

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

FINANCE AND TAX
Senator Gainer, Chair
Senator Gruters, Vice Chair

MEETING DATE: Tuesday, February 18, 2020
TIME: 4:00—6:00 p.m.
PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Building

MEMBERS: Senator Gainer, Chair; Senator Gruters, Vice Chair; Senators Baxley, Bracy, Bradley, Pizzo, Powell, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Consideration of proposed bill:			
1	SPB 7058	Internal Revenue Code; Adopting the 2020 version of the Internal Revenue Code for purposes of the state corporate income tax code; providing for retroactive operation, etc.	Submitted and Reported Favorably as Committee Bill Yeas 8 Nays 0
Consideration of proposed bill:			
2	SPB 7060	Tax Administration; Providing applicability of certain property assessment limitations to changes, additions, or improvements to property damaged or destroyed by Hurricane Michael which are commenced within a certain timeframe; revising the classification of certain residential property for assessment purposes; revising timeframes for certain documentation to be provided to the department for the purposes of a sales tax exemption for the sale of certain boats and aircraft, etc.	Submitted and Reported Favorably as Committee Bill Yeas 8 Nays 0
3	SB 334 Stewart	Tourist Development Tax; Authorizing counties imposing the tax to use the tax revenues to promote or incentivize film or television productions in this state; requiring such counties to require certain productions to include a specified statement in the production's credits, etc. CA 01/27/2020 Favorable FT 02/18/2020 Favorable AP	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Finance and Tax

Tuesday, February 18, 2020, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 1066 Community Affairs / Gruters (Identical CS/CS/H 637)	Impact Fees; Revising requirements for counties and municipalities that adopt, collect, or administer an impact fee by ordinance and for special districts that adopt, collect, or administer an impact fee by resolution; requiring local governments to provide impact fee credits or other forms of compensation under certain conditions; requiring certain counties and municipalities to establish impact fee review committees, etc. CA 02/10/2020 Fav/CS FT 02/18/2020 Fav/CS AP	Fav/CS Yeas 7 Nays 1
5	CS/SB 1662 Community Affairs / Albritton (Compare CS/H 1249)	Property Tax Exemption for Disabled Veterans; Providing that certain veterans and their surviving spouses receiving a certain homestead tax exemption may apply for and receive a prorated refund of property taxes paid on new homestead property acquired during a certain timeframe; requiring the property appraiser to immediately make certain entries upon the tax rolls to allow the prorated refund, etc. CA 02/03/2020 Temporarily Postponed CA 02/10/2020 Fav/CS FT 02/18/2020 Favorable AP	Favorable Yeas 8 Nays 0
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: SPB 7058

INTRODUCER: Finance and Tax Committee

SUBJECT: Internal Revenue Code

DATE: February 17, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Babin</u>	<u>Diez-Arguelles</u>	_____	FT Submitted as Comm. Bill/Fav

I. Summary:

SPB 7058 updates Florida's corporate Income Tax Code by adopting the federal Internal Revenue Code in effect on January 1, 2020.

The Revenue Estimating Conference estimates that the bill will have an indeterminate, positive or negative, impact on General Revenue Fund receipts beginning in Fiscal Year 2020-2021.

The bill is effective upon becoming law and operates retroactively to January 1, 2020.

II. Present Situation:

Annual Adoption of the Internal Revenue Code

Florida imposes a 5.5 percent tax on the taxable income of corporations and financial institutions doing business in Florida.¹ The determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes.² Additional adjustments are then made to determine Florida's taxable income. By starting with federal taxable income, Florida eases the administrative burden on Florida taxpayers because they receive the same treatment in Florida as is allowed in determining their federal taxable income.

Florida maintains this relationship with the federal Internal Revenue Code (IRC) each year by adopting the IRC as it exists on January 1 of the year. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income.

¹ Sections 220.11(2) and 220.63(2), F.S.

² See generally s. 220.13(2), F.S.

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).³ The TCJA made significant changes to federal income tax provisions that affect Florida corporations. The unique structure of the TCJA resulted in corporate taxpayers generally having more income subjected to tax (higher taxable income), but ultimately paying less federal tax. This situation occurred because although the TCJA increased federal taxable income by limiting deductions and creating new items of income, the TCJA also lowered the federal corporate tax rate from 35 percent to 21 percent.

Since Florida begins its corporate income tax calculation with federal taxable income, the TCJA has resulted in an increase of Florida taxable income. However, unlike the federal tax rate reduction, Florida's tax rate has remained the same, and thus, the TCJA has resulted in an increase in Florida's corporate income tax collections.

Florida's Response to the TCJA

Recognizing the potential for increased corporate income tax collections, Florida adopted a procedure for refunding corporate income tax collections that exceed a certain threshold⁴ and temporarily reducing the corporate income tax rate by a proportional amount.⁵ The procedure provides refunds to qualifying corporate taxpayers and tax rate reductions based on corporate income tax collections in Fiscal Years 2018-2019, 2019-2020, and 2020-2021.⁶ Tax rate reductions are repealed for taxable years beginning on or after January 1, 2022, after which the corporate income tax rate returns to 5.5 percent;⁷ and the final refund payments, if any, will be paid to qualifying corporate taxpayers by May 1, 2022.⁸

Currently, the refund and tax rate reduction procedure will result in taxpayer refunds for excess collections received in Fiscal Year 2018-2019, and the corporate income tax rate is temporarily decreased from 5.5 percent to 4.458 percent for taxable years beginning in calendar years 2019, 2020, and 2021. No additional refunds or rate reductions are estimated to occur under the current forecast for corporate income tax collections.⁹

The Further Consolidated Appropriations Act, 2020

The Further Consolidated Appropriations Act, 2020,¹⁰ extended for a limited time certain expiring tax provisions in the IRC. These changes have the effect of limiting certain deductions

³ Pub. Law No. 115-97 (Dec. 22, 2017).

⁴ The threshold is 107 percent of the Revenue Estimating Conference's February 23, 2018, estimate for the relevant fiscal year. Section 220.1105(1)(b), F.S.

⁵ See s. 220.1105(2), F.S.

⁶ *Id.*

⁷ Section 220.1105(5), F.S.

⁸ See s. 220.1105(4) and (4)(c), F.S.

⁹ Revenue Estimating Conference, *Corporate Income Tax – Supporting Material for Statutory Adjustment*, available at http://www.edr.state.fl.us/Content/conferences/generalrevenue/CIT_AdjustmentSupportingMaterial.pdf (last visited Feb. 18, 2020).

¹⁰ Pub. Law No. 116-94 (Dec. 20, 2019).

and granting certain credits to Florida taxpayers, but the effects will vary depending on the tax position of the taxpayer involved, which is unknown.

III. Effect of Proposed Changes:

Section 1 amends s. 220.03, F.S., to adopt the Internal Revenue Code in effect on January 1, 2020, for use by corporations subject to Florida's Corporate Income Tax.

Section 2 applies the bill retroactively to January 1, 2020.

Section 3 provides an effective date of upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties or municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of state tax shared with them. Therefore, the mandates provisions of Article VII, section 18 of the Florida Constitution do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has determined that due to certain provisions within the Further Consolidated Appropriations Act, 2020, the bill will have an indeterminate, positive or negative, fiscal impact on General Revenue Fund receipts beginning in Fiscal Year 2020-2021.

B. Private Sector Impact:

By adopting recent changes to the Internal Revenue Code, Florida provides ease of administration for Florida corporate taxpayers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends section 220.03 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Finance and Tax

593-02951-20

20207058pb

1 A bill to be entitled
 2 An act relating to the Internal Revenue Code; amending
 3 s. 220.03, F.S.; adopting the 2020 version of the
 4 Internal Revenue Code for purposes of the state
 5 corporate income tax code; providing for retroactive
 6 operation; providing an effective date.
 7
 8 Be It Enacted by the Legislature of the State of Florida:
 9
 10 Section 1. Paragraph (n) of subsection (1) and paragraph
 11 (c) of subsection (2) of section 220.03, Florida Statutes, are
 12 amended to read:
 13 220.03 Definitions.—
 14 (1) SPECIFIC TERMS.—When used in this code, and when not
 15 otherwise distinctly expressed or manifestly incompatible with
 16 the intent thereof, the following terms shall have the following
 17 meanings:
 18 (n) "Internal Revenue Code" means the United States
 19 Internal Revenue Code of 1986, as amended and in effect on
 20 January 1, 2020 ~~2019~~, except as provided in subsection (3).
 21 (2) DEFINITIONAL RULES.—When used in this code and neither
 22 otherwise distinctly expressed nor manifestly incompatible with
 23 the intent thereof:
 24 (c) Any term used in this code has the same meaning as when
 25 used in a comparable context in the Internal Revenue Code and
 26 other statutes of the United States relating to federal income
 27 taxes, as such code and statutes are in effect on January 1,
 28 2020 ~~2019~~. However, if subsection (3) is implemented, the
 29 meaning of a term shall be taken at the time the term is applied

Page 1 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

593-02951-20

20207058pb

30 under this code.
 31 Section 2. The amendment to s. 220.03, Florida Statutes,
 32 made by this act operates retroactively to January 1, 2020.
 33 Section 3. This act shall take effect upon becoming a law.

Page 2 of 2

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18
Meeting Date

7058
Bill Number (if applicable)

Topic IRS

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior VP

Address 516 W Adams
Street

Phone 224-7173

City

State

Zip

Email

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: SPB 7060

INTRODUCER: Finance and Tax Committee

SUBJECT: Tax Administration

DATE: February 17, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Babin</u>	<u>Diez-Arguelles</u>	_____	FT Submitted as Comm. Bill/Fav

I. Summary:

SPB 7060 makes changes to tax-related statutes, as recommended by the Department of Revenue. Specifically, the bill:

- Extends from 3 to 5 years the time for commencement of repairs to property damaged by Hurricane Michael without the property owner losing the prior assessment limitation.
- Updates real property classification language to classify apartments with more than nine units as commercial property.
- Updates the Department of Revenue's tax roll review requirements to delete the requirement that the department do in-depth reviews of tangible personal property and to delete the requirement that the department calculate a confidence interval for an entire property roll.
- Tolls the statute of limitations for refund claims to allow taxpayers to apply for refunds during the audit process.
- Increases the timeframes during which non-residents and dealers must provide documentation demonstrating that boats and aircraft purchased in Florida were removed from the State.
- Changes the penalty for not properly labeling dyed diesel fuel from \$10 per gallon to \$2,500 for every month that dyed diesel fuel is improperly labeled.

The Revenue Estimating Conference estimates that the provisions of the bill that toll the statute of limitations for refunds will reduce General Revenue Fund receipts by an indeterminate amount beginning in Fiscal Year 2020-2021. The remaining provisions of the bill do not have a fiscal impact.

The bill takes effect July 1, 2020.

II. Present Situation:

The present situation for each issue is explained below in Section III, Effect of Proposed Changes.

III. Effect of Proposed Changes:

Section 1 –Repairs to Property Damaged by Hurricane Michael

Present Situation

Under current law, changes, additions, or improvements to property are assessed at fair market value on the January 1 after the changes, additions, or improvements are substantially completed; however, Florida allows an owner of property that was damaged or destroyed by misfortune or calamity to make changes, additions, or improvements that repair or replace portions of the property without increasing the assessed value of the property above the value of the property before it was damaged or destroyed.¹ In order to receive this lower assessed value, the square footage of the property, as changed or improved, may not exceed 110 percent of the square footage of the property before it was damaged or destroyed, or 1500 square feet. And, the qualifying changes, additions, or improvements must commence within three years after the January 1 following the damage or destruction of the property.

Proposed change

The bill creates s. 193.1557, F.S., to extend from three years to five years the timeframe for commencing qualifying changes, additions or improvements that replace all or a portion of property damaged or destroyed by Hurricane Michael. This extension of time applies for tax years 2019-2023 and is repealed on December 31, 2023.

Section 2 – Property Classification of Apartments with more than Nine Units

Present Situation

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.² Real property must be classified according to the assessment basis of the land.³

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 change

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

Section 3 – In-Depth Study Requirements and Confidence Interval Calculations

Present Situation

The DOR must 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

¹ See ss. 193.155(4)(b), 193.1554(6)(b), and 193.1555(6)(b), F.S.

² Section 195.073, F.S.

³ *Id.*

to specified legislative staff and county officials.⁴ As part of the in-depth review, the DOR conducts assessment ratio studies, which assist in determining whether property is being assessed fairly and equitably.⁵ In conducting the assessment ratio studies, the DOR 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.

The DOR must complete the review of the county assessment roll and publish the findings within 120 days after receiving the roll or within 10 days after the approval of the roll, whichever is later.⁶ During the review process, the 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.⁷

A recently completed Auditor General's report contained findings noting that the DOR has not conducted in-depth reviews of tangible personal property and that the DOR has not met the requirement to compute a confidence interval for the overall property tax roll.

The DOR has not conducted in-depth reviews of the tangible personal property rolls in over a decade because, during the recession, the Legislature cut the staff positions that conducted these studies.

The DOR has not computed a confidence interval for the property tax roll as a whole because there is not a generally accepted statistical procedure for the calculation.

Proposed change

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

Section 4 – Reduce Penalties for Diesel Fuel Noticing Violations

Present Situation

Florida law allows consumers to purchase dyed diesel fuel free from state and local taxes under the following circumstances:

- When used on a farm for farming purposes;
- When used exclusively by a local government;
- When used in a vehicle owned by an aircraft museum;
- When used exclusively by the American Red Cross;

⁴ Section 195.096(2), and (3)(c), F.S.

⁵ International Association of Assessing Officers, *Standard On Ratio Studies*, p. 8, available at https://www.iaao.org/media/standards/Standard_on_Ratio_Studies.pdf (last visited Feb. 12, 2020).

⁶ Section 195.096(2)(f), F.S.

⁷ Section 195.096(3)(a), F.S.

- When used in a vessel employed in the business of commercial transportation or in commercial fishing;
- When used in a bus engaged in the transportation of students and employees of schools;
- When used in a local bus service open to the public and travels regular routes;
- When used exclusively by a nonprofit educational facility;
- When used in a motor vehicle owned by the US Government which is used off-highway;
- When used in a vessel of war;
- When used for home heating;
- When used in certain self-propelled off-road or stationary equipment; and
- When used by a non-commercial vessel.⁸

Each local government or mass transit system provider that intends to purchase dyed diesel must register with the DOR before making exempt purchases.⁹

Tax free dyed diesel fuel is marked with a red dye¹⁰ 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.”¹¹

Failure to include the required statement requires a mandatory penalty of \$10 for every gallon or \$1,000, whichever is greater.¹² The mandatory \$10 per gallon penalty requirement has resulted in very large penalty assessments, even when the dealer had paid all taxes due.

Proposed Change

The bill amends s. 206.8741, F.S., to revise the penalty to \$2,500 for each month that there is a failure to include the required notice.

Section 5 – Timeframe for Non-Residents to Remove Boats and Aircraft from the State

Present Situation

Non-residents¹³ who purchase a boat or aircraft in Florida for use outside Florida are not required to pay Florida sales tax on their purchase if the item is removed from the state within a statutory timeframe and documentation is provided to the 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:

⁸ Section 206.874(3), F.S.

⁹ Section 206.874(4) and (5), F.S.

