible personal property on January 1 of each year and who has a proprietorship, partnership, or corporation, or is a self-employed agent or a contractor, must file a tangible personal property return to the property appraiser by April 1 each year.[85] Property owners who lease, lend, or rent property must also file a return. Each tangible personal property tax return is eligible for an exemption from ad valorem taxation of up to $25,000 of assessed value.[86]

Taxation of Agricultural Property

[74] FLA. CONST. art VII, s. 2.
[75] See, for example, *Moore v. Palm Beach County*, 731 So. 2d 754 (Fla. 4th DCA 1999) citing *W. J. Howey Co. v. Williams*, 142 Fla. 415, 195 So. 181, 182 (1940).
[76] "Exemption" presupposes the existence of a power to tax, while "immunity" implies the absence of it. See *Turner v. Florida State Fair Authority*, 974 So. 2d 470 (Fla. 2d DCA 2008); *Dept. of Revenue v. Gainesville*, 918 So. 2d 250, 257-59 (Fla. 2005).
[77] FLA. CONST. art VII, s. 4, authorizes valuation differentials, which are based on character or use of property.
[78] FLA. CONST. art VII, s. 4(c), authorizes the "Save Our Homes" property assessment limitation, which limits the increase in assessment of homestead property to the lesser of 3% or the percentage change in the Consumer Price Index. Section 4(e) authorizes counties to provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. This provision is known as the "Granny Flats" assessment limitation.
[79] FLA. CONST. art VII, s. 3, provides authority for the various property tax exemptions. The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone, properties used to provide affordable housing, educational facilities, charter schools, property owned and used by any labor organizations, community centers, space laboratories, and not-for-profit sewer and water companies.
[80] s. 192.001(11)(d), F.S.
[81] s. 196.001(1), F.S.
[82] s. 196.181, F.S.
[83] s. 196.185, F.S.
[84] s. 196.183, F.S.
[85] s. 193.062, F.S.; see also DOR, Tangible Personal Property, http://dor.myflorida.com/dor/property/tpp/ (last visited Feb. 15, 2018).
[86] Fla. Const. art. VII, s. 3.

Section 193.461, F.S., allows properties classified as bona fide agricultural operations to be taxed according to the "use" value of the agricultural operation, rather than the development value. Generally, tax assessments for qualifying lands are lower than tax assessments for other uses. Lands classified as agricultural for assessment purposes retain their agricultural classification if the land is taken out of production by a state or federal eradication or quarantine program, including the Citrus Health Response Program, for a period of five years. If these agricultural lands are converted to fallow or are otherwise nonincome producing, property tax collectors may only assess a de minimis value up to $50 per acre on a single-year assessment.[87]

For purposes of ad valorem property taxation, agricultural equipment that is located on property classified as agricultural under s. 193.461, F.S., and is obsolete and no longer usable for its intended purpose is deemed to have a market value no greater than its value for salvage.[88]

Citrus Greening

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

Over a five year period from 2006-2011, it is estimated that citrus greening disease has resulted in an economic loss of $4.54 billion and the loss of 8,257 jobs. From 1999-2010, 56 packing houses and 33 processing plants were shut down, partially as a result of decreased production due to citrus greening.[89] The U.S. Department of Agriculture forecasted that Florida's citrus production for the 2017-2018 season will be 33 percent less than last season and a decline of more than 80 percent since peak citrus production during the 1997-1998 season. The 2017-2018 forecasted citrus production is also expected to be the smallest production since the 1944-1945 season.[90]

Proposed Changes

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

The bill also creates s. 218.135, F.S., to direct the legislature to provide fiscally constrained counties[91] an appropriation to offset the reduction in ad valorem tax revenue which occur as a direct result of the implementation of s. 193.4516, F.S. The affected counties must apply to DOR and provide supporting documentation to receive the appropriation. The appropriations will be distributed to the affected counties in January of each fiscal year in proportion of the total reduction in ad valorem tax revenue resulting from the implementation of s. 193.4516, F.S.

Homestead Property Damaged or Destroyed by Natural Disaster in 2017

Current Situation

[87] s. 193.461(7)(a), F.S.
[88] s. 193.4615, F.S.
[89] Economic Impacts of Citrus Greening in Florida, 2006/07-2010/11, FE903. UF IFAS Extension. January 2012.
[90] USDA National Agriculture Statistics Service December Forecast, Citrus Maturity Test Results and Fruit Size, available at: https://www.nass.usda.gov/Statistics_by_State/Florida/Publications/Citrus/Citrus_Forecast/2017-18/cit1217.pdf
[91] See s. 218.67(1), F.S. for a definition of "fiscally constrained counties."

Tax Relief for Natural Disasters

The Legislature has provided tax relief for the victims of natural disasters on at least four occasions.[92] Chapter 88-101, L.O.F., created s. 196.295(3), F.S., which provided an abatement of taxes for properties damaged by windstorms or tornadoes.[93] To receive the abatement, the property owner was required to file an application with the property appraiser by March 1 of the year following the year in which the windstorm or tornado occurred.[94] After making a determination on the validity of the application, the property appraiser was directed to issue an official statement to the tax collector containing the number of the months the property was uninhabitable due to the damage or destruction, the value of the property prior to the damage or destruction, the total taxes due on the property as reduced by the number of months the property was uninhabitable, and the amount of the reduction in taxes.[95]

Upon receipt of the official statement, the tax collector reduced the amount of taxes due on the property on the tax collection roll and informed the board of county commissioners and DOR of the total reduction in taxes for all property in the county receiving the abatement.[96] The law was applied retroactively to January 1, 1988 and included a repeal effective of July 1, 1989.[97] The language was removed from statute in 1992.[98]

Natural Disaster Provisions

Current law provides that the Governor shall issue an executive order declaring a state of emergency if he finds an emergency has occurred or a threat is imminent.[99] Depending on the severity of the emergency, the declaration may result in a military mobilization or allow out-of-state healthcare professionals to provide services in the disaster area.[100]

Proposed Changes

The bill creates s. 197.318, F.S., providing a relief credit[101] for homestead parcels on which the defined residential improvements were damaged or destroyed by a hurricane that occurred in 2016 or 2017, namely hurricanes Hermine, Matthew, and Irma. If the residential improvement is rendered uninhabitable for at least 30 days due to a hurricane that occurred during the 2016 or 2017 calendar year, taxes initially levied in 2019 may be abated.

The tax credit is in the form of a credit against property taxes levied in 2019. The amount of the credit reflects the value of the homestead structure for the portion of 2016 or 2017 that it was uninhabitable as a consequence of hurricane damage.

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

[92] Chs. 88-101, 98-185, 2004-474, and 2007-106, Laws of Fla.
[93] s. 196.295(3), F.S, repealed by ch. 92-173, s. 8, Laws of Fla.
[94] s. 196.295(3)(a), F.S, repealed by ch. 92-173, s. 8, Laws of Fla.
[95] s. 196.295(3)(d), F.S, repealed by ch. 92-173, s. 8, Laws of Fla.
[96] s. 196.295(3)(e)-(f), F.S, repealed by ch. 92-173, s. 8, Laws of Fla.
[97] s. 196.295(3)(h), F.S, repealed by ch. 92-173, s. 8, Laws of Fla.
[98] Ch. 92-173, s. 8, Laws of Fla.
[99] s. 252.36, F.S.
[100] s. 252.36(3)(c)1. and 2., F.S.
[101] The bill defines "disaster relief credit" as the product arrived at by multiplying the damage differential by the amount of timely paid taxes that were initially levied in the year the natural disaster occurred.

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

- The number of days during the calendar year in which the natural disaster occurred that the residential improvement was uninhabitable.[102]
- The just value of the residential parcel on January 1, 2016 or 2017.
- The post-disaster just value of the residential parcel, as determined by the property appraiser.
- The percent change in value applicable to the residential parcel.[103]

The tax collector uses the property appraiser's written statement to calculate the value of the damage differential and disaster relief credit and applies the credit to reduce the taxes initially levied on the residential parcel by the amount of the credit.[104] If the value of the credit exceeds the taxes levied in 2019, the remaining value of the credit shall be applied to taxes due in subsequent years until the value of the credit is exhausted.

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

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

The bill also creates s. 218.135, F.S., requiring the legislature to appropriate funds to offset the reduction in ad valorem tax revenue in taxing jurisdictions in fiscally constrained counties which occur as a direct result of the implementation of s. 197.318, F.S. The affected taxing jurisdictions must apply to DOR and provide supporting documentation to receive the appropriation. The appropriations will be distributed to the affected taxing jurisdictions in January 2020 in proportion of the total reduction in ad valorem tax revenue resulting from the implementation of s. 197.318, F.S.

