HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7097 PCB WMC 20-01 Taxation
SPONSOR(S): Appropriations Committee, Ways & Means Committee, Avila
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ways & Means Committee	12 Y, 4 N	Aldridge	Langston
1) Appropriations Committee	25 Y, 4 N, As CS	Trexler	Pridgeon

SUMMARY ANALYSIS

The bill provides for tax reductions and tax-related modifications that will impact both families and businesses.

The bill provides for a 0.5 percentage point reduction in the state communications services tax.

Several provisions related to sales tax are included:

- A reduction in the tax rate for commercial property rentals from 5.5% to 5.4%;
- A three-day "back-to-school" tax holiday in early August 2020 and a seven-day "disaster preparedness" tax holiday in May and June of 2020;
- A requirement that School Capital Outlay sales surtaxes approved in the future be proportionately shared with charter schools;
- A repeal of the Sports Development Program;
- A change in distributions made under the Tax Collection Enforcement Diversion Program; and
- Future sunset of the Charter County and Regional Transportation System Sales Surtax currently levied in Miami-Dade County, and a requirement that any future levy of the tax in any eligible county be limited to 20 years in duration.

For corporate income tax, the bill provides a one-time increase of $8.2 million for the brownfields tax credit program equal to the amount of the current backlog of approved tax credits. It also amends the calculation of a taxpayer's "final tax liability" for purposes of calculating certain corporate income tax refunds, and allows a one-time credit against corporate income tax for certain car rental, leasing, or financing companies adversely affected by recent federal and state law changes.

The bill provides for restructuring of the authorized uses of tourist development, convention development, and local option food and beverage taxes levied in Miami-Dade County. The bill also expands the allowable uses for tourist development tax in all counties to allow for water quality improvement and parks and trails projects.

Regarding property taxes, the bill amends the requirements for hospitals to qualify for a charitable tax exemption. Non-profit hospitals will be required to document the value of charitable services they provide, and their current charity tax exemption will be limited to the value of that charity care. The bill updates the qualifying operations for the deployed servicemember tax exemption; amends statutory provisions that address conflict of interest for special magistrates; restricts information that may be mailed with the yearly TRIM notice; clarifies the timing of when certain utility owned tangible personal property is included on the tax roll; allows condominium associations to jointly represent condominium owners in certain judicial appeals; amends the definition of "inventory" to include some equipment owned by heavy equipment dealers; and allows educational institutions to qualify for an exemption from property tax on leased property in certain circumstances.

The bill provides for an approximately one-third reduction in the aviation fuel tax paid by commercial air carriers, and a modification to the tax on surplus lines insurance. The bill also includes provisions proposed by the Department of Revenue to enhance the administration of state taxes and oversight of property taxation.

The total state and local government revenue impact of the bill in Fiscal Year 2020-21 is estimated to be -$128.0 million (-$115.3 million recurring), including an impact of -$87.3 million to the General Revenue Fund. The bill also provides nonrecurring appropriations totaling $383,500 from the General Revenue Fund to implement the act. See Fiscal Comments section on page 44 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 (79.0 percent for Fiscal Year 2019-20)[2] and is administered by the Department of Revenue (DOR) under ch. 212, F.S.

Authorized in 1982, the Local Government Half-cent Sales Tax Program generates the largest amount of revenue for local governments among the state-shared revenue sources currently authorized by the Legislature.[3] It distributes a portion of state sales tax revenue via three separate distributions to eligible county or municipal governments. Additionally, the program distributes a portion of communications services tax revenue to eligible local governments. Allocation formulas serve as the basis for these separate distributions. The program's primary purpose is to provide relief from ad valorem and utility taxes in addition to providing counties and municipalities with revenues for local programs.[4]

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.[5] Sales tax is due at the rate of 5.5 percent on the total rent paid for the right to use or occupy commercial real property. Local option sales surtaxes can also apply.[6] 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.

Proposed Changes

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[1] The Legislature reduced the sales tax rate on commercial rentals to 5.5% effective Jan. 1, 2020. *See* s. 33, ch. 2019-42, L.O.F.
[2] Florida Revenue Estimating Conference (REC), 2020 Florida Tax Handbook, p. 16 available at: http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf.
[3] Chapter 82-154, Laws of Fla.
[4] 2019 Local Government Financial Information Handbook, p. 79 available at: http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf.
[5] Chapter 1969-222, Laws of Fla.
[6] Section 212.031, F.S., and Rule 12A-1.070, F.A.C.

The bill reduces the state sales tax rate on rental of commercial real estate from 5.5 percent to 5.4 percent, beginning January 1, 2021.

Sales Tax Holidays

Current Situation

Since 1998, the Legislature has enacted 26 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 eighteen times since 1998. The length of the exemption periods has varied from three to 10 days. The type and value of exempt items has also varied. Clothing and footwear have always been exempted at various thresholds, most recently $60. Books valued at $50 or less were exempted in six periods. School supplies have been included starting in 2001, with the value threshold increasing from $10 to $15. Personal computers and related accessories purchased for noncommercial home or personal use have been included several times with varying sales price thresholds. In 2013 and 2017 such computers and accessories with a sales price of $750 or less were exempted. In 2019, the exemption was for such items with a sales price of $1,000 or less. In 2014 and 2015, the first $750 of the sales price was exempted.

For the 2019-20 school year, none of the Florida school districts held their opening day for students during the first full week of August (Aug. 5-9, 2019). 66 districts (98 percent) had opening days during the second week of August (Aug. 12-16, 2019). The remaining county had its opening day on August 19, 2019. Of the 40 counties that have posted their 2020-2021 school calendar as of a scheduled first day during the second week of August (August 10-14, 2020) and one is scheduled to start on August 17, 2020.

Hurricanes and Disasters in Florida--The Florida Office of Insurance Regulation estimated insured losses of over $7.4 billion due to Hurricane Michael in 2018,[7] $11 billion due to Hurricane Irma in 2017,[8] $1.3 billion due to hurricanes Hermine and Mathew in 2016,[9] $25 billion due to four hurricanes in 2004, and $10.8 billion due to four hurricanes in 2005.[10] Tropical Storm Fay was estimated to have resulted in $242 million of damage in 2008.[11] 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.[12]

Proposed Changes

The bill establishes a temporary back-to-school sales tax holiday and a temporary disaster preparedness sales tax holiday.

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[7] Florida Office of Insurance Regulation, Catastrophe Report, available at: https://floir.com/Office/HurricaneSeason/HurricaneMichaelClaimsData.aspx (last visited Feb. 1, 2020).
[8] Florida Office of Insurance Regulation, Catastrophe Report, available at: https://www.floir.com/Office/HurricaneSeason/HurricaneIrmaClaimsData.aspx (last visited Feb. 1, 2020).
[9] Florida Office of Insurance Regulation, Catastrophe Reports, available at: https://floir.com/Office/HurricaneSeason/HurricaneMatthewClaimsData.aspx and https://floir.com/Office/HurricaneSeason/HurricaneHermineClaimsData.aspx (last visited Feb. 1, 2020).
[10] Florida Office of Insurance Regulation, *Florida Office of Insurance Regulation Hurricane Summary Data*, available at: http://www.floir.com/siteDocuments/HurricaneSummary20042005.pdf (last visited Feb. 1, 2020).
[11] Florida Office of Insurance Regulation, *Florida Office of Insurance Regulation Hurricane Summary Data*, available at: http://www.floir.com/siteDocuments/HurricaneSummary2008.pdf. (last visited Feb. 1, 2020).
[12] Florida Division of Emergency Management, *Disaster Supply Kit*, https://www.floridadisaster.org/planprepare/disaster-supply-kit/ (last visited Feb. 1, 2020).

"Back-to-School Holiday"--A three-day sales tax holiday is authorized from August 7, 2020, through August 9, 2020. 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 various "school supplies" that cost $15 or less per item during the holiday.

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

Disaster Preparedness Sales Tax Holiday--The bill provides for a seven-day sales tax holiday from May 29, 2020, through June 4, 2020, 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 AAA-cell, 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 above sales tax holidays 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.

Additionally, the "back to school" sales tax holiday will 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 are exempt under the holiday. If a qualifying dealer chooses not to participate in the tax holiday, by August 1, 2020, 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 DOR is authorized to adopt emergency rules to implement the provisions of the tax holidays.

Sports Development Program

<u>Sports Development Program</u>

Section 288.11625, F.S., allows for distributions of state sales and use tax revenue pursuant to s. 212.20, F.S., to fund professional sports franchise facilities. The Department of Economic Opportunity

(DEO) administers the program and is responsible for screening applicants[13] for state funding. The purpose of the program is to provide state funding for the construction, reconstruction, renovation, or improvement of a sports facility,[14] the proposed acquisition of land to construct a new facility, and construction of improvements to state-owned land necessary for the efficient use of the facility.

General Application and Approval Process

DEO accepts applications between June 1 and November 1 each year. Within 60 days of receiving a completed application, DEO is required to evaluate the application and notify the applicant in writing of their decision to recommend or deny approval. DEO provides the Legislature with a list of the recommended applicants, ranked in the order of the project's likelihood to positively impact the state. To receive funding, an application must be approved by the Legislature in a conforming bill or general law approved by the Governor, and DEO must certify the applicant and its approved request for funding and notify DOR of the initial certification and distribution amount.

An applicant remains certified for 30 years or the length of the agreement between the beneficiary[15] and the local government that owns the facility or the property on which the facility is or will be located, whichever is less.

DEO may only recommend one distribution per applicant, facility or beneficiary. Furthermore, no facility or beneficiary can receive more than one distribution under s. 212.20, F.S., for any state-administered, sports-related program.[16] An exception exists for applicants who can show that the beneficiary that was the subject of a previous distribution under s. 212.20, F.S., no longer plays at the facility that is the subject of the application under the new program.

Distribution of State Funds

The amount that an applicant may receive is based on 75 percent of the average annual new incremental state sales taxes generated by sales at the facility, and are limited by a tiered system.

DEO is required to consult with DOR and the Office of Economic and Demographic Research (EDR) to develop a standard calculation for estimating the average annual new incremental state sales taxes generated by sales at the facility.

Use of Funds

Once certified, applicants may use Sports Development Program funds for the following purposes:

- Constructing, reconstructing, renovating, or improving a facility or reimbursing such costs;
- Paying or pledging for the payment of debt service on bonds issued for the construction or renovation of a facility;
- Funding debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect thereto on bonds issued for the construction or renovation of a facility; and

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[13] Section 288.11625(2), F.S. An "applicant" is a unit of local government which is responsible for the construction, management, or operation of a facility; or an entity that is responsible for the construction, management, or operation of a facility if a unit of local government holds title to the underlying property on which the facility is located.

[14] *Id.* A "Facility" is a structure, and its adjoining parcels of local-government-owned land, primarily used to host games or events held by a beneficiary and does not include any portion used to provide transient lodging.

[15] *Id.* A "Beneficiary" is a professional sports franchise of the NFL, NHL, NBA, the National League or American League of MLB, Minor League Baseball, MLS, the North American Soccer League (NASL), the Professional Rodeo Cowboys Association (PRCA), the promoter or host of a signature event administered by Breeders' Cup Limited, or the promoter of a signature event sanctioned by the National Association for Stock Car Auto Racing (NASCAR). A beneficiary may also be an applicant under this program.

[16] Such sports-related programs include Professional Sports Franchises (s. 288.1162, F.S.), Spring Training Baseball Franchises (s. 288.11621, F.S.), Sports Development (s. 288.11625, F.S.), and Retention of MLB Spring Training Franchises (s. 288.11631, F.S.). However, if an applicant for the Sports Development Program is already receiving distributions under the Professional Sports Franchises Program (s. 288.1162, F.S.) for the same facility or beneficiary, the applicant is eligible for an additional distribution of up to $1 million if the total project cost exceeds $100 million.

- Reimbursing the costs associated with debt service payments or refinancing of bonds issued for the construction or renovation of a facility.

Contract

Certified applicants must enter into a contract with DEO that meets certain criteria.[17] The contract must also require the applicant to reimburse the state, after all distributions have been made, any amount by which the total distributions made under the program exceed actual new incremental state sales taxes generated by sales at the facility during the contract, plus a 5 percent penalty on that amount.

Applicant History under the Sports Development Program

To date, no applicants have been certified and no funds have been distributed under the Program. In Fiscal Year 2014-15, DEO received four applications: the City of Jacksonville, the City of Orlando, Daytona International Speedway, LLC, and South Florida Stadium, LLC. All applicants qualified for the "special" application process.

In Fiscal Year 2015-16, DEO received four applications: Buccaneers Football Stadium Limited Partnership, the City of Jacksonville, Daytona International Speedway, LLC, and South Florida Stadium, LLC. The Buccaneers application was incomplete and not transmitted to the Legislature, the other applications qualified for the special application process.

In Fiscal Year 2016-17, DEO received one application, from Buccaneers Stadium, LLC. DEO reviewed the application under the "general" application process.

DEO did not receive any applications for the program in Fiscal Years 2017-18 or 2018-19.[18]

Economic Development Programs Evaluation

Section 288.0001, F.S., requires EDR and OPPAGA to include the Sports Development Program among the list of economic development programs scheduled to be reviewed and analyzed by January 1, 2018, and every three years thereafter. As no applicants have been certified under the program and no funds have been distributed, neither OPPAGA[19] nor EDR[20] was able to review and analyze the program in its first three-year reporting cycle.

Proposed Changes

The bill repeals s. 288.11625, F.S., eliminating the Sports Development Program. The bill also removes provisions relating to the distribution of funds under the program, reimbursement provisions, and reporting requirements, to conform to elimination of the program.

Tax Collection Enforcement Diversion Program

Current Situation

The Tax Collection Enforcement Diversion program, which collects revenue due from persons who have not remitted their sales tax collections, began as a pilot program in 2002 and was fully implemented in 2005. The program is operated by participating State Attorney's Offices in cooperation with the DOR. To be eligible for the program, taxpayers must meet certain requirements. They must show a pattern of delinquency for several months, and the delinquency cannot exceed the misdemeanor level. Eight State Attorney's Offices currently participate in the program: Jacksonville,

[17] Section 288.11625(7), F.S.
[18] Email from Karis Lockhart, Deputy Director of Legislative Affairs, DEO (Jan. 17, 2020).
[19] OPPAGA, Report No. 17-13, Florida Economic Development Program Evaluations-Year 5, p. 45 (Dec. 28, 2017).
[20] EDR, Return on Investment for the Florida Sports Foundation Grants and Related Programs, p. 1 (Jan. 1, 2018).

Clearwater, Miami, Tampa, West Palm Beach, Fort Lauderdale, Fort Myers, and Orlando (Key West participated in the program from Fiscal Year 2008-09 through Fiscal Year 2013-14).

Fifty percent of all collections from the program is distributed as sales tax collections via s. 212.20, F.S., and fifty percent is deposited into the special reserve account of the Florida Association of Centers for Independent Living to be used to administer the James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program (JP-PAS) and to contract with the State Attorneys participating in the Tax Collection Enforcement Diversion program. The JP-PAS provides personal care attendants and other support and services to persons with significant and chronic disabilities to enable them to obtain or maintain competitive and integrated employment, including self-employment.