¹⁰ See Rule 12B-5.140(1), F.A.C., and 48.4082-1(b), Treasury Regulations (February 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.”

¹¹ Section 206.8741, F.S.

¹² Sections 206.8741(6) and 206.872(11), F.S.

¹³ 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 non-resident 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.

- The purchaser has **10 days** from the date the boat or aircraft left Florida to provide the DOR with proof of the removal.
- The purchaser has **30 days** from the date of departure to provide the 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 the registration to the DOR once it has been received.
- The selling dealer has **5 days** from the date of the sale to provide to the 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 non-resident purchases.

Proposed Change

The bill amends s. 212.05, F.S., to extend each of the current statutory timeframes to allow additional time for the purchaser and dealer to provide information to the DOR, as follows:

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

Section 6 – Toll Statute of Limitations for Refund Claims during an audit

Present Situation

Under Florida law, taxpayers have the ability to file an application for a refund when they have paid tax in error, have made an overpayment of tax, or have paid tax when no tax was due.¹⁴ Generally, a taxpayer has three years from the time the tax was paid to apply for the refund.¹⁵

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; the taxpayer has the option to protest the case through the informal protest process.¹⁶ The informal protest process provides taxpayers a separate and independent forum to challenge audit assessments and refund denials.

The time for the DOR to make a tax assessment is tolled during an audit protest, thus protecting the state's interest;¹⁷ however, the time for a taxpayer to file a refund claim for overpayment of taxes is not tolled during these same protests.

Proposed Change

The bill amends s. 213.21, F.S., to toll the time for a taxpayer to file a refund claim during an audit protest.

¹⁴ Section 215.26(1), F.S.

¹⁵ Section 215.26(2), F.S.

¹⁶ Section 213.21(1)(a), F.S.

¹⁷ Section 213.21(1)(b), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill does not require counties or municipalities to spend funds, limit their ability to raise revenue, or reduce the percentage of state tax shared with them. Therefore, the mandates provisions of Article VII, section 18 of the Florida Constitution, do not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference estimates that the provisions of the bill that toll the time for a taxpayer to apply for refunds during an audit protest will reduce General Revenue Fund receipts by an indeterminate amount beginning in Fiscal Year 2020-2021. The remaining provisions of the bill do not have a fiscal impact.

B. Private Sector Impact:

Property owners affected by Hurricane Michael may have more time to commence repairs to their property without losing their assessment limitation.

Taxpayers with refund claims found during an informal protest may be able to receive refunds that are currently time barred.

Non-residents who purchase boats and aircraft for use in another state will have more time to provide required documentation.

Sellers of dyed diesel fuel may pay less penalties.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 195.073; 195.096; 206.8741; 212.05; and 213.21.

The bill creates section 193.1557 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Finance and Tax

593-03404A-20

20207060pb

1 A bill to be entitled
 2 An act relating to tax administration; creating s.
 3 193.1557, F.S.; providing applicability of certain
 4 property assessment limitations to changes, additions,
 5 or improvements to property damaged or destroyed by
 6 Hurricane Michael which are commenced within a certain
 7 timeframe; specifying the applicable tax years;
 8 providing for future repeal; amending s. 195.073,
 9 F.S.; revising the classification of certain
 10 residential property for assessment purposes; amending
 11 s. 195.096, F.S.; revising requirements for the
 12 Department of Revenue's review and published findings
 13 of county assessment rolls; amending s. 206.8741,
 14 F.S.; revising a penalty for failure to provide or
 15 post a notice relating to dyed diesel fuel; amending
 16 s. 212.05, F.S.; revising timeframes for certain
 17 documentation to be provided to the department for the
 18 purposes of a sales tax exemption for the sale of
 19 certain boats and aircraft; amending s. 213.21, F.S.;
 20 providing that the period for filing a claim for
 21 certain refunds is tolled during a period in which a
 22 taxpayer is engaged in certain informal conference
 23 procedures; providing an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Section 193.1557, Florida Statutes, is created
 28 to read:
 29 193.1557 Assessment of certain property damaged by

Page 1 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

593-03404A-20

20207060pb

30 Hurricane Michael.—For property damaged or destroyed by
 31 Hurricane Michael in 2018, s. 193.155(4)(b), s. 193.1554(6)(b),
 32 or s. 193.1555(6) shall apply to changes, additions, or
 33 improvements commenced within 5 years after January 1 following
 34 the damage or destruction of the property. This section applies
 35 to tax years 2019-2023 and shall stand repealed December 31,
 36 2023.

37 Section 2. Paragraphs (a) and (b) of subsection (1) of
 38 section 195.073, Florida Statutes, are amended to read:

39 195.073 Classification of property.—All items required by
 40 law to be on the assessment rolls must receive a classification
 41 based upon the use of the property. The department shall
 42 promulgate uniform definitions for all classifications. The
 43 department may designate other subclassifications of property.
 44 No assessment roll may be approved by the department which does
 45 not show proper classifications.

46 (1) Real property must be classified according to the
 47 assessment basis of the land into the following classes:

48 (a) Residential, subclassified into categories, one
 49 category for homestead property and one for nonhomestead
 50 property:

- 51 1. Single family.
- 52 2. Mobile homes.
- 53 3. Multifamily, up to nine units.
- 54 4. Condominiums.
- 55 5. Cooperatives.
- 56 6. Retirement homes.

57 (b) Commercial and industrial, including apartments with
 58 more than 9 units.

Page 2 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

593-03404A-20

20207060pb

59 Section 3. Subsection (2) and paragraph (a) of subsection
60 (3) of section 195.096, Florida Statutes, are amended to read:
61 195.096 Review of assessment rolls.-

62 (2) The department shall conduct, no less frequently than
63 once every 2 years, an in-depth review of the real property
64 assessment ~~roll rolls~~ of each county. The department need not
65 individually study every use-class of property set forth in s.
66 195.073, but shall at a minimum study the level of assessment in
67 relation to just value of each classification specified in
68 subsection (3). Such in-depth review may include proceedings of
69 the value adjustment board and the audit or review of procedures
70 used by the counties to appraise property.

71 (a) The department shall, at least 30 days prior to the
72 beginning of an in-depth review in any county, notify the
73 property appraiser in the county of the pending review. At the
74 request of the property appraiser, the department shall consult
75 with the property appraiser regarding the classifications and
76 strata to be studied, in order that the review will be useful to
77 the property appraiser in evaluating his or her procedures.

78 (b) Every property appraiser whose upcoming roll is subject
79 to an in-depth review shall, if requested by the department on
80 or before January 1, deliver upon completion of the assessment
81 roll a list of the parcel numbers of all parcels that did not
82 appear on the assessment roll of the previous year, indicating
83 the parcel number of the parent parcel from which each new
84 parcel was created or "cut out."

85 (c) In conducting assessment ratio studies, the department
86 must use all practicable steps, including stratified statistical
87 and analytical reviews and sale-qualification studies, to

Page 3 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

593-03404A-20

20207060pb

88 maximize the representativeness or statistical reliability of
89 samples of properties in tests of each classification, stratum,
90 or roll made the subject of a ratio study published by it. The
91 department shall document and retain records of the measures of
92 representativeness of the properties studied in compliance with
93 this section. Such documentation must include a record of
94 findings used as the basis for the approval or disapproval of
95 the tax roll in each county pursuant to s. 193.1142. In
96 addition, to the greatest extent practicable, the department
97 shall study assessment roll strata by subclassifications such as
98 value groups and market areas for each classification or stratum
99 to be studied, to maximize the representativeness of ratio study
100 samples. For purposes of this section, the department shall rely
101 primarily on an assessment-to-sales-ratio study in conducting
102 assessment ratio studies in those classifications of property
103 specified in subsection (3) for which there are adequate market
104 sales. The department shall compute the median and the value-
105 weighted mean for each classification or subclassification
106 studied and for the roll as a whole.

107 (d) In the conduct of these reviews, the department shall
108 adhere to all standards to which the property appraisers are
109 required to adhere.

110 (e) The department and each property appraiser shall
111 cooperate in the conduct of these reviews, and each shall make
112 available to the other all matters and records bearing on the
113 preparation and computation of the reviews. The property
114 appraisers shall provide any and all data requested by the
115 department in the conduct of the studies, including electronic
116 data processing tapes. Any and all data and samples developed or

Page 4 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

593-03404A-20

20207060pb

117 obtained by the department in the conduct of the studies shall
 118 be confidential and exempt from the provisions of s. 119.07(1)
 119 until a presentation of the findings of the study is made to the
 120 property appraiser. After the presentation of the findings, the
 121 department shall provide any and all data requested by a
 122 property appraiser developed or obtained in the conduct of the
 123 studies, including tapes. Direct reimbursable costs of providing
 124 the data shall be borne by the party who requested it. Copies of
 125 existing data or records, whether maintained or required
 126 pursuant to law or rule, or data or records otherwise
 127 maintained, shall be submitted within 30 days from the date
 128 requested, in the case of written or printed information, and
 129 within 14 days from the date requested, in the case of
 130 computerized information.

131 (f) Within 120 days after receipt of a county assessment
 132 roll by the executive director of the department pursuant to s.
 133 193.1142(1), or within 10 days after approval of the assessment
 134 roll, whichever is later, the department shall complete the
 135 review for that county and publish the department's findings.
 136 The findings must include ~~a statement of the confidence interval~~
 137 ~~for the median and such other~~ measures as may be appropriate for
 138 each classification or subclassification studied ~~and for the~~
 139 ~~roll as a whole~~, and related statistical and analytical details.
 140 The measures in the findings must be based on:

- 141 1. A 95-percent level of confidence; or
- 142 2. Ratio study standards that are generally accepted by
- 143 professional appraisal organizations in developing a
- 144 statistically valid sampling plan if a 95-percent level of
- 145 confidence is not attainable.

Page 5 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

593-03404A-20

20207060pb

146 (g) Notwithstanding any other provision of this chapter, in
 147 one or more assessment years following a natural disaster in
 148 counties for which a state of emergency was declared by
 149 executive order or proclamation of the Governor pursuant to
 150 chapter 252, if the department determines that the natural
 151 disaster creates difficulties in its statistical and analytical
 152 reviews of the assessment rolls in affected counties, the
 153 department shall take all practicable steps to maximize the
 154 representativeness and reliability of its statistical and
 155 analytical reviews and may use the best information available to
 156 estimate the levels of assessment. This paragraph first applies
 157 to the 2019 assessment roll and operates retroactively to
 158 January 1, 2019.

159 (3) (a) Upon completion of review pursuant to paragraph
 160 (2) (f), the department shall publish the results of reviews
 161 conducted under this section. The results must include all
 162 statistical and analytical measures computed under this section
 163 for the real property assessment roll ~~as a whole, the personal~~
 164 ~~property assessment roll as a whole~~, and independently for the
 165 following real property classes if the classes constituted 5
 166 percent or more of the total assessed value of real property in
 167 a county on the previous tax roll:

- 168 1. Residential property that consists of one primary living
 169 unit, including, but not limited to, single-family residences,
 170 condominiums, cooperatives, and mobile homes.
- 171 2. Residential property that consists of 2 to 9 ~~two or more~~
 172 primary living units.
- 173 3. Agricultural, high-water recharge, historic property
 174 used for commercial or certain nonprofit purposes, and other

Page 6 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

593-03404A-20

20207060pb

175 use-valued property.

176 4. Vacant lots.

177 5. Nonagricultural acreage and other undeveloped parcels.

178 6. Improved commercial and industrial property, including
179 apartments with more than 9 units.

180 7. Taxable institutional or governmental, utility, locally
181 assessed railroad, oil, gas and mineral land, subsurface rights,
182 and other real property.

183

184 If one of the above classes constituted less than 5 percent of
185 the total assessed value of all real property in a county on the
186 previous assessment roll, the department may combine it with one
187 or more other classes of real property for purposes of
188 assessment ratio studies or use the weighted average of the
189 other classes for purposes of calculating the level of
190 assessment for all real property in a county. The department
191 shall also publish such results for any subclassifications of
192 the classes or the assessment roll ~~rolls~~ it may have chosen to
193 study.

194 Section 4. Subsection (6) of section 206.8741, Florida
195 Statutes, is amended to read:

196 206.8741 Dyeing and marking; notice requirements.—

197 (6) Any person who fails to provide or post the required
198 notice with respect to any dyed diesel fuel is subject to a
199 penalty of \$2,500 for each month such failure occurs ~~the penalty~~
200 ~~imposed by s. 206.872(11).~~

201 Section 5. Paragraph (a) of subsection (1) of section
202 212.05, Florida Statutes, is amended to read:

203 212.05 Sales, storage, use tax.—It is hereby declared to be

593-03404A-20

20207060pb

204 the legislative intent that every person is exercising a taxable
205 privilege who engages in the business of selling tangible
206 personal property at retail in this state, including the
207 business of making mail order sales, or who rents or furnishes
208 any of the things or services taxable under this chapter, or who
209 stores for use or consumption in this state any item or article
210 of tangible personal property as defined herein and who leases
211 or rents such property within the state.

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

215 (a)1.a. At the rate of 6 percent of the sales price of each
216 item or article of tangible personal property when sold at
217 retail in this state, computed on each taxable sale for the
218 purpose of remitting the amount of tax due the state, and
219 including each and every retail sale.

220 b. Each occasional or isolated sale of an aircraft, boat,
221 mobile home, or motor vehicle of a class or type which is
222 required to be registered, licensed, titled, or documented in
223 this state or by the United States Government shall be subject
224 to tax at the rate provided in this paragraph. The department
225 shall by rule adopt any nationally recognized publication for
226 valuation of used motor vehicles as the reference price list for
227 any used motor vehicle which is required to be licensed pursuant
228 to s. 320.08(1), (2), (3)(a), (b), (c), or (e), or (9). If any
229 party to an occasional or isolated sale of such a vehicle
230 reports to the tax collector a sales price which is less than 80
231 percent of the average loan price for the specified model and
232 year of such vehicle as listed in the most recent reference

593-03404A-20

20207060pb

232 price list, the tax levied under this paragraph shall be
 233 computed by the department on such average loan price unless the
 234 parties to the sale have provided to the tax collector an
 235 affidavit signed by each party, or other substantial proof,
 236 stating the actual sales price. Any party to such sale who
 237 reports a sales price less than the actual sales price is guilty
 238 of a misdemeanor of the first degree, punishable as provided in
 239 s. 775.082 or s. 775.083. The department shall collect or
 240 attempt to collect from such party any delinquent sales taxes.
 241 In addition, such party shall pay any tax due and any penalty
 242 and interest assessed plus a penalty equal to twice the amount
 243 of the additional tax owed. Notwithstanding any other provision
 244 of law, the Department of Revenue may waive or compromise any
 245 penalty imposed pursuant to this subparagraph.

247 2. This paragraph does not apply to the sale of a boat or
 248 aircraft by or through a registered dealer under this chapter to
 249 a purchaser who, at the time of taking delivery, is a
 250 nonresident of this state, does not make his or her permanent
 251 place of abode in this state, and is not engaged in carrying on
 252 in this state any employment, trade, business, or profession in
 253 which the boat or aircraft will be used in this state, or is a
 254 corporation none of the officers or directors of which is a
 255 resident of, or makes his or her permanent place of abode in,
 256 this state, or is a noncorporate entity that has no individual
 257 vested with authority to participate in the management,
 258 direction, or control of the entity's affairs who is a resident
 259 of, or makes his or her permanent abode in, this state. For
 260 purposes of this exemption, either a registered dealer acting on
 261 his or her own behalf as seller, a registered dealer acting as

593-03404A-20

20207060pb

262 broker on behalf of a seller, or a registered dealer acting as
 263 broker on behalf of the purchaser may be deemed to be the
 264 selling dealer. This exemption shall not be allowed unless:

265 a. The purchaser removes a qualifying boat, as described in
 266 sub-subparagraph f., from the state within 90 days after the
 267 date of purchase or extension, or the purchaser removes a
 268 nonqualifying boat or an aircraft from this state within 10 days
 269 after the date of purchase or, when the boat or aircraft is
 270 repaired or altered, within 20 days after completion of the
 271 repairs or alterations; or if the aircraft will be registered in
 272 a foreign jurisdiction and:

273 (I) Application for the aircraft's registration is properly
 274 filed with a civil airworthiness authority of a foreign
 275 jurisdiction within 10 days after the date of purchase;

276 (II) The purchaser removes the aircraft from the state to a
 277 foreign jurisdiction within 10 days after the date the aircraft
 278 is registered by the applicable foreign airworthiness authority;
 279 and

280 (III) The aircraft is operated in the state solely to
 281 remove it from the state to a foreign jurisdiction.

282 For purposes of this sub-subparagraph, the term "foreign
 283 jurisdiction" means any jurisdiction outside of the United
 284 States or any of its territories;

285 b. The purchaser, within 90 ~~30~~ days from the date of
 286 departure, provides the department with written proof that the
 287 purchaser licensed, registered, titled, or documented the boat
 288 or aircraft outside the state. If such written proof is
 289 unavailable, within 90 ~~30~~ days the purchaser shall provide proof
 290

593-03404A-20

20207060pb

291 that the purchaser applied for such license, title,
292 registration, or documentation. The purchaser shall forward to
293 the department proof of title, license, registration, or
294 documentation upon receipt;

295 c. The purchaser, within 30 ~~40~~ days of removing the boat or
296 aircraft from Florida, furnishes the department with proof of
297 removal in the form of receipts for fuel, dockage, slippage,
298 tie-down, or hangaring from outside of Florida. The information
299 so provided must clearly and specifically identify the boat or
300 aircraft;

301 d. The selling dealer, within 30 ~~5~~ days of the date of
302 sale, provides to the department a copy of the sales invoice,
303 closing statement, bills of sale, and the original affidavit
304 signed by the purchaser attesting that he or she has read the
305 provisions of this section;

306 e. The seller makes a copy of the affidavit a part of his
307 or her record for as long as required by s. 213.35; and

308 f. Unless the nonresident purchaser of a boat of 5 net tons
309 of admeasurement or larger intends to remove the boat from this
310 state within 10 days after the date of purchase or when the boat
311 is repaired or altered, within 20 days after completion of the
312 repairs or alterations, the nonresident purchaser applies to the
313 selling dealer for a decal which authorizes 90 days after the
314 date of purchase for removal of the boat. The nonresident
315 purchaser of a qualifying boat may apply to the selling dealer
316 within 60 days after the date of purchase for an extension decal
317 that authorizes the boat to remain in this state for an
318 additional 90 days, but not more than a total of 180 days,
319 before the nonresident purchaser is required to pay the tax

Page 11 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

593-03404A-20

20207060pb

320 imposed by this chapter. The department is authorized to issue
321 decals in advance to dealers. The number of decals issued in
322 advance to a dealer shall be consistent with the volume of the
323 dealer's past sales of boats which qualify under this sub-
324 subparagraph. The selling dealer or his or her agent shall mark
325 and affix the decals to qualifying boats in the manner
326 prescribed by the department, before delivery of the boat.

327 (I) The department is hereby authorized to charge dealers a
328 fee sufficient to recover the costs of decals issued, except the
329 extension decal shall cost \$425.

330 (II) The proceeds from the sale of decals will be deposited
331 into the administrative trust fund.

332 (III) Decals shall display information to identify the boat
333 as a qualifying boat under this sub-subparagraph, including, but
334 not limited to, the decal's date of expiration.

335 (IV) The department is authorized to require dealers who
336 purchase decals to file reports with the department and may
337 prescribe all necessary records by rule. All such records are
338 subject to inspection by the department.

339 (V) Any dealer or his or her agent who issues a decal
340 falsely, fails to affix a decal, mismarks the expiration date of
341 a decal, or fails to properly account for decals will be
342 considered prima facie to have committed a fraudulent act to
343 evade the tax and will be liable for payment of the tax plus a
344 mandatory penalty of 200 percent of the tax, and shall be liable
345 for fine and punishment as provided by law for a conviction of a
346 misdemeanor of the first degree, as provided in s. 775.082 or s.
347 775.083.

348 (VI) Any nonresident purchaser of a boat who removes a

Page 12 of 14

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

593-03404A-20

20207060pb

349 decal before permanently removing the boat from the state, or
 350 defaces, changes, modifies, or alters a decal in a manner
 351 affecting its expiration date before its expiration, or who
 352 causes or allows the same to be done by another, will be
 353 considered prima facie to have committed a fraudulent act to
 354 evade the tax and will be liable for payment of the tax plus a
 355 mandatory penalty of 200 percent of the tax, and shall be liable
 356 for fine and punishment as provided by law for a conviction of a
 357 misdemeanor of the first degree, as provided in s. 775.082 or s.
 358 775.083.

359 (VII) The department is authorized to adopt rules necessary
 360 to administer and enforce this subparagraph and to publish the
 361 necessary forms and instructions.

362 (VIII) The department is hereby authorized to adopt
 363 emergency rules pursuant to s. 120.54(4) to administer and
 364 enforce the provisions of this subparagraph.

365
 366 If the purchaser fails to remove the qualifying boat from this
 367 state within the maximum 180 days after purchase or a
 368 nonqualifying boat or an aircraft from this state within 10 days
 369 after purchase or, when the boat or aircraft is repaired or
 370 altered, within 20 days after completion of such repairs or
 371 alterations, or permits the boat or aircraft to return to this
 372 state within 6 months from the date of departure, except as
 373 provided in s. 212.08(7)(fff), or if the purchaser fails to
 374 furnish the department with any of the documentation required by
 375 this subparagraph within the prescribed time period, the
 376 purchaser shall be liable for use tax on the cost price of the
 377 boat or aircraft and, in addition thereto, payment of a penalty

593-03404A-20

20207060pb

378 to the Department of Revenue equal to the tax payable. This
 379 penalty shall be in lieu of the penalty imposed by s. 212.12(2).
 380 The maximum 180-day period following the sale of a qualifying
 381 boat tax-exempt to a nonresident may not be tolled for any
 382 reason.

383 Section 6. Paragraph (b) of subsection (1) of section
 384 213.21, Florida Statutes, is amended to read:

385 213.21 Informal conferences; compromises.—

386 (1)

387 (b) The statute of limitations upon the issuance of final
 388 assessments and the period for filing a claim for refund as
 389 required by s. 215.26(2) for any transactions occurring during
 390 the audit period shall be tolled during the period in which the
 391 taxpayer is engaged in a procedure under this section.

392 Section 7. This act shall take effect July 1, 2020.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: SB 334

INTRODUCER: Senator Stewart

SUBJECT: Tourist Development Tax

DATE: February 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Gross</u>	<u>Diez-Arguelles</u>	<u>FT</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 334 authorizes counties imposing a tourist development tax to use the tax revenues to promote or incentivize film or television production in the state. The bill requires all productions using tourist development tax revenues to include either a "Created in Florida" or "Filmed in Florida" statement within the production credits.

This bill takes effect July 1, 2020.

II. Present Situation:

Tourist Development Taxes

Under Florida law, a county may impose local option tourist development taxes on the short-term¹ rental or lease of accommodations.² The tourist development taxes consist of the following levies:

- 1 or 2 Percent Tax:³ The county's governing board may levy this tax, upon approval of a referendum by the county electorate,⁴ at a rate of 1 or 2 percent on the total amount charged for taxable transient rental transactions.⁵
- Additional 1 Percent Tax:⁶ In addition to the 1 or 2 percent tax, a 1 percent tax may be levied by an extraordinary vote⁷ of a county's governing board, or upon approval of a referendum

¹ Section 125.0104(3)(a), F.S. provides that the tax applies to rentals or leases of 6 months or less.

² Section 125.0104, F.S.

³ Section 125.0104(3)(c), F.S.

⁴ Section 125.0104(6), F.S.

⁵ See s. 212.03, F.S.

⁶ Section 125.0104(3)(d), F.S.

⁷ "Extraordinary vote" is not defined by law, but by its plain definition would appear to mean something greater than an ordinary vote by simple majority. See Op. Att'y Gen. Fla. 2010-05.

by the county electorate, on the total amount charged for taxable transient rental transactions. To be eligible to levy the tax, a county must have levied the 1 or 2 percent tax for at least 3 years.

- High Tourism Impact Tax:⁸ By an extraordinary vote of the governing board of the county, a county with a high tourism impact may levy an additional 1 percent tax on the total amount charged for taxable transient rental transactions.⁹
- Professional Sports Franchise Facility Tax:¹⁰ In addition to any other tourist development taxes, a 1 percent tax on the total amount charged for transient rental transactions may be levied, by a majority vote of the governing board, to pay debt service on bonds issued to finance professional sports franchise facilities, retained spring training franchise facilities, and convention centers. These funds may also be used to promote tourism in the state.
- Additional Professional Sports Franchise Facility Tax:¹¹ A county that levies the professional sports franchise facility tax may levy an additional 1 percent tax to be used for the same purposes. This tax must be approved by a majority plus one vote of the membership of the board of county commissioners.

Depending on a county’s eligibility, the maximum tax rate that may be levied varies from 3 to 6 percent. The table below displays the five local option tourist development taxes available to counties, the number of counties eligible to levy a specific tourist development tax, and the number of counties currently levying such tax.¹²

2020 TDT Rates & Number of Counties	Original Tax (1% or 2%)	Additional Tax (1%)	Professional Sports Franchise Facility Tax (up to 1%)	High Tourism Impact Tax (1%)	Additional Professional Sports Franchise Facility Tax (up to 1%)
Eligible to Levy:	67	59	67	9	65
Levying:	63	54	45	7	30

A county may elect to levy and impose the 1 or 2 percent tax or the additional 1 percent tax within a subcounty special district. If the tax is levied in a subcounty special district, the additional taxes must be levied only in that district and the county must assist the Department of Revenue (DOR) in identifying the rental units subject to tax.¹³

Tourist development taxes may be administered by the Department of Revenue or by a county that has adopted an ordinance providing for the local collection and administration of the tax.¹⁴

⁸ Section 125.0104(3)(m), F.S.

⁹ A county may be designated as having a “high tourism impact” by the Department of Revenue as provided by s. 125.0104(3)(m)2., F.S. The tax is currently levied by Broward, Monroe, Orange, Osceola, Palm Beach, and Pinellas counties. Additionally, Hillsborough, Lee, and Walton counties are eligible to levy it.

¹⁰ Section 125.0104(3)(l), F.S.

¹¹ Section 125.0104(3)(n), F.S.

¹² Office of Economic and Demographic Research, *2020 Local Option Tourist/Food and Beverage/Tax Rates in Florida’s Counties*, available at <http://edr.state.fl.us/Content/local-government/data/county-municipal/2020LOTTTrates.pdf>, (published Dec. 19, 2019) (last visited Feb. 12, 2020).

¹³ See s. 125.0104(3)(b) and (d), F.S.

¹⁴ Section 125.0104(10), F.S.

Tourist Development Council

The governing board of each county that levies tourist development taxes must form a tourist development council. Section 125.0104(4)(e), F.S., provides the authority and requirements for county tourist development councils and their memberships. Requirements include:

- The council must be called “(name of county) Tourist Development Council;”
- The council must be composed of nine members appointed by the governing board of the county;
- A member of the county governing board must serve as a member of the council;
- Two members of the council must be elected municipal officials;
- Six members of the council must be involved in the tourism industry, of whom no less than three and no more than four must be owners or operators of motels, hotels, recreational vehicles parks, or other tourist accommodations in the county;
- All members of the council must be electors of the county;
- The governing board of the county may elect a chair for the council or allow the council to elect its chair;
- The chair must be appointed or elected annually and may be reappointed or elected;
- Members of the council must serve staggered four year terms;
- The council must meet at least once each quarter;
- The council must recommend to the governing board of the county, special projects and uses for tourist development tax revenue;
- The council must continuously review expenditures of revenues from the tourist development taxes; and
- The council must report unauthorized/questionable expenditures from the tourist development tax revenues to the county governing board and the DOR for review.

Authorized Uses of Tax Revenue

Tourist development tax revenues may be used for capital construction of tourist-related facilities, tourism promotion, and beach or shoreline maintenance. More specifically, the revenues derived from tourist development taxes are authorized to be used to:¹⁵

- Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more:
 - Publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums; or
 - Aquariums and museums that are publicly owned and operated, or owned and operated by a non-profit organization that is open to the public;
- Promote zoological parks that are publicly owned and operated or owned and operated by a non-profit organization that is open to the public;
- Promote and advertise tourism in the state;
- Fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies;
- Finance beach park facilities or beach improvement, maintenance, nourishment, restoration, and erosion control; or

¹⁵ Section 125.0104(5)(a), F.S.

- Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities within the boundaries of the county or subcounty special taxing district, 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, and only if the following five conditions are satisfied:
 - \$10 million in tourist development tax revenue was received the year before expenditure;
 - The county governing board approves the use for the proposed public facilities by a vote of at least two-thirds of its membership;
 - No more than 70 percent of the cost of the proposed public facilities will be paid for with tourist development tax revenues;
 - At least 40 percent of all tourist development tax revenues collected in the county are spent to promote and advertise tourism; and
 - An independent professional analysis, performed at the expense of the county tourist development council, demonstrates the positive impact of the infrastructure project on tourist-related businesses in the county.

A county that has a population of less than 750,000 may, in addition to the aforementioned uses, expend tax revenues, to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more zoological parks, fishing piers or nature centers which are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public.¹⁶

Tourist Development Plan

As a requirement for levying tourist development taxes, a county's tourist development council¹⁷ must prepare a plan for tourism development and present it before the governing board of the county. The plan must include (1) the anticipated revenue derived from the tax for the first 24 months of implementation, (2) the tax district where the tax will be imposed, and (3) a list, in order of priority, of the proposed uses of the tax revenue.¹⁸

After the tourist development plan has been enacted by ordinance, the plan may not be substantially amended except by an ordinance enacted by an affirmative vote of a majority plus one additional member of the governing board.¹⁹

An example of a tourist development plan can be seen in the ordinances of Pinellas County.²⁰ Pinellas County's plan provides five categories of proposed uses:²¹

- Category A: Promoting and advertising tourism in the state, nationally and internationally, and funding other marketing events and promotional operations.

¹⁶ Section 125.0104(5)(b), F.S.

¹⁷ Also referred to as a "tourism" development council.

¹⁸ Section 125.0104(4)(c), F.S.

¹⁹ See s. 125.0104(4), F.S. The provisions found in s. 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.

²⁰ Pinellas County Code of Ordinances, ch. 118, Art. III, Sec. 118-32 Use of revenues; tourist development plan, available at https://library.municode.com/fl/pinellas_county/codes/code_of_ordinances?nodeId=PTIIPICOCO_CH118TA_ARTIIITODETA_S118-34TODECO (last visited Jan. 19, 2020).

²¹ *Id.*

- Category B: Funding the St. Petersburg/Clearwater Convention and Visitors Bureau; funding budget reserves as authorized by law; and funding other bureaus.
- Category C: Funding beach improvement, maintenance, renourishment, restoration, and erosion control.
- Category D: Funding annually as matching funds (applicants must have at least \$1.00 for every \$1.00 of Category D tourist tax funding) to publicly owned and operated or owned and operated by not-for-profit organizations, facilities open to the public.
- Category E: Funding for debt service payments for bonds issued to finance the construction, reconstruction, or renovation of professional sports franchise facilities, retained spring training facilities, and convention centers located in Pinellas County.

Pinellas County’s plan allocates 60 percent of yearly tax revenues to category A, B, and C uses, and 40 percent to category D and E uses.²² Notwithstanding the above allocations, the plan also states that tax revenues must be allocated to debt service on bonds for the City of Dunedin retained spring training facility, the Dali Museum, and the City of Clearwater spring training facility.²³

Tourist Development Tax Revenues Fiscal Year 2018

According to the DOR, total tourist development tax receipts by all counties for Fiscal Year 2017-2018 (most recent year data is available) amounted to just under a billion dollars (\$954, 937,590).²⁴ This represents a 12.1 percent increase from Fiscal Year 2016-2017.²⁵ The table below displays the top five counties with the highest tourist development tax receipts in Fiscal Year 2017-2018.²⁶

1. Orange	2. Broward	3. Pinellas	4. Osceola	5. Palm Beach
\$272,306,000	\$79,597,603	\$58,485,782	\$57,233,940	\$53,487,001

Florida’s Entertainment Industry Financial Incentive Program (2010 – 2016)

In 2010, Florida created the Entertainment Industry Financial Incentive Program to encourage film productions to use Florida “as a site for filming, for the digital production of films, and to develop and sustain the workforce and infrastructure for film, digital media, and entertainment production.”²⁷ The program was administered by the Florida Office of Film and Entertainment and lasted from July 1, 2010 until its repeal on June 30, 2016. During this period, Florida awarded \$296 million in tax credits and exemptions to productions and companies that met the certification criteria.²⁸

²² *Id.*

²³ *Id.*

²⁴ Office of Economic & Demographic Research, *Local Option Tax Receipts (Data Source: Department of Revenue)*, Tax Receipts by Tax by County: SFY 1987-2018, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm> (last visited Jan. 17, 2020).

²⁵ *Id.*

²⁶ *Id.*

²⁷ Section 288.1254(2), F.S.

²⁸ Office of Economic & Demographic Research, *Return on Investment for the Entertainment Industry Incentive Programs* (Jan. 2015), available at <http://edr.state.fl.us/Content/returnoninvestment/EntertainmentIndustryIncentivePrograms.pdf> (last visited Jan. 19, 2020).

III. Effect of Proposed Changes:

Section 1 amends s. 125.0104(5), F.S., to authorize a county's use of tourist development tax revenues to promote or incentivize film or television production in Florida. The bill specifies that the term "production" is to have the same meaning as provided in s. 288.1254(1), F.S.²⁹ Productions receiving county tax revenues must include "Created in Florida" or "Filmed in Florida" in the production credits.

Section 2 provides the bill takes effect July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

²⁹ "Production means a theatrical or direct-to-video motion picture; a made-for-television motion picture; visual effects or digital animation sequences produced in conjunction with a motion picture; a commercial; a music video; an industrial or educational film; an infomercial; a documentary film; a television pilot program; a presentation for a television pilot program; a television series, including, but not limited to, a drama, a reality show, a comedy, a soap opera, a telenovela, a game show, an awards show, or a miniseries production; or a digital media project by the entertainment industry. One season of a television series is considered one production. The term does not include a weather or market program; a sporting event or a sporting event broadcast; a gala; a production that solicits funds; a home shopping program; a political program; a political documentary; political advertising; a gambling-related project or production; a concert production; a local, regional, or Internet-distributed-only news show or current-events show; a sports news or sports recap show; a pornographic production; or any production deemed obscene under chapter 847. A production may be produced on or by film, tape, or otherwise by means of a motion picture camera; electronic camera or device; tape device; computer; any combination of the foregoing; or any other means, method, or device." Section 288.1254(1)(g), F.S.

B. Private Sector Impact:

Visitors to Florida and Floridians may incur increased taxes if additional counties decide to levy a tourist development tax in response to the film production use. Private sector film and television industries would have access to tax revenue as capital for productions. Private sector businesses may also benefit depending on the efficacy of film to induce tourism.

C. Government Sector Impact:

The bill may cause counties to incur nominal costs in updating tourist development plan ordinances to include film and television expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill references s. 288.1254(1), F.S., which defines “production” to also include digital media projects.³⁰ This definition may incorporate more than just “film or television productions.”

VIII. Statutes Affected:

This bill substantially amends section 125.0104 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

³⁰ “Digital media project” means a production of interactive entertainment that is produced for distribution in commercial or educational markets. The term includes a video game or production intended for Internet or wireless distribution, an interactive website, digital animation, and visual effects, including, but not limited to, three-dimensional movie productions and movie conversions. The term does not include a production that contains content that is obscene as defined in s. 847.001. See Section 288.1254(1)(b), F.S.

By Senator Stewart

13-00436-20

2020334__

1 A bill to be entitled
 2 An act relating to the tourist development tax;
 3 amending s. 125.0104, F.S.; authorizing counties
 4 imposing the tax to use the tax revenues to promote or
 5 incentivize film or television productions in this
 6 state; defining the term "production"; requiring such
 7 counties to require certain productions to include a
 8 specified statement in the production's credits;
 9 providing an effective date.

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

11 Section 1. Paragraph (a) of subsection (5) of section
 12 125.0104, Florida Statutes, is amended to read:

13 125.0104 Tourist development tax; procedure for levying;
 14 authorized uses; referendum; enforcement.—
 15 (5) AUTHORIZED USES OF REVENUE.—
 16 (a) All tax revenues received pursuant to this section by a
 17 county imposing the tourist development tax shall be used by
 18 that county for the following purposes only:
 19 1. To acquire, construct, extend, enlarge, remodel, repair,
 20 improve, maintain, operate, or promote one or more:
 21 a. Publicly owned and operated convention centers, sports
 22 stadiums, sports arenas, coliseums, or auditoriums within the
 23 boundaries of the county or subcounty special taxing district in
 24 which the tax is levied;
 25 b. Auditoriums that are publicly owned but are operated by
 26 organizations that are exempt from federal taxation pursuant to
 27 26 U.S.C. s. 501(c) (3) and open to the public, within the

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

13-00436-20

2020334__

30 boundaries of the county or subcounty special taxing district in
 31 which the tax is levied; or
 32 c. Aquariums or museums that are publicly owned and
 33 operated or owned and operated by not-for-profit organizations
 34 and open to the public, within the boundaries of the county or
 35 subcounty special taxing district in which the tax is levied;
 36 2. To promote zoological parks that are publicly owned and
 37 operated or owned and operated by not-for-profit organizations
 38 and open to the public;
 39 3. To promote and advertise tourism in this state and
 40 nationally and internationally; however, if tax revenues are
 41 expended for an activity, service, venue, or event, the
 42 activity, service, venue, or event must have as one of its main
 43 purposes the attraction of tourists as evidenced by the
 44 promotion of the activity, service, venue, or event to tourists;
 45 4. To fund convention bureaus, tourist bureaus, tourist
 46 information centers, and news bureaus as county agencies or by
 47 contract with the chambers of commerce or similar associations
 48 in the county, which may include any indirect administrative
 49 costs for services performed by the county on behalf of the
 50 promotion agency;
 51 5. To finance beach park facilities, or beach, channel,
 52 estuary, or lagoon improvement, maintenance, renourishment,
 53 restoration, and erosion control, including construction of
 54 beach groins and shoreline protection, enhancement, cleanup, or
 55 restoration of inland lakes and rivers to which there is public
 56 access as those uses relate to the physical preservation of the
 57 beach, shoreline, channel, estuary, lagoon, or inland lake or
 58 river. However, any funds identified by a county as the local

Page 2 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

13-00436-20 2020334__
 59 matching source for beach renourishment, restoration, or erosion
 60 control projects included in the long-range budget plan of the
 61 state's Beach Management Plan, pursuant to s. 161.091, or funds
 62 contractually obligated by a county in the financial plan for a
 63 federally authorized shore protection project may not be used or
 64 loaned for any other purpose. In counties of fewer than 100,000
 65 population, up to 10 percent of the revenues from the tourist
 66 development tax may be used for beach park facilities; ~~or~~

67 6. To acquire, construct, extend, enlarge, remodel, repair,
 68 improve, maintain, operate, or finance public facilities within
 69 the boundaries of the county or subcounty special taxing
 70 district in which the tax is levied, if the public facilities
 71 are needed to increase tourist-related business activities in
 72 the county or subcounty special district and are recommended by
 73 the county tourist development council created pursuant to
 74 paragraph (4) (e). Tax revenues may be used for any related land
 75 acquisition, land improvement, design and engineering costs, and
 76 all other professional and related costs required to bring the
 77 public facilities into service. As used in this subparagraph,
 78 the term "public facilities" means major capital improvements
 79 that have a life expectancy of 5 or more years, including, but
 80 not limited to, transportation, sanitary sewer, solid waste,
 81 drainage, potable water, and pedestrian facilities. Tax revenues
 82 may be used for these purposes only if the following conditions
 83 are satisfied:

84 a. In the county fiscal year immediately preceding the
 85 fiscal year in which the tax revenues were initially used for
 86 such purposes, at least \$10 million in tourist development tax
 87 revenue was received;

13-00436-20 2020334__
 88 b. The county governing board approves the use for the
 89 proposed public facilities by a vote of at least two-thirds of
 90 its membership;
 91 c. No more than 70 percent of the cost of the proposed
 92 public facilities will be paid for with tourist development tax
 93 revenues, and sources of funding for the remaining cost are
 94 identified and confirmed by the county governing board;
 95 d. At least 40 percent of all tourist development tax
 96 revenues collected in the county are spent to promote and
 97 advertise tourism as provided by this subsection; and
 98 e. An independent professional analysis, performed at the
 99 expense of the county tourist development council, demonstrates
 100 the positive impact of the infrastructure project on tourist-
 101 related businesses in the county; or
 102 7. To promote or incentivize film or television productions
 103 in this state. As used in this subparagraph, the term
 104 "production" has the same meaning as provided in s. 288.1254(1).
 105 If tax revenues are used for a production, the county must
 106 require that the production include in its credits the statement
 107 "Created in Florida" or "Filmed in Florida," as applicable.
 108
 109 Subparagraphs 1. and 2. may be implemented through service
 110 contracts and leases with lessees that have sufficient expertise
 111 or financial capability to operate such facilities.
 112 Section 2. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator George Gainer, Chair
Committee on Finance and Tax

Subject: Committee Agenda Request

Date: January 30, 2020

I respectfully request that **Senate Bill #: 334** relating to Tourist Development Tax, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in cursive script that reads "Linda Stewart".

Senator Linda Stewart
Florida Senate, District 13

c.c. Jose Diez-Arguelles, Staff Director
Lynn Wells, Senior Administrative Assistant

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: CS/CS/SB 1066

INTRODUCER: Finance and Tax Committee; Community Affairs Committee and Senator Gruters

SUBJECT: Impact Fees

DATE: February 20, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1066 imposes new requirements related to impact fees. The bill:

- Requires impact fee calculations to use data obtained within the most recent 36 months and exclude any costs that do not meet specific definitions for infrastructure and public facility.
- Limits the cost per student station in school impact fee calculations to the maximum cost per student station calculated for purposes of capital outlay projects under s. 1013.64, F.S.
- Prohibits the application of a new or increased impact fee to pending permit applications unless the result is to reduce the total impact fees or mitigation costs imposed on the applicant.

The bill requires each county or municipality assessing impact fees to establish an impact fee review committee and outlines the composition and duties of the committee.

The bill also provides that impact fee credits are assignable and transferable at any time after establishment and establishes limitations for use of the credits.

The Revenue Estimating Conference determined that a prior version of the bill (CS/SB 1066) had an indeterminate, positive or negative, impact on local government impact fee revenues beginning in Fiscal Year 2020-2021. Staff estimates that the changes made by the current version of the bill (CS/CS/SB 1066) do not change the fiscal impact.

The bill takes effect July 1, 2020.

II. Present Situation:

Local Government Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.² Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.³

Local Government Impact Fees

Pursuant to home rule authority, counties and municipalities may impose proprietary fees,⁴ regulatory fees, and special assessments⁵ to pay the cost of providing a facility or service or regulating an activity. As one type of regulatory fee, impact fees are charges imposed by local governments against new development to pay for the cost of capital facilities made necessary by such growth.⁶ Impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee. With respect to a school impact fee, the fee is imposed by the respective board of county commissioners at the request of the school board.

Section 163.31801(3), F.S., provides requirements and procedures for the adoption of an impact fee. An impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum:

- Require that the calculation of the impact fee be based on the most recent and localized data;
- Provide for accounting and reporting of impact fee collections and expenditures. If a local government imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund;
- Limit administrative charges for the collection of impact fees to actual costs; and
- Require that notice be provided at least 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee.

¹ FLA. CONST. art. VIII, s. 1(f).

² FLA. CONST. art. VIII, s. 1(g).

³ FLA. CONST. art. VIII, s. 2(b); s. 166.021(1), F.S.

⁴ Office of Economic and Demographic Research, The Florida Legislature, *2019 Local Government Financial Handbook*, available at <http://edr.state.fl.us/Content/local-government/reports/lgfi19.pdf> (last visited Feb. 12, 2020). Examples of proprietary fees include admissions fees, franchise fees, user fees, and utility fees.

⁵ *Id.* Special assessments are typically used to construct and maintain capital facilities or to fund certain services.

⁶ *See supra* note 4 at p. 13.

Some local governments impose impact fees specifically for local school facilities.⁷ School districts have authority to impose ad valorem taxes within the district for school purposes⁸ but are not general purpose governments with home rule power⁹ and are not expressly authorized to impose impact fees.¹⁰ Local governments imposing specific impact fees for education capital improvements typically collect the fees for deposit directly into an account segregated for funding those improvements.¹¹ Local government ordinances creating the impact fee also typically stipulate that the funds be used only for education capital improvement projects.¹² The credit imposed for impact fees imposed for public educational facilities must be based on the total impact fee assessed and not limited to the impact fee imposed for a particular type of school.¹³

Section 163.31801(5), F.S., provides that if a local government increases its impact fee rates, the holder of any impact fee credits, whether such credits are granted under concurrency, developments of regional impact, or otherwise,¹⁴ which were in existence before the increase, is entitled to the full benefit of the intensity or density prepaid by the credit balance as of the date it was first established.¹⁵

Section 163.31801(7), F.S., provides that in any action challenging an impact fee or the government's failure to provide required dollar-for-dollar credits for the payment of impact fees, as provided in s. 163.3180(6) (h) 2.b., F.S.,¹⁶ the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee or credit meets the requirements of state legal precedent and s. 163.31801, F.S. The court may not use a deferential standard for the benefit of the government.

Chapter 2019-165, Laws of Fla., amended s. 163.31801, F.S., to codify the 'dual rational nexus test' for impact fees, as articulated in case law. This test requires an impact fee to be proportional and have a reasonable connection, or rational nexus, between 1) the proposed new development and the need and the impact of additional capital facilities, and 2) the expenditure of funds and

⁷ See, e.g., Miami-Dade County Code of Ordinances ch. 33K, *Educational Facilities Impact Fee Ordinance* and Orange County Code of Ordinances ch. 23, art. V, *School Impact Fees*.

⁸ FLA. CONST. art. VII, s. 9(a), and art. IX, s. 4(b); See s. 1011.71, F.S.

⁹ See FLA. CONST. art. VIII, ss. 1(f)-(g) and 2

¹⁰ Section 163.31801(2), F.S.

¹¹ In Miami-Dade County, the education facility impact fee is paid to the County Planning & Zoning Director, who must then deposit that amount into a specific trust fund maintained by the county. See Miami-Dade County Code of Ordinances, ss. 33K-7(a), 33K-10(c). In Orange County, the school impact fee is paid to the county or municipality (if the land being developed is within a municipality), which then transfers the funds collected at least quarterly to the Orange County School District. The District is responsible for maintaining the trust into which the impact fee revenues must be deposited. See Orange County Code of Ordinances, s. 23-142.

¹² See Miami-Dade County Code of Ordinances, s. 33K-11(a); Orange County Code of Ordinances, s. 23-143(b).

¹³ Section 163.3180(6)(h)2.b., F.S.

¹⁴ Local governments often specify types of credits and how they operate.

¹⁵ This subsection shall operate prospectively and not retrospectively.

¹⁶ With respect to school concurrency applied by a local government, when a contribution of land; the construction, expansion, or payment for land acquisition; the construction or expansion of a public school facility, or a portion thereof; or the construction of a specified charter school is used as proportionate-share mitigation, the local government is required to credit such contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by a local ordinance for the same need, on a dollar-for-dollar basis.

the benefits accruing to the proposed new development.¹⁷ Local governments are prohibited from requiring the payment of impact fees prior to issuing a property's building permit.¹⁸

Additionally, ch. 2019-165, Laws of Fla., established that impact fee funds must be earmarked for capital facilities that benefit new residents and may not be used to pay existing debt unless specific conditions are met.¹⁹ Provisions also authorized a local government to provide an exception or waiver for an impact fee for affordable housing. If a local government provides such an exception or waiver, it is not required to use any revenues to offset the impact.²⁰ Impact fee provisions in s. 163.31801, F.S., do not apply to water and sewer connection fees.

Concurrency and Proportionate Share

Concurrency requires public facilities and services to be available concurrent with the impacts of new development. Concurrency was formerly required for transportation, schools, and parks and recreation, but in 2011, the Legislature made concurrency for these facilities optional with the passage of the Community Planning Act (CPA).²¹ Concurrency on a statewide basis is required only for sanitary sewer, solid waste, drainage, and potable water. However, any local government is authorized to extend the concurrency requirement to additional public facilities within its jurisdiction.²² "Area" or "area of jurisdiction" within the CPA means the total area qualifying under the act, whether this be all of the lands lying within the limits of an incorporated municipality, lands in and adjacent to incorporated municipalities, all unincorporated lands within a county, or areas comprising combinations of the lands in incorporated municipalities and unincorporated areas of counties.²³

Many local governments continue to exercise the option to impose concurrency on transportation and school facilities. If a local government elects to apply concurrency to either transportation or school facilities, or both, its comprehensive plan must provide principles, guidelines, standards, and strategies, including adopted levels of service,²⁴ to guide its application of concurrency requirements.²⁵ Concurrency is tied to provisions requiring local governments to adopt level-of-service (LOS) standards, address existing deficiencies, and provide infrastructure to accommodate new growth reflected in the comprehensive plan.²⁶ Local governments are charged with setting LOS standards within their jurisdictions. The local comprehensive plan must demonstrate, for required or optional concurrency requirements, that the adopted LOS standards can be reasonably met, and infrastructure needed to ensure that the LOS standards are achieved

¹⁷ Section 163.31801(3)(f) and (g), F.S.

¹⁸ Section 163.31801(3)(e), F.S.

¹⁹ Section 163.31801(3)(h) and (i), F.S.

²⁰ Section 163.31801(8), F.S.

²¹ Chapter 2011-139, s. 15, Laws of Fla.

²² Section 163.3180(1), F.S.

²³ Section 163.3164(6), F.S.

²⁴ "Level of service" is defined in s. 163.3164(28), F.S., to mean "an indicator of the extent or degree of service provided by, or proposed to be provided by, a facility based on and related to the operational characteristics of the facility. Level of service shall indicate the capacity per unit of demand for each public facility."

²⁵ See ss. 163.3180(5) and (6), F.S., with respect to concurrency applied to transportation facilities and to public education facilities, respectively.

²⁶ See generally s. 163.3180, F.S.

and maintained for a five-year period must be identified.²⁷ Generally, if the LOS standards are not met, development permits may not be issued without an applicable exception.

Proportionate share is a tool local governments may use to require developers to help mitigate the impacts of their development notwithstanding a failure to achieve and maintain the adopted LOS standards.²⁸ Proportionate share generally requires developers to contribute to costs, or build facilities, necessary to offset a new development's impacts.²⁹ Local governments may require proportionate share contributions from developers for both transportation and school impacts.³⁰

A local government applying the concurrency requirement to transportation facilities must comply with the statutory requirements in order to achieve and maintain the LOS standard adopted in the comprehensive plan.³¹ A local government that later repeals transportation concurrency is encouraged to apply statutory criteria to an alternative mobility funding system. A mobility fee-based funding system adopted by a local government must comply with the dual rational nexus test applicable to impact fees.³²

With respect to school concurrency applied by a local government, when a contribution of land; the construction, expansion, or payment for land acquisition; the construction or expansion of a public school facility, or a portion thereof; or the construction of a specified charter school is used as proportionate-share mitigation, the local government is required to credit such contribution, construction, expansion, or payment toward any other impact fee or exaction imposed by a local ordinance for the same need, on a dollar-for-dollar basis.³³

School Per-Student Station Costs

Each district school board must meet all educational plant space needs of its elementary, middle, and high schools.³⁴ Section 1013.64(6)(b)1, F.S., specifies maximum total costs per student station for each school level as of January 2006, adjusted annually to reflect increases or decreases in the Consumer Price Index. Chapter 2019-23, Laws of Fla., directed the Department of Education in conjunction with the Office of Economic and Demographic Research to review and adjust the cost per student station limits to reflect actual construction costs by January 1, 2020, and annually thereafter.

Capital Assets, Infrastructure and Public Facilities

As used in the Rules of the Auditor General, Chapter 10.550 on Local Government Entity Audits, "generally accepted accounting principles" are those accounting principles generally

²⁷ Section 163.3180(1)(b), F.S.

²⁸ Florida Department of Community Affairs (now Department of Economic Opportunity), *Transportation Concurrency: Best Practices Guide*, pg. 64 (2007), available at http://www.cutr.usf.edu/pdf/DCA_TCBP%20Guide.pdf (last visited Feb. 12, 2020).

²⁹ *Id.*

³⁰ Sections 163.3180(5) and 163.3180(6), F.S.

³¹ Section 163.3180(5), F.S.

³² Section 163.3180(5)(i), F.S.

³³ Section 163.3180(6)(h)2.b., F.S.

³⁴ Section 1013.64(6), F.S.

accepted in the United States of America, as defined by the Governmental Accounting Standards Board (GASB).³⁵ The GASB definition of capital assets and their link to infrastructure assets includes:

...land, improvements to land, easements, buildings, building improvements, vehicles, machinery, equipment, works of art and historical treasures, infrastructure, and all other tangible or intangible assets that are used in operations and that have initial useful lives extending beyond a single reporting period. Infrastructure assets are long-lived capital assets that normally are stationary in nature and normally can be preserved for a significantly greater number of years than most capital assets. Examples of infrastructure assets include roads, bridges, tunnels, drainage systems, water and sewer systems, dams, and lighting systems.³⁶

Section 212.055(2), F.S., authorizes counties to levy a local government infrastructure surtax. For the purposes of the surtax, the term “infrastructure” means any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years, any related land acquisition, land improvement, design, and engineering costs, and all other professional and related costs required to bring the public facilities into service.³⁷ An allowable meaning for a public facility is one used in the Community Planning Act: major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational facilities.³⁸

III. Effect of Proposed Changes:

Section 1 amends s. 163.31801, F.S., to provide definitions for both “infrastructure” and “public facility” as they relate to impact fees in this section of law. Infrastructure means:

- Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of a public facility, excluding the cost of repairs or maintenance, that have a life expectancy of 5 or more years;
- Any related land acquisition, land improvement, design, engineering, and permitting costs; and
- All other related construction costs required to bring the public facility into service.

The term public facility is defined similarly to its meaning in the Community Planning Act, i.e., a major capital improvement, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational facilities and would, with the bill, also include a fire and law enforcement facility. The bill also includes within the definition of “public facility,” that for independent special fire control and rescue districts, the term “infrastructure” also includes new facilities as defined in s. 191.009(4), F.S.

³⁵ State of Florida Auditor General, *Rules of the Auditor General, Chapter 10.550 Local Government Entity Audits* (Sep. 30, 2019) available at https://flauditor.gov/pages/pdf_files/10_550.pdf (last visited Feb. 12, 2020).

³⁶ See Governmental Accounting Standards Board, *Capital Assets –Project Plan* available at https://www.gasb.org/jsp/GASB/GASBContent_C/ProjectPage&cid=1176173270952 (last visited February 12, 2020).

³⁷ Section 212.055(2)(d)1., F.S.

³⁸ Section 163.3164(39), F.S.

Minimum impact fee requirements are amended to include that:

- The data upon which an impact fee is calculated be collected within the last 36 months and exclude any cost that does not meet the definition of infrastructure.
- The cost per student station established in school impact fee calculations may not exceed the statutory total maximum cost per student station.
- Unless the result is to reduce the total mitigation costs or impact fees imposed on an applicant, new or increased impact fees may not apply to current or pending permit applications submitted before the effective date of an ordinance or resolution imposing a new or increased impact fee.

This section of the bill also amends s. 163.31801, F.S., to provide that:

- An existing required local government affidavit of compliance with s. 163.31801, F.S., must also state compliance with spending period provisions of an impact fee.
- Factors surrounding an action challenging an impact fee or a government's failure to provide credits for the payment of an impact fee also include a challenge for contributions made and these types of challenges apply within all of ch. 163, F.S.
- Impact fee credits are assignable³⁹ and transferable at any time after establishment. The credits must be used for the same type of facility located within the geographic boundary of the local government jurisdiction, as well as a zone or district that receives benefit from the improvement. This treatment is also applied to transportation credits when local governments use alternative mobility funding systems in lieu of impact fees. A benefit must be recognized in any zone or district within five miles of the zone or district where the credits were generated.
- A local government shall provide impact fee credits or other forms of compensation if a contribution is greater in value than the applicable impact fee.
- Contributions related to a transportation system are creditable against the combined total of all impact fees, mobility fees or other forms of exactions charged to mitigate transportation impacts.
- The above provisions apply at the time any contribution is accepted, regardless of when the contributions were agreed upon or committed to.

Section 163.31801, F.S., is further amended to require a county or municipality to establish an impact fee review committee prior to enacting an impact fee. Committee members:

- Must be qualified electors of the county or municipality for whom they were appointed;
- Must include:
 - Two county or municipality employees. If a school impact fee is assessed or under consideration, one of the two members must be employed by the school district;
 - Two business community members who are neither elected officials nor employees of the local government jurisdiction;
 - Two local residential contractors who are neither elected officials nor employees of the local government jurisdiction;
 - One at-large member who is not an elected official or an employee of the local government jurisdiction;

³⁹ Assignability is the quality or attribute which permits a thing to be transferred or negotiated. *See* BLACK'S LAW DICTIONARY (6th ed. 1990).

- Must serve without compensation at the pleasure of the local government until they are replaced; and
- Automatically forfeit appointment after missing three consecutive meetings or two-thirds of the meetings within a calendar year.

A county or municipality may appoint alternate members to serve in the absence of their respective member.

In lieu of an impact review committee, a small county, as defined in s. 110.1228, F.S., and a small municipality, as defined in s. 110.1228, F.S., that assesses an impact fee may utilize an existing committee which contains representation from the building or development community and reviews building or development.

Committees must duly notice committee meetings and committee meetings may not be held unless a quorum is present. A quorum consists of a majority of members of the committee, but an alternate shall count toward the quorum when a regular member is absent.

The committee shall meet as needed to:

- Review the selection of an impact fee consultant.
- Review impact fee studies and study recommendations.
- Review policies and methodologies for determining impact fees on new developments and new construction.
- Review changes to impact fee calculations.
- Review impact fee expenditures in the local government's proposed budget to ensure the fees are used in accordance with Florida law.

Section 2 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, Section 18(a) of the Florida Constitution, provides that municipalities and counties are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met. However, the mandate requirement does not apply to laws having an insignificant impact,⁴⁰ which for Fiscal Year 2020-2021 is forecast at approximately \$2.2 million.^{41,42}

Article VII, Section 18(b) of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the

⁴⁰ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 5, 2020).

⁴¹ FLA. CONST. art. VII, s. 18(d).

⁴² Based on the Florida Demographic Estimating Conference's December 3, 2019 population forecast for 2020 of 21,555,986. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 5, 2020).

Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that cities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. As in Subsection 18(a), the mandate requirement does not apply to laws having an insignificant impact.

Under this bill, municipalities and counties that assess impact fees will incur costs related to the administration of the newly required impact fee review committees and they may realize a reduction in impact fee collections (revenues) as a result of the newly provided definitions for infrastructure and public facility. If costs are determined to exceed \$2.2 million in the aggregate, and no other exemption or exception applies, in order to be binding on the municipalities and counties, the bill must contain a finding of important state interest and final passage must be approved by two-thirds of the membership of each house of the Legislature. If a reduction in authority to raise revenues is found and the reduction exceeds the aggregate threshold, final passage of the bill would require approval by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that a prior version of the bill (CS/SB 1066) had an indeterminate, positive or negative, impact on local government impact fee revenues beginning in Fiscal Year 2020-2021. Staff estimates that the changes made by the current version of the bill (CS/CS/SB 1066) do not change the fiscal impact.

B. Private Sector Impact:

The bill's provisions related to assignable and transferable impact fee credits and impact fee contribution crediting may have an indeterminate impact on holders of such credits or contributions.

C. Government Sector Impact:

Local governments will likely incur additional expenses to accommodate the administrative facets of the bill's required impact fee review committee and may incur expenses if their current impact fee calculations are based on data older than 36 months.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.31801 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Finance and Tax on February 18, 2020:

The committee substitute:

- Clarifies that the bill applies to a special district that adopts, collects and administers an impact fee.
- Expands the definition of “infrastructure” to include, for independent special fire control and rescue districts, new facilities as defined in s. 191.009(4), F.S.
- Provides that new impact fees apply to existing applications if the result is to reduce the total mitigation costs or impact fees imposed on an applicant.
- Limits the use of impact fee credits to the same type of public facility for which the impact fee applies located within the geographic boundary of the local government jurisdiction where the impact fee is imposed, as well as a zone or district that receives benefit from the improvement. The committee substitute applies these same restrictions to alternative mobility funding systems as provided for in s. 163.3180(5)(i), F.S.
- Requires, for purposes of impact fee credits, that a benefit be recognized within any zone or district located within five miles of the zone or district where the credit was generated.
- Clarifies that impact fee credits are intended to ensure that impact fees or equivalent contributions are not collected more than once for the same impacts.
- Clarifies that contributions related to the transportation system are creditable against impact fees, mobility fees, or other forms of exactions that are charged to mitigate transportation impacts.
- Further details the composition and duties of the impact fee review committee.

CS by Community Affairs on February 10, 2020:

The committee substitute:

- Provides impact fee related definitions for infrastructure and public facility.
- Establishes a 36-month age-of-data requirement for analysis sources used to calculate impact fees.
- Provides that new or increased impact fees may not apply to current or pending permit applications submitted prior to the effective date of an ordinance imposing new or increased fees.
- Includes contributions within exiting impact fee challenge provisions and makes the challenges applicable to all of ch. 163, F.S.
- Clarifies that impact fee credits are assignable and transferrable within the same impact fee jurisdiction.
- Provides directives on how and when contributions in lieu of impact fees are credited.
- Removes a requirement that an impact fee review committee select an impact fee consultant.

B. Amendments:

None.



229240

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/19/2020	.	
	.	
	.	
	.	

The Committee on Finance and Tax (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 163.31801, Florida Statutes, is amended
to read:

163.31801 Impact fees; short title; intent; minimum
requirements; audits; challenges.—

(1) This section may be cited as the "Florida Impact Fee
Act."



11 (2) The Legislature finds that impact fees are an important
12 source of revenue for a local government to use in funding the
13 infrastructure necessitated by new growth. The Legislature
14 further finds that impact fees are an outgrowth of the home rule
15 power of a local government to provide certain services within
16 its jurisdiction. Due to the growth of impact fee collections
17 and local governments' reliance on impact fees, it is the intent
18 of the Legislature to ensure that, when a county or municipality
19 adopts, collects, or administers an impact fee by ordinance or a
20 special district adopts, collects, and administers an impact fee
21 by resolution, the governing authority complies with this
22 section to ensure a consistent statewide process.

23 (3) For purposes of this section:

24 (a) The term "infrastructure" means any fixed capital
25 expenditure or fixed capital outlay associated with the
26 construction, reconstruction, or improvement of a public
27 facility, excluding the cost of repairs or maintenance, that
28 have a life expectancy of 5 or more years; any related land
29 acquisition, land improvement, design, engineering, and
30 permitting costs; and all other related construction costs
31 required to bring the public facility into service.

32 (b) The term "public facility" means any facility as
33 defined in s. 163.3164(39) and includes any fire and law
34 enforcement facility. For independent special fire control and
35 rescue districts, the term "infrastructure" also includes new
36 facilities as defined in s. 191.009(4).

37 (4) At a minimum, each county and municipality that adopts,
38 collects, or administers an impact fee by ordinance and each
39 special district that adopts, collects, and administers an



229240

40 ~~impact fee by resolution an impact fee adopted by ordinance of a~~
41 ~~county or municipality or by resolution of a special district~~
42 ~~must satisfy all of the following conditions:~~

43 (a) Require that the calculation of the impact fee ~~must~~ be
44 based on the most recent and localized data collected within the
45 last 36 months and excludes any cost that does not meet the
46 definition of infrastructure.

47 (b) Account for the revenues and expenditures of such
48 impact fee in a separate impact fee account, if the local
49 governmental entity imposes an impact fee to address its
50 infrastructure needs ~~The local government must provide for~~
51 ~~accounting and reporting of impact fee collections and~~
52 ~~expenditures. If a local governmental entity imposes an impact~~
53 ~~fee to address its infrastructure needs, the entity must account~~
54 ~~for the revenues and expenditures of such impact fee in a~~
55 ~~separate accounting fund.~~

56 (c) Limit administrative charges for the collection of
57 impact fees ~~must be limited~~ to actual costs. The cost per
58 student station established in school impact fee calculations
59 may not exceed that statutory total maximum cost per student
60 station calculated under s. 1013.64(6).

61 (d) ~~The local government must~~ Provide notice not less than
62 90 days before the effective date of an ordinance or resolution
63 imposing a new or increased impact fee. Unless the result is to
64 reduce the total mitigation costs or impact fees imposed on an
65 applicant, new or increased impact fees may not apply to current
66 or pending permit applications submitted before the effective
67 date of an ordinance or resolution imposing a new or increased
68 impact fee. A county or municipality is not required to wait 90



229240

69 days to decrease, suspend, or eliminate an impact fee.

70 ~~(e) Collection of the impact fee may not be required to~~
71 ~~occur earlier than the date of issuance of the building permit~~
72 ~~for the property that is subject to the fee.~~

73 ~~(f)~~ Ensure that the impact fee ~~is~~ must be proportional and
74 reasonably connected to, or has ~~have~~ a rational nexus with, the
75 need for additional infrastructure ~~capital facilities~~ and the
76 increased impact generated by the new residential or commercial
77 construction.

78 ~~(f)(g)~~ Ensure that the impact fee ~~is~~ must be proportional
79 and reasonably connected to, or has ~~have~~ a rational nexus with,
80 the expenditures of the funds collected and the benefits
81 accruing to the new residential or nonresidential construction.

82 ~~(g)(h)~~ The local government must Specifically earmark funds
83 collected under the impact fee for use in acquiring,
84 constructing, or improving infrastructure ~~capital facilities~~ to
85 benefit new users.

86 (5) Collection of the impact fee may not be required to
87 occur earlier than the date of issuance of the building permit
88 for the property that is subject to the fee.

89 ~~(6)(i)~~ Revenues generated by the impact fee may not be
90 used, in whole or in part, to pay existing debt or for
91 previously approved projects unless the expenditure is
92 reasonably connected to, or has a rational nexus with, the
93 increased impact generated by the new residential or
94 nonresidential construction.

95 ~~(7)(4)~~ The local government must credit against the
96 collection of the impact fee any contribution, whether
97 identified in a proportionate share agreement or other form of



229240

98 exaction, related to public education facilities, including land
99 dedication, site planning and design, or construction. Any
100 contribution must be applied to reduce any education-based
101 impact fees on a dollar-for-dollar basis at fair market value.

102 (8)~~(5)~~ If a local government increases its impact fee
103 rates, the holder of any impact fee credits, whether such
104 credits are granted under s. 163.3180, s. 380.06, or otherwise,
105 which were in existence before the increase, is entitled to the
106 full benefit of the intensity or density prepaid by the credit
107 balance as of the date it was first established. This subsection
108 shall operate prospectively and not retrospectively.

109 (9)~~(6)~~ Audits of financial statements of local governmental
110 entities and district school boards which are performed by a
111 certified public accountant pursuant to s. 218.39 and submitted
112 to the Auditor General must include an affidavit signed by the
113 chief financial officer of the local governmental entity or
114 district school board stating that the local governmental entity
115 or district school board has complied with this section and the
116 spending period provision in the local ordinance or resolution.

117 (10)~~(7)~~ In any action challenging an impact fee or the
118 government's failure to provide required dollar-for-dollar
119 credits for the payment of impact fees or for contributions made
120 as provided in this chapter s. 163.3180(6)(h)2.b., the
121 government has the burden of proving by a preponderance of the
122 evidence that the imposition or amount of the fee or credit
123 meets the requirements of state legal precedent and this
124 section. The court may not use a deferential standard for the
125 benefit of the government.

126 (11) Impact fee credits are assignable and transferable at



229240

127 any time after establishment for the same type of public
128 facility for which the impact fee applies to any development or
129 parcel located within the geographic boundary of the local
130 government jurisdiction where the impact fee is imposed and
131 situated geographically within an impact fee zone or district
132 that receives a benefit from the improvement, dedication, or
133 payment which generated the credit to be transferred. If a local
134 government elects to use an alternative mobility funding system
135 as provided for in s. 163.3180(5)(i) in lieu of impact fees,
136 transportation credits are assignable and transferable at any
137 time after establishment to any development or parcel within the
138 geographic boundary of the local government jurisdiction where
139 the credit was established so long as the credit is applied to a
140 zone or district which is receiving a benefit from the
141 contribution to the alternative mobility funding system which
142 generated the credit. Under either system described in this
143 subsection, a benefit shall be recognized within any zone or
144 district located within 5 miles of the zone or district where
145 the credits were generated.

146 (12)~~(8)~~ A county, municipality, or special district may
147 provide an exception or waiver for an impact fee for the
148 development or construction of housing that is affordable, as
149 defined in s. 420.9071. If a county, municipality, or special
150 district provides such an exception or waiver, it is not
151 required to use any revenues to offset the impact.

152 (13) To ensure impact fees or equivalent contributions are
153 not imposed more than once for the same impacts, a local
154 government shall provide impact fee credits or other forms of
155 compensation if a contribution is greater in value than the



229240

156 applicable impact fee. Contributions related to the
157 transportation system are creditable against the combined total
158 of all impact fees, mobility fees, or other forms of exactions
159 charged to mitigate transportation impacts. This subsection
160 applies at the time any contribution is accepted, regardless of
161 when the contributions were agreed upon or committed to.

162 (14) (a) Before enacting an impact fee, each county and
163 municipality must establish an impact fee review and advisory
164 committee.

165 (b)1. The committee shall be composed of the following
166 members appointed by the county commission or the governing body
167 of the municipality, as applicable:

168 a. Two members who are employed by the county or
169 municipality. If a school impact fee is assessed or under
170 consideration, one of the two members shall be employed by the
171 school district.

172 b. Two members who represent the business community who are
173 not elected officials or employees of the local government
174 jurisdiction.

175 c. Two members who are local licensed general or
176 residential contractors, who are not elected officials or
177 employees of the local government jurisdiction.

178 d. One at-large member who is not an elected official or
179 employee of the local government jurisdiction.

180 2. The county commission or the governing body of the
181 municipality, as applicable, may appoint three alternate
182 members, consisting of one representative from each of the
183 categories described in sub-subparagraphs 1.a., b., and c., who
184 shall serve in the absence of their respective member.



229240

185 3. Members and alternate members must be qualified electors
186 of the county or municipality, as applicable.

187 4. Members and alternate members shall serve at the
188 pleasure of the local government and shall serve until they are
189 replaced.

190 (c)1. Each committee meeting must be duly noticed and open
191 to the public as required by s. 286.011.

192 2. A meeting may not be held unless a quorum is present. A
193 quorum consists of a majority of members of the committee, but
194 an alternate member shall count toward the quorum when a regular
195 member is absent.

196 3. A member who fails to attend three consecutive meetings
197 or fails to attend two-thirds of the meetings within a calendar
198 year automatically forfeits the appointment, and the county
199 commissioners or members of the governing body of the
200 municipality, as applicable, shall promptly fill the vacancy.

201 4. Members of the committee shall serve without
202 compensation.

203 5. A small county as defined in s. 110.1228(1)(c) or a
204 small municipality as defined in s. 110.1228(1)(b) which
205 assesses an impact fee may utilize an existing committee that
206 contains representation from the building or development
207 community and reviews building or development in lieu of the
208 impact fee review committee provided herein.

209 (d) The committee shall meet as needed to examine impact
210 fee policies and provide recommendations on impact fee
211 decisions, including, but not limited to, reviewing all of the
212 following:

213 1. The selection of an impact fee consultant.



229240

- 214 2. Impact fee studies and study recommendations.
- 215 3. Policies and methodologies for determining impact fees
- 216 on new developments and new construction.
- 217 4. Changes to impact fee calculations.
- 218 5. After each impact fee is adopted by the local government
- 219 and at least before a county or municipality adopts its budget,
- 220 the proposed budget for expending impact fees to ensure the fee
- 221 is used in accordance with this section and other pertinent
- 222 sections of state law.

223 ~~(15)-(9)~~ This section does not apply to water and sewer
224 connection fees.

225 Section 2. This act shall take effect July 1, 2020.

226
227 ===== T I T L E A M E N D M E N T =====

228 And the title is amended as follows:

229 Delete everything before the enacting clause
230 and insert:

231 A bill to be entitled

232 An act relating to impact fees; amending s. 163.31801,

233 F.S.; revising legislative findings; defining terms;

234 revising requirements for counties and municipalities

235 that adopt, collect, or administer an impact fee by

236 ordinance and for special districts that adopt,

237 collect, and administer an impact fee by resolution;

238 providing minimum requirements for such counties,

239 municipalities, and special districts; prohibiting new

240 or increased impact fees from applying to certain

241 applications; providing an exception; providing

242 timeframes for the collection of impact fees by local



229240

243 governments; providing that impact fee credits are
244 assignable and transferable under certain conditions;
245 providing that transportation credits, used in lieu of
246 impact fees, are assignable and transferable under
247 certain conditions; requiring local governments to
248 provide impact fee credits or other forms of
249 compensation under certain conditions; providing
250 applicability; requiring certain counties and
251 municipalities to establish impact fee review and
252 advisory committees; providing for membership;
253 providing procedures for holding meetings and
254 establishing quorums; providing committee duties;
255 providing an effective date.

By the Committee on Community Affairs; and Senator Gruters

578-03429-20

20201066c1

A bill to be entitled

An act relating to impact fees; amending s. 163.31801, F.S.; providing definitions; revising requirements for counties and municipalities that adopt, collect, or administer an impact fee by ordinance and for special districts that adopt, collect, or administer an impact fee by resolution; providing timeframes for the collection of impact fees by local governments; providing that impact fee credits are assignable and transferable under certain conditions; requiring local governments to provide impact fee credits or other forms of compensation under certain conditions; providing applicability; requiring certain counties and municipalities to establish impact fee review committees; providing for membership; providing procedures for holding meetings and establishing quorums; providing committee duties; providing an effective date.

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

Section 1. Section 163.31801, Florida Statutes, is amended to read:

163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges.—

(1) This section may be cited as the "Florida Impact Fee Act."

(2) The Legislature finds that impact fees are an important source of revenue for a local government to use in funding the

Page 1 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

578-03429-20

20201066c1

infrastructure necessitated by new growth. The Legislature further finds that impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction. Due to the growth of impact fee collections and local governments' reliance on impact fees, it is the intent of the Legislature to ensure that, when a county or municipality adopts, collects, or administers an impact fee by ordinance or a special district adopts, collects, or administers an impact fee by resolution, the governing authority complies with this section to ensure a consistent statewide process.

(3) For purposes of this section:

(a) The term "infrastructure" means any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of a public facility, excluding the cost of repairs or maintenance, that have a life expectancy of 5 or more years; any related land acquisition, land improvement, design, engineering, and permitting costs; and all other related construction costs required to bring the public facility into service.

(b) The term "public facility" means any facility as defined in s. 163.3164(39), and includes any fire and law enforcement facility.

(4) At a minimum, each county and municipality that adopts, collects, or administers an impact fee by ordinance and each special district that adopts, collects, or administers an impact fee by resolution ~~an impact fee adopted by ordinance of a county or municipality or by resolution of a special district~~ must satisfy all of the following conditions:

(a) Require that the calculation of the impact fee ~~must~~ be

Page 2 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

578-03429-20

20201066c1

59 based on the most recent and localized data collected within the
 60 last 36 months and excludes any cost that does not meet the
 61 definition of infrastructure.

62 (b) Account for the revenues and expenditures of such
 63 impact fee in a separate impact fee account, if the local
 64 governmental entity imposes an impact fee to address its
 65 infrastructure needs ~~The local government must provide for~~
 66 ~~accounting and reporting of impact fee collections and~~
 67 ~~expenditures. If a local governmental entity imposes an impact~~
 68 ~~fee to address its infrastructure needs, the entity must account~~
 69 ~~for the revenues and expenditures of such impact fee in a~~
 70 ~~separate accounting fund.~~

71 (c) Limit administrative charges for the collection of
 72 impact fees ~~must be limited~~ to actual costs. The cost per
 73 student station established in school impact fee calculations
 74 may not exceed that statutory total maximum cost per student
 75 station calculated under s. 1013.64(6).

76 (d) ~~The local government must~~ Provide notice not less than
 77 90 days before the effective date of an ordinance or resolution
 78 imposing a new or increased impact fee. New or increased impact
 79 fees may not apply to current or pending permit applications
 80 submitted before the effective date of an ordinance or
 81 resolution imposing a new or increased impact fee. A county or
 82 municipality is not required to wait 90 days to decrease,
 83 suspend, or eliminate an impact fee.

84 (e) ~~Collection of the impact fee may not be required to~~
 85 ~~occur earlier than the date of issuance of the building permit~~
 86 ~~for the property that is subject to the fee.~~

87 ~~(f)~~ Ensure that the impact fee is ~~must be~~ proportional and

578-03429-20

20201066c1

88 reasonably connected to, or has ~~have~~ a rational nexus with, the
 89 need for additional infrastructure ~~capital facilities~~ and the
 90 increased impact generated by the new residential or commercial
 91 construction.

92 ~~(f)(g)~~ Ensure that the impact fee is ~~must be~~ proportional
 93 and reasonably connected to, or has ~~have~~ a rational nexus with,
 94 the expenditures of the funds collected and the benefits
 95 accruing to the new residential or nonresidential construction.

96 ~~(g)(h)~~ ~~The local government must~~ Specifically earmark funds
 97 collected under the impact fee for use in acquiring,
 98 constructing, or improving infrastructure ~~capital facilities~~ to
 99 benefit new users.

100 (5) Collection of the impact fee may not be required to
 101 occur earlier than the date of issuance of the building permit
 102 for the property that is subject to the fee.

103 ~~(6)(4)~~ Revenues generated by the impact fee may not be
 104 used, in whole or in part, to pay existing debt or for
 105 previously approved projects unless the expenditure is
 106 reasonably connected to, or has a rational nexus with, the
 107 increased impact generated by the new residential or
 108 nonresidential construction.

109 ~~(7)(4)~~ The local government must credit against the
 110 collection of the impact fee any contribution, whether
 111 identified in a proportionate share agreement or other form of
 112 exaction, related to public education facilities, including land
 113 dedication, site planning and design, or construction. Any
 114 contribution must be applied to reduce any education-based
 115 impact fees on a dollar-for-dollar basis at fair market value.

116 ~~(8)(5)~~ If a local government increases its impact fee

578-03429-20

20201066c1

117 rates, the holder of any impact fee credits, whether such
 118 credits are granted under s. 163.3180, s. 380.06, or otherwise,
 119 which were in existence before the increase, is entitled to the
 120 full benefit of the intensity or density prepaid by the credit
 121 balance as of the date it was first established. This subsection
 122 shall operate prospectively and not retrospectively.

123 (9)(6) Audits of financial statements of local governmental
 124 entities and district school boards which are performed by a
 125 certified public accountant pursuant to s. 218.39 and submitted
 126 to the Auditor General must include an affidavit signed by the
 127 chief financial officer of the local governmental entity or
 128 district school board stating that the local governmental entity
 129 or district school board has complied with this section and the
 130 spending period provision in the local ordinance or resolution.

131 (10)(7) In any action challenging an impact fee or the
 132 government's failure to provide required dollar-for-dollar
 133 credits for the payment of impact fees or for contributions made
 134 as provided in this chapter s. 163.3180(6)(h)2.b., the
 135 government has the burden of proving by a preponderance of the
 136 evidence that the imposition or amount of the fee or credit
 137 meets the requirements of state legal precedent and this
 138 section. The court may not use a deferential standard for the
 139 benefit of the government.

140 (11) Impact fee credits are assignable and transferable at
 141 any time after establishment from one development or parcel to
 142 any other development or parcel within the same impact fee
 143 jurisdiction for the same type of public facility for which the
 144 impact fee applies.

145 (12)(8) A county, municipality, or special district may

578-03429-20

20201066c1

146 provide an exception or waiver for an impact fee for the
 147 development or construction of housing that is affordable, as
 148 defined in s. 420.9071. If a county, municipality, or special
 149 district provides such an exception or waiver, it is not
 150 required to use any revenues to offset the impact. To ensure
 151 impact fees or equivalent contributions are only collected once,
 152 a local government shall provide impact fee credits or other
 153 forms of compensation if a contribution is greater in value than
 154 the applicable impact fee. Contributions related to the
 155 transportation system are creditable against the combined total
 156 of all impact fees and exactions charged for mobility. This
 157 subsection applies at the time any contribution is accepted,
 158 regardless of when the contributions were agreed upon or
 159 committed to.

160 (13)(a) Each county and municipality that assesses impact
 161 fees must establish an impact fee review committee.

162 (b)1. The committee shall be composed of the following
 163 members appointed by the county commission or the governing body
 164 of the municipality, as applicable:

165 a. Two members who are employed by the county or
 166 municipality.

167 b. Two members who represent the business community.

168 c. Two members who are local licensed general or
 169 residential contractors.

170 d. One at-large member.

171 2. The county commission or the governing body of the
 172 municipality, as applicable, shall appoint three alternate
 173 members, consisting of one representative from each of the
 174 categories described in sub-subparagraphs 1.a., b., and c., who

578-03429-20 20201066c1

175 shall serve in the absence of their respective member.

176 3. Members and alternate members must be qualified electors

177 of the county or municipality, as applicable, for at least 2

178 years before their appointment.

179 4. Committee members shall serve at the pleasure of the

180 local government and shall serve until they are replaced.

181 (c)1. Each committee meeting must be duly noticed and open

182 to the public as required by s. 286.011.

183 2. A meeting may not be held unless a quorum is present. A

184 quorum consists of a majority of members of the committee, but

185 an alternate member shall count toward the quorum when a regular

186 member is absent.

187 3. A member who fails to attend three consecutive meetings

188 or fails to attend two-thirds of the meetings within a calendar

189 year automatically forfeits the appointment, and the county

190 commissioners or members of the governing body of the

191 municipality, as applicable, shall promptly fill the vacancy.

192 4. Members of the committee shall serve without

193 compensation.

194 (d) The committee shall meet as needed to:

195 1. Establish a policy and methodology for determining

196 impact fees on new developments.

197 2. Review the proposed impact fee on each new development

198 before the fee becomes final.

199 3. Submit recommendations made by the impact fee committee

200 to the county commission or governing body of the municipality,

201 as applicable. The recommendations must be presented at the

202 meeting when the impact fee on the new development will be

203 discussed and voted upon.

Page 7 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

578-03429-20 20201066c1

204 4. After each impact fee is adopted by the local

205 government, review all proposed expenditures of that impact fee

206 to ensure the fee is used for capital projects within the

207 jurisdiction.

208 ~~(14)(9)~~ This section does not apply to water and sewer

209 connection fees.

210 Section 2. This act shall take effect July 1, 2020.

Page 8 of 8

CODING: Words ~~stricken~~ are deletions; words underlined are additions.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Commerce and Tourism, *Chair*
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Banking and Insurance

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS

23rd District

February 11, 2020

The Honorable George B. Gainer, Chair
Committee on Finance and Tax
215 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Gainer:

I am writing to request that Senate Bill 1066, Impact fees to be placed on the agenda of the next Finance and Tax Committee meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

cc: Jose Diez-Arguelles, Staff Director
Lynn Wells, Committee Administrative Assistant

REPLY TO:

- 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-20

Meeting Date

210 1066

Bill Number (if applicable)

229240

Amendment Barcode (if applicable)

Topic Impact Fees

Name KARI HEBRANK

Job Title _____

Address 215 S. Monroe St., #500

Street

Tallahassee FL 32301

City

State

Zip

Phone 566-7824

Email khebrank@carbonfields.com

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing FLORIDA HOME BUILDERS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/20

Meeting Date

1066

Bill Number (if applicable)

229240

Amendment Barcode (if applicable)

Topic Impact Fees

Name Marco Panedes

Job Title _____

Address 106 E. College Ave

Street

Phone 850-354-7608

Tallahassee FL 32301

City

State

Zip

Email mpanedes@steamswarrior.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing M/I Homes of Tampa

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/20
Meeting Date

1066
Bill Number (if applicable)

Topic IMPACT Fees

Amendment Barcode (if applicable)

Name David Cruz

Job Title Legislative Counsel

Address P.O. Box 1757

Phone 701-3676

Tallahassee FL 32301
City State Zip

Email DCRUZ@FCCities.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/20

Meeting Date

1066

Bill Number (if applicable)

Topic Impact fees

Amendment Barcode (if applicable)

Name Paul Owens

Job Title President, 1000 Friends of Florida

Address 308 N. Monroe St

Phone 850-222-6277

Street

Jallahassee

FL

State

32301

Zip

Email powens@1000Fof.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing 1000 Friends of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/20

Meeting Date

1066

Bill Number (if applicable)

Topic Impact Fees

Amendment Barcode (if applicable)

Name Mark Jeffries

Job Title

Address 201 S. Rosalind Street

Phone 407-236-5909

Email mark.jeffries@ocfl.net

City

State

Zip

Speaking: [] For [] Against [] Information

Waive Speaking: [] In Support [x] Against (The Chair will read this information into the record.)

Representing Orange County

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [x] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/20

Meeting Date

1066

Bill Number (if applicable)

Topic Input fees

Amendment Barcode (if applicable)

Name ERIC POOLE

Job Title Leg Counsel

Address 100 Monroe St

Phone

Street

TALL FL 32311

City

State

Zip

Email

Speaking: [] For [x] Against [x] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing

Appearing at request of Chair: [] Yes [x] No

Lobbyist registered with Legislature: [] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date _____

1066
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable) _____

Name LOUIS ROTUNDO

Job Title _____

Address 302 Pinestraw Circle
Street

Phone 407-699-9361

City _____ State _____ Zip _____

Email CCR5002@aol.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing CITY OF AHHAMONT SPRINGS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2020
Meeting Date

1066
Bill Number (if applicable)

Topic IMPACT FEES

Amendment Barcode (if applicable)

Name AMY PATTERSON

Job Title Director - Capital Project Planning - Collier County

Address 2685 S. Horseshoe Dr. Suite
Naples FL 34104¹⁶³
Street City State Zip

Phone 239-252-5721

Email anp0213@yahoo.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing COLLIER COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/20
Meeting Date

1066
Bill Number (if applicable)

Topic Impact Fees

Amendment Barcode (if applicable)

Name Edward Briggs

Job Title H

Address 235 W. Brandon Blvd. Ste. 640
Street

Phone 850-933-5994

Brandon FL 33511
City State Zip

Email edward@rsacountyfla.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Highland Homes

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2-18-20
Meeting Date

1066
Bill Number (if applicable)

Topic Impact Fees

Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Chief Lobbyist

Address 3730 Coconut Creek Parkway, Ste 200

Phone (954) 465-6861

Coconut Creek FL 33066
City State Zip

Email cbowen@abucastflorida.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Associated Builders and Contractors

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/17/19

Meeting Date

1066

Bill Number (if applicable)

Topic Impact Fees

Amendment Barcode (if applicable)

Name Marco Paredes

Job Title _____

Address 106 E College Ave

Phone 850-354-7608

Street

Tallahassee FL 32301

City

State

Zip

Email mparedes@starnsweaver.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing M/I Homes of Tampa

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: CS/SB 1662

INTRODUCER: Community Affairs Committee and Senators Albritton and Broxson

SUBJECT: Property Tax Exemption for Disabled Veterans

DATE: February 17, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
2.	<u>Babin</u>	<u>Diez-Arguelles</u>	<u>FT</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1662 allows a totally and permanently disabled veteran, or his or her surviving spouse, who acquires legal or beneficial title to property between January 1 and November 1, to receive a prorated refund of the ad valorem taxes paid for the newly acquired property as of the date of the property transfer. To receive the refund, the veteran or surviving spouse must have received the homestead exemption for totally and permanently disabled veterans authorized in s. 196.081, F.S., on another homestead property in that tax year.

Although current law provides a full property tax exemption for homestead property owned by veterans who sustained a total and permanent service-connected disability, tax-exempt veterans may incur some tax liabilities when selling their prior homestead property and purchasing a new homestead property. The bill would allow a veteran or surviving spouse to obtain a refund of a portion of the taxes paid.

The Revenue Estimating Conference has determined that the bill will reduce local property taxes by \$2.9 million in Fiscal Year 2020-2021, increasing to \$3.9 million by Fiscal Year 2024-2025.

The bill takes effect July 1, 2020.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of a property as of January 1 of each year.¹ The property appraiser annually determines the “just value”² of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³ Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due before April 1.⁴

The Florida Constitution prohibits the state from levying ad valorem taxes⁵ and limits the Legislature’s authority to provide for property valuations at less than just value unless expressly authorized by the Constitution.⁶

Homestead Exemptions

Every person having legal or equitable title to real estate and who maintains a permanent residence on the real estate is eligible for a \$25,000 tax exemption applicable to all ad valorem tax levies, including levies by school districts.⁷ An additional \$25,000 exemption applies to homestead property value between \$50,000 and \$75,000.⁸ This exemption does not apply to ad valorem taxes levied by school districts.⁹

Annual Application

Each person or organization meeting the criteria for an ad valorem tax exemption may claim the exemption if the claimant held legal title to the real or personal property subject to the exemption on January 1.¹⁰ The application for exemption must be filed with the property appraiser on or before March 1, and failure to make an application constitutes a waiver of the exemption for that year.¹¹ The application must list and describe the property for which the exemption is being claimed and certify the ownership and use of the property. The claimant must reapply for the exemption on an annual basis unless the property appraiser (subject to approval by a vote of the

¹ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. Art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965).

³ *See* ss. 192.001(2) and (16), F.S.

⁴ Section 197.333, F.S.

⁵ FLA. CONST. art. VII, s. 1(a).

⁶ *See* FLA. CONST. art. VII, s. 4.

⁷ FLA. CONST. art VII, s. 6(a).

⁸ *Id.*

⁹ *Id.*

¹⁰ Section 196.011(1)(a), F.S.

¹¹ Section 196.011(1)(b), F.S.

governing body of the county) has waived the annual application requirement for a property after an initial application is made and the exemption granted.¹²

Veterans with Total and Permanent Service-Connected Disability

The homestead property of a veteran who was honorably discharged with a service-connected total and permanent disability is exempt from taxation.¹³ To qualify for this exemption, the veteran must be a permanent resident of the state on January 1 of the tax year for which exemption is being claimed or must have been a permanent resident of this state on January 1. If the veteran predeceases their spouse, the spouse may continue to receive the exemption as long as the property remains the homestead property of the spouse, and the spouse is unmarried.¹⁴

The just value and the use of the property on January 1 are used by the property appraiser for purposes of the tax bill issued the following November.¹⁵ Thus, when property is sold mid-year, the new owner's November tax bill is determined by the just value and the prior owner's use of the property on the prior January 1. This treatment also applies when a disabled veteran that receives the full homestead exemption provided in s. 196.081, F.S., purchases a new homestead; the tax bill received in November will not reflect the disabled veteran exemption because the veteran did not use the new property as a homestead on January 1 of that year – he or she purchased the property after that date.

III. Effect of Proposed Changes:

The bill amends ss. 196.011 and 196.081, F.S., to allow a totally and permanently disabled veteran, or his or her surviving spouse, to receive a prorated refund for homestead property taxes paid on the newly acquired property, if legal or beneficial title to the property is acquired between January 1 and November 1. To qualify for the refund, the veteran or the surviving spouse must have received the homestead exemption for totally and permanently disabled veterans authorized in s. 196.081, F.S., on another property in that tax year.

Upon finding an applicant is entitled to the homestead exemption, a property appraiser must immediately make entries on the tax rolls of the county to allow the prorated refund of taxes for the previous tax year.

Veterans and spouses who qualify for the refund will receive the reimbursement in the tax year following the acquisition of a new property.

The bill takes effect on July 1, 2020.

¹² Section 196.011(5) and (9)(a), F.S.

¹³ Section 196.081(1), F.S.

¹⁴ Section 196.081(3), F.S.

¹⁵ See ss. 193.155, 193.1554, 193.1554, and 196.011(1)(a), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Article VII, Section 18(b) of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirement does not apply to laws having an insignificant impact,¹⁶ which for the Fiscal Year 2019-2020 is forecast at approximately \$2.2 million.^{17, 18}

The mandate provision may apply because the bill requires counties to issue a prorated refund of ad valorem tax to qualified disabled veterans under certain circumstances. If the bill does qualify as a mandate, the final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

¹⁶ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 14, 2020).

¹⁷ FLA. CONST. art. VII, s. 18(d).

¹⁸ Based on the Florida Demographic Estimating Conference's July 8, 2019, population forecast for 2020 of 21,555,986. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 14, 2020).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has determined the bill will reduce local government ad valorem receipts by \$2.9 million in the Fiscal Year 2020-2021, increasing to \$3.9 million by Fiscal Year 2024-2025.¹⁹

B. Private Sector Impact:

The bill may generate tax savings for qualified disabled veterans by providing these veterans ad valorem tax refunds when moving between homestead properties.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 196.011 and 196.081.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs February 10, 2020:

The committee substitute alters the mechanics of the homestead exemption “transfer” concept in the bill to allow a qualified veteran, or a surviving spouse, to receive a prorated refund for homestead taxes paid on newly acquired property.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁹ Office of Economic and Demographic Research, *Revenue Estimating Conference Impact Results: SB 1662 – Proposed Amendment*, 489-493 (Feb. 14, 2020), available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/pdf/page489-493.pdf> (last visited Feb. 14, 2020).

By the Committee on Community Affairs; and Senators Albritton
and Broxson

578-03428-20

20201662c1

1 A bill to be entitled
2 An act relating to a property tax exemption for
3 disabled veterans; amending s. 196.011, F.S.;
4 conforming a provision to changes made by the act;
5 amending s. 196.081, F.S.; providing that certain
6 veterans and their surviving spouses receiving a
7 certain homestead tax exemption may apply for and
8 receive a prorated refund of property taxes paid on
9 new homestead property acquired during a certain
10 timeframe; requiring the property appraiser to
11 immediately make certain entries upon the tax rolls to
12 allow the prorated refund; providing an effective
13 date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Paragraph (a) of subsection (1) of section
18 196.011, Florida Statutes, is amended to read:
19 196.011 Annual application required for exemption.—
20 (1) (a) Except as provided in s. 196.081, every person or
21 organization who, on January 1, has the legal title to real or
22 personal property, except inventory, which is entitled by law to
23 exemption from taxation as a result of its ownership and use
24 shall, on or before March 1 of each year, file an application
25 for exemption with the county property appraiser, listing and
26 describing the property for which exemption is claimed and
27 certifying its ownership and use. The Department of Revenue
28 shall prescribe the forms upon which the application is made.
29 Failure to make application, when required, on or before March 1

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

578-03428-20

20201662c1

30 of any year shall constitute a waiver of the exemption privilege
31 for that year, except as provided in subsection (7) or
32 subsection (8).
33 Section 2. Subsection (1) of section 196.081, Florida
34 Statutes, is amended to read:
35 196.081 Exemption for certain permanently and totally
36 disabled veterans and for surviving spouses of veterans;
37 exemption for surviving spouses of first responders who die in
38 the line of duty.—
39 (1) (a) Any real estate that is owned and used as a
40 homestead by a veteran who was honorably discharged with a
41 service-connected total and permanent disability and for whom a
42 letter from the United States Government or United States
43 Department of Veterans Affairs or its predecessor has been
44 issued certifying that the veteran is totally and permanently
45 disabled is exempt from taxation, if the veteran is a permanent
46 resident of this state on January 1 of the tax year for which
47 exemption is being claimed or was a permanent resident of this
48 state on January 1 of the year the veteran died.
49 (b) If legal or beneficial title to property is acquired
50 between January 1 and November 1 of any year by a veteran or his
51 or her surviving spouse receiving an exemption under this
52 section on another property for that tax year, the veteran or
53 his or her surviving spouse may receive a refund, prorated as of
54 the date of transfer, of the ad valorem taxes paid for the newly
55 acquired property if he or she applies for and receives an
56 exemption under this section for the newly acquired property in
57 the next tax year. If the property appraiser finds that the
58 applicant is entitled to an exemption under this section for the

Page 2 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

578-03428-20

20201662c1

59 newly acquired property, the property appraiser shall
60 immediately make such entries upon the tax rolls of the county
61 as are necessary to allow the prorated refund of taxes for the
62 previous tax year.

63 Section 3. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator George Gainer, Chair
Committee on Finance and Tax

Subject: Committee Agenda Request

Date: February 10, 2020

I respectfully request that **Senate Bill #1662**, relating to Property Tax Exemption for Disabled Veterans, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in blue ink, appearing to read "Ben Albritton".

Senator Ben Albritton
Florida Senate, District 26

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/2020

Meeting Date

1662

Bill Number (if applicable)

Topic Veteran property tax

Amendment Barcode (if applicable)

Name Mike Ford

Job Title Commander Purple Heart Chapter 748

Address 3053 KILLERBURN PT. CT.

Phone _____

Street

Tallahassee

City

State

Zip

Email MUF1944@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Military Order of Purple Heart

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/18/20

Meeting Date

1662

Bill Number (if applicable)

Topic Property Tax Exemption

Amendment Barcode (if applicable)

Name Gail ERNST

Job Title AF Veteran

Address P.O. Box 802
Street

Phone 813-727-5983

HAVANA
City

FL
State

32333
Zip

Email ernstgail@gmail

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing American Legion

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

02/18/2020

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1662

Bill Number (if applicable)

Topic Property Tax Exemptions for Disabled Veterans' widows

Amendment Barcode (if applicable)

Name FRED INGLEY

Retired

Job Title

Address POB 802

Street

Phone 850 510 8134

HAVANA

City

FL

State

32323

Zip

Email fritz39@gmail.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing American Legion, Marine Corps League and Military Officers Association of America

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

CourtSmart Tag Report

Room: SB 401

Case No.:

Type:

Caption: Senate Finance and Tax Committee

Judge:

Started: 2/18/2020 4:02:03 PM

Ends: 2/18/2020 5:22:07 PM

Length: 01:20:05

4:02:03 PM Meeting called to order by Chair Gainer
4:02:05 PM Roll call
4:02:22 PM Quorum present
4:02:24 PM Comments from Chair Gainer
4:02:34 PM Introduction of Tab 4, CS/SB 1066, Impact Fees by Chair Gainer
4:02:59 PM Introduction of Amendment Barcode No. 229240 by Chair Gainer
4:03:32 PM Explanation of Amendment by Senator Gruters
4:04:54 PM Speaker Kari Hebrank, Florida Home Builders in support
4:06:16 PM Question from Chair Gainer
4:06:20 PM Response from Ms. Hebrank
4:07:32 PM Question from Senator Bradley
4:07:37 PM Response from Ms. Hebrank
4:08:42 PM Follow-up question from Senator Bradley
4:08:50 PM Response from Ms. Hebrank
4:09:53 PM Follow-up question from Senator Bradley
4:10:04 PM Response from Ms. Hebrank
4:11:20 PM Additional question from Senator Bradley
4:11:26 PM Response from Ms. Hebrank
4:12:23 PM Additional question from Senator Bradley
4:12:30 PM Response from Ms. Hebrank
4:13:29 PM Additional question from Senator Bradley
4:13:37 PM Response from Ms. Hebrank
4:14:09 PM Response from Chair Gainer
4:14:31 PM Question from Senator Bradley
4:14:45 PM Response from Ms. Hebrank
4:15:08 PM Marco Paredes, M/I Homes of Tampa waives in support
4:15:26 PM Question from Senator Pizzo
4:15:37 PM Response from Senator Gruters
4:16:47 PM Question from Senator Bracy
4:17:01 PM Response from Senator Gruters
4:17:54 PM Question from Senator Bradley
4:18:02 PM Response from Senator Gruters
4:19:09 PM Question from Senator Pizzo
4:19:16 PM Response from Senator Gruters
4:19:51 PM Follow-up question from Senator Pizzo
4:20:24 PM Response from Senator Gruters
4:20:39 PM Follow-up question from Senator Pizzo
4:21:07 PM Response from Senator Gruters
4:22:24 PM Additional question from Senator Pizzo
4:22:31 PM Response from Senator Gruters
4:23:02 PM Question from Senator Bradley
4:23:08 PM Response from Senator Gruters
4:23:48 PM Question from Chair Gainer
4:23:57 PM Response from Senator Gruters
4:24:08 PM Question from Senator Bradley
4:24:40 PM Response from Senator Gruters
4:25:54 PM Follow-up question from Senator Bradley
4:26:02 PM Response from Senator Gruters
4:26:50 PM Follow-up question from Senator Bradley
4:26:58 PM Response from Senator Gruters
4:27:24 PM Question from Senator Powell
4:27:39 PM Response from Senator Gruters

4:28:06 PM Follow-up question from Senator Powell
4:28:16 PM Response from Senator Gruters
4:28:52 PM Follow-up question from Senator Powell
4:28:58 PM Response from Senator Gruters
4:29:16 PM Additional question from Senator Powell
4:29:23 PM Response from Senator Gruters
4:30:05 PM Question from Chair Gainer
4:30:12 PM Response from Senator Gruters
4:31:13 PM Question from Senator Pizzo
4:31:45 PM Closure waived on Amendment
4:31:50 PM Amendment adopted
4:32:13 PM Marco Paredes waives in support
4:32:21 PM Carol Bowen, Associated Builders and Contractors waives in support
4:32:28 PM Edward Briggs, Highland Homes waives in support
4:32:31 PM Speaker Amy Patterson, Director, Capital Project Planning, Collier County in opposition
4:33:40 PM Question from Senator Bradley
4:33:49 PM Response from Ms. Patterson
4:34:20 PM Follow-up question from Senator Bradley
4:34:27 PM Response from Ms. Patterson
4:35:11 PM Follow-up question from Senator Bradley
4:35:19 PM Response from Ms. Patterson
4:36:21 PM Follow-up question from Senator Bradley
4:36:31 PM Response from Ms. Patterson
4:38:36 PM Additional question from Senator Bradley
4:38:43 PM Response from Ms. Patterson
4:38:52 PM Additional question from Senator Bradley
4:38:58 PM Response from Ms. Patterson
4:39:11 PM Question from Senator Pizzo
4:39:16 PM Response from Ms. Patterson
4:39:37 PM Follow-up question from Senator Pizzo
4:40:37 PM Response from Ms. Patterson
4:41:58 PM Follow-up question from Senator Pizzo
4:42:04 PM Response from Ms. Patterson
4:42:33 PM Question from Senator Bradley
4:42:38 PM Response from Ms. Patterson
4:43:07 PM Speaker Louis Rotundo, City of Altamonte Springs in support
4:47:19 PM Speaker Eric Poole
4:49:36 PM Mark Jeffries, Orange County waives in opposition
4:49:53 PM Paul Owens, 1000 Friends of Florida waives in opposition
4:50:03 PM Speaker David Cruz, Florida League of Cities in opposition
4:50:40 PM Senator Pizzo in debate
4:52:47 PM Closure by Senator Gruters
4:53:01 PM Roll call
4:53:53 PM CS/CS/SB 1066 reported favorably
4:54:08 PM Introduction of Tab 5 by Chair Gainer
4:54:36 PM Explanation of CS/SB 1662, Exemption for Disabled Veterans by Senator Albritton
4:55:41 PM Fred Ingley, American Legion, Marine Corps League and Military Officers Association of America waives
in support
4:55:52 PM Gail Ernst, American Legion waives in support
4:56:07 PM Speaker Mike Ford, Military Order of Purple Heart in support
5:01:07 PM Speaker Fred Ingley
5:03:03 PM Closure by Senator Albritton
5:03:10 PM Roll call
5:03:19 PM CS/SB 1662 reported favorably
5:03:34 PM Introduction of Tab 3 by Chair Gainer
5:03:46 PM Explanation of SB 334, Tourist Development Tax by Senator Stewart
5:05:45 PM Senator Stewart in closure
5:05:53 PM Roll call
5:05:58 PM SB 334 reported favorably
5:06:15 PM Introduction of Tab 1 by Chair Gainer
5:06:30 PM Explanation of SPB 7058, Internal Revenue Code by Robert Babin, Deputy Staff Director
5:07:25 PM Brewster Bevis, Associated Industries of Florida waives in support

5:08:03 PM Senator Pizzo moves that SPB 7058 be submitted as a Committee Bill
5:08:24 PM Roll call
5:08:27 PM SPB 7058 reported favorably
5:08:42 PM Introduction of Tab 2 by Chair Gainer
5:08:55 PM Explanation of SPB 7060, Tax Administration by Robert Babin, Deputy Staff Director
5:15:56 PM Question from Senator Pizzo
5:16:12 PM Response from Mr. Babin
5:16:26 PM Question from Senator Powell
5:16:31 PM Response from Mr. Babin
5:17:52 PM Follow-up question Senator Powell
5:17:59 PM Response from Mr. Babin
5:20:01 PM Senator Bradley moves that SPB 7060 be submitted as a Committee Bill
5:20:19 PM Roll call
5:20:24 PM SPB 7060 reported favorably
5:20:44 PM Senator Powell's motion to be shown as voting in the negative - CS/CS/SB 1066
5:21:27 PM Comments from Chair Gainer
5:21:38 PM Senator Bradley moves to adjourn, meeting adjourned