Save Our Homes Portability Affected by Storm Damage

Current Situation

The "Save Our Homes" amendment to the Florida Constitution was approved by voters in 1992.[105] This amendment limits annual assessment increases to the lower of: 3% of the assessment for the prior year or the change in the Consumer Price Index (CPI) for all urban consumers. See Fla. Const., art. VII, s. 4(d)(1). The operation of this provision over time results in the market value of a homestead property exceeding its assessed value for property tax purposes if the property owner does not sell the property.

Section 193.155(8), F.S., allows a homestead to be assessed at less than just value when the person who establishes a new homestead has received a homestead exemption as of January 1 of either of the two immediately preceding years. Property owners who relocate to a new homestead may also transfer or "port" up to $500,000 of their accrued benefit, also known as the Save our Home (SOH) benefit, to the new homestead.

Section 193.155(8)(g), F.S., provides for purposes of receiving an assessment reduction pursuant to this subsection, a person entitled to assessment under this section may abandon his or her property

[102] To qualify for the disaster relief credit, the residential improvement must be uninhabitable for at least 30 days.
[103] The bill defines the "percent change in value" as the difference between the residential parcels just value as of Jan. 1, 2017, and its postdisaster just value expressed as a percentage of the parcel's just value as of Jan. 1, 2017.
[104] The bill defines "damage differential" as the product arrived at by multiplying the percent change in value by a ratio, the numerator of which is the number of days the residential improvement was rendered uninhabitable, the denominator of which is 365.
[105] s. 193.155(1), F.S.

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

Proposed Changes

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

Ad Valorem Exemption for Unmarried Surviving Spouse of a Disabled Ex-Servicemember

Current Situation

Current law provides a $5,000 property tax exemption to any resident ex-servicemember who was honorably discharged and has been disabled to a degree of 10 percent or more by misfortune or while serving during a period of wartime service. This exemption is also extended to the surviving spouse of the disabled ex-servicemember if, at the time of the disabled ex-servicemember's death, the unremarried surviving spouse was married to the ex-servicemember for at least 5 years.[106]

Proposed Change

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

Ad Valorem Exemption for Deployed Servicemembers[107]

Current Situation

The Florida Constitution grants an exemption for military servicemembers that have Florida homesteads and are deployed on active duty outside the continental United States, Alaska or Hawaii in support of military operations designated by the Legislature.[108] The exemption is equal to the taxable value of the qualifying servicemember's homestead on January 1 of the year in which the exemption is sought, multiplied by the number of days that the servicemember was on a qualifying deployment in the preceding calendar year, and divided by the number of days in that year.[109]

Eligible Military Operations

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

- Operation Joint Task Force Bravo, which began in 1995;
- Operation Joint Guardian, which began on June 12, 1999;
- Operation Noble Eagle, which began on September 15, 2001;

[106] s. 196.24, F.S.

[107] Section 196.173(7), F.S., defines the term "servicemember" for purposes of this exemption to mean a member or former member of any branch of the United States military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard.

[108] Fla. Const. art. VII, s. 3(g). See also s. 196.173, F.S.

[109] s. 196.173(4), F.S.

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

Annual Report of All Known and Unclassified Military Operations

By January 15 of each year, the Department of Military Affairs (DMA) must submit to the President of the Senate, the Speaker of the House of Representatives, and the tax committees of each house of the Legislature a report of all known and unclassified military operations outside the continental United States, Alaska, or Hawaii for which servicemembers based in the continental United States have been deployed during the previous calendar year.[110]

To the extent possible, the report must include:

- The official and common names of the military operations;
- The general location and purpose of each military operation;
- The date each military operation commenced; and
- The date each military operation terminated, unless the operation is ongoing.[111]

DMA submitted the required report in January 2018, providing the names, dates, locations and general purposes of all known and unclassified military operations that occurred outside the continental United States, Alaska, and Hawaii in calendar year 2017.[112]

Proposed Changes

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

Ad Valorem for Water and Wastewater Utilities

Current Situation

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

[110] s. 196.173(3), F.S.
[111] s. 196.173(3), F.S.
[112] DMA, Office of the Adjutant General, *Named Operations 2017Report*, on file with the House Ways & Means Committee.

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

In a recent circuit court case, the court concluded that water and wastewater facilities owned by an entity created under ch. 163 were not exempt from ad valorem taxes, despite the exemption provided in s. 163.01(7), F.S.[113] The court reasoned that the facilities did not serve a governmental function or purpose for members located within the entity when the facilities only served members located outside the entity The court also declined to interpret the exemption provided in s. 163.01(7) as an ad valorem exemption because the language in the statute does not specifically mention ad valorem taxation. Lastly, the court reasoned that the facilities were subject to taxation when the entity contracted a private entity to perform the water treatment services because that private entity would be subject to tax had it owned the property,

Proposed Changes

This bill amends s. 163.01, F.S., to clarify that any separate legal entity created under the Florida Interlocal Cooperation Act of 1969 is not required to pay any taxes or assessments, including ad valorem tax, on property acquired or used by the entity to perform essential governmental functions regardless of whether the property is located within or outside of the jurisdiction of the members of the entity. The bill also clarifies that the entity, in performance of its authorized purposes, provides essential governmental functions for the public health, safety and welfare of the people of the state and not just the members located within the entity. Further, the bill clarifies that the exemption is not affected by the entity entering into agreements with private entities for services related to utilities owned by the separate legal entity.

Condominium Owners Contesting a Tax Assessment

Current Situation

Current law permits condominium associations to file a single joint petition to the Value Adjustment Board ("VAB") contesting the tax assessment of all units within the condominium.[114] The association must provide each unit owner notice of the petition and their right to opt out of the appeal, if desired. This allows all unit owners the efficiency and benefit of working together to reduce their taxes if they are over-assessed.

A decision by the VAB may be appealed to the circuit court. While current law is clear that an association is authorized to act on behalf of all unit owners when filing a petition to the VAB, it is unclear whether the association may defend an appeal on behalf of all unit owners when a county property appraiser appeals a VAB decision. The Eleventh Judicial Circuit Court in Miami-Dade County recently issued an order stating that current law does not allow an association to act on behalf of unit owners on appeal where a VAB decision is appealed by a county tax appraiser.[115] The decision is currently on appeal in the Third District Court of Appeal.[116]

[113] Florida Governmental Utility Authority v. Tim Parker and Linda Myers, Case Number 2014-CA-000472, Fla. 7th Judicial Circuit (December 8, 2016), per curiam affirmed, Florida Governmental Utility Authority v. Tim Parker and Linda Myers, Case No. 5D17-93, Slip Opinion 2017 WL 6624263, (Fla. 5th DCA Dec. 26, 2017)
[114] SS. 194.011 and 718.111, F.S.
[115] Amended Order Denying Condominium Association's Motion for Class Certification, *Pedro J. Garcia v. Central Carillon Beach Condominium Association, Inc., et. al*, No. 16-26521-CA-02 (Fla. 11th Cir. Cr. April 27, 2017).
[116] Case No.: 3D17-1198

Proposed Changes

The bill amends current law to clarify that where an association has filed a single joint petition to the VAB, the association may continue to represent the unit owners through a related subsequent proceeding.

Ad Valorem Tax on Multiple Parcel Buildings

Current Situation

Currently, owners of entities in a mixed use multiple parcel building all share the same tax folio number of the property upon which the building is located. The owners of the entities within the multiple parcel building are collectively responsible for paying the property taxes on the land, and each owner pays a portion of the assessed taxes. However, because the land value is not allocated separately among the owners within the building, if one owner fails to pay his or her portion of the property taxes the tax for the entire property becomes delinquent and subject to liens and auction of the property pursuant to s. 197, F.S.

Section 197.3631, F.S., provides general provisions for methods of collecting non-ad valorem assessments. Section 197.572, F.S., provides that when any lands are sold for nonpayment of taxes, or any tax certificate is issued thereon by a governmental unit or agency or pursuant to any tax lien foreclosure proceeding, the title to the land shall continue to be subject to any easement or telephone, telegraph, pipeline, power transmission, or other public service purpose and shall continue to be subject to any easement for the purposes of drainage or of ingress and egress to and from other land.

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

Proposed Changes

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

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

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

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

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

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

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

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

Documentary Stamp Tax

General

Florida imposes a documentary stamp tax on tax deeds and other documents related to real property at the rate of 70 cents per $100 of the consideration paid therefor.[117] Consideration is defined to include, but is not limited to, the money paid or agreed to be paid; the discharge of an obligation; and the amount of any mortgage, purchase money mortgage lien, or other encumbrance, whether or not the underlying indebtedness is assumed.[118] Additionally, Florida imposes a documentary stamp tax on bonds, certificates of indebtedness, notes and other written obligations to pay money at the rate of 35 cents per $100 of the amount of the indebtedness.[119]

Spousal Homestead Transfers

Current Situation

[117] s. 201.02(1)(a), F.S.
[118] s. 201.02(1)(a), F.S.
[119] ss. 201.07 and 201.08, F.S.

Current law exempts from documentary stamp taxes on documents related to real property for certain transfers or conveyances as specified in ch. 201, F.S.[120] For example, a deed, transfer, or conveyance between spouses or former spouses pursuant to an action for dissolution of their marriage wherein the real property is or was their marital home or an interest therein is not subject to taxation under ch. 201, F.S.[121] This exemption also applies to conveyances that occurred within one year before the dissolution of marriage.

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

Proposed Changes

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

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

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

Loans issued by Local Housing Finance Authorities

Current Situation

Current law authorizes each county to create by ordinance a Housing Finance Authority (HFA) to encourage investment in construction and rehabilitation of suitable affordable housing units.[122] HFAs have the authority to issue bonds and use the bond proceeds to raise capital for financing of qualifying housing projects.[123] Bonds issued by a HFA, and all notes, mortgages, or other instruments given to secure repayment of the bonds, are exempt from all taxes.[124]

HFAs also have the authority to make conventional loans with funds derived from sources other than bond proceeds,[125] for instance, loans made to persons who otherwise cannot borrow from conventional lending sources.[126] However, even though bonds issued by a HFA and financial instruments given to secure repayment of the bonds are tax exempt, notes and mortgages pertaining to loans made by a HFA other than as part of a bond transaction remain subject to documentary stamp tax at a rate of 35 cents per $100 of the consideration paid therefor.[127]

Proposed Changes

[120] See ss. 201.02(6)-(8), and 201.24, F.S.
[121] s. 201.02(7), F.S.
[122] ch. 159, F.S.
[123] s. 159.612(2), F.S.
[124] s. 159.621, F.S.
[125] For example, funds from the State Housing Initiatives Partnership pursuant to ch. 420, F.S.
[126] s. 159.608(8), F.S.
[127] s. 201.08, F.S.

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

Article V Fees

Traffic Fine Reduction for Driver Improvement Course Attendance

Current Situation

In general, ch. 318, F.S., provides for the disposition of traffic infractions. Specifically, s. 318.14, F.S., provides the procedures for processing noncriminal traffic infractions. A person who commits a noncriminal traffic infraction and is issued a citation, must elect to appear before a designated official, pay the citation, or enter into a payment plan with the clerk of court within 30 days after the citation is issued to avoid having his or her driver license suspended.[128]

Section 318.14(9), F.S., provides that a person who does not hold a commercial driver license or commercial learner's permit and who is cited while driving a noncommercial motor vehicle for a noncriminal traffic infraction may, in lieu of a court appearance, elect to attend a basic driver improvement course.[129] If a driver improvement course is completed, adjudication is withheld and points[130] are not assessed against the person's driver license. However, a person may not elect to attend a driver improvement course if he or she elected to attend a driver improvement course in the preceding 12 months.

Similarly, the option to elect to attend a driver improvement program is not available for citations related to:

- Violating the posted speed limit when the driver exceeds the posted speed limit by 30 miles per hour or more;
- Not carrying the vehicle's certificate of registration while the vehicle is in use;
- Operating a motor vehicle with an expired registration;
- Operating a motor vehicle with a driver license expired for six months or less; and
- Operating a motor vehicle without carrying a driver license.[131]

A person may not make more than five elections for a driver improvement course within his or her lifetime.[132] If a person completes a basic driver improvement course, 18 percent of the civil penalty imposed[133] is deposited in the State Courts Revenue Trust Fund. However, the 18 percent is not revenue for purposes of s. 28.36, F.S.,[134] and may not be used in establishing the budget of the clerk of the court under s. 28.36, F.S., or s. 28.35, F.S.[135]

Prior to 2009, s. 318.14(9), F.S., provided for an 18 percent reduction in the civil penalty for persons who completed driver improvement school. In 2009, the statute was changed to remove the 18 percent reduction in fines and to allocate those funds to the State Courts Revenue Trust Fund.[136]

[128] s. 318.14, F.S.
[129] Driver improvement courses must be approved by the DHSMV.
[130] Points are provided for in s. 322.27, F.S.
[131] s. 318.14(9), F.S.
[132] s. 318.14(9), F.S.
[133] The civil penalty is imposed under s. 318.18(3), F.S. The civil penalty imposed varies by violation.
[134] Section 28.36, F.S., provides budget procedures for court-related functions of the clerk of the court.
[135] Section 28.35, F.S., creates the Florida Clerk of Court Operations Corporation.
[136] Ch. 2009-7, Laws of Fla. The bill had an effective date of Feb. 1, 2009.

Section 318.15, F.S., relates to failure to comply with a civil penalty or failure to appear. Specifically s. 318.15(1)(b), F.S., provides that a person who elects to attend driver improvement school and has paid the civil penalty[137] who subsequently fails to attend the driver improvement school within the time specified by the court is deemed to have admitted the infraction and is adjudicated guilty. In such a case, the clerk of the court notifies the Department of Highway Safety and Motor Vehicles (DHSMV) of the person's failure to attend driver improvement school and points are assessed on the person's driver license.

The cost of driver improvement courses range from $15 to $40, depending on the provider.[138] From 2008 to 2017, there has been a decrease in the number of individuals who have opted to attend a driver improvement course.[139]

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

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

Proposed Changes

The bill amends s. 318.14(9), F.S., providing a reduction of 18 percent on the civil penalty for a noncriminal traffic infraction if the person elects to attend driver improvement school. The bill also removes the provision that 18 percent of the civil penalty from those attending driver improvement schools is deposited into the State Courts Revenue Trust Fund. Therefore, the bill reduces the fine for those attending a driver improvement course and reduces the revenue provided to the State Courts Revenue Trust Fund.

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

Cigarette Tax Distributions

Current Situation

[137] The civil penalty is provided for in s. 318.14(9), F.S.
[138] DHSMV, *2017 Agency Legislative Bill Analysis: HB 547*, on file with the House Transportation & Infrastructure Subcommittee.
[139] Email from DHSMV staff, Dec. 1, 2017, on file with House Transportation & Infrastructure Subcommittee.

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

From the total amount of cigarette tax collections:[140]

- 8.0 percent service charge to the General Revenue Fund; [141] and
- 0.9 percent to the Alcoholic Beverage and Tobacco Trust Fund.

From the remaining net collections:[142]

- 2.9 percent to the Revenue Sharing Trust Fund for Counties;
- 29.3 percent to the Public Medical Assistance Trust Fund;
- 4.04 percent to the Moffitt Center;[143] and
- 1.0 percent to the Biomedical Research Trust Fund in the Department of Health (DOH).[144]

After the above distributions are made, the remaining balance of net cigarette tax collections is deposited in the General Revenue Fund.[145]

Proposed Changes

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

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

Florida Education Scholarship Programs

Background

The Florida Tax Credit Scholarship Program (FTCP)[146] was established to encourage taxpayers to make private voluntary contributions to scholarship-funding organizations (SFO), expand educational opportunities for families with limited financial resources, and to enable children in Florida to achieve a

[140] *See* s. 210.20(2)(a), F.S.
[141] *See* s 215.20(1), F.S. concerning the appropriation of the eight percent service charge to the General Revenue Fund.
[142] *See* s. 210.20(2)(a), F.S.
[143] *See* s. 210.20(2)(b), F.S. The distribution of cigarette tax funds to the Moffitt Center was initiated in 1998, using 2.59% for the calculation on net cigarette tax collections. *See* ch. 98-286, Laws of Fla. The last adjustment to the percentage for the calculation occurred in 2014, when the percentage was set at the current 4.04% from July 1, 2014 through June 30, 2017. *See* s. 8 of ch. 2014-38, Laws of Fla.
[144] Pursuant to s. 210.20(2)(c), F.S. these funds (constituting 1.0% of net collections) are appropriated in an amount up to $3 million annually during the period of July 1, 2013 to June 30, 2033, to DOH and the Sanford-Burnham Medical Research Institute for the purpose of those entities working to establish activities and grant opportunities relating to biomedical research.
[145] *See* s. 210.20(b), F.S.
[146] s. 1002.395, F.S.

greater level of excellence in their education.[147] SFOs use contributions to award scholarships to eligible low-income students for private school tuition and fees or transportation expenses to a Florida public school located outside of the school district in which the student resides.[148]

The Florida Tax Credit Scholarship Program is funded with contributions to private non-profit SFOs from taxpayers who receive a tax credit for use against their liability for corporate income tax; insurance premium tax, severance taxes on oil and gas production, self-accrued sales tax liabilities of direct pay permit holders; or alcoholic beverage taxes on beer, wine and spirits.[149] The credit is equal to 100 percent of the eligible contributions made.[150] To receive a credit the taxpayer must submit an application and specify each tax for which the taxpayer requests a credit and the applicable taxable or state fiscal year for the credit.[151] Taxpayers can rescind tax credits, which will become available to another eligible taxpayer in that fiscal year.[152]

The maximum amount of tax credits that may be awarded in FY 2017-18 is $698 million. The Revenue Estimating Conference estimates that contributions applicable against this limit will be $639.2 million in FY 2017-18. In any state fiscal year when the annual tax credits granted for the prior state fiscal year are equal to or greater than 90 percent of the tax credit cap amount applicable to that state fiscal year, the tax credit cap amount is increased by 25 percent.[153] Consequently, the maximum amount of tax credits expected to be available for award in FY 2018-19 is $873.6 million.

The Gardiner Scholarship Program (GSP) was established in 2014[154] to provide an educational option for a parent of an eligible child[155] to better meet the individual educational needs of his or her child who has a disability.[156] Under the GSP, a parent of an eligible child may request a GSP scholarship by submitting an application to a SFO."[157] The GSP is directly administered by SFOs, and GSP funds may be awarded to parents to reimburse purchases of the certain items or services related to the child's education.[158] A student is not eligible for the program if he or she is receiving a scholarship pursuant to the Florida Tax Credit Scholarship Program under s. 1002.395, F.S.[159] The GSP is funded with appropriations made by the state to SFOs based on a funding formula provided in s. 1002.385(13), F.S.

The bill contains several provisions related to Florida's education scholarship programs.

Sales Tax Dealer Scholarship Credits

Proposed Changes

The bill creates s. 212.099, F.S., establishing tax credits that may be taken against sales tax liabilities for business-funded scholarships for the Gardiner Scholarship Program or the Florida Tax Credit Scholarship Program. The credit is equal to the amount of each business-funded scholarship created by the eligible business. A business-funded scholarship is an annual amount of financial aid created by an eligible business when the business makes a contribution to an eligible nonprofit scholarship funding organization in an amount that, if awarded to a single student, would equal the maximum scholarship award authorized pursuant to s. 1002.395 (The Florida Tax Credit Scholarship Program). Similar to the FTCP a business may not designate a specific student as the beneficiary of the contribution.

[147] s. 1002.395 (1)(b), F.S.
[148] ss. 1002.395(2)(e) and (6)(d), F.S. An eligible contribution is a monetary contribution from a taxpayer to an eligible SFO.
[149] ss. 1002.395(1) and (5), F.S.
[150] ss. 220.1875 and 1002.395(5), F.S.
[151] s. 1002.395(5)(b), F.S.
[152] s. 1002.395(5)(e), F.S.
[153] s. 1002.395(5)(a), F.S.
[154] Ch. 2014-184, s. 16, Laws of Fla.
[155] s. 1002.385(1) and (3), F.S.
[156] s. 1002.385(2)(d), F.S.
[157] s. 1002.385(11), F.S.
[158] *See* s. 1002.385(5), F.S.
[159] s. 1002.385(4), F.S.

To receive a credit the dealer must submit an application and specify the applicable state fiscal year for the credit. DOR will approve tax credits on a first-come, first-served basis. Within 10 days after approving or denying an application, DOR will provide a copy of its approval or denial letter to the SFO specified by the dealer in the application.

Dealers may carryforward credits not fully used in the specified fiscal year for a period not to exceed 10 years. Dealers generally cannot transfer credits to another entity, unless the other entity has acquired all of the dealer's business assets or is a member of an affiliated group of corporations. Dealers can rescind its tax credits, which will become available to another eligible dealer in that fiscal year.

SFOs cannot use contributions from dealers for GSP scholarships until all of the funds appropriated to the organization in that year for GSP scholarships are used. When the appropriations are exhausted the SFO can use contributions from dealers, but must first use the contributions for GSP scholarships, and any remaining contributions can then be used for FTCP scholarships. Similar to the FTCP, an SFO can use up to three percent of contributions from dealers for administrative expenses, subject to the limitations in s. 1002.395(6)(j)l., F.S.

The sum of tax credits under this new statute that may be approved by DOR in any state fiscal year is $154 million. This cap is unrelated to current statutory caps in s. 1002.395, F.S., for the Florida Tax Credit Scholarship Program.

The Department of Revenue is required to adopt rules to administer the new tax credits.

Information Sharing

Current Situation

Section 213.053, F.S., provides that all information contained in returns, reports, accounts, or declarations received by DOR is confidential, and exempt from public disclosure under s. 119.07(1), F.S. Section 213.053, F.S., also provides exceptions to this general rule allowing for disclosure of confidential taxpayer information under specified circumstances.

Proposed Changes

The bill amends s. 213.053, F.S., and creates a new subsection to require the DOR to disclose under certain circumstances the 200 taxpayers with the greatest corporate income tax liability reported during the previous calendar year. The list is to be provided to and at the request of eligible nonprofit SFOs that are eligible to use up to 3% of eligible contributions for administrative expenses. The list shall be in alphabetical order based on the taxpayer's name and include the taxpayer's address. The list shall not disclose the amount of tax owed by the taxpayer. An eligible nonprofit SFO may request the list once each calendar year and may use the list only to notify the taxpayer of the opportunity to make an eligible contribution to the Florida Tax Credit Scholarship Program. DOR shall provide such information within 45 days after receiving the request.

Credit Carry Forwards

Current Situation

If any tax credits under the program are not used within the state fiscal year originally specified by the taxpayer due to insufficient tax liability, the credit may be carried forward for a period of five years.[160] To carryforward an unused tax credit the taxpayer must submit an application for approval in the year that the taxpayer intends to use the carryforward credit.[161]

Proposed Changes

[160] s. 1002.395(5)(c), F.S.
[161] s. 1002.395(5)(c), F.S.

The bill extends from five years to ten the period for which unused credits may be carried forward by a taxpayer. Additionally, the need to apply for carry forwards is eliminated.

Sales Tax Dealer Collection Allowance

Current Situation

In 2010, the revenue sources against which tax credits can be claimed through the Florida Tax Credit Scholarship Program were expanded to include self-accrued sales tax liabilities of direct pay permit holders pursuant to s. 212.1831.[162]

Section 212.183, F.S., establishes a process for the self-accrual of sales taxes, in limited circumstances,[163] which involves DOR granting a direct pay permit to a taxpayer, who then pays the taxes directly to DOR instead of paying taxes to the seller of purchased items.[164]

Current law authorizes a collection allowance for certain sales tax dealers (including direct pay permit holders) as compensation for the prescribed record keeping, accounting for, and for the timely reporting and remitting of sales and use tax and discretionary sales surtax by electronic means.[165] Such persons will be allowed 2.5 percent of "the amount of the tax due", accounted for, and remitted to DOR in the form of a deduction. The collection allowance is limited to 2.5 percent of the first $1,200 of the tax due, not to exceed $30 in any filing period.[166]

Direct pay permit holders using tax credits under the Florida Tax Credit Scholarship Program often are unable to take a dealer collection allowance because "the amount of tax due," upon which the allowance is based, may be zero.

Proposed Changes

For purposes of the dealer's collection allowance under s. 212.12, F.S., the bill requires that the amount of tax due shall include any eligible contribution made to an eligible nonprofit SFO from a direct pay permit holder, thereby allowing the taxpayer to retain their dealer collection allowance.

Use of Credits Against Estimated Payments

Current Situation

Corporate income tax payers must make four payments of a portion of their estimated tax liability during their taxable year, following certain requirements as to timing and amounts.[167]

Currently, corporate income tax payers making contributions under the Florida Tax Credit Scholarship Program must use the amount of the credit earned to reduce the next estimated payment that is due immediately following a contribution in that taxable year.[168]

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[162] s. 212.1831, F.S.

[163] See s. 212.183, F.S., and Rule 12A-1.0911, F.A.C.

[164] Direct pay was originally designed to overcome the tax complexities in situations where the taxability of a transaction could not be easily determined at the time of purchase. For example, a number of states exempt transactions if the item purchased is used in a particular manner, e.g., for manufacturers, if the item is used in the manufacturing process or as an "ingredient and component part" of their sale products. In such instances, direct pay authority would allow an entity to purchase certain products for all types of uses and to report the appropriate tax after the actual use had been determined. *See Model Direct Payment Permit Regulation: A Report of the Steering Committee*, Task Force on EDI Audit and Legal Issues for Tax Administration, June 2000, available at https://www.taxadmin.org/assets/docs/Publications/dpay.pdf

[165] s. 212.12, F.S., and Rule 12A-1.056(2)(a), F.A.C.

[166] Rule 12A-1.056(2)(b), F.A.C.

[167] s. 220.33, F.S.

Proposed Changes

The bill allows corporate income tax payers to use credits earned against any of their estimated payments due instead of against the estimated payment due immediately following the contribution date.

Timing of Scholarship Contributions

Current Situation

When corporate income tax payers wishing to make contributions to the program and use the allowable tax credits apply to the Department of Revenue (DOR) for a tax credit allocation, they must indicate which of the taxpayer's taxable years the credits will apply to. To use the credits allocated to them by the DOR, the taxpayer must make the actual contribution to the program during the taxable year indicated in the application.[169]

Corporate income tax payers often do not have a precise knowledge of their tax liability until their taxable year is completed.

Provisions generally applicable to corporate income tax payers require annual tax returns to be filed on or before the first day of the fifth month following the close of the taxpayer's taxable year. Further, current law allows the final due date of tax returns to be extended by another six months, but only after tentative payments of final taxes owed.[170]

Proposed Changes

The bill amends s. 220.1875(1), F.S., to provide that an eligible contribution must be made to an eligible nonprofit SFO on or before the date that the taxpayer is required to file a return pursuant to s. 220.222, F.S. This would allow a contribution to be made after a taxpayer's taxable year is complete but would allow the credit to be taken against that taxable year.

The bill also adds subsection (4) to provide if a taxpayer applies and is approved for a credit under s. 1002.395, F.S., after timely requesting an extension to file a return, credits granted under such circumstances shall not reduce the amount of tax due for purposes of the determination of whether the taxpayer was in compliance with the requirements under ss. 220.222 and 220.32, F.S. These provisions are designed to prevent a taxpayer from making a contribution (and using credits) to avoid penalties and interest associated with under payment of tentative final tax payments. The taxpayer's noncompliance with the requirement to pay tentative taxes (s. 220.32, F.S.) shall result in the revocation and rescindment of any credits and the taxpayer shall be assessed for any taxes, penalties, or interest due to noncompliance with the requirement to pay tentative taxes.

The bill adds s. 220.13(1)(b), F.S., to provide that if the amount taken as credit under s. 220.1875, F.S., is added to taxable income in the previous taxable year and is subsequently allowed as a deduction from taxable income for federal tax purposes in the current taxable year, the amount of the deduction shall not be added back to the current year. This provision is intended to ensure that the credit under s. 220.1875, F.S., is added in the applicable tax year and does not result in a duplicate addition is a subsequent year.

Taxes Imposed on Motor and Diesel Fuel

Generally

Motor fuel and diesel fuel are subject to state taxation pursuant to ch. 206, F.S. The tax rate is a combination of several state and local rates, and the revenue collected is distributed to various state

[168] s. 1002.395(5)(g)1., F.S.
[169] s. 1002.395(5)(b)1., F.S.
[170] ss. 220.222 and 220.32, F.S.

trust funds and to local governments for revenue sharing purposes.[171] For 2017, the combined state tax rate is 24.8 cents per gallon.[172] In addition, the retail sale of motor and diesel fuel is subject to sales tax under ch. 212, F.S., under certain circumstances if fuel taxes have not been paid.[173]

Fuel Used for Agricultural Shipment after Hurricane Irma

Current Situation

Current law exempts the sale or use of motor and diesel fuel for agricultural or farm purposes;[174] however, agricultural or farm purposes are generally defined to mean "used exclusively on a farm or for processing farm products on the farm, and does not include fuel used in any vehicle or equipment operated upon public highways of the state."[175]

Proposed Changes

The bill creates an exemption from state and local taxes imposed on motor fuel and diesel under parts I and II, ch. 206, F.S.,[176] for fuel that is used for the transportation of agricultural products from the farm or agricultural land to a facility used to process, package, or store the product. The exemption is available through a refund of previously paid taxes and applies to purchases made between September 10, 2017, and June 30, 2018. Excluded from this exemption are the "constitutional fuel tax" levied under s. 9(c), Art. XII of the 1968 State Constitution, and the 0.125 cents per gallon levied to defray expenses for motor fuel inspection, testing and analysis by the Department of Agriculture and Consumer Services.[177]

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

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

Export of Tax-Free Fuels

Current Situation

Chapter 206, F.S., provides for the licensing of a person engaged in business as a terminal supplier, importer, exporter, blender, biodiesel manufacturer, or wholesaler of motor fuel within this state.[178] Generally, taxes on motor fuel are imposed on all of the following:[179]

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[171] s. 206.41, F.S.
[172] REC, 2018 FLORIDA TAX HANDBOOK, pp. 126-127, available at: http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf
[173] ss. 212.18(3) and 212.0501, F.S.; Rule 12B-5.120, F.A.C.
[174] ss. 206.41(4)(c), 206.64, 206.874(2)-(3), and 212.0501, F.S.
[175] The restriction does not apply to fuel used on highways to move equipment from one farm to another.
[176] The exemption does not include the 2 cent per gallon "second gas tax" imposed pursuant to art. XII, sec. 9(c), Fla. Const. under s. 206.41(1)(a), F.S., or the 0.125 cents per gallon inspection fee imposed under s. 206.41(1)(h), F.S.
[177] ss. 206.41(1)(a) and (h), F.S.
[178] s. 206.02, F.S.
[179] s. 206.41(6), F.S.

- The removal of motor fuel in this state from a terminal[180] if the motor fuel is removed at the rack.[181]
- The removal of motor fuel in this state from any refinery under certain circumstances.
- The entry of motor fuel into this state for sale, consumption, use, or warehousing under certain circumstances.
- The removal of motor fuel in this state to an unregistered person, unless there was a prior taxable removal, entry, or sale of the motor fuel.
- The removal or sale of blended motor fuel in this state by the blender thereof.

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

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

If a licensed exporter pays Florida motor fuel taxes, the exporter can take a credit on its monthly fuel tax return or apply for a refund of Florida fuel tax paid on fuel exported from the state.[182]

Terminal suppliers may exchange fuel above the loading rack of a terminal with other terminal suppliers without paying motor fuel taxes,[183] but fuel tax must be paid by a terminal supplier that purchases motor fuel at the rack from another terminal supplier.

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

Proposed Changes

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

- The terminal supplier who purchased the motor fuels sells the motor fuels to a licensed exporter for immediate export from the state.
- The terminal supplier who purchased the motor fuels has designated to the terminal supplier who sold the motor fuels the destination for delivery of the fuel to a location outside the state.
- The terminal supplier who purchased the motor fuels is licensed in the state of destination and has supplied the terminal supplier who sold the motor fuels with that license number.

[180] "Terminal" means a storage and distribution facility for taxable motor or diesel fuel, supplied by pipeline or marine vessel, that has the capacity to receive and store a bulk transfer of taxable motor or diesel fuel. See s. 206.01(18), F.S.
[181] "Rack" means the part of a terminal or refinery by which fuel is physically removed into tanker trucks or rail cars. See s. 206.01(12), F.S.
[182] s. 206.051(4), F.S.
[183] Rule 12B-5.050, F.A.C.

- The licensed exporter has not been barred from making tax-free exports by the department for violation of s. 206.051(5).
- The terminal supplier who sold the motor fuels collects and remits to the state of destination all taxes imposed on said fuel by the destination state.

Aviation Fuel Taxes

Current Situation

Florida Law

Florida law imposes an excise tax of 6.9 cents on every gallon of aviation fuel sold in the state or brought into the state for use.[184] Aviation fuel is defined as "fuel for use in aircraft, and includes aviation gasoline and aviation turbine fuels and kerosene, as determined by the American Society for Testing Materials specifications D-910 or D-1655 or current specifications."[185]

In 2016, the Legislature amended the fuel tax laws by removing a limited exemption for certain air carriers and reducing the tax rate on all air carriers.[186] The combination of the exemption repeal and tax rate cut was intended to be neutral with respect to total aviation fuel tax collections on a recurring basis. The 2016 law changes provided a delayed effective date to July 1, 2019. Beginning in fiscal year 2019-2020, the excise tax on aviation fuel will be 4.27 per gallon.

Collections of aviation fuel tax in fiscal year 2018-19 are estimated to be $34 million, net of refunds. After implementation of the rate cut enacted by the Legislature in 2016, collections of aviation fuel tax in fiscal year 2019-20 are estimated to be $27.7 million, net of refunds.[187]

Federal Law

The Federal Aviation Administration (FAA) is the agency within the United States Department of Transportation (USDOT) that, among other things, regulates the air transportation system in the United States.[188] Title 14 of the Code of Federal Regulations, in part, provides the licensing, certification, and operational specifications for all aviation activities in the United States. Federal regulations define "air carrier" to mean a person who undertakes directly by lease, or other arrangement, to engage in air transportation. Part 121 provides the operating requirements for domestic, flag, and supplemental operations. Part 125 provides for the certification and operation requirements for airplanes having a seating capacity of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more; part 125 also provides rules governing person on board such aircrafts. Part 135 provides the operating requirements for commuter and on-demand operations and rules governing persons on board such aircrafts.

The FAA imposes certain restrictions on the uses of revenues for airport operators that accept Federal assistance.[189] Generally, revenues from state and local taxes on aviation fuel may only be used for certain aviation-related purposes such as airport operating costs, or in the case of state taxes, a "state aviation program."[190] However, the revenue from state and local taxes on aviation fuel which were in effect prior to December 30, 1987, is considered "grandfathered" and is eligible for use for otherwise

[184] s. 206.9825, F.S.
[185] s. 206.9815, F.S.
[186] Ch. 2016-220, Laws of Fla.
[187] EDR, Florida Transportation Revenue Estimating Conference, February 2018.
[188] USDOT, Administrations, available at: http://www.dot.gov/administrations (last visited Feb. 15, 2018).
[189] 49 U.S.C. §§ 47107(b) and 47133; Public Laws No. 97-248 and 100-223.
[190] "State aviation program" is not defined, but generally refers to state programs that support capital improvements or operating costs of airports; FAA, Policy and Procedures Concerning the use of Airport Revenue: Proceeds from Taxes on Aviation Fuel, 79 FR 66282, available at: https://www.faa.gov/airports/resources/publications/federal_register_notices/ (last visited Feb. 15, 2018).

impermissible expenditures.[191] On November 7, 2014, the FAA clarified its interpretation of the federal requirements for the use of revenue derived from taxes on aviation fuel, and requested each state to validate compliance with this FAA regulation.[192] On April 26, 2016, the Florida Department of Transportation validated the state's compliance with the FAA regulation.[193]

Proposed Changes

Beginning July 1, 2019, the bill reduces the excise tax on aviation fuel from 4.27 cents per gallon to 2.85 cents per gallon for aviation fuel paid by an air carrier who conducts scheduled operations or all-cargo operations that are authorized under 14 C.F.R. parts 121, 129, or 135, to 2.85 cents per gallon.

Local Government Preemption

Current Situation

Counties

A county without a charter has such power of self-government as provided by general[194] or special law, and may enact county ordinances not inconsistent with general law.[195] General law authorizes counties "the power to carry on county government"[196] and to "perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."[197]

Municipalities

Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,[198] acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.[199] Chapter 166, F.S., provides municipalities with broad home rule powers, respecting expressed limits on municipal powers established by the Florida Constitution, applicable laws, and county charters.[200]

Section 166.221, F.S., authorizes municipalities to levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter.

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature "has preempted a particular subject area" or (2) the local enactment conflicts with a state statute. Where state preemption applies it precludes a local government from exercising authority in that

[191] Dec. 30, 1987, is the "grandfather" deadline because The Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223, passed on that date, which first required state and local taxes on aviation fuel to be spent on airport-related purposes.
[192] FAA, Policy and Procedures Concerning the use of Airport Revenue: Proceeds from Taxes on Aviation Fuel, 79 FR 66282, available at: https://www.faa.gov/airports/resources/publications/federal_register_notices/ (last visited Feb 15, 2018).
[193] Florida DOT, correspondence from FDOT State Aviation Manager to FAA Director of Office of Airport Compliance and Management Analysis, April 26, 2016, on file with House Ways & Means Committee.
[194] ch. 125, part I, F.S.
[195] FLA. CONST. art. VIII, s. 1(f).
[196] s. 125.01(1), F.S.
[197] s. 125.01(1)(w), F.S.
[198] s. 166.011, F.S.
[199] Local Government Formation Manual 2017-2018, p. 16.
[200] s. 166.021(4), F.S.

particular area.[201] Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[202] Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.[203] In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.[204] In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.[205] Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.[206] Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.[207] Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.[208]

Businesses, Professions and Occupations

General law directs a number of state agencies and licensing boards to regulate many professions and occupations and preempts the regulation of many businesses.

Whether or not, and to what degree, current law authorizes or preempts the local regulation of professions and occupations is typically done specifically and individually by subject matter, business type, or profession. For example, Florida law currently preempts local regulation with regard to the following: local fees associated with providing proof of licensure as a contractor, recording a contractor license, or providing, recording, or filing evidence of worker's compensation insurance coverage by a contractor;[209] local fees and rules regarding low-voltage alarm system projects;[210] tobacco and nicotine products;[211] firearms, weapons, and ammunition;[212] employment benefits;[213] styrofoam products;[214] public lodging establishments and public food service establishments;[215] and disposable plastic bags.[216]

Conversely, Florida law also specifically grants local jurisdictions the right to regulate businesses, occupations and professions in certain circumstances. For example, Florida law specifically authorizes regulations relating to: zoning; the levy of reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter;[217] the levy of local business taxes;[218] building code inspection fees;[219] tattoo establishments;[220] massage practices;[221] child care facilities;[222] taxis and other vehicles for hire;[223] and waste and sewage collection.[224]

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[201] Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).
[202] *See City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).
[203] *Mulligan*, 934 So.2d at 1243.
[204] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).
[205] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami,* 812 So.2d 504 (Fla. 3d DCA 2002).
[206] *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011(Fla. 2d DCA 2005).
[207] 12A FLA. JUR 2D COUNTIES, ETC. s. 87 *Implied preemption—When preemption will be implied* (2018).
[208] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880 (Fla. 2010).
[209] s. 553.80(7)(d), F.S.
[210] s. 489.503(14), F.S.
[211] ch. 569, F.S., and s. 386.209, F.S.
[212] s. 790.33(1), F.S.
[213] s. 218.077, F.S.
[214] s. 500.90, F.S.
[215] s. 509.032, F.S.
[216] s. 403.7033, F.S.
[217] s. 166.221, F.S.
[218] ch. 205, F.S.
[219] s. 166.222, F.S.
[220] s. 381.00791, F.S.

Proposed Changes

The bill prohibits counties, municipalities, and other local governments from prohibiting the sale of or offering for sale of tangible personal property that is subject to tax under ch. 212, F.S,(i.e., sales and use tax) which may otherwise lawfully be sold in the state.

Administrative Provisions

Current Situation

Under s. 28.241(1)(a)2., F.S., a party instituting a civil action in circuit court relating to real property or mortgage foreclosure must pay a graduated filing fee based on the value of the claim. For cases where the value of the claim is more than $50,000, but less than $250,000, the filing fee is $900, of which $700 must be remitted by the clerk of court to DOR for deposit in the General Revenue Fund.[225]

Under s. 28.241(6), F.S., attorneys wishing to appear pro hac vice[226] in trial and appellate proceedings must pay a $100 filing fee. The fee is deposited into the General Revenue Fund.

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

Proposed Changes

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

B. SECTION DIRECTORY:

Section 1. Amends ss. 28.241(1) and (6), F.S., to redirect the deposit of certain court fees from the General Revenue Fund to the Miami-Dade Clerk of Court and the State Courts Revenue Fund.

Section 2. Creates s. 125.0103(8), F.S., to provide that except as otherwise provided by law, a county, municipality, or other entity of local government may not prohibit the sale or offer for sale of tangible personal property subject to the tax imposed by chapter 212 which may lawfully be sold in the state.

Section 3. Amends s. 159.621, F.S., to exempt from the excise tax on documents certain notes and mortgages.

Section 4. Creates s. 166.043(8), F.S., to provide that except as otherwise provided by law, a county, municipality, or other entity of local government may not prohibit the sale or offer

[221] s. 480.052, F.S.
[222] s. 402.306, F.S
[223] s. 125.01(1)(n), F.S.
[224] s. 125.01(1)(k), F.S.
[225] s. 28.241(1)(a)2.d.(II), F.S.
[226] An attorney licensed in another state, but not a member of the Florida Bar, may appear in trial and appellate proceedings under certain circumstances. This is referred to as appearing Pro Hac Vice. See: https://www.floridabar.org/rules/upl/upl002/#E-FilingProHacVice (last visited Feb. 15, 2018)

for sale of tangible personal property subject to the tax imposed by chapter 212 which may lawfully be sold in the state.

Section 5. Creates s. 193.0237, F.S., to provide for the assessment of multiple parcel buildings.

Section 6. Creates s. 193.4516, F.S., to provide for ad valorem tax valuation for certain tangible personal property owned and operated by a citrus fruit packing or processing facility for the 2018 tax roll.

Section 7. Provides that the creation of s. 193.4516, F.S., by the bill applies to 2018 property tax roll.

Section 8. Amends s. 194.011(3)(e), F.S., to clarify that where a condominium association has filed a single joint petition to the VAB, the association may continue to represent the unit owners through a related subsequent proceeding

Section 9. Amends s. 194.032(1)(b), F.S., to expand value adjustment board jurisdiction to include appeals pertaining to tax abatements under s. 197.318.

Section 10. Amends s. 194.181(2), F.S., provides statutory changes to conform with the changes in section 8 of the bill.

Section 11. Amends s. 196.173(2), F.S., to update the statutory list of military operations that qualify a servicemember for the additional ad valorem exemption.

Section 12. Amends s. 196.24(1), F.S., to remove the requirement that a surviving spouse be married to a disabled ex-servicemember for at least 5 years prior to his or her death in order to qualify for the ad valorem exemption.

Section 13. Creates s. 197.318, F.S., to provide an ad valorem tax abatement for certain residential improvements damaged by a natural disaster.

Section 14. Amends s. 197.3631, F.S., specifying application of special assessments on multiple parcel buildings.

Section 15. Amends s. 197.572, F.S., relating to easements for conservation purposes.

Section 16. Amends ss. 197.573(1) and (2), F.S., amending provisions related to the survival of restrictions and covenants after a tax sale.

Section 17. Amends s. 201.02(7), F.S., to provide a documentary stamp tax exemption for certain instruments that transfer homestead property between spouses.

Section 18. Creates s. 210.205, F.S., to require reporting by certain entities that receive cigarette tax distributions.

Section 19. Amends s. 212.031(1), F.S., to reduce the business rent tax from 5.8% to 5.5% beginning in calendar year 2019.

Section 20. Creates s. 212.05(6), F.S., to provide that except as otherwise provided by law, a county, municipality, or other entity of local government may not prohibit the sale or offer for sale of tangible personal property subject to the tax imposed by chapter 212 which may lawfully be sold in the state.

Section 21. Amends s. 212.055(2)(d), F.S., to clarify the definition of “public facilities” means facilities enumerated in ss. 163.3164(38), s. 163.3221(13), or s. 189.012(5) and also includes facilities that are necessary to carry out governmental purposes, including but not limited to fire stations, general governmental office buildings, animal shelters.

Section 22. Amends s. 212.08(5)(p), F.S., to set the cap for the Community Contribution Tax Credit Program at $10.5 million for fiscal year 2018-2019, $17 million for fiscal year 2019-2020, and $10.5 million in each fiscal year thereafter.

Section 23. Creates s. 212.099, F.S.; to establish the Florida Sales Tax Credit Scholarship Program, which provides tax credits to certain dealers who make contributions to eligible nonprofit scholarship-funding organizations under ss. 1002.385 and 1002.395.

Section 24. Amends s. 212.12(11), F.S., to direct DOR to make available tax amounts and brackets for the tax imposed under s. 212.031(1), F.S.

Section 25. Amends s. 212.1831, F.S., to modify the calculation of the dealer’s collection allowance under s. 212.12 to include certain contributions to eligible nonprofit scholarship-funding organization.

Section 26. Creates s. 212.205, F.S., to require reporting from certain entities that receive sales tax distributions.

Section 27. Adds new section (21) to s. 213.053, F.S., to authorize the Department of Revenue to disclose certain information to certain nonprofit scholarship-funding organizations relative to the top 200 corporate income or franchise taxpayers.

Section 28. Creates s. 218.131, F.S., to provide an appropriation to offset the reductions in ad valorem tax revenue experienced by fiscally constrained counties, and all taxing jurisdictions within such counties, as a direct result of the implementation of s. 197.318, F.S., by the bill.

Section 29. Creates s. 218.135, F.S., to provide an appropriation to offset the reductions in ad valorem tax revenue experienced by fiscally constrained counties as a direct result of the implementation of s. 193.4516, F.S., by the bill.

Section 30. Provides an appropriation to the Department of Revenue to implement the provisions of s. 218.135, F.S., created by the bill.

Section 31. Amends s. 220.13(1)(a), F.S., to provide an exception to the additions to the calculation of adjusted taxable income for corporate income tax credits taken under s. 220.1875.

Section 32. Amends s. 220.183(1)(c), F.S, to set the cap for the Community Contribution Tax Credit Program at $10.5 million for fiscal year 2018-2019, $17 million for fiscal year 2019-2020, and $10.5 million in each fiscal year thereafter.

Section 33. Amends s. 220.1845(2)(f), F.S., to set the cap for the Brownfields Redevelopment Program Tax Credit at $23 million for fiscal year 2018-2019.

Section 34. Amends 220.1875, F.S., to provide a deadline for an eligible contribution to be made to an eligible nonprofit scholarship-funding organization; and provide compliance requirements to pay tentative taxes under ss. 220.222 and 220.32 for tax credits under s. 1002.395.

Section 35. Amends s. 318.14(9), F.S., to require an 18 percent reduction of a civil penalty under certain circumstances; and to delete the requirement that a specified percentage of the civil penalty be deposited in the State Courts Revenue Trust Fund.

Section 36. Amends s. 318.15, F.S., to make conforming changes to the amendments made to s. 318.14(9) by the bill.

Section 37. Amends s. 376.30781(4), F.S., to increase the total amount of tax credits for the rehabilitation of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas to $23 million for fiscal year 2018-19.

Section 38. Amends s. 624.5105(6), F.S., to set the cap for the Community Contribution Tax Credit Program at $10.5 million for fiscal year 2018-2019, $17 million in fiscal year 2019-2020, and $10.5 million thereafter.

Section 39. Amends ss. 718.111(3), (12) and (13), F.S., to clarify that where a condominium association has filed a single joint petition to the VAB, the association may continue to represent the unit owners through a related subsequent proceeding.

Section 40. Amends s. 741.01(3), F.S., to redirect the deposit of certain court fees from the General Revenue Fund to the State Courts Revenue Fund.

Section 41. Amends s. 1002.395, F.S., to provide an application deadline for certain tax credits under s. 220.1875; to extend the carry forward period for unused tax credits from 5 years to 10 years; and to provide applicability of the carried forward tax credit for purposes of s. 220.02(8).

Section 42. Provides an exemption from the sales and use tax for the retail sale of certain clothes, school supplies, and personal computers and personal computer-related accessories during a specified period; provides emergency rulemaking authority; provides an appropriation.

Section 43. Provides an exemption from the sales and use tax for the retail sale of certain supplies related to disaster preparedness during a specified period; provides emergency rulemaking authority; provides an appropriation.

Section 44. Provides an exemption from the sales and use tax for the purchase of generators used at nursing homes and assisted living facilities during a specified period; provides procedures and requirements for filing applications; provides penalties; provides emergency rulemaking authority; provides retroactive applicability; provides an appropriation.

Section 45. Provides an exemption from the sales and use tax for the purchase of certain fencing materials during a specified period; provides definitions; provides procedures and requirements for filing applications; provides penalties; provides emergency rulemaking authority; provides retroactive applicability.

Section 46. Provides an exemption from the sales and use tax for the purchase of certain building materials used to repair nonresidential farm buildings during a specified period; provides definitions; provides procedures and requirements for filing applications; provides penalties; provides emergency rulemaking authority; provides retroactive applicability.

Section 47. Provides an exemption from certain taxes for the purchase of motor or diesel fuel used to transport agricultural products during a specified period; provides definitions; provides

procedures and requirements for filing applications; provides penalties; provides emergency rulemaking authority; provides retroactive applicability.

Section 48. Adds new paragraph (m) to s. 193.155(8), F.S., to allow certain owners of homestead property damaged by a named tropical storm or hurricane to elect, for purposes of ad valorem assessment, to have the property deemed to have been abandoned as of the date of the storm or hurricane under certain circumstances.

Section 49. Amends s. 163.01(7)(g), F.S., to clarify that certain legal entities created under the Florida Interlocal Cooperation Act of 1969 are not required to pay taxes or assessments regardless of whether the property is located within the jurisdiction of members of the entity, and the exemption is not affected by the entity entering into agreements with private entities for services related to utilities owned by the entity.

Section 50. Amends s. 206.052, F.S., to provide an exemption from motor fuel taxes for certain terminal suppliers who resell motor fuel for immediate export from the state.

Section 51. Amends s. 206.9825, F.S., as amended by ch. 2016-220, Laws of Fla., to reduce the excise tax rate on certain air carriers to 2.85 cents per gallon.

Section 52. Provides that sections 33 through 36 of the act shall be considered revenue laws for purposes of ss. 213.05 and 213.06, F.S., and that the provisions of s. 72.011, F.S., apply to those sections.

Section 53. Provides that the amendments made by this act to ss. 220.13, 220.1875 and 1002.395, F.S., apply to taxable years beginning on or after January 1, 2018.

Section 54. Provides that amendments made by this act to ss. 195.208, 197.572, and 197.573, Florida Statutes, and the creation by this act of s. 193.0237, Florida Statutes, first apply to taxes levied and special assessments levied in 2018.

Section 55. Provides the DOR with emergency rulemaking authority to implement the amendments made to ss. 212.1831, 220.13, 220.1875 and 1002.395, F.S., and the creation by this act of s. 212.099, F.S.

Section 56. Provides an appropriation of nonrecurring funds in fiscal year 2018-19 to DOR to implement the provisions of the act.

Section 57. Provides effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce the sales tax on the rental of commercial real estate. The bill provides for a 10-day back-to-school sales tax holiday and three seven-day disaster preparedness sales tax holidays.

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

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

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

D. FISCAL COMMENTS:

The total impact of the bill in FY 2018-19 is -$331.3 million (-$273.9 million recurring) of which -$292.8 million (-$252.0 million recurring) is on General Revenue, -$3.3 million (-$10.0 million recurring) is on state trust funds, and -$35.2 million (-$11.9 million recurring) is on local government (see table below). Non-recurring state and local government impacts in years beyond FY 2018-19, total -$6.5 million and -$12.9 million, respectively. Total tax reductions proposed by the bill are represented by the sum of the recurring impacts, reflecting the annual value of permanent tax cuts when fully implemented, and the pure nonrecurring impacts, reflecting temporary tax reductions. The total of -$414.2 million in tax reductions proposed by the bill is the sum of -$273.9 million (recurring, excluding appropriations), -$120.9 million (pure nonrecurring in FY 2018-19), and -$19.4 million (pure nonrecurring after FY 2018-19).

Appropriations Detail—The $985,133 appropriated in the bill consists of $243,814 to implement the “back-to-school” sales tax holiday, $91,319 for programming changes and certain taxpayer notifications, and $650,000 to compensate fiscally constrained counties for ad valorem revenue losses. Most of the above appropriations are needed to pay the cost of notifying several hundred thousand sales tax dealers of either the temporary or permanent law changes.

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

	General Revenue		State Trust Funds		Local		Total	
	1st Yr	Recur.	1st Yr	Recur.	1st Yr	Recur.	1st Yr	Recur.
Sales Tax: Scholarships Tax Credits	(154.0)	(154.0)	-	-	-	-	(154.0)	(154.0)
Sales Tax: Business Rent Tax Rate Cut	(34.3)	(82.3)	(*)	(*)	(4.4)	(10.6)	(38.7)	(92.9)
Sales Tax: Tax Holiday/"Back-to-School"	(50.4)	-	(*)	-	(12.9)	-	(63.3)	-
Sales Tax: Tax Holidays/Disaster Preparedness	(9.8)	-	(*)	-	(2.4)	-	(12.2)	-
Sales Tax: Agriculture Building Materials	(7.0)	-	(*)	-	(1.8)	-	(8.8)	-
Sales Tax: Agriculture Fencing	(2.1)	-	(*)	-	(0.6)	-	(2.7)	-
Sales Tax: Generators for Nursing Homes/ALFs	(5.3)	-	(*)	-	(1.4)	-	(6.7)	-
Sales Tax: Scholarships/Direct Pay Coll. Allowance	(0.1)	(0.1)	(*)	(*)	(*)	(*)	(0.1)	(0.1)
Corp Income Tax: Scholarships/Contribution Timing (2)	(10.0)	(10.0)	-	-	-	-	(10.0)	(10.0)
Corp Income Tax: Scholarships/Credit Carryforward	(**)	(**)	-	-	-	-	(**)	(**)
Corp Income Tax: Scholarships/Est. Payment Timing	(**)	+/-	-	-	-	-	(**)	+/-
Corp Income Tax: Scholarships/Top 200 List	(**)	(**)	-	-	-	-	(**)	(**)
Corp Income Tax: Brownfields Credit Increase	(13.0)	-	-	-	-	-	(13.0)	-
Ad Valorem: Citrus Processing/Packing Hurr Relief (1)	-	-	-	-	(10.5)	-	(10.5)	-
Ad Valorem: Condo Assn Appeals	(**)	(**)	-	-	(**)	(**)	(**)	(**)
Ad Valorem: Dis.Vet/Surviving Spouse (1)	-	-	-	-	(*)	(0.1)	(*)	(0.1)
Ad Valorem: FGUA Clarification (1)	-	-	-	-	(*)	(*)	(*)	(*)
Ad Valorem: Save Our Homes Portability (1)	-	-	-	-	-	(1.2)	-	(1.2)
Clerks of Court: Distribution	(1.5)	-	-	-	-	-	(1.5)	-
Doc Stamp Tax: Housing Authority Obligations	(0.2)	(0.2)	(0.3)	(0.3)	-	-	(0.5)	(0.5)
Doc Stamp Tax: Spousal Transfers	(0.6)	(0.6)	(0.9)	(0.9)	-	-	(1.5)	(1.5)
Fuel Tax: Aviation Tax Rate Reduction	-	(0.8)	-	(9.2)	-	-	-	(10.0)
Fuel Tax: Refunds for Agricultural Transportation	-	-	(2.5)	-	(1.2)	-	(3.7)	-
Fuel Tax: Supplier Export Exemption	-	-	(*)	(*)	(*)	(*)	(*)	(*)
Spec. Assessments/Ad Valorem: Multiparcel Buildings	-	-	-	-	(**)	(**)	(**)	(**)
Traffic Fines: 18% Discount	(3.5)	(4.0)	0.4	0.4	-	-	(3.1)	(3.6)
Appropriations: Administration & Fiscally Constrained	(0.99)	-	-	-	-	-	(0.99)	-
2018-19 Total	**(292.8)**	**(252.0)**	**(3.3)**	**(10.0)**	**(35.2)**	**(11.9)**	**(331.3)**	**(273.9)**
Non-recurring Impacts After FY 2018-19	Cash		Cash		Cash		Cash	
Ad Valorem: Hurricane Homestead Tax Relief (1)	-	-	-	-	(12.9)	-	(12.9)	-
Sales Tax/Corp Inc Tax: Comm Cont Tax Credits	(6.0)	-	(*)	-	(0.5)	-	(6.5)	-
Bill Total	**(298.8)**	**(252.0)**	**(3.3)**	**(10.0)**	**(48.6)**	**(11.9)**	**(350.7)**	**(273.9)**
						Pure Nonrecurring =		**(140.3)**
						Recurring + Pure Nonrecurring (3) =		**(414.2)**

(*) Impact less than $50,000; (**) Impact is indeterminate.
(1) Ad valorem tax impacts assume current tax rates.
(2) Revenue Estimating Conference determined these are minimum impacts.
(3) Recurring tax cut total (excl. appropriations) = -$273.9 million
Pure nonrecurring tax cuts in FY 2017-18= -$120.9 million
Pure nonrecurring tax cuts after FY 2017-18 = -$ 19.4 million
-$ 414.2 million

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18(b), of the Florida Constitution may apply because the provisions in the bill providing property tax abatements for homestead properties damaged or destroyed by hurricanes or reductions in valuation of certain tangible personal property used in citrus processing may reduce county and municipal government authority to raise revenue. The bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

The single subject provision in Art. III, section 6, of the Florida Constitution may be implicated by sections 2, 4 and 20 of the bill.

B. RULE-MAKING AUTHORITY:

The DOR has general rulemaking authority to create rules governing the taxes it administers. The bill authorizes DOR to adopt emergency rules to implement numerous changes in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 14, 2018, the Ways & Means Committee adopted seven amendments and reported the proposed committee bill favorably as a bill. The amendments:

- Made technical corrects to sections of the bill related to the Florida Scholarship Tax Credit Program.
- Provide DOR with emergency rulemaking authority.
- Provide that the temporary tax relief provisions related to hurricane damage (ss. 32-35 of the bill) are treated as “revenue laws” for purposes of DOR’s tax administration. This amendment addresses an administrative concern from DOR because the bill sections are in chapter law (not statutory changes).
- Provide property tax relief to owners of homestead property damaged or destroyed by a named tropical storm or hurricane. The amendment allows such homeowners to keep their Save our Homes differential if they move and establish a new homestead as long as they deem the damaged property abandoned.
- Clarify the tax treatment of property located within and outside the jurisdiction of a separate legal entity created under the Florida Interlocal Cooperation Act of 1969.
- Provide a motor fuel tax exemption for certain businesses that sell motor fuel for immediate export from the state if the fuel tax is paid in the other state.
- Reduce the aviation fuel tax for certain air carriers from 4.27 cents per gallon to 2.85 cents per gallon beginning July 1, 2019.

This analysis is drafted to the bill as amended.