Proposed Change

The bill increases the percentage of collections from the program that are deposited into the special reserve account of the Florida Association of Centers for Independent Living from fifty percent to seventy-five percent.

School Capital Outlay Surtax

Current Situation

Subsection 212.055(6), F.S., authorizes school districts to levy discretionary sales surtaxes for school capital outlay. Each county school board may levy a discretionary sales surtax at a rate not to exceed 0.5 percent, pursuant to a resolution conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum.[21]

The resolution must include a statement that provides a brief and general description of the school capital outlay projects to be funded by the surtax.[22] The resolution must include a plan for the use of the surtax proceeds for fixed capital expenditures or fixed capital costs associated with the construction, reconstruction, or improvement of school facilities and campuses that have a useful life expectancy of five or more years, and any land acquisition, land improvement, design, and related engineering costs. The plan must also include the costs of retrofitting and providing for technology implementation, including hardware and software, for the various sites within the school district. Surtax revenues may be used for the purpose of servicing bond indebtedness to finance authorized projects, and any interest accrued may be held in trust to finance the projects.[23]

Twenty-four counties currently levy a school capital outlay surtax.[24] DOR collects the surtax revenues and is required by law to distribute them to the district school board imposing the tax.[25] There is currently no provision in law requiring school districts to share the capital outlay surtax funds with charter schools.

Proposed Changes

The bill establishes an additional requirement for the resolution that voters must approve in order to levy a school capital outlay surtax. Specifically, such resolution must include a statement that the revenues collected shall be shared with charter schools based on their proportionate share of the total school district enrollment.

[21] Section 212.055, F.S.
[22] Section 212.055(6)(b), F.S
[23] Section 212.055(6)(c), F.S
[24] 2019 Local Government Financial Information Handbook, p. 158. *See*: http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf.
[25] Section 212.055(6)(d), F.S

The bill also requires that charter schools expend the surtax funds in a manner consistent with existing allowable uses for charter school capital outlay funding, as set forth in s. 1013.62(4), F.S., which are for the:

- Purchase of real property.
- Construction of school facilities.
- Purchase, lease-purchase, or lease of permanent or relocatable school facilities.
- Purchase of vehicles to transport students to and from the charter school.
- Renovation, repair, and maintenance of school facilities that the charter school owns or is purchasing through a lease-purchase or long-term lease of 5 years or longer.
- Payment of the cost of premiums for property and casualty insurance necessary to insure the school facilities.
- Purchase, lease-purchase, or lease of driver's education vehicles; motor vehicles used for the maintenance or operation of plant and equipment; security vehicles; or vehicles used in storing or distributing materials and equipment.
- Purchase, lease-purchase, or lease of computer and device hardware and operating system software necessary for gaining access to or enhancing the use of electronic and digital instructional content and resources; and enterprise resource software applications that are classified as capital assets in accordance with definitions of the Governmental Accounting Standards Board, have a useful life of at least 5 years, and are used to support schoolwide administration or state-mandated reporting requirements. Enterprise resource software may be acquired by annual license fees, maintenance fees, or lease agreement.
- Payment of the cost of the opening day collection for the library media center of a new school.

Further, all revenues and expenditures shall be accounted for in a charter school's monthly or quarterly financial statement pursuant to s. 1002.33(9), F.S. These changes only apply to levies authorized by vote of the electors on or after July 1, 2020.

Charter County and Regional Transportation System Surtax

Current Situation

Each charter county that has adopted a charter, each county the government of which is consolidated with that of one or more municipalities, and each county that is within or under an interlocal agreement with a regional transportation or transit authority created under chapter 343 or chapter 349, F.S., may levy a discretionary sales surtax of up to one percent, subject to approval by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county.[26]

Generally, the surtax proceeds are used for the development, construction, operation, and maintenance of fixed guideway rapid transit systems; bus systems; on-demand transportation services; and roads and bridges.[27] Counties eligible to levy the surtax may also use up to 25 percent of the proceeds for nontransit purposes.[28] Currently four counties are levying the tax.[29]

Proposed Changes

The bill provides that the surtax levied in counties, as defined in s. 125.011(1), F.S.,[30] shall expire on December 31, 2049. Any new levy of such surtax, on or after January 1, 2050, must be approved by a

[26] Section 212.055(1), F.S.
[27] Section 212.055(1)(d), F.S.
[28] Section 212.055(1)(d)3., F.S.
[29] Broward, Duval, Hillsborough and Miami-Dade counties levy this tax. *See* 2019 Local Government Financial Information Handbook, p. 158. See: http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf.
[30] Section 125.011(1), F.S., defines "county" as "any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred." This definition currently applies only to Miami-Dade County.

majority vote of the electorate at a general election held within two years prior to the effective date of a new levy.

The bill also provides that any new levy of the surtax by any county approved in a referendum on or after July 1, 2020, may not be authorized for a period of more than 20 years.

Communications Services Tax

Current Situation

Chapter 202, F.S., imposes a tax on the sale of communication services, including wireline and mobile telecommunications service, cable and video service, and direct-to-home satellite service.

The state tax rate for communications services (state CST) is 4.92 percent and is applied to the retail sales price of communications service that originates and terminates in this state, or originates or terminates in this state and is charged to a service address in this state.[31] The tax is calculated and collected on each retail sale of communications services[32] except direct-to-home satellite services, which are taxed at a rate of 9.07 percent.[33] The state also levies a 2.52 percent gross receipts tax on communications services.[34]

Local governments may also levy a communications service tax (local CST), which varies by jurisdiction.[35] The maximum rate for municipalities or charter counties is 5.1 percent (or 4.98 percent if the municipality or charter county levies certain permit fees, which are discussed below).[36] The maximum rate for non-charter counties is 1.6 percent.[37] These maximum rates do not include add-ons of up to 0.12 percent for municipalities and charter counties or up to 0.24 percent for non-charter counties.[38] Further, rates adopted by a local taxing jurisdiction to correct an expected shortfall caused by law changes in 2002 may exceed the statutory maximum rates under certain circumstances.[39] The local CST does not apply to direct-to-home satellite services.[40]

The state CST is distributed by a similar formula as the sales and use tax, as prescribed in s. 212.20(6), F.S., with most of the proceeds deposited into the General Revenue Fund and a portion distributed to local governments.[41]

Proposed Changes

The bill reduces the state CST rate for general communications services from 4.92 percent to 4.42 percent. The bill reduces the CST rate for direct-to-home satellite services from 9.07 percent to 8.57 percent. The bill provides that these reduced rates shall be applied to bills for communications services dated on or after January 1, 2021.

Corporate Income Tax

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[31] Section 202.12(1)(a), F.S.
[32] In addition, a gross receipts tax of 2.52 percent is calculated and collected on the same taxable transactions and remitted with the communications services tax. S. 203.01(1)(b), F.S.
[33] Section 202.12(1)(b), F.S.
[34] Section 203.01(1)(a) and (b), F.S.
[35] Section 202.19(1), F.S.
[36] Section 202.19(2)(a), F.S.
[37] Section 202.19(2)(b), F.S.
[38] Section 202.19(2)(c), F.S.
[39] Section 202.20(2)(a)3. F.S.
[40] Section 202.19(6), F.S.
[41] Section 202.18(1), F.S. In addition, the gross receipts tax collected on communications services pursuant to s. 203.01(1)(b), F.S., goes to the Public Education Capital Outlay and Debt Service Trust Fund (PECO).

Florida levies corporate income tax on corporations of 5.5 percent for income earned in Florida.[42] The calculation of Florida corporate income tax starts with a corporation's federal taxable income.[43] 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.[44] The Florida corporate income tax uses a three-factor apportionment formula consisting of property, payroll, and sales (which is double-weighted) to measure the portion of a multistate corporation's business activities attributable to Florida.[45] 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.[46]

Voluntary Cleanup Tax Credit (VCTC) 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;[47]
- 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.[48]

Eligible tax credit applicants may receive up to $500,000 per site per year in tax credits. Due to concern that some participants in a voluntary cleanup might only conduct enough work to eliminate or minimize their exposure to third party lawsuits, current law also provides a completion incentive in the form of an additional 25 percent supplemental tax credit for those applicants that completed site rehabilitation and received a Site Rehabilitation Completion Order from 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 fiscal year 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 $108.1 million in VCTCs.[49] Since 2014, the approved tax credits have averaged more than $12.3 million per year.

[42] Section 220.11, F.S.
[43] Section 220.12, F.S.
[44] Section 220.15, F.S.
[45] Section 220.15, F.S.
[46] Section 220.14, F.S.
[47] Section 376.30781, F.S.
[48] Section 220.1845, F.S.
[49] Email correspondence with DEP staff, Feb. 6, 2020, on file with House Ways & Means Committee.

As of February 1, 2020, DEP had a backlog of $8.2 million in approved tax credits that have not been funded.[50] DEP received 149 VCTC applications for 2019 calendar year expenses totaling $13.0 million.[51,52]

Proposed Changes

The bill provides a one-time additional tax credit authorization of $8.2 million for Fiscal Year 2020-21.

Automatic Refunds

Current Situation

On December 22, 2017, the federal government passed the Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018 (Tax Cuts and Jobs Act).[53] On February 9, 2018, the Bipartisan Budget Act of 2018 was passed, which contained tax extender legislation.[54] The acts made substantial changes to the taxation of individuals and business entities in all industries and contained numerous significant amendments to the Internal Revenue Code (IRC). One of the most significant changes that the Tax Cuts and Jobs Act made was amending IRC section 11(b) to permanently reduce the federal corporate income tax rate from 35 percent to 21 percent for taxable years beginning after December 31, 2017. Additionally, numerous changes were made to the calculation of federal taxable income. On balance, the federal tax base was substantially expanded. The Legislature adopted measures in response to the 2017 and 2018 federal income tax legislation during the 2018 and 2019 legislative sessions.

One such measure requires any collections in excess of "adjusted forecasted collections" during Fiscal Year 2018-19 to be refunded to eligible corporate taxpayers no later than May 1, 2020, according to a process set forth in statute. "Adjusted forecasted collections" is defined as the amount of net collections of corporate income tax forecasted by the Revenue Estimating Conference for the 2018-19 fiscal year on February 23, 2018, multiplied by 1.07.

Taxpayers eligible for refunds are those with taxable years beginning between April 1, 2017, and March 31, 2018, and whose final tax liability for that period is greater than zero. An eligible taxpayer's refund will equal the total excess collections multiplied by that taxpayer's final tax liability as a percentage of the total liabilities of all eligible taxpayers. Current estimates are that $543 million will be refunded to taxpayers by May 1, 2020, as a result of this provision.

For purposes of calculating the refund each taxpayer may receive, its "final tax liability" is the taxpayer's amount of tax due under this chapter for a taxable year, reported on a return filed with the department. The amount of tax due on a taxpayer's return is the amount owed after all required tax calculations are made, including accounting for applicable credits, including the credit allowed under s. 220.1875, F.S., for certain contributions made to eligible nonprofit scholarship-funding organizations under the Florida Tax Credit Scholarship Program. Businesses that used tax credits pursuant to s. 220.1875, F.S., for taxable years beginning between April 1, 2017, and March 31, 2018, had a lower "final tax liability" than they would have had without making eligible contributions to eligible organizations and therefore are eligible for a smaller proportion of the $543 million in refunds scheduled to be made by May 1, 2020.

Proposed Change

[50] DEP, Voluntary Cleanup Tax Credit Backlog, https://floridadep.gov/sites/default/files/VCTC-Pending-Awards_30Jul19.pdf (last visited Feb. 5, 2020)
[51] Email correspondence with DEP staff, Feb. 5, 2020, on file with House Ways & Means Committee.
[52] Note that, for various reasons, not all of the $12.9 million in tax credits applied for will be approved.
[53] Public Law No. 115-97, H.R. 1 (Dec. 22, 2017). The act was originally introduced as the Tax Cuts and Jobs Act.
[54] Public Law No. 115-123, H.R. 1892 (Feb. 9, 2018). Tax extenders are temporary tax laws that have a set expiration date, but are typically kept alive through extensions. Because lawmakers generally extend these laws they are collectively referred to as "tax extenders."

The bill, in effect, allows credits taken under s. 220.1875, F.S., to count towards a taxpayer's "final tax liability" for purposes of calculating refunds available under s. 220.1105, F.S.

Like-Kind Property Exchange Relief

Current Situation

Bonus Depreciation

The IRC allows a taxpayer to deduct the cost of long-term business assets by deducting a portion of the cost over the useful life of the property (depreciation).[55] Since taxpayers deduct for depreciation in calculating their federal taxable income, the deduction is already included when the taxpayer begins calculating its Florida taxable income.

For the past decade, federal legislation has granted an additional, first-year depreciation deduction (bonus depreciation).[56] The legislation has generally authorized 50 or 100 percent of the cost of qualifying property to be deducted in the first year of depreciation. Currently, some level of bonus depreciation is authorized through 2026.

Generally, the entire cost of an asset is depreciable over time. Therefore, bonus depreciation deductions do not increase the total amount that can be deducted as depreciation; bonus depreciation merely accelerates the depreciation deduction. That being said, the immediate fiscal impact of bonus depreciation can substantially reduce corporate income tax receipts in the near term. As an example, the Revenue Estimating Conference determined that bonus depreciation granted by the Tax Increase Prevention Act of 2014 would reduce Fiscal Year 2015-16 General Revenue receipts by $180 million.[57]

Due to the near term fiscal impact that bonus depreciation deductions would have on Florida, the Legislature has chosen to "decouple" from these deductions by requiring taxpayers to add back the amount of bonus depreciation to their taxable income for Florida purposes and then subtract 1/7th of that amount over seven years.[58] This treatment has the effect of giving the taxpayer the benefit of bonus depreciation at the federal level, but requiring the taxpayer to "spread" that benefit over a 7-year period for Florida's tax purposes.

The Tax Cuts and Jobs Act of 2017

On December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act of 2017 (TCJA).[59] The TCJA made significant changes to federal income tax provisions related to individuals, corporations, and the treatment of foreign income. Included in the TCJA was an extension of bonus depreciation through taxable years beginning before January 1, 2027.[60]

Section 1031 Exchanges

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[55] *See generally* ss. 167 and 168, IRC.
[56] *See* the Economic Stimulus Act of 2008, Pub. L. No. 110-185; the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5; the Small Business Jobs Act of 2010, Pub. L. No. 111-240; the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312; the American Taxpayer Relief Act of 2012, Pub. L. No. 112-240; the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295; the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113; and the Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97.
[57] Revenue Impact Conference Impact Statement, Proposed Language, January 26, 2015, *available at:* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2015/_pdf/page17-18.pdf (last visited Feb. 4, 2020).
[58] *See* chs. 2008-206, 2009-192, 2011-229, 2013-46, 2015-35, 2016-220, and 2018-119, L.O.F.
[59] Pub. Law No. 115-97 (Dec. 22, 2017).
[60] For simplicity, the chart above shows the TCJA's bonus depreciation provisions as applying to taxable years beginning January 1, 2018; however, the TCJA also applied its bonus depreciation provisions to qualifying property acquired after September 27, 2017. *See* Tax Cuts and Jobs Act of 2017, s. 13201, Pub. L. No. 115-97.

Generally, when a taxpayer sells an asset, the IRC requires the taxpayer to recognize as income any gain on the sale.[61] One exception to this general recognition rule is provided by section 1031 of the IRC, for transactions commonly known as "like-kind exchanges" or "1031 exchanges."

Prior to the TCJA, s. 1031 of the Code provided that a taxpayer shall not recognize gain or loss when business property was exchanged for business property of a like kind.[62] For example, this type of transaction could be used by a rental car company that regularly updates its rental fleet.[63] So, companies that were using s. 1031 of the IRC to avoid recognizing income when business equipment was exchanged, would not be required to recognize income at the federal level. When the income was not recognized at the federal level, that income would likewise not be recognized for Florida tax purposes.

Importantly, the TCJA amended s. 1031 of the IRC to limit use of the provision to exchanges of realty. Therefore, corporations must report any gain or loss as part of their income moving forward. The effect of losing the ability to use s. 1031 of the IRC may be mitigated at the federal level because the TCJA provides 100 percent bonus depreciation deduction on the new equipment purchase. For Florida tax purposes, companies are now required to report their income earned on like-kind exchanges, but "spread" the bonus depreciation amount over seven years.

Proposed Changes

The bill creates s. 220.197, F.S., which provides a $2 million credit against the 2018 state corporate income tax of certain motor vehicle rental, motor vehicle leasing, and motor vehicle financing companies.

A corporation is eligible for a $2 million credit if it deferred gains on the sale of its personal property assets under s. 1031 of the Internal Revenue Code for the purposes of federal income tax during its taxable year that began on or after August 1, 2016, but before August 1, 2017, and it is:

- A car rental or leasing company that is classified under NAICS[64] industry group code 53211 that had a final tax liability of more than $15 million for its taxable year beginning on or after August 1, 2017, and before August 1, 2018. This tax liability must also be at least 700 percent greater than its final tax liability from its prior tax year; or
- A car sales financing establishment or car leasing company, classified under NAICS industry group code 522220 and 532112, respectively, that had a final tax liability of more than $15 million for its taxable year beginning on or after August 1, 2017, and before August 1, 2018. This tax liability must also be at least $15 million greater than its final tax liability from the prior tax year.

These provisions operate retroactively to January 1, 2018, and take effect upon becoming law.

Aviation Fuel Tax

Current Situation

Florida Law

[61] *See* s. 62(a)(3), IRC.
[62] *See* s. 1031(a)(1), IRC (2016).
[63] Gerald Auten, David Joulfaian, and Romen Mookerjee, *Recent Trends in Like-kind Exchanges*, 1 (August 1, 2017), *available at* https://ssrn.com/abstract=3049029 or http://dx.doi.org/10.2139/ssrn.3049029. "Indeed, the most common like-kind exchanges are now those involving the 'trade-in' of vehicles and replacement vehicles and vehicle fleets, e.g., by rental car companies, farmers, and businesses."
[64] The NAICS is the North American Industry Classification System developed by the Office of Management and Budget for use by Federal statistical agencies to classify business establishments for the collection, analysis, and publication of statistical data related to the U.S. business economy. U.S. Census Bureau, *Introduction to NAICS*, https://www.census.gov/eos/www/naics/ (last visited Feb. 4, 2020).

Florida law imposes an excise tax of 4.27 cents on every gallon of aviation fuel sold in the state or brought into the state for use.[65] 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."[66]

In 2018, the Legislature reduced the excise tax on aviation fuel from 4.27 cents per gallon to 2.85 cents per gallon for aviation fuel paid by an air carrier who conducts scheduled operations or all-cargo operations that are authorized under 14 C.F.R. parts 121, 129, or 135. The tax reduction is available only through a refund of previously paid taxes. The purchaser must pay the 4.27 cents per gallon tax at the time of purchase and request a refund of 1.42 cents per gallon. The refund provided under this section plus the refund provided under s. 206.9855, F.S., related to wages paid by air carriers to employees located or based within Florida may not exceed 4.27 cents per gallon of aviation fuel purchased by an air carrier.

Collections of aviation fuel tax in Fiscal Year 2020-21 are estimated to be $15.3 million, net of refunds.[67]

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.[68] 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.[69] 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."[70] However, the revenue from state and local taxes on aviation fuel which were in effect prior to December 30, 1987, is considered "grandfathered" and is eligible for use for otherwise impermissible expenditures.[71] 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.[72] On April 26, 2016, the Florida Department of Transportation validated the state's compliance with the FAA regulation.[73]

<u>Proposed Changes</u>

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[65] Section 206.9825, F.S.
[66] Section 206.9815, F.S.
[67] EDR, Florida Transportation Revenue Estimating Conference, Jan. 2020.
[68] USDOT, Administrations, available at: http://www.dot.gov/administrations (last visited Feb. 15, 2018).
[69] 49 U.S.C. §§ 47107(b) and 47133; Public Laws No. 97-248 and 100-223.
[70] "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).
[71] 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.
[72] 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).
[73] 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.

The bill further reduces the net excise tax on aviation fuel (after accounting for refunds) from 2.85 cents per gallon to 1.89 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. Using the same refund mechanism enacted in 2018 described above, the bill increases the refund available to these air carriers from 1.42 cents per gallon to 2.38 cents per gallon.

Surplus Lines Tax

Current Situation

Surplus lines insurance refers to a category of insurance for risks for which the admitted market is unable or unwilling to provide coverage.[74] There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that admitted insurers view as undesirable;
- Niche risks for which admitted carriers do not have a filed policy form or rate; and
- Capacity risks that are risks where an insured needs higher coverage limits than those that are available in the admitted market.

Surplus lines insurers are not "authorized" insurers as defined in the Florida Insurance Code, which means they do not obtain a certificate of authority from OIR to transact insurance in Florida.[75] Rather, surplus lines insurers are "unauthorized" insurers[76] that may transact surplus lines insurance, if they are made eligible by OIR.

The Florida Surplus Lines Service Office (FSLSO) is a self-regulating, nonprofit association of approved unauthorized insurers established by the Legislature in 1997. The FSLSO was created to protect consumers seeking surplus line insurance in the state, monitor marketplace compliance, and protect state revenues.[77] All licensed surplus lines agents are deemed to be members of the FSLSO. The FSLSO operates under the supervision of a nine-member board of governors, which has oversight responsibilities for the Florida surplus lines market.

The premiums charged for surplus lines coverages are subject to a premium receipts tax of 5 percent of all gross premiums charged for such insurance.[78] However, when a multistate policy covers risk outside of Florida and Florida is the home state for purposes of the Nonadmitted and Reinsurance Reform Act of 2010, the tax rate is limited to the tax rate where an insured risk is located.[79]

Proposed Changes

The bill reduces the statutory tax rate on surplus line insurance premiums from 5 percent to 4.94 percent. For multistate policies, the bill also eliminates the provision in statute that limits such premiums covering risk outside of Florida to the tax rate where the insured risk is located.

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.[80] Ad valorem taxes are collected on the fair market value of the property, adjusting for any exclusions, differentials or exemptions.

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[74] The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. S. 626.921, F.S.
[75] Section 624.09(1), F.S.
[76] Section 624.09(2), F.S.
[77] See section 626.921, F.S. and FLORIDA SURPLUS LINES SERVICE OFFICE, *About*, https://www.fslso.com/about (last visited Jan. 26, 2020).
[78] Section 626.932(1), F.S.
[79] Section 626.932(3), F.S.
[80] 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.[81] 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.[82]

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.[83] The Florida Constitution grants property tax relief in the form of certain valuation differentials,[84] assessment limitations,[85] and exemptions,[86] including the exemptions relating to municipalities and exemptions for educational, literary, scientific, religious or charitable purposes.

Property Tax Assessments - Condominium Associations

Current Situation

Condominium association unit owners and cooperative associations unit owners are assessed yearly ad valorem[87] taxes by the county property appraiser.[88] For condominium unit owners, ad valorem taxes for common elements are divided and levied proportionally among individual condominium parcel owners.[89]

Current law permits condominium and cooperative associations to file a single joint petition to the Value Adjustment Board ("VAB") contesting the tax assessment of all units within the condominium or cooperative.[90] The association must provide each unit owner notice of the petition and their right to opt out of the appeal, if desired.[91]

A decision by the VAB may be appealed to the circuit court.[92] 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 and when initiating an appeal of the VAB's decision, it is unclear whether the association may defend, on behalf of unit owners, an appeal of the VAB's decision by the property appraiser.[93]

The court in *Central Carillon Beach Condominium v. Garcia* took up this issue in a case of first impression.[94] Petitioners were two condominium associations who had represented their unit owners in

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[81] Fla. Const. art VII, s. 2.
[82] 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).
[83] "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).
[84] Fla. Const. art VII, s. 4, authorizes valuation differentials, which are based on character or use of property.
[85] 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 percent or the percentage change in the Consumer Price Index. S. 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.
[86] 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.
[87] "Ad valorem tax" means a tax based upon the assessed value of property. Section 192.001(1), F.S.
[88] Section 194.011, F.S.
[89] Section 718.120(1), F.S.; Office of the Attorney General, Advisory Legal Opinion – AGO 99-12, Mar. 8, 1999.
[90] Section 194.011(3)(e), F.S.
[91] Section 194.171, F.S.
[92] Section 194.011(3)(e), F.S.
[93] *Id*.
[94] *Central Carillon Beach Condominium Association, Inc., et al., v. Garcia, etc, et al.,* 245 So. 3d 869 (Fla. 3d DCA 2018).

a tax assessment challenge before a VAB (Associations). Respondent was the property appraiser for Miami-Dade County (Appraiser).[95]

When the Associations initially challenged their tax assessment, the VAB substantially lowered their assessed property values.[96] As a result, the Appraiser challenged the decision in an appeal to the Miami-Dade Circuit Court, and named the individual unit owners, instead of the Associations.[97] In response, the Associations submitted a motion to dismiss the appeal and a motion for certification of the unit owners as a defense class. Both motions were denied by the circuit court, and the Associations appealed the denial of the motion to the Third District Court of Appeal.[98] In response, the Appraiser argued that defense class certification should be denied, and the appeal should name individual unit owners, because statutes governing tax assessment challenge procedures require that individual unit owners be named on appeal.[99]

Section 194.181(2), F.S., states that in any case brought by the taxpayer or association contesting the assessment of any property, the county property appraiser shall be party. In any case brought by the property appraiser alleging specific legal violations in the VAB's decision or claiming a certain monetary variance between the assessed value of the property by the property appraiser and the VAB in the decision,[100] the taxpayer shall be party defendant. "Taxpayer" is defined as the person or other legal entity in whose name property is assessed, including an agent of a timeshare period titleholder.[101] In *Central Carillon*, the individual unit owners were assessed the taxes, not the associations.[102]

The Associations argued that this law conflicts with condominium association law which generally allows associations to represent unit owners through their rights of collective representation.[103]

Section 718.111(3), F.S., in pertinent part, states that:

"The association may institute… or appeal actions or hearings in its name on behalf of all unit owners concerning matters of common interest to most or all unit owners, including, but not limited to, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; representations of the developer pertaining to any existing or proposed commonly used facilities; and protesting ad valorem taxes on commonly used facilities and on units; and may defend actions in eminent domain or bring inverse condemnation actions. If the association has the authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action."

The court found that the Associations' argument was unsupported, stating that the provision only addresses ad valorem taxes in one phrase: "protesting ad valorem taxes on commonly used facilities and on units." The Associations protested the ad valorem taxes on behalf of all units, but the lawsuits brought by the Appraiser against the unit owners are not "protests." Rather, they are judicial review proceedings in which the unit owners are defendants. The specific cases in which an association may defend on behalf of all unit owners are "actions in eminent domain."[104]

The Associations argued that because they could bring a class action if they were appealing a decision of the VAB, they "may be joined in an action as a representative of that class with reference to litigation…." However, the court found that s. 718.111(3), F.S., was not as precisely applied to the

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[95] *Id*. at 869.
[96] *Id*. at 870.
[97] *Id*. at 871.
[98] *Id*. at 869.
[99] *Id*. at 871.
[100] Section 194.036(1)(a), (b), F.S. In cases where the property appraiser is claiming a systematic violation of legal requirements, the VAB is the defendant.
[101] Section 192.001(13), F.S.
[102] *Central Carillon*, *supra* note 20, at 871.
[103] *Id.* at 871, 872.
[104] *Id.* at 872.

Appraiser's lawsuits against the unit owners as the ad valorem litigation provision, s. 194.181(2), F.S., which states that when an appraiser is the plaintiff seeking circuit court review of the VAB decision, "the taxpayer shall be the party defendant…."[105]

Based on this statutory interpretation, the court in *Central Carillon* found that current law does not allow such an association to act on behalf of unit owners on appeal where a VAB decision is appealed by the property appraiser.[106]

Proposed Changes

The bill amends current law to clarify that where an association has filed a single joint petition to challenge a tax assessment, a condominium or cooperative association may continue to represent, prosecute, and defend the unit owners through any related subsequent proceeding in any tribunal and any appeals. This provision will apply to cases pending on July 1, 2020.

The bill provides that in any case brought by the property appraiser concerning a value adjustment board decision on a single joint petition filed by a condominium or cooperative association, the association and all unit owners included in the single joint petition are the party defendants. The bill also requires, in cases in which the association chooses to continue in the appeal process, that the association must notify all unit owners of their options to participate or not participate. The notice must be hand-delivered or delivered by certified mail, return receipt requested, or transmitted electronically if a unit owner has expressly consented in writing to receive such notices through electronic transmission. The association must provide at least 14 days for unit owners to respond to the notice. Any unit owner failing to respond to the notice will be represented in the response or answer filed by the association.

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;
- Operation Enduring Freedom, which began on October 7, 2001, and ended on December 31, 2014;
- 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;

[105] *Id.* at 872.
[106] *Id.* at 873.
[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] Section 196.173(4), F.S.

- 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]

Proposed Changes

The bill updates the statutory list of military operations eligible for the exemption by adding Operation Juniper Shield, which began February 2007, Operation Pacific Eagle, which began September 2017, and Operation Martillo, which began January 2012. The bill also removes Operation Enduring Freedom which ended on December 31, 2014.

Ad Valorem Exemption for Hospitals

Current Situation

Florida Charitable Property Tax Exemption

The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,[111] and it provides for specified assessment limitations, property classifications and exemptions.[112] After the local property appraiser considers any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.[113] Such exemptions include, but are not limited to, exemptions for such portions of property used predominately for educational, literary, scientific, religious, or charitable purposes.[114]

The Legislature implemented these constitutional exemptions and set forth the criteria used to determine whether property is entitled to an exemption for use as a charitable, religious, scientific, or literary purpose.[115] Specific provisions exist for property for hospitals, nursing homes, and homes for special services;[116] property used for religious purposes;[117] educational institutions[118] and charter schools;[119] labor organization property;[120] nonprofit community centers;[121] biblical history displays;[122] and affordable housing.[123]

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[110] Section 196.173(3), F.S.
[111] Fla. Const., art. VII, s. 4.
[112] Fla. Const., art. VII, ss. 3, 4, and 6.
[113] Section 196.031, F.S.
[114] Fla. Const., art. VII, s. 3.
[115] Sections 196.195 and 196.196, F.S.
[116] Section 196.197, F.S.
[117] Sections 196.1975(3) and 196.196(3), F.S.
[118] Section 196.198, F.S.
[119] Section 196.1983, F.S.
[120] Section 196.1985, F.S.
[121] Section 196.1986, F.S.
[122] Section 196.1987, F.S.
[123] Section 196.196(5), F.S.

In determining whether the use of a property qualifies the property for an ad valorem tax exemption, the property appraiser must consider the nature and extent of the qualifying activity compared to other activities performed by the organization owning the property, and the availability of the property for use by other qualifying entities.[124] Only the portions of the property used predominantly for qualified purposes may be exempt from ad valorem taxation. If the property owned by an exempt organization is used exclusively for exempt purposes, it shall be totally exempt from ad valorem taxation.

Charitable Organizations

Under federal law, an organization may only be tax-exempt if it is organized and operated for exempt purposes, including charitable and religious purposes.[125] None of the organization's earnings may benefit any private shareholder or individual, and the organization may not attempt to influence legislation as a substantial part of its activities. Charitable purposes include relief of the poor, the distressed or the underprivileged, the advancement of religion, and lessening the burdens of government.

Florida law defines a charitable purpose as a function or service which is of such a community service that its discontinuance could legally result in the allocation of public funds for the continuance of the function or the service.[126]

Determining Profit vs. Non-Profit Status of an Entity

Current law outlines the criteria a local property appraiser must consider in determining whether an applicant for a religious, literary, scientific, or charitable exemption is a nonprofit or profit-making venture for the purposes of receiving an exemption.[127] An applicant must provide the property appraiser with "such fiscal and other records showing in reasonable detail the financial condition, record of operations, and exempt and nonexempt uses of the property . . . for the immediately preceding fiscal year."[128]

The applicant must show that "no part of the subject property, or the proceeds of the sale, lease, or other disposition thereof, will inure to the benefit of its members, directors, or officers or any person or firm operating for profit or for a nonexempt purpose."[129]

Based on the information provided by the applicant, the property appraiser must determine whether the applicant is a nonprofit or profit-making venture or if the property is used for a profit-making purpose.[130] In doing so, the property appraiser must consider the reasonableness of various payments, loan guarantees, contractual arrangements, management functions, capital expenditures, procurements, charges for services rendered, and other financial dealings.

A religious, literary, scientific, or charitable exemption may not be granted until the property appraiser, or value adjustment board on appeal, determines the applicant to be nonprofit.[131]

Additional Criteria for Hospitals, Nursing Homes, and Homes for Special Services

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[124] Section 196.196(1)(a)-(b), F.S.
[125] 26 U.S.C. § 501(c)(3).
[126] Section 196.012(7), F.S.
[127] Section 196.195, F.S.
[128] Section 196.195(1), F.S.
[129] Section 196.195(3), F.S.
[130] Section 196.195(2)(a)-(e), F.S.
[131] Section 196.195(4), F.S.

In addition to the above criteria, hospitals,[132] nursing homes[133] and homes for special services[134] must be a Florida non-profit corporations that are exempt organizations under the provisions of s. 501(c)(3) of the Internal Revenue Code.[135]

In determining the extent of the exemption to be granted to hospitals, nursing homes, and homes for special services, portions of the property leased as parking lots or garages operated by private enterprise are not exempt from taxation.[136] Property or facilities which are leased to a nonprofit corporation which provides direct medical services to patients in a nonprofit or public hospital and qualify under s. 196.196, F.S., are exempt from taxation.[137]

Federal Charity Care Reporting Requirements

To qualify for federal tax exemption, hospitals must report their community benefit activities to the Internal Revenue Service by filing IRS Form 990 and a supplemental Schedule H form. Community benefit activities include the net, unreimbursed costs of charity care (providing free or discounted services to patients who qualify under the hospital's financial assistance policy); participation in means-tested government programs, such as Medicaid; health professions education; health services research; subsidized health services; community health improvement activities; and cash or in-kind contributions to other community groups.[138] Net community benefit activities do not include revenue from uncompensated care pools or programs, such as Low Income Pool or Disproportionate Share Hospital funds.[139]

Proposed Changes

The bill requires that the value of charity care provided by a hospital in each county be compared to the tax value of the hospital's property exemption in each county. If the value of the charity care is less than the tax value of the all of the hospital's exempt property, then the hospital's exemption on each parcel in a county will be reduced to reflect the ratio of the hospital's charity care in the county to the tax value of all of the hospital's exempt property in the county. The language sets forth specific computations for the above.

The bill requires hospitals when applying for the exemption each year to provide their IRS form 990, schedule H, and a schedule displaying; 1) the value of charitable services provided or performed in each Florida county in which a hospital's properties are located; and 2) the portion of charitable services reported by the hospital on its most recently filed IRS Form 990, schedule H, attributable to the services and activities provided or performed by the hospital outside of Florida. The sum of the amounts provided in the schedule must equal the total net community benefit expense reported by the hospital on its most recently filed IRS Form 990, schedule H.

The bill also requires hospitals to provide a statement signed by the hospital's CEO and an independent certified public accountant that the information submitted is true and correct.

Ad Valorem Exemption – Leases by Educational Institutions

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[132] Section 196.012(8), F.S., "Hospital" means an institution which possesses a valid license granted under chapter 395 on January 1 of the year for which exemption from ad valorem taxation is requested

[133] Section 196.012(8), F.S., "Nursing home" or "home for special services" means an institution that possesses a valid license under chapter 400 or part I of chapter 429 on January 1 of the year for which exemption from ad valorem taxation is requested.

[134] *Id*; s. 400.801, F.S. "Home for special services" means a site licensed by AHCA prior to January 1, 2006, where specialized health care services are provided, including personal and custodial care, but not continuous nursing services.

[135] Section 196.197, F.S.

[136] *Id.*

[137] *Id.*

[138] James, Julia. Health Affairs, *Nonprofit Hospitals' Community Benefit Requirements* (2016), available at: https://www.healthaffairs.org/do/10.1377/hpb20160225.954803/full/ (last viewed Feb. 28, 2019); Department of the Treasury, Internal Revenue Service, *Instructions for Schedule H (Form 990)* (2018), on file with Health Market Reform Subcommittee Staff.

[139] Department of the Treasury, Internal Revenue Service, *Instructions for Schedule H (Form 990)* (2018), on file with Health Market Reform Subcommittee Staff.

Current Situation

Educational Property Tax Exemption

All property in the state is subject to taxation unless it is expressly exempted.[140] Section 196.012, F.S., provides a number of relevant definitions related to exemptions:

- "Exempt use of property" or "use of property for exempt purposes" means predominant or exclusive use of property owned by an exempt entity for educational, literary, scientific, religious, charitable, or governmental purposes.[141]
- "Exclusive use of property" means use of property solely for exempt purposes.[142]
- "Use" means the exercise of any right or power over real or personal property incident to the ownership of the property.[143]

Property used for educational purposes is generally exempt from property tax in Florida.[144] Generally, in order to be exempt, the property has to be both owned by an educational institution and used for educational purposes by the educational institution or another exempt entity.[145][146]

Proposed Changes

The bill amends s. 196.198, F.S., to provide that land, buildings, and other improvements to real property used exclusively for educational purposes shall also be exempt from ad valorem taxes if, under a lease, the educational institution is responsible for any taxes owed and for ongoing maintenance and operational expenses for the land and buildings, and if the real property has been used for educational purposes and has received the exemption under this section for that property for any 10 prior years. For such leasehold properties, the educational institution shall receive the full benefit from the exemption. The owner of the property shall disclose to the educational institution the full amount of the benefit derived from the exemption and the method for ensuring the educational institution receives the benefit.

Construction Work in Progress

Current Situation

Section 192.001(11(d), F.S., defines "tangible personal property" as 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.[147] All tangible personal property is subject to ad valorem taxation unless expressly exempted.[148] Household goods and personal effects,[149] items of inventory,[150] and up to $25,000 of assessed value for each tangible personal property tax return[151] are exempt from ad valorem taxation. Anyone who owns tangible personal property on January 1 of each year and who has

[140] *See* FLA. CONST. art. VII, ss. 3 and 4, and s. 196.001, F.S.
[141] Section 196.012(1), F.S.
[142] Section 196.012(2), F.S. Such purposes may include more than one class of exempt use.
[143] Section 196.012(4), F.S.
[144] Section 196.198, F.S.
[145] *Id.*
[146] In a 2012 opinion, the Attorney General's office specifically opined that an educational entity operating a school on property owned by another entity did not qualify for the educational exemption, even if the two entities had identical members, as the educational institution did not own the property. See Op. Att'y Gen. Fla. 2012-15 (2012), available at: http://www.myfloridalegal.com/ago.nsf/Opinions/183655E0401BCD59852579EB0074D15F (last visited February 24, 2020).
[147] Section 192.001(11)(d), F.S.
[148] Section 196.001(1), F.S.
[149] Section 196.181, F.S.
[150] Section 196.185, F.S.
[151] Section 196.183, F.S.

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.[152]

Section 192.001(11)(d), F.S., also defines "construction work in progress" as items consisting of tangible personal property commonly known as fixtures, machinery, and equipment when in the process of being installed in new or expanded improvements to real property and whose value is materially enhanced upon connection or use with a preexisting, taxable, operational system or facility. Construction work in progress is subject to ad valorem taxation when it is deemed to be substantially completed, meaning when it is connected with the preexisting, taxable, operational system or facility.

Proposed Changes

The bill amends s. 192.001(11)(d), F.S., to clarify that for purposes of tangible personal property constructed or installed by an electric utility, construction work in progress shall not be deemed substantially complete unless all permits or approvals required for commercial operation have been received and approved.

Inventory- Heavy Equipment Rental Dealers

The Florida Constitution allows the Legislature to exempt from ad valorem taxation tangible personal property held for sale as stock in trade.[153]

Current law exempts from ad valorem taxation all items of inventory.[154] "Inventory" is defined as chattels consisting of items commonly referred to as goods, wares, and merchandise (as well as inventory) which are held for sale or lease to customers in the ordinary course of business. Supplies and raw materials are considered to be inventory only to the extent that they are acquired for sale or lease to customers in the ordinary course of business or will physically become a part of merchandise intended for sale or lease to customers in the ordinary course of business. Partially finished products which when completed will be held for sale or lease to customers in the ordinary course of business are deemed items of inventory. All livestock is considered inventory. Items of inventory held for lease to customers in the ordinary course of business, rather than for sale, shall be deemed inventory only prior to the initial lease of such items.[155]

Proposed Change

The bill amends the definition of "inventory" in s. 192.001(11), F.S., to include, for all levies other than school district levies, construction equipment owned by a heavy equipment rental dealer for sale or short-term rental in the normal course of business on the annual assessment date. The bill defines the term "heavy equipment rental dealer" as a person or entity principally engaged in the business of short-term rental and sale of equipment described under the North American Industrial Classification System,[156] including attachments for the equipment or other ancillary equipment. The term "short-term rental" means the rental of a dealer's heavy equipment rental property for a period of less than 365 days, under an open-ended contract, or under a contract with unlimited terms. The prior short-term rental of any construction or industrial equipment does not disqualify such property from qualifying as inventory under the new provisions following the term of such rental. This exemption does not apply to equipment rented with an operator.

The effect of this change will be to exempt the listed equipment from ad valorem taxation.

Value Adjustment Boards

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[152] Section 193.062, F.S.; *see also* DOR, Tangible Personal Property, https://floridarevenue.com/property/Pages/Taxpayers_TangiblePersonalProperty.aspx (last visited Feb. 13, 2020).
[153] FLA. CONST. art. VII, s. 4(c).
[154] Section 196.185, F.S.
[155] Section 192.001(11)(c), F.S.
[156] 2017 NAICS Definition, 532412, Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing

Current Situation

Part 1 of ch. 194, F.S., provides for the administrative review of ad valorem tax assessments and exemption denials through local value adjustment boards (VABs). The VAB hearings are a venue in which taxpayers can present their case to a neutral party without the need to hire an attorney or go through the formal process of a circuit court case.

Current law authorizes a property owner to initiate a review by filing a petition with the clerk of the VAB within 25 days of the mailing of the Truth in Millage (TRIM) notice.[157]

In most counties, the VAB hearing takes place in front of a special magistrate instead of the VAB.[158] Special magistrates are experienced appraisers and attorneys who are hired to serve as impartial hearing officers.[159] After the hearing the special magistrate produces a recommended decision which is given to the VAB which produces the final decision. This step does not occur if the VAB hears the petition directly.

Once the final written decision is issued by the VAB, if the petitioner disagrees with the decision, he or she then has 60 days to file an action in circuit court contesting that decision.[160] However, an appeal of a VAB decision by the property appraiser must be filed, if the tax roll has been extended during a VAB hearing, within 30 days of the certification.[161] In addition, it does not appear that either party is afforded the authority to file a counterclaim to an appeal.

Proposed Changes

As current law requires VAB special magistrates to be qualified individuals, many are familiar with and employed in the appraisal business. The bill strengthens the statutory provisions that address conflict of interest for special magistrates. Specifically, the bill amends s. 194.035(1), F.S., providing that an appraisal performed by a special magistrate may not be submitted as evidence to the value adjustment board in any roll year during which he or she has served on that board as a special magistrate.

The Truth in Millage (TRIM) notice

Current Situation

Each August, a TRIM notice is sent out by the property appraiser to all taxpayers providing specific information about their parcel.[162]

The TRIM notice lists each taxing authority that levies taxes on the property, how much they collected from that parcel in the previous year, how much they propose to collect this year, and how much would be levied on the property if the taxing authority made no budget changes.[163] It also lists the day and time that the taxing authority will be holding its preliminary budget hearing, so that the taxpayer can participate in the process and provide input to the taxing authority if they disagree with the proposed taxes.[164] After this meeting, where a tentative millage (tax) rate and budget are adopted, the taxing authority must then publish the proposed millage rate[165] and the proposed budget[166] in a newspaper of

[157] Section 194.011(3), F.S.
[158] Section 194.035(1), F.S., requires the use of special magistrates in counties with a population over 75,000. Smaller counties may opt to use special magistrates.
[159] Section 194.035(1), F.S.
[160] Section 194.171(2), F.S.
[161] Section 193.122(4), F.S.
[162] Section 200.069, F.S.
[163] *Id.*
[164] Section 200.069(4)(g), F.S.
[165] Section 200.065(3), F.S.
[166] Section 200.065(3)(l), F.S.

general circulation before holding a meeting for the final adoption of the millage rate and budget.[167] This gives citizens two opportunities to have input into the process of setting the millage rate and budget.

The TRIM notice also provides key information about the valuation of the property. It lists the value the property appraiser has placed on the property, shows any reductions which have been made to that value due to a classification or assessment limitation, and shows what exemptions have been granted on that property and the value of those exemptions.[168] This gives taxpayers notice of the assessment of their property, lets them review any assessment limitations or classifications applied, allows them to check to make sure they are getting all of the exemptions they are entitled to receive, and allows them to dispute any of these matters before the tax bills are sent out.

Proposed Changes

The bill prohibits inclusion in the annual TRIM notice of information or statements not relating to the items that are in the notice. Specifically, the bill amends s. 200.069, F.S., requiring the property appraiser to only include in the mailing of the notice of ad valorem taxes and non-ad valorem assessments additional statements explaining any item in the notice and any other relevant information for property owners.

Tourist Development Taxes

Current Situation

The Local Option Tourist Development Act[169] authorizes counties to levy five separate taxes on transient rental[170] transactions ("tourist development taxes" or "TDTs"). Depending on a county's eligibility to levy such taxes, the maximum tax rate varies from a minimum of three percent to a maximum of six percent:

- The original TDT may be levied at the rate of 1 or 2 percent.[171]
- An additional 1 percent tax may be levied by counties who have previously levied a TDT at the 1 or 2 percent rate for at least three years.[172]
- A high tourism impact tax may be levied at an additional 1 percent.[173]
- A professional sports franchise facility tax may be levied up to an additional 1 percent.[174]
- An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.[175]

TDT Process

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[167] Section 200.065 (2)(d), F.S.
[168] Section 200.069(6), F.S.
[169] Section 125.0104, F.S.
[170] Section 125.0104(3)(a)(1), F.S. considers "transient rental" to be the rental or lease of any accommodation for a term of 6 months or less.
[171] Section 125.0104(3)(c), F.S. Sixty-three counties levy this tax, all at a rate of 2 percent. Office of Economic & Demographic Research (EDR), Local Option Tourist / Food & Beverage Tax Rates, *available at* http://edr.state.fl.us/Content/local-government/data/county-municipal/ (last visited Jan. 25, 2020). These counties are expected to collect an estimated $1.01 billion in revenue in the 2019-2020 state fiscal year. 2019 Local Government Financial Information Handbook, p. 243, *available at* http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf (last visited Feb. 3, 2020).
[172] Section 125.0104(3)(d), F.S. Fifty-four of the eligible 59 counties levy this tax, with an estimated 2019-20 state fiscal year collection of $169 million. *Id at 263.*
[173] Section 125.0104(3)(m), F.S. Seven of the nine eligible counties levy this tax, with an estimated 2019-20 state fiscal year collection of $106 million. *Id at 269.*
[174] Section 125.0104(3)(l), F.S. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities or professional sports franchises, and convention centers and to promote and advertise tourism. Forty-five of the 67 eligible counties levy this additional tax, with an estimated 2019-20 state fiscal year collection of $183 million. *Id at 267.*
[175] Section 125.0104(3)(n) F.S. Thirty of the eligible 65 counties levy the additional professional sports franchise facility tax, with an estimated 2019-20 state fiscal year collection of $147 million. *Id at 273.*

Each county that levies the original 1 or 2 percent tax is required to have a "tourist development council."[176] The tourist development council is a group of residents from the county that are appointed by the county governing authority. The tourist development council, among other duties, makes recommendations to the county governing authority for the effective operation of the special projects or for uses of the TDT revenue.

Prior to the authorization of the original 1 or 2 percent TDT, the levy must be approved by a countywide referendum[177] and additional TDT levies must be authorized by a vote of the county's governing authority or by voter approval of a countywide referendum.[178] Each county proposing to levy the original 1 or 2 percent tax must then adopt an ordinance for the levy and imposition of the tax,[179] which must include a plan for tourist development prepared by the tourist development council.[180] The plan for tourist development must include the anticipated net tax revenue to be derived by the county for the two years following the tax levy, as well as a list of the proposed uses of the tax and the approximate cost for each project or use.[181] The plan for tourist development may not be substantially amended except by ordinance enacted by an affirmative vote of a majority plus one additional member of the governing board.[182]

TDT Uses

Current statute prescribes the authorized uses of TDT revenues, which includes tourism marketing, water- or beach-oriented projects, and construction of tourist-related facilities.[183] The permitted uses of each local option tax vary according to the particular levy.

Revenues received by a county from a tax levied under s. 125.0104(3)(c) and (d), F.S. (the original 1 or 2 percent levy and the additional 1 percent levy), must be used only for purposes listed in s. 125.0104(5), F.S. Revenues received by a county from a tax levied under s. 125.0104(3)(m), F.S. (the High Tourism Impact Tax of 1%), must also be used for purposes listed in s. 125.0104(5), F.S. These purposes are:

- The acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum that is publicly owned and operated or owned and operated by a not-for-profit organization, or promotion of a zoo.
- Promotion and advertising of tourism in the state.
- Funding of convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies, or by contract with chambers of commerce or similar associations in the county.
- Financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river.[184]
- In counties with populations less than 750,000, tourist development tax revenue may be used for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement, maintenance, operation, or promotion of zoos, fishing piers, or nature centers which are publicly

[176] Section 125.0104(4)(e), F.S.
[177] Section 125.0104(6), F.S.
[178] Section 125.0104(3)(d), F.S.
[179] Section 125.0104(4)(a), F.S.
[180] Section 125.0104(4), F.S.
[181] *See* s. 125.0104(4), F.S.
[182] *See* s. 125.0104(4), F.S. The provisions found in ss. 125.0104(4)(a)-(d), F.S., do not apply to the high tourism impact tax, the professional sports franchise facility tax, or the additional professional sports franchise facility tax.
[183] Florida Legislative Committee on Intergovernmental Relations, Issue Brief: Utilization of Local Option Tourist Taxes by Florida Counties in Fiscal Year 2009-10 (December 2009), available at http://edr.state.fl.us/Content/local-government/reports/localopttourist09.pdf (last visited Jan. 25, 2020).
[184] In counties with populations less than 100,000, up to 10 percent of tourist development tax revenues may be used for financing beach park facilities. *See* s. 125.0104(5)(a), F.S.

owned and operated or owned and operated by a not-for-profit organization and open to the public.
- A county located adjacent to the Gulf of Mexico or the Atlantic Ocean, except a county that receives revenue from taxes levied pursuant to s. 125.0108, F.S., may use up to 10 percent of the tax revenue received pursuant to this section to reimburse expenses incurred in providing public safety services, including emergency medical services, and law enforcement services, which are needed to address impacts related to increased tourism and visitors to an area.
- Securing revenue bonds issued by the county for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum or financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control.

Revenues received by a county from a tax levied under s. 125.0104(3)(l), F.S., (the original 1 percent levy or the additional 1 percent levy under s. 125.0104(3)(n), F.S.) can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities or professional sports franchises, and to promote and advertise tourism. The original 1 percent levy may also be used to operate or maintain a convention center.

The use of TDT revenue for any purpose not expressly authorized in statute is expressly prohibited.[185]

TDT Administration

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

Current Collections and Related Expenditures in Miami-Dade County

Based on the Miami-Dade County budget for Fiscal Year 2019-20,[186] actual TDT collections for 2018-19 were nearly $47 million, comprised of:
- Tourist Development Tax[187] revenues of $31,223,480, and
- Professional Sports Facilities Tax[188] revenues of $15,611,740.

The estimated 2019-20 collections are nearly $49 million, comprised of:
- Tourist Development Tax revenues of $32,464,000, and
- Professional Sports Facilities Tax revenues of $16,232,000.

These funds were budgeted for use as follows[189]:
- TDT revenues were budgeted for distribution to:
  - The Greater Miami Convention and Visitors Bureau (60% minus a stipend to the Tourist Development Council),
  - The Cultural Affairs Council (within the Miami-Dade County Department of Cultural Affairs) (20%), and
  - City of Miami (20%), which is used for debt service.
- Professional Sports Facilities Tax revenues were exclusively budgeted for debt service.

[185] Section 125.0104(5)(e), F.S.
[186] Available at https://www.miamidade.gov/budget/library/fy2019-20/adopted/appendix-o.pdf (last visited Feb. 3, 2020).
[187] Section 125.0104(3)(c), F.S.
[188] Section 125.0104(3)(l), F.S.
[189] *Id.*

- The debt secured and paid by this revenue stream over time has included funds for the Key Biscayne Golf Course, Golf Club of Miami, Orange Bowl Stadium, International Tennis Center, Miami Arena, Homestead Sports Complex, and the Dade International Speedway.[190]

Proposed Changes

The bill expands the list of allowable uses of TDT revenues to include public parks and trails and water quality improvement projects. Allowable water quality improvement projects include, but are not limited to, flood mitigation; seagrass or seaweed removal; algae control, cleanup, or prevention measures; and septic to sewer conversion projects intended to prevent, mitigate, or ameliorate damage to the water quality of surface waters important to the tourism industry of the jurisdiction.

The bill also increases from 750,000 to 950,000, the current population threshold under which counties are allowed to use tourist development tax revenue for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement, maintenance, operation, or promotion of zoos, fishing piers, or nature centers which are publicly owned and operated or owned and operated by a not-for-profit organization and open to the public.

The bill limits the uses of TDT revenues in Miami-Dade County.[191] It allows Miami-Dade County to use TDT revenues to complete the terms of any project or contract in effect as of the date the bill becomes law, including debt service on such projects, but does not allow use of revenues for extension of any project, contract, or debt service beyond the terms in effect as of the date the bill becomes law. Any revenue not needed for those purposes is redirected to the following:

- 50 percent of the revenues will be distributed back to the local government jurisdictions within which the revenues were collected. For amounts collected and remitted within municipalities, the revenues will be distributed back to each local governing body in proportion to the amount of revenue received from that municipality. For unincorporated areas, revenues will be distributed back to Miami-Dade County. The jurisdictions are authorized to use these revenues to:
  - Promote or advertise tourism, through direct expenditures by the jurisdiction or through an interlocal agreement with the Greater Miami Convention and Visitors Bureau;
  - Reimburse expenses incurred in providing public safety services related to tourism, like emergency medical or law enforcement services, provided that such revenues may not supplant the normal operating expenses incurred for such services; or
  - Finance certain public facility infrastructure projects, if the public facilities are needed to increase tourist-related business activities in the county or subcounty special district and are recommended by the county tourist development council. TDT revenues may also be used for any related land acquisition, land improvement, design, and engineering costs and all other professional and related costs required to bring public facilities into service.[192] Any public facility infrastructure projects are subject to the conditions currently applicable to similar infrastructure projects in s. 125.0104(5)(a)6., F.S.:
    - The use must be approved by a vote of at least two-thirds of the county governing board membership;
    - No more than 70 percent of the cost of the new facilities may be paid for with these TDT revenues;
    - No more than 40 percent of these TDT revenues collected by the county are spent to promote and advertise tourism; and

[190] Professional Sports Franchise Facility Tax, available at http://www.miamidade.gov/finance/library/bond-book/2018/special/professional-sports-tax-receipts.pdf (last visited Feb. 3, 2020).

[191] The bill only affects a county as defined in s. 125.011(1), F.S. Section 125.011(1), F.S., defines "county" as "any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred." This definition currently applies only to Miami-Dade County.

[192] Infrastructure projects are limited to the acquisition, construction, extension, enlargement, remodel, repair, improvement, maintenance, or operation of public facilities in the jurisdiction. "Public facilities" is defined to mean "major capital improvements that have a life expectancy of 5 or more years, including, but not limited to, transportation; sanitary sewer, including solid waste, drainage, and potable water; and pedestrian facilities."

        - An independent analysis, performed at the expense of the county tourist development council, must demonstrate the positive impact of the infrastructure project on tourist-related business in the county.
    - Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote parks or trails that are either publicly owned and operated or owned and operated by a not-for-profit organization and open to the public.

- 20 percent of the revenues will be distributed to the county to fund the primary bureau, department, or association responsible for organizing, funding, and promoting opportunities for artists and cultural organizations within the county. The organization currently meeting this criteria is the Miami-Dade Department of Cultural Affairs.[193]

- 30 percent of the revenues will be distributed to the county to be used for any new purpose specified for the current food and beverage tax in s. 212.0306, F.S., renamed the Local Option Coastal Recovery and Resiliency Tax by the bill. These include any one or more of the following, as decided by a majority of the governing board of the county:
    - Water quality improvement projects, including, but not limited to:
        - Flood mitigation,
        - Seagrass or seaweed removal,
        - Algae control, cleanup, or prevention measures,
        - Biscayne Bay and waterway network restoration measures, and
        - Septic to sewer conversion projects primarily undertaken to reduce or prevent the discharge of wastewater into surface waters important to the tourism industry of the jurisdiction, if the septic system being converted is within 2 miles of any surface water other than those designated as Outstanding Florida Waters, or within 5 miles of Outstanding Florida Waters.[194]
    - Erosion control.
    - Mangrove protection.
    - Removal of invasive plant and animal species.
    - Beach renourishment.
    - Purchase of land for conservation purposes.
    - Coral reef protection.

Convention Development Taxes

Current Situation

The Convention Development Tax Act[195] authorizes certain counties or sub-parts of counties to levy convention development taxes on transient rental transactions. Depending on a jurisdiction's ability to levy such taxes, the maximum tax rate varies from a minimum of one percent to a maximum of three percent:

- The consolidated county convention tax may be levied at two percent.[196]
- The charter county convention tax may be levied at three percent.[197]
- The special district, special, and subcounty convention tax may be levied at a rate up to three percent.[198]

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[193] For more information on this organization, visit https://www.miamidadearts.org (Last visited Feb. 3, 2020).
[194] "Outstanding Florida Waters" is a designation used by the Department of Environmental Protection pursuant to s. 403.061(27), F.S., to identify surface waters that are worthy of special protection because of their natural attributes and importance to the state. A complete list of current Outstanding Florida Waters is adopted in Rule 62-302.700(9), F.A.C.
[195] Section 212.0305, F.S.
[196] Section 212.0305(4)(a), F.S.
[197] Section 212.0305(4)(b), F.S.
[198] Section 212.0305(4)(c),(d), and (e), F.S.

Duval County (as a county consolidated with a municipality), Miami-Dade County (as a charter county), and parts of Volusia County currently levy the maximum convention development tax allowable in their respective jurisdictions.[199]

CDT Process

CDT levies must be authorized pursuant to an ordinance enacted by the county's governing body.[200] A certified copy of the ordinance imposing the levy must be furnished by the county to DOR within 10 days after approval of such ordinance.[201] The effective date of imposition of the levy can be the first day of any month at least 60 days after enactment of the ordinance. Revenues must be deposited in a convention development trust fund, established by the county before they can receive any CDT funds.[202]

The charter county development tax has an exception for municipalities in which a municipal tourist tax is levied and in which a resolution prohibiting imposition of the charter county convention development levy within such municipality has been adopted.[203] The convention development levy is imposed by the county in all other areas of the county except municipalities which have a municipal tourist tax and which have adopted a resolution. No CDT funds may be used in a municipality which has adopted such a resolution. In Miami-Dade County, three jurisdictions have a municipal tourist tax and have adopted a resolution under this provision. Those jurisdictions are Bal Harbour, Miami Beach, and Surfside.[204]

CDT Uses

Generally, the revenues raised by CDT levies may be used for capital construction of convention centers and other tourist-related facilities, as well as tourism promotion; however, the authorized uses vary by levy.

The charter county convention development tax, levied only by Miami-Dade County, is restricted to the following uses:

- Two-thirds of the proceeds were to be used to extend, enlarge, and improve the largest existing publicly owned convention center in the county.[205] Since this project was completed, this tax revenue was authorized for use to acquire, construct, extend, enlarge, remodel, repair, improve, plan for, operate, manage, or maintain one or more convention centers, stadiums, exhibition halls, arenas, coliseums, auditoriums, golf courses, or an intercity light rail transportation system.[206]
- One-third of the proceeds were to be used to construct a new multipurpose convention/coliseum/exhibition center/stadium or the maximum components thereof as funds permit in the most populous municipality in the county (Miami).[207] Since this project was completed, tax revenues may be used, as determined by the county, to operate an oversight authority or to acquire, construct, extend, enlarge, remodel, repair, improve, operate, or maintain one or more convention centers, stadiums, exhibition halls, arenas, coliseums, auditoriums, golf courses, or related buildings and parking facilities in Miami.[208]

Current Collections and Related Expenditures in Miami-Dade County

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[199] Office of Economic & Demographic Research (EDR), Local Option Tourist / Food & Beverage Tax Rates, available at http://edr.state.fl.us/Content/local-government/data/county-municipal/ (last visited Jan. 25, 2020).
[200] Section 212.0305(4)(b)1., F.S.
[201] Section 212.0305(4)(b)6., F.S.
[202] Section 212.0305(4)(b)7., F.S.
[203] Section 212.0305(4)(b)3., F.S.
[204] Office of Economic & Demographic Research (EDR), Local Option Tourist / Food & Beverage Tax Rates, available at http://edr.state.fl.us/Content/local-government/data/county-municipal/ (last visited Jan. 25, 2020).
[205] Section 212.0305(4)(b)2.a., F.S.
[206] Section 212.0305(4)(b)2.c., F.S.
[207] Section 212.0305(4)(b)2.b., F.S.
[208] Section 212.0305(4)(b)2.d., F.S.

In the State Fiscal Year 2019-20, Miami-Dade County will realize an estimated $97,025,000 in CDT revenue.[209] Budgeted expenditures include payments to Miami-Dade County for bond payments for the Performing Arts Center and neighborhood cultural facilities, Performing Arts Center operations, American Airlines Arena operations and maintenance, and interlocal payments to the Cities of Miami Beach and Miami, as well as residual payments to Miami-Dade County for eligible projects.[210]

Proposed Changes

The bill limits the uses of CDT revenues to the following:

- To complete the terms of any project or contract in effect as of the date the bill becomes law, including debt service on such projects, but does not allow revenues to be used for extension of any project, contract, or debt service beyond the terms in effect as of the date the bill becomes law.
- Any revenue not needed for those purposes is redirected to the following:
  - One-half of the revenues will be distributed back to the municipal jurisdictions within the county. Revenues will be distributed back to each municipality in proportion to the amount of revenue collected in that municipality compared to the revenues collected in all municipalities within the county. The jurisdictions are authorized to use the revenues to acquire, construct, extend, enlarge, remodel, repair, improve, operate, or maintain one or more of the following: a convention center, exhibition hall, coliseum, auditorium, or related building or parking facility in the jurisdiction. They are also authorized to use the revenues to promote and advertise tourism and tourism promotion bureaus or to enter into an interlocal agreement with the county-wide tourism bureau to use the funds.
  - One-half of the revenues will be distributed to Miami-Dade County. The county is authorized to use the revenues to acquire, construct, extend, enlarge, remodel, repair, improve, operate, or maintain one or more of the following: a convention center, exhibition hall, coliseum, auditorium, or related building or parking facility in the county. The county may also use the proceeds to fund a countywide convention and visitors bureau which, by interlocal agreement and contract with the county, has been given the primary responsibility for promoting the county and its cities as business and pleasure destinations. The organization currently meeting this criteria is the Greater Miami Convention and Visitors Bureau.[211]

Local Option Food and Beverage Tax

Current Situation

Section 212.0306(1)(a), F.S., authorizes Miami-Dade County to impose, by majority vote of the county's governing body, a 2 percent tax on the sale of food, beverages, and alcoholic beverages in restaurants, coffee shops, snack bars, wet bars, night clubs, banquet halls, catering or room services, and any other food and beverage facilities in or on the property of hotels and motels. Like the tourist development tax, the proceeds of this 2 percent tax must be used to fund a convention bureau or to fund similar tourism promotion activities.[212]

Food and Beverage Tax Process

The levy of the food and beverage tax must be authorized pursuant to an ordinance enacted by the county's governing body.[213] A certified copy of the ordinance imposing the levy must be furnished by the county to DOR within 10 days after approval of such ordinance.[214] The effective date of imposition of the levy can be the first day of any month at least 60 days after enactment of the ordinance.[215] The

[209] Available at https://www.miamidade.gov/budget/library/fy2019-20/adopted/appendix-o.pdf (last visited Feb. 3, 2020).
[210] *Id.*
[211] For more information on this organization, visit https://www.miamiandbeaches.com/about-gmcvb (Last visited Feb. 3, 2020).
[212] Section 212.0306(3)(a), F.S.
[213] Section 212.0306(1)(a), F.S.
[214] Section 212.0306(4), F.S.
[215] Section 212.0306(5), F.S.

county must locally administer the tax subject to the same provisions in s. 125.0104, F.S., that local jurisdictions which self-administer tourist development taxes must use.[216]

The food and beverage tax has an exception for municipalities in which a municipal tourist tax is levied.[217] In Miami-Dade County, three jurisdictions have a municipal tourist tax: Bal Harbour, Miami Beach, and Surfside.[218]

Food and Beverage Tax Uses

The revenues raised by the food and beverage tax are to be used to fund a countywide convention and visitors bureau which, by interlocal agreement and contract with the county, has been given the primary responsibility for promoting the county and its cities as business and pleasure destinations. The organization currently meeting this criteria is the Greater Miami Convention and Visitors Bureau.[219] In the event the interlocal agreement and contract end, the funds are to be used for general tourism purposes consistent with the TDT provisions in ss. 125.0104(5)(a)2. and 3., F.S.

Current Collections and Related Expenditures in Miami-Dade County

In the State Fiscal Year 2019-20, Miami-Dade County will realize an estimated $8,131,000 in revenue from the food and beverage tax in hotels and motels.[220] Budgeted expenditures include $100,000 to the Tourist Development Council and the remainder to the Greater Miami Convention and Visitors Bureau.

<u>Proposed Changes</u>

The bill names the 2 percent food and beverage tax the "Local Option Coastal Recovery and Resiliency Tax."

The bill redirects the use of tax revenues as follows:

- Funds are used to complete the terms of the contract in effect as of the date the bill becomes law but does not allow the use of revenues for the extension of any contract beyond the terms in effect as of the date the bill becomes law.
- Any revenue not needed for those purposes is redirected to any one or more of the following, as decided by a majority of the governing board of the county:
  - Water quality improvement projects, including, but not limited to:
    - Flood mitigation,
    - Seagrass or seaweed removal,
    - Algae control, cleanup, or prevention measures,
    - Biscayne Bay and waterway network restoration measures, and
    - Septic to sewer conversion projects primarily undertaken to reduce or prevent the discharge of wastewater into surface waters important to the tourism industry of the jurisdiction, if the septic system being converted is within 2 miles of any surface water other than those designated as Outstanding Florida Waters, or within 5 miles of Outstanding Florida Waters.[221]
  - Erosion control.
  - Mangrove protection.
  - Removal of invasive plant and animal species.
  - Beach renourishment.
  - Purchase of land for conservation purposes.

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[216] Section 212.0306 (6), F.S.
[217] Section 212.0306(2)(d), F.S.
[218] Office of Economic & Demographic Research (EDR), Local Option Tourist / Food & Beverage Tax Rates, available at http://edr.state.fl.us/Content/local-government/data/county-municipal/ (last visited Jan. 25, 2020).
[219] For more information on this organization, visit https://www.miamiandbeaches.com/about-gmcvb (Last visited Feb. 3, 2020).
[220] Available at https://www.miamidade.gov/budget/library/fy2019-20/adopted/appendix-o.pdf (last visited Feb. 3, 2020).
[221] "Outstanding Florida Waters" is a designation used by the Department of Environmental Protection pursuant to s. 403.061(27), F.S., to identify surface waters that are worthy of special protection because of their natural attributes and importance to the state. A complete list of current Outstanding Florida Waters is adopted in Rule 62-302.700(9), F.A.C.

- Coral reef protection.

Department of Revenue Tax Administration and Oversight Legislative Concepts

General Tax Administration

Extending Documentation Period for Purchases of Boats And Aircraft

Current Situation

Nonresidents[222] who purchase a boat or aircraft in Florida for use in other locations are not required to pay Florida sales tax on their purchase if the item is removed from the state within a statutory time frame and documentation is provided to DOR to show that the boat or aircraft was removed and titled or registered in another jurisdiction. Currently, the following time limits are in statute:

- A purchaser has **30 days** from the date of departure to provide DOR with documentation that the boat or aircraft has been titled or registered in another jurisdiction. If proof of registration is not available within **30 days**, the purchaser must provide evidence that the registration was applied for in another jurisdiction within the timeframe and must send a follow up to DOR with the registration once it has been received.
- A purchaser has **10 days** from the date the boat or aircraft left Florida to provide DOR with proof of the removal.
- The selling dealer has **5 days** from the date of the sale to provide to DOR a copy of the invoice (or other proof of sale) and a copy of the original affidavit from the purchaser attesting that he or she has read the statute on nonresident purchases.

Proposed Changes

The bill extends each of the current statutory deadlines for documentation to allow additional time for the purchaser and dealer to provide information to DOR as follows:

- Proof of titling or registration- **90 days**,
- Proof of removal- **30 days**, and
- Dealer provision of invoice- **30 days**.

Form 1099-K Reporting Requirement

Current Situation

Section 6050W of the Internal Revenue Code requires certain entities to file a return each year providing information about payments made by credit card or third party merchants.[223] The return is Form 1099-K, and is required to be filed for each calendar year on or before the last day of February of the year following the transactions.[224]

Reportable transactions include any transaction where the payment method is a payment card (credit card, debit card, or similar) or a third party payment system (like PayPal or Apple Pay). The return is filed by the payment settlement entity (e.g., a bank, credit card company, or payment platform like PayPal) and a copy is provided to dealers who have payment card transactions (credit card sales) of any amount, or who have third-party payment transactions (e.g., PayPal) in excess of $20,000 over more than 200 transactions.[225] These sales should be included in the payee's gross income on their tax returns for the year.

[222] Section 212.05(1)(a)2., F.S., provides that Florida sales tax does not apply to the purchase of a boat or aircraft if the purchaser is, at the time of delivery, (1) a nonresident of the state, (2) not engaged in carrying on a trade or business which would use the boat or aircraft in the state, and (3) not a corporation which has any Florida resident officers or directors.
[223] 26 U.S. Code s. 6050W(e)
[224] https://www.irs.gov/forms-pubs/about-form-1099-k (last visited Feb. 4, 2020).
[225] https://www.irs.gov/businesses/understanding-your-form-1099-k (last visited Feb. 4, 2020).

Some states require payment settlement entities to submit a copy of any Form 1099-K related to sales in that state or for residents of that state, if the IRS already requires the Form 1099-K to be filed. Examples include Alabama,[226] Tennessee,[227] North Carolina,[228] and New York.[229]

For states that do not require separate copies of Form 1099-K to be filed with them, the IRS provides those returns to the states for tax enforcement purposes.[230] There can be a delay in when that information becomes available to the states, which negatively impacts the state's ability to use the tax data for enforcement purposes. Most states have a limited window in which an audit can take place. In Florida, for example, audits have a three-year statute of limitations.[231] If information is not received quickly from the IRS, then transactions that would have been included in an audit may be outside the statute of limitations by the time they are received.

Proposed Changes

The bill provides that entities required to file Form 1099-K, must file a copy with DOR electronically within 15 days of filing the federal return. The bill also creates a penalty of $1,000 for each month a required return is not filed with DOR, up to $10,000 per year per reporting entity. This penalty may be waived by DOR if it determines the failure was due to reasonable cause.

Tolling the Period in Which a Taxpayer Can File a Refund Claim

Current Situation

Under Florida law, a taxpayer has the ability to file an application for a refund when they have paid a tax in error, have made an overpayment of tax, or have paid tax when no tax was due.[232] Generally, a taxpayer has three years from the time the tax was paid to apply for the refund.[233]

When a taxpayer has been audited and would like to dispute the outcome of the audit; or when the taxpayer has applied for a refund, been denied, and would like to dispute the refund denial; they have the option to protest their case under s. 213.21, F.S., which provides for informal protest conferences.[234] The informal protest conference process provides taxpayers a separate and independent forum to challenge audit assessments and refund denials.

The time limit for the department to make a tax assessment is tolled (frozen) during an audit protest under s. 213.21, F.S., thus protecting the state's interest.[235] However, specific statutory authority is not provided to freeze the time limit for a taxpayer to file a refund claim for overpayment of taxes during these same protests.

Proposed Changes

The bill amends s. 213.21, F.S., related to informal audit protests, to provide specific statutory language that, during an informal audit protest, the time limit for a taxpayer to file a refund claim is frozen. This will extend the time a taxpayer has to file a refund claim for an overpayment of taxes arising from the audit period under protest.

Dyed Diesel Fuel Penalty Revision

Current Situation

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[226] https://revenue.alabama.gov/2018/02/new-1099-k-filing-requirement/ (last visited Feb. 4, 2020).
[227] https://www.tn.gov/revenue/taxes/sales-and-use-tax/1099-k-filing-requirement.html (last visited Feb. 4, 2020).
[228] https://www.ncdor.gov/file-pay/guidance-information-reporting#payment-settlement-entity-(1099k) (last visited Feb. 4, 2020).
[229] https://www.tax.ny.gov/bus/multi/reporting_requiremts.htm (last visited Feb. 4, 2020).
[230] This information sharing is authorized by section 6103(d), IRC. The Internal Revenue Manual, Part 11, Chapter 3, Section 32, provides more information about the disclosures to states for tax administration purposes. It is available online at https://www.irs.gov/irm/part11/irm_11-003-032 (last visited Feb. 4, 2020).
[231] Section 95.091(3)(a)1.a., F.S., provides a statute of limitations that allows for assessments of tax "within 3 years after the date the tax is due, any return with respect to the tax is due, or such return is filed, whichever occurs later."
[232] Section 215.26(1), F.S.
[233] Section 215.26(2), F.S.
[234] Section 213.21(1)(a), F.S.
[235] Section 213.21(1)(b), F.S.

Florida law allows consumers to purchase diesel fuel free from state and local taxes if used for certain exempt purposes.[236] These purposes are limited to: use on a farm for farming purposes, exclusive use by a local government, use in a vehicle owned by an aircraft museum, exclusive use by the American Red Cross, use in a vessel employed in the business of commercial transportation or in commercial fishing, use in a school bus, use in a local bus service open to the public, exclusive use by a nonprofit educational facility, use in a motor vehicle owned by the US Government which is used off-highway, use in a vessel of war, use for home heating, use in certain off-road or stationary equipment, and use for recreational vessels.[237] Each local government or mass transit system provider that intends to purchase dyed diesel must register with DOR before making exempt purchases.[238]

Tax free diesel fuel is marked with a red dye[239] and invoices, shipping papers, bills of lading, pumps, and other related items associated with the sale are required to be marked with the statement "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use."[240]

Failure to include the required statement requires a mandatory penalty of $10 for every gallon or $1,000, whichever is greater.[241] This has resulted in large penalties being assessed on taxpayers, even when all tax has been paid, for failure to include the statement "Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use" due to the mandatory $10 per gallon penalty requirement.

Proposed Changes

The bill revises the penalty to $2,500 for each month there is a failure to include the notice as required.

Fuel Tax Bond Requirement Increase

Current Situation

Fuel dealers are required to pay taxes either to their supplier or directly to the state.[242] If a fuel dealer is unable to pay their supplier, Florida law allows the supplier to request a bad debt credit from the state.[243] If the entity fails to remit a tax payment directly to the state, a liability is created, and a bill is generated. There may be instances where the state is unable to collect on the bad debt or bill because an entity goes out of business, bankruptcy is filed, or fraud has occurred. Section 206.05, Florida Statutes attempts to mitigate these risks by requiring each taxpayer to obtain a bond.

Sections 206.05 and 206.90, F.S., require fuel tax dealers to file with DOR a bond of not more than $100,000 to allow for recovery of unpaid tax. The amount is described in statute as "approximately 3 times the combined average monthly tax levied…during the preceding 12 calendar months."[244] DOR calculates the bond amount specific to each taxpayer, but cannot impose a bond in excess of the statutory cap.

Based on information provided by DOR, three times the combined average monthly tax levied for motor fuel terminal suppliers is currently $405,209.[245] Three times the average levy for motor fuel wholesalers and importers is $151,459. The three-month average of these two types of motor fuel dealers is currently $278,334.

Proposed Changes

The bill updates the bond amount to $300,000. This amount is slightly higher than the current three-month average tax levied for motor fuel dealers.

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[236] Section 206.874(1)(a), F.S.
[237] Section 206.874(3), F.S.
[238] Section 206.874(4) and (5), F.S.
[239] *See* Rule 12B-5.140(1), F.A.C., and 48.4082-1(b), Treasury Regulations (Feb. 26, 2002), which specifies the dye "Solvent Red 164 (and no other dye) at a concentration spectrally equivalent to at least 3.9 pounds of the solid dye standard Solvent Red 26 per thousand barrels of diesel fuel."
[240] Section 206.8741(2), F.S.
[241] Sections 206.8741(6) and 206.872(11), F.S.
[242] *See, e.g.,* s. 206.054(1),(4), F.S.
[243] *See* s. 206.43, F.S.
[244] Section 206.05(1), F.S.
[245] Email correspondence with DOR staff, Feb. 6, 2020, on file with House Ways & Means Committee.

Reemployment Tax E-File Revisions

Current Situation

Currently, an agent who prepared and reported for 100 or more employers in any quarter of the preceding state fiscal year is required to remit reemployment tax payments and file wage reports by electronic means.[246] In addition, any single employer with 10 or more employees in any quarter during the prior state fiscal year is required to remit reemployment tax reports and payments by electronic means.[247]

If reporting entities fail to file electronically when required by law, then they are subject to a penalty of $50 for the non-electronically-filed report plus $1 per employee included on the report.[248] If they fail to pay electronically when required by law, there is an additional penalty of $50 for each remittance submitted non-electronically.[249]

DOR has the authority to waive the requirement for electronic filing of reports if the filer is unable to comply despite good faith efforts.[250] Reasonable basis to grant this waiver include circumstances in which the employer does not file or store data electronically with any business or government agency, or does not have a computer that meets department standards.[251] Alternative acceptable reasons include the need for programming time, financial hardship, or conflict with business procedures.[252]

An employer or agent also has the ability to request a waiver for the penalty. This waiver request must be in writing and must establish that the imposition of the penalty would be inequitable.[253] Examples of circumstances which would give rise to an inequitable penalty include the death or serious illness of the person responsible for the report, destruction of the records by fire or other casualty, or unscheduled and unavoidable computer downtime.[254]

Corrections to wage reports are able to be submitted electronically, but employers who file and pay electronically are not required to use the electronic method.

Since the electronic filing requirement for agents, and the related penalty, were created, there have been administrative issues in tracking which employers are filing for themselves, and which are filing through an agent. This led to unnecessary billing of agents, and caused confusion for taxpayers and the Department.[255]

DOR reviewed filings under this section and determined that over 99% of returns filed by obligated (required to e-file) agents were e-filed.[256] DOR believes this will continue even without the statutory requirement, as electronic submissions are more efficient than paper filings.[257]

In addition, the DOR reviewed similar provisions in other southern states, and Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Texas, all elect not to bill agents for this issue.[258]

Proposed Changes

Section 443.163, F.S., is amended to make the following statutory changes:

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[246] Section 443.163(1), F.S.
[247] *Id*.
[248] Section 443.163(1)(a), F.S.
[249] *Id.*
[250] Section 443.163(3), F.S.
[251] Section 443.163(3)(a), F.S.
[252] Section 443.163(3)(b), F.S.
[253] Section 443.163(5), F.S.
[254] Section 443.163(5)(a)-(c), F.S.
[255] "Reemployment Tax Agent Requirement" document received from the Department of Revenue on Feb. 4, 2020. On file with the staff of House Ways & Means Committee.
[256] *Id.*
[257] *Id.*
[258] *Id.*

- Require employers to file corrections electronically if they are required to file reports and make payments electronically;
- Reduce electronic filing penalties so they are consistent with other reemployment tax penalties;[259]
- Remove the requirement for a written penalty waiver request so that waivers can be granted more quickly; and
- Remove the electronic filing and payment requirements and penalty for agents to reduce unnecessary billing.

Electronic Notification

Current Situation

DOR provides taxpayers official notice of actions such as billings, audits, and assessments by United States Postal Service mail delivery.[260] Certain communications, like ongoing communications related to an audit, general taxpayer information publications, or updates to a taxpayer's account, may be conducted using e-mail if requested by the taxpayer.

This limited use of email is consistent with s. 213.053(5)(b), F.S., which specifically provides that DOR is authorized to use e-mail or other electronic means to distribute information relating to changes in law, tax rates, interest rates, or other information that is not specific to a particular taxpayer; to remind taxpayers of due dates; to respond to a taxpayer at an electronic mail address that does not support encryption if the use of that address is authorized by the taxpayer; or to notify taxpayers to contact DOR.

Electronic notification is not used for formal agency action, even in cases where DOR has communicated with the taxpayer for an extended time through electronic means or where the taxpayer requests electronic delivery.

Proposed Changes

The bill provides specific authority for DOR to send taxpayers official notice of actions by electronic means if they receive the affirmative consent of the taxpayer.

Tax Jurisdiction Situsing and Distribution Adjustments

Current Situation

Upon registration with DOR, a business receives a county assignment in DOR's computer system based upon the best available address information. This assignment is used to determine local rates and revenue distributions for certain taxes.

DOR uses several sources to determine the county assignment, including United States Postal Service approved software and DOR's Address/Jurisdiction Database[261] that is used for Communications Services Tax[262] and Insurance Premium Taxes.[263]

The Address/Jurisdiction Database is currently updated twice a year, consistent with statutory requirements.[264] Updates must be provided by local jurisdictions 120 days before changes go into

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[259] Section 443.141(1)(b)1., F.S., provides for a $25 per month penalty for delinquent reports.
[260] Certain taxes provide that notice of agency action should be my personal delivery or registered or certified mail. *See, e.g.*, s. 220.739, F.S. In addition, s. 120.569(1), F.S., provides that any notice in any proceeding in which the substantial interests of a party are determined by an agency must be delivered or mailed to each party (or attorney of record) at the address of record.
[261] https://pointmatch.floridarevenue.com/Default.aspx (last visited Feb. 4, 2020).
[262] *See* s. 202.22(2)(a), F.S., and Rule 12A-19.071, F.A.C., for more information on how the address/jurisdiction database is used for communications services tax purposes.
[263] Insurance Premium Taxes are specific to street addresses. Insurers use the database to assign policies and premiums to local taxing jurisdictions. More information about how the database is used and updated for IPT purposes is available at https://floridarevenue.com/taxes/taxesfees/Pages/ipt.aspx (last visited Feb. 4, 2020).
[264] Section 202.22(2)(b)2., F.S.

effect, and DOR must publish the updates 90 days before they go into effect.[265] Changes to the database are effective each January and July 1.[266]

Currently, local governments are not required to notify DOR of changes to county address information for sales tax purposes, and DOR may be unaware of changes in addresses, annexations, incorporations, reorganizations, and any other changes in jurisdictional boundaries which may affect a change in the rate assignment and subsequent revenue distribution.

Section 202.22, F.S., instructs counties and municipalities to furnish DOR with changes and updates to maintain accurate addresses in the Address/Jurisdiction Database for communications services tax purposes; however, some counties and jurisdictions do not routinely do so.

There is no statutory guidance on how to manage occurrences that require revenue distribution adjustments.

Proposed Changes

The bill requires DOR to update the Address/Jurisdiction Database every six months based on information received from counties. Counties will be responsible for providing DOR with any updates necessary to identify subcounty special districts that may be subject to special tourist development taxes under s. 125.0104(3)(b), F.S., unless the county self-administers that tax.

These provisions align with existing requirements for the Address/Jurisdiction Database, and updates will follow the existing January 1/July 1 update schedule.

The bill also provides specific statutory guidance on how sales tax distribution adjustments resulting from address corrections should be addressed. Generally, for distributions of tourist development taxes, convention development taxes, or discretionary sales surtaxes, or for distributions from the Local Government Half-cent Sales Tax Clearing Trust Fund, misallocations caused by an incorrectly assigned address will be corrected moving forward from the date DOR is made aware of the mistake.

- If the county that should have received the distributions has complied with the notification provisions to update the Address/Jurisdiction Database in a timely manner, then misallocations may be corrected by adjusting distributions from the incorrect county to the correct county until the mistake is corrected. Those distributions will be prorated and may be distributed over an extended period, not to exceed three years.
- If the county that should have received the distributions did not comply with the notification provisions to update the Address/Jurisdiction Database in a timely manner, but the county which received the amount in error did update the Database in a timely manner, then the correction will only apply moving forward from the date DOR is made aware of the issue and no re-allocation will occur for past misallocations.
- If the counties prefer to address the adjustment using an alternative method, they may determine a preferred method and provide a copy of the interlocal agreement setting forth that method to DOR within 90 days of the date DOR is notified of the misallocation.

Property Tax Oversight

Hurricane Michael – Rebuilding Start Time 3 yrs. To 5 Yrs. To Retain Caps

Assessments Limitations

Current Situation

Under current law changes, additions, or improvements to property are assessed at just value on January 1 after the changes, additions, or improvements are substantially completed. Sections 193.155(4)(b) (homesteads), 193.1554(6)(b), (non-homestead residential), and 193.1555(6)(b) (non-residential), F.S., stipulate that changes, additions, or improvements that replace all or a portion of property damaged or destroyed by misfortune or calamity shall not increase the assessed value of the

[265] Section 202.22(2)(b)1. and 2., F.S.
[266] Section 202.22(2)(b)1., F.S.

property if the square footage of the property, as changed or improved, does not exceed 110 percent of the property before the damage or destruction, or if the square footage of the property, as changed or improved, does not exceed 1500 square feet.

These provisions apply to changes, additions, or improvements commenced within three years after the January 1 following the damage or destruction of the property.

Proposed Changes

The bill extends from three years to five years the timeframe for commencing changes, additions or improvements that replace all or a portion of property damaged or destroyed by misfortune or calamity. Specifically, it creates s. 193.1557, F.S., to provide that for property damaged or destroyed by Hurricane Michael in 2018, the provisions of sections 193.155(4)(b), 193.1554(6)(b), and 193.1555(6)(b), F.S., shall apply to changes, additions, or improvements commenced within five years after January 1, 2019. These provisions will apply for tax years 2019-2023 and are repealed on December 31, 2023.

Classification of Property

Current Situation

Apartment Classification

Under current law all items that are required by law to be on the assessment rolls must receive a classification based upon the use of the property.[267] Real property must be classified according to the assessment basis of the land. Apartment property is generally assessed in a manner similar to other commercial property but must be classified as multifamily, regardless of the number of units.

Proposed Changes

The bill amends s. 195.073, F.S., to specify that apartment property with more than nine units should be classified as commercial property.

Review of Assessment Rolls

Current Situation

Section 195.096, F.S., requires DOR to conduct an in-depth review of the real property and tangible personal property assessment rolls of each county at least once every two years and report the results of its review to specified legislative staff and county officials. In conducting the assessment ratio studies, the department must adhere to the standards to which the property appraisers are required to adhere to and use all practicable steps to maximize the representativeness or statistical reliability of the samples of properties reviewed.

DOR must complete the review of the county assessment roll and publish the department's finding within 120 days after receiving the roll or within 10 days after the approval of the roll, whichever is later. During the review process, DOR must compute a confidence interval for the overall property tax roll and include in its findings a statement of the confidence interval for the median and any other measures that may be appropriate for each classification or subclassification studied. The results should also include all related statistical and analytical details and measures for the real property assessment roll as a whole and the personal property assessment roll as a whole.
A recently completed Auditor General's report contained findings noting that DOR has not conducted in-depth reviews of tangible personal property and that the department has not met the requirement to compute a confidence interval for the overall property tax roll.

[267] Section 195.073, F.S.

DOR has not conducted in-depth reviews of the tangible personal property rolls in over a decade as a result of the reassignment of staff in the legislative appropriations process. Also, there is no International Association of Assessing Officer guidance for computing a confidence interval for the property tax roll and the department has been unable to locate a statistical procedure for calculating this metric.

Proposed Changes

The bill amends s. 195.096, F.S., to specify that in-depth reviews are only required for real property rolls and to remove statutory language requiring DOR to compute confidence intervals for the overall property tax roll.

TRIM Process Adjustments

Current Situation

Florida law requires local taxing authorities to annually follow the Truth in Millage (TRIM) process. Various noticing requirements, timeframes, and other required procedures are provided in law. During and following natural disasters, the TRIM process may be disrupted but no statutory direction is provided to address any modifications to the process that may be necessary due to the emergency. Historically, Governors have issued executive orders providing the authority for DOR to make the needed adjustments to the process.

Proposed Changes

The bill amends s. 200.065, F.S., to provide alternative deadlines, scheduling requirements, revised notice delivery methods and other procedures that may be used by property appraisers and local taxing authorities as a result of a declared state of emergency.

B. SECTION DIRECTORY:

Section 1. Amends s. 125.0104, F.S., relating to uses of tourist development taxes, to allow counties to use revenues for water quality improvement projects, and to restructure use of TDT funds in certain counties.

Section 2. Amends s. 192.001, F.S.; relating to the definition of “tangible personal property” for ad valorem purposes.

Section 3. Provides that changes made to s. 192.001, F.S., are retroactive to January 1, 2020, and apply to the 2020 ad valorem tax roll.

Section 4. Creates s. 193.1557, F.S., to extend through tax year 2023 certain protections to properties damaged by Hurricane Michael.

Section 5. Amends s. 194.011, F.S., allowing condominium and cooperative associations to represent unit owners in certain proceedings.

Section 6. Amends s. 194.035, F.S., relating to special magistrates; property evaluators.

Section 7. Amends s. 194.181, F.S., allowing condominium and cooperative associations to represent unit owners in certain proceedings.

Section 8. Amends s. 195.073, F.S., relating to classification of real property; revising classification of apartments as residential or commercial real property based on number of units.

Section 9. Amends s. 195.096, F.S., relating to review of property tax rolls.

Section 10. Amends s. 196.173, F.S., relating to property tax exemption for deployed servicemembers.

Section 11. Specifies that changes made to s. 196.173(2), F.S., apply to the ad valorem tax rolls for the 2020 tax year and thereafter.

Section 12. Provides one-time extension to apply for benefits which were affected by changes in section 10 of this act.

Section 13. Amends s. 196.197, F.S, relating to additional provisions for exempting property used by hospitals, nursing homes, and homes for special services.

Section 14. Amends s. 196.198, F.S., relating to the tax exemption for property used for educational purposes.

Section 15. Amends s. 200.065, F.S., providing timing flexibility for the fixing of millage rates during and after a declared state of emergency.

Section 16. Amends s. 200.069, F.S., relating to the notice of proposed property taxes and non-ad valorem assessments (TRIM notice).

Section 17. Amending s. 202.12, F.S., to provide reductions to the state tax rate applied to the sale of communications services.

Section 18. Amending s. 202.12001, F.S., to make conforming changes as a result of the rate reductions to the communications services tax rate.

Section 19. Amending s. 203.001, F.S., to make conforming changes as a result of the rate reductions to CST.

Section 20. Amending s. 206.05, F.S., to update the bonds required for terminal suppliers, importers, exporters, and wholesalers of motor fuels.

Section 21. Amending s. 206.8741, F.S., reducing penalties for dyeing and marking of diesel fuels.

Section 22. Amending s. 206.90, F.S., to update the bonds required for terminal suppliers, importers, and wholesalers of diesel fuels.

Section 23. Amending s. 206.9826, F.S., to increase the refund of aviation fuel tax.

Section 24. Amending s. 212.0305, F.S., to revise authorized uses of convention development taxes.

Section 25. Amending s. 212.0306, F.S., to revise authorized uses of local option food and beverage taxes.

Section 26. Amends s. 212.031, F.S., to reduce the business rent tax from 5.5% to 5.4% beginning in calendar year 2021.

Section 27. Amends s. 212.05, F.S., to extend the deadline for certain documentation to be provided to the Department of Revenue related to the sale of vessels and aircraft.

Section 28. Amends s. 212.055, F.S., to require the reauthorization of the surtax in certain counties and to require that students of charter schools and students of other public schools in a school district are provided proportionate funding from levies under that section.

Section 29. Provides that changes to the sharing of revenues made by section 27 of the act apply only to new levies after July 1, 2020.

Section 30. Creates s. 212.134, F.S., to require certain entities to file reports with the Department of Revenue if required to file reports with the Internal Revenue Service.

Section 31. Creates s. 212.181, F.S., relating to situsing of addresses for sales tax purposes, updates to addresses, and distribution procedures related to situsing issues.

Section 32. Amends s. 212.20, F.S., conforming provisions to the repeal of s. 288.11625, F.S.

Section 33. Amends s. 212.205, F.S., conforming provisions to the repeal of s. 288.11625, F.S.

Section 34. Amends s. 218.64, F.S., conforming provisions to the repeal of s. 288.11625, F.S.

Section 35. Creates s. 213.0537, F.S., to allow the Department of Revenue to send certain communications electronically if requested by the taxpayer.

Section 36. Amends s. 213.21, F.S., to toll the period in which a taxpayer must request a refund during the informal protest of an audit.

Section 37. Amends s. 220.1105, F.S., to revise the calculation of refunds to include the amount taken as a credit under the Florida Tax Credit Scholarship Program.

Section 38. Provides for retroactivity of changes made to s. 220.1105, F.S., by this act.

Section 39. Amends s. 220.1845, F.S., to set the cap for the Brownfields Redevelopment Program Tax Credit at $18.2 million for Fiscal Year 2020-21.

Section 40. Creates s. 220.197, F.S., to create a corporate income tax credit for certain car rental, leasing or financing companies.

Section 41. Amends s. 288.0001, F.S., conforming provisions to the repeal of s. 288.11625, F.S.

Section 42. Repeals s. 288.11625, F.S., relating to the Sports Development Program.

Section 43. Amends s. 376.30781, F.S., to set the cap for the Brownfields Redevelopment Program Tax Credit at $18.2 million for Fiscal Year 2020-21.

Section 44. Amends s. 413.4021, F.S.; modifying distribution provisions related to the tax collection enforcement diversion program.

Section 45. Amends s. 443.163, F.S., relating to filing requirements and penalties for certain parties required to file reemployment tax returns.

Section 46. Amends s. 626.932, F.S., to lower the surplus lines tax rate from 5 percent to 4.94 percent and to remove a provision that limits the insurance rate on premiums for risk insured outside of Florida to the tax rate in that state.

Section 47. Amends s. 718.111, F.S.; related to condominium administration as it relates to ad valorem tax protest procedures.

Section 48. Provides an exemption from the sales and use tax for the retail sale of certain clothes, school supplies, and personal computers and related accessories during a specified period; provides an appropriation.

Section 49. 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 an appropriation.

Section 50. Provides an appropriation for implementing the provisions of the act.

Section 51. Directs the Division of Law Revision and Information to replace the phrase “the effective date of this act” with the date the act becomes law.

Section 52. Provides the Department of Revenue with emergency rulemaking authority.

Section 53. Provides effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS section.

2. Expenditures:

   See FISCAL COMMENTS section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS section.

2. Expenditures:

   See FISCAL COMMENTS section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

The total revenue impact of the bill in Fiscal Year 2020-21 is estimated to be -$128.0 million (-$115.3 million recurring) of which -$87.3 million (-$80.7 million recurring) is General Revenue, -$3.2 million (-$4.8 million recurring) is state trust funds, and -$24.8 million (-$42.5 million recurring) is local government (see table on following page). Total tax reductions embodied in 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 -$193.4 million in tax reductions is the sum of -$128.0 million (recurring, excluding appropriations), and -$65.4 million (pure nonrecurring in Fiscal Year 2020-21).

Appropriations—The bill includes $383,500 in nonrecurring General Revenue appropriations, including $241,000 to implement the “back-to-school” sales tax holiday, $70,000 to implement the disaster preparedness sales tax holiday, and $72,500 to implement the reduction in the business rent tax. Most of these appropriations are needed to pay the cost of notifying several hundred thousand sales tax dealers of either the temporary or permanent law changes.

CS/HB 7097								
Fiscal Year 2020-21 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: Business Rent Tax/Rate Cut 0.1%	(14.0)	(29.3)	(*)	(*)	(1.8)	(3.8)	(15.8)	(33.1)
Comm Services Tax: Rate Cut 0.5%	(20.9)	(50.1)	(*)	(*)	(4.0)	(9.6)	(24.9)	(59.7)
Sales Tax: Back-to-School Holiday 3 Days	(32.3)	-	(*)	-	(9.5)	-	(41.8)	-
Sales Tax: Tax Holiday/Disaster Preparedness	(4.3)	-	(*)	-	(1.3)	-	(5.6)	-
Sales Tax: Collection Enforcement Diversion Prog.	(0.9)	(0.9)	(*)	(*)	(0.1)	(0.1)	(1.0)	(1.0)
Corporate Income Tax: Brownfields Backlog	(8.2)	-	-	-	-	-	(8.2)	-
Corporate Income Tax: Like-Kind Exchange Relief	(6.0)	-	-	-	-	-	(6.0)	-
Ad Valorem: Deployed Service Discount/Update	-	-	-	-	(*)	(*)	(*)	(*)
Ad Valorem: Hospitals Exemption/Charity Care	-	-	-	-	**	**	**	**
Ad Valorem: Condo Assn Appeal Representation	-	-	-	-	(5.5)	(1.7)	(5.5)	(1.7)
Ad Valorem: Const. Work in Progress/Clarification	-	-	-	-	(2.6)	(2.6)	(2.6)	(2.6)
Ad Valorem: Inventory/Heavy Equipment	-	-	-	-	-	(20.5)	-	(20.5)
Ad Valorem: Education Exemption Transfer	-	-	-	-	-	(4.2)	-	(4.2)
Fuel Tax: Aviation Tax Cut	(0.3)	(0.4)	(3.2)	(4.8)	-	-	(3.5)	(5.2)
DOR Legislative Concepts:								
Ad Valorem: Hurr. Michael/Extend Rebuild Time	-	-	-	-	-	(**)	-	(**)
Sales Tax: Informational Returns/Credit Cards	**	**	**	**	**	**	**	**
Sales Tax: Statute of Limitations/Refunds	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
Appropriations: Tax Holidays & Rate Changes	(0.38)	-	-	-	-	-	(0.38)	-
2020-21 Total	**(87.3)**	**(80.7)**	**(3.2)**	**(4.8)**	**(24.8)**	**(42.5)**	**(115.3)**	**(128.0)**
						Pure Nonrecurring =		**(65.4)**
						Recurring + Pure Nonrecurring (2) =		**(193.4)**

(*) Impact less than $50,000; (**) Impact is indeterminate.
(1) Ad valorem tax impacts assume current tax rates.
(2) Recurring tax cut total (excl. appropriations) = -$128.0 million
Pure nonrecurring tax cuts in FY 2020-21= -$65.4 million
-$193.4 million

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Subsection 18(b), art. VII of the Florida Constitution provides that the Legislature, except upon approval by a two-thirds vote, may not enact a general law if the anticipated effect of doing so would be to reduce the authority that counties or municipalities have to raise revenues in the aggregate.

It is unclear whether providing for the expiration of, and requiring a new vote for the readoption of, a discretionary sales surtax as provided in changes to s. 212.055(1), F.S., in this act, represents a reduction in revenue raising authority as contemplated by subsection 18(b). If the purpose of subsection 18(b) is to determine whether the amount of potential revenue available to counties and municipalities was reduced, then this bill does not reduce that potential and the requirement for a two-thirds vote is not applicable. However, if the purpose of subsection 18(b) is to consider the methods for adopting a discretionary sales surtax, then the provisions of this bill (requiring an additional vote to continue levying a current surtax) may be considered a mandate requiring a two-thirds vote of the Legislature.

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill extends from three years to five years the timeframe for commencing changes, additions or improvements that replace all or a portion of property damaged or destroyed by Hurricane Michael in order to maintain certain property tax benefits. However, an exemption may apply because this provision likely has an insignificant fiscal impact.

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may also apply because this bill expands the tax exemption for certain property used by an educational institution and the bill expands the definition of the term "inventory" to include certain construction equipment owned for sale or short-term rental in the normal course of business. These provisions do not appear to qualify under any exemption or exception with respect to these provisions. 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:

Article VII, s. 19 of the Florida Constitution requires the imposition, authorization, or raising of a state tax or fee be contained in a separate bill that contains no other subject and be approved by two-thirds of the membership of each house of the Legislature. As such, Article VII, s. 19 of the Florida Constitution may apply if the provisions in the bill related to the surplus lines tax are interpreted to be raise a state tax or fee. The bill explicitly decreases the statutory state tax rate on taxable surplus lines insurance policies from 5 percent to 4.94 percent. However, the bill also requires that all taxable surplus lines policies be subject to that rate, whereas current law limits the tax rate to "the rate in the state where the insured risk or exposure is located." There are states with a tax rate lower than 4.94 percent on such policies.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2020, the Ways & Means Committee adopted three amendments that:

- Modified a provision in the bill that allows tourist development tax revenues to be used for water quality improvement projects, including septic-to-sewer conversions projects. The amendment requires such projects be intended to prevent or mitigate damage to water quality of surface waters important to the tourism industry.
- Modified a provision in the bill that allows the local option food and beverage tax in Miami-Dade County, (which is being renamed the "local option coastal recovery and resiliency tax" by the bill) to be used for water quality improvement projects, including septic-to-sewer conversions projects. The amendment requires such projects be intended to prevent or mitigate damage to water quality of surface waters important to the tourism industry.
- Changes from 20 days to 14 days, the amount of time a condo unit owner has to respond to a notice from the condo association regarding the association's intention to represent the unit owner in a court case where the property appraiser is appealing a value adjustment board decision.

On February 25, 2020, the Appropriations Committee adopted seven amendments that:

- Modified the provision in the bill which allows counties to use tourist development tax revenues to finance certain water quality improvement projects. The amendment clarifies that qualifying septic-to-sewer conversion projects are limited to those for which the septic tanks are within 5 miles of surface waters designated as Outstanding Florida Waters or within 2 miles of surface waters.

- Modified a similar provision in the bill for the local option food and beverage tax in Miami-Dade County.
- Modifies the definition of the term “inventory” for property tax purposes. It provides that construction equipment owned by heavy equipment dealers for sale or short-term rental in the normal course of business qualifies as “inventory” under specified circumstances, and is therefore not subject to tax. The amendment does not apply to school taxes.
- Clarifies that the property tax exemption for property used by an educational institution for educational purposes applies if an educational institution was exempt for at least 10 years, and under a lease, is responsible for all taxes, maintenance and operations of the property improvements, then the institution and the property can retain the property exemption.
- Grants certain qualifying car rental, leasing or financing companies a one-time $2 million tax credit against their Florida corporate income tax paid for the 2018 taxable year if they saw a significant increase (700% or $15 million depending on the sector) in their corporate income taxes as a result of the federal tax reform passed in late 2017 and subsequent changes in Florida law.
- Modified the taxation of certain surplus lines insurance policies. Under current Florida law, surplus lines tax is calculated based upon the rates of the states where the risk is located. Most states tax these types of policies based only on the home state’s rate. The amendment slightly lowers Florida’s tax rate on such policies from 5% to 4.94% and provides that all taxable policies in Florida would be subject to that rate, irrespective of where the insured risk is located.
- Made a technical change to clarify that future enactments of the Charter County and Regional Transportation System Surtax may not be for longer than 20 years.

The analysis is drafted to the bill as amended.