

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 Appropriations

BILL: HB 33-A, 1st Eng.

INTRODUCER: Finance and Tax Committee and Representatives Gaetz and B. Cortes

SUBJECT: Taxation

DATE: June 11, 2015

REVISED: 06/11/15

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Diez-Argüelles	Kynoch	AP	Fav/1 amendment

Please see Section IX. for Additional Information:

AMENDMENTS - Significant amendments were recommended

I. Summary:

HB 33-A:

- Allows property owners who may lose their homestead because they received similar treatment in another jurisdiction to retain their homestead exemption by paying back the benefit received from the other jurisdiction.
- Updates the military operations for which servicemembers may receive an additional property tax exemption on their Florida homestead property.
- Increases the widows, widowers and disabled property tax exemption from \$500 to \$5,000;
- Reduces the communications services tax (CST) rate by 0.9 percentage points permanently with an additional temporary 0.9 percentage point reduction from October 1, 2016, through September 30, 2017.
- Authorizes CST dealers to report taxes on a month-long period other than a calendar month.
- Provides a tax exemption for aviation fuel used for flight training purposes by certain educational institutions.
- Exempts aquacultural products and feed for aquacultural products from sales tax.
- Expands the farm equipment sales tax exemption to include storage equipment, irrigation equipment, parts and repairs, trailers, and plant stakes.
- Clarifies statutory language relating to the sales tax exemption for college meal plans.
- Exempts food and drink sales by school support organizations from sales tax.
- Provides a temporary sales tax exemption for machinery and equipment used by secondary metals recyclers.

- Provides a sales tax exemption for motor vehicles imported by active members of the United States military and their spouses for vehicles purchased and used for 6 months or more in a foreign country.
- Reduces the sales tax rate on commercial rent from 6 percent to 5.6 percent, effective January 1, 2016, and provides for a temporary 5.5 percent tax rate for calendar year 2017.
- Exempts admissions to gun clubs from the sales tax.
- Repeals the Estate Tax.
- Extends the Community Contribution Tax Credit and reduces the credit limit from \$21.9 million to \$14.7 million in Fiscal Year 2016-2017.
- Increases the annual limit on the Research and Development Corporate Tax Credit, limits the credit to qualified target industries and changes the distribution to qualifying applicants from first-come, first-served to pro rata.
- Increases the amount of tax credits available for brownfield rehabilitation from \$5 million annually to \$20.3 million in Fiscal Year 2015-2016 and \$8.3 million annually thereafter.
- Decreases the beverage tax rate for pear cider.
- Provides a three-day “back-to-school” tax holiday.
- Provides a Small Business Saturday tax holiday for November 28, 2015.
- Provides three single-day College Textbook tax holidays.
- Creates a permanent tax exemption for title insurance premiums retained by a title insurance agent or agency.
- Provides appropriations to the Department of Revenue to implement certain provisions.
- Provides emergency rulemaking authority to the Department of Revenue to implement certain provisions.

The bill has a significant, negative fiscal impact on state and local government revenues. See the table in Section V.A. for the fiscal impact of the bill.

The mandates constitutional provision may apply to this bill, requiring a two-thirds vote of the membership of each house for passage. See Section IV.A. of the analysis.

The bill provides an effective date of July 1, 2015, unless otherwise specified in the bill.

II. Present Situation:

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

III. Effect of Proposed Changes:

Ad Valorem – Homestead Denial Alternative – Section 1

Present Situation

Property owners are not entitled to receive a Florida homestead exemption and a property tax benefit in another state that is based on his or her permanent residency in that other state

(residency-based benefit).¹ If a property appraiser determines that a property owner received a Florida homestead exemption and a residency-based benefit in another state, the property appraiser must assess the property owner for the taxes that would have been due had the property owner not received a Florida homestead exemption during the time the property owner received the residency-based benefit in the other state, up to 10 years.² The property owner has 30 days to pay the taxes, plus a 50 percent penalty and 15 percent interest, after which the property appraiser must file a lien for the unpaid amount.³

Proposed Change

The bill amends s. 196.161, F.S., to allow a person who received both a Florida homestead exemption and a residency-based benefit in another jurisdiction to avoid the taxes, penalty and interest due to Florida by demonstrating to the property appraiser that he or she is a permanent resident of Florida and has repaid the taxes that would have been due to the other jurisdiction if the residency-based benefit in the other jurisdiction had not been claimed, plus associated interest and penalties. The tax, penalty and interest must be paid to the other jurisdiction within 30 days after notification by the property appraiser, after which the property appraiser must pursue the lien process in current law.

Ad Valorem – Deployed Servicemembers – Sections 2 and 3

Present Situation

Servicemembers who receive a homestead exemption in Florida may receive an additional exemption for the time the servicemember was deployed outside the continental United States, Alaska, or Hawaii in support of certain statutorily-identified military operations.⁴ The additional exemption is equal to the taxable value of the homestead multiplied by the fraction of the year that the servicemember was on qualifying deployment.⁵ Qualifying servicemembers must apply by March 1 of each year for qualifying deployments during the preceding calendar year.

Proposed Change

The bill amends s. 196.173, F.S., to update the list of qualifying operations. The bill adds 11 qualifying operations and deletes one qualifying operation for which the time period to claim an additional exemption has ended.

The bill authorizes qualifying servicemembers to apply by August 1, 2015, for qualifying deployments in calendar year 2014. If a property appraiser denies an application, the appraiser must send a notice of disapproval no later than September 1, 2015, citing the reason for disapproval.

A servicemember who files an application with the property appraiser after August 1, 2015, may still qualify for the exemption, but must demonstrate to the property appraiser or the value adjustment board extenuating circumstances that warrant granting the exemption.

¹ Section 196.031(5), F.S.

² Section 196.031(1)(b), F.S.

³ *Id.*

⁴ Section 196.173, F.S.

⁵ Section 196.173(4), F.S.

Ad Valorem – \$500 Exemption for Widows, Widowers, Blind and Disabled – Section 4

Present Situation

The Florida Constitution requires that a minimum of \$500 of property owned by a widow, widower, blind person, or totally and permanently disabled person be exempt from ad valorem tax pursuant to general law.⁶ Current law exempts the minimum required amount, \$500.⁷

Proposed Change

The bill amends s. 196.202, F.S., to increase the exemption from \$500 to \$5,000.

Communications Services Tax – Rate Reduction – Sections 5, 6, 7, 11, 12, and 14

Present Situation

Florida imposes communications services tax on retail sales of communications services, such as telephone service, cable television, satellite television, and similar services.⁸ Most sales of communications services are subject to a state communications services tax rate of 6.65 percent.⁹ These sales are also subject to a state gross receipts tax¹⁰ and applicable local communications services tax.¹¹

Direct-to-home satellite television service is subject to a state communications services tax rate of 10.8 percent.¹² These sales are also subject to gross receipts tax,¹³ but the local communications services tax does not apply to sales of direct-to-home satellite service.¹⁴

All of the revenue from the state communications services tax rate of 6.65 percent and 63 percent of the revenue from the direct-to-home satellite tax rate of 10.8 percent are distributed in the same manner as sales tax, significant portions of which are shared with local governments.¹⁵

Proposed Change

The bill amends s. 202.12, F.S., to permanently reduce the 6.65 and 10.8 rates by 0.9 percentage points to 5.75 and 9.9 percent, respectively.

The bill also temporarily reduces both communications services tax rates by an additional 0.9 percentage point – to 4.85 and 9.0 percent, respectively – for the period October 1, 2016, through September 30, 2017.

⁶ FLA. CONST. Art. VII, s. 3(b)

⁷ Section 196.202, F.S.

⁸ Sections 202.12 and 202.11(1), F.S.

⁹ Section 202.12(1)(a), F.S.

¹⁰ Section 203.01(1)(a)2., F.S.

¹¹ Sections 202.12(1)(a) and 202.19, F.S.

¹² Section 202.12(1)(b), F.S.

¹³ Section 203.01(1)(a)2., F.S.

¹⁴ Section 202.19(6), F.S.

¹⁵ See generally sections 202.18 and 212.20, F.S.

The bill amends s. 212.20, F.S., to increase the percentage of revenue shared with local governments so that local revenues will not decrease due to the communications services tax rate reductions made by the bill.

The bill makes conforming changes to related statutes.

The communications services tax rate changes are effective October 1, 2015; however, the temporary, additional 0.9 percentage point reduction only applies from October 1, 2016, through September 30, 2017.

The changes to the statutory distribution formulas that will ensure that local government revenues do not decrease due to the communications services tax rate changes are effective December 1, 2015.¹⁶

Communications Services Tax – Alternative Period Collection and Collection Allowance – Sections 8 - 10

Present Situation

Communications services dealers are required to collect taxes on a calendar-month basis and to remit collected taxes by the 20th day of the following calendar month.¹⁷

For the keeping of prescribed records and the proper accounting and remitting of taxes, communications services dealers are authorized to retain a collection allowance from the taxes they collect.¹⁸ A collection allowance is not authorized if either the tax return or tax payment is late.¹⁹

Proposed Change

The bill amends s. 202.27, F.S., to allow communications services dealers to elect to collect taxes on any month-long period basis with an end date on or after the 15th day of the calendar month (alternative-period). An election to use an alternative-period basis is binding for at least 12 months. Collected taxes must still be remitted by the 20th day of the following calendar month.

The bill amends s. 202.28, F.S., to allow a communications services dealer to retain a collection allowance when only a portion of the taxes due are remitted late. The dealer may retain a percentage of the collection allowance equal to the percentage of taxes timely remitted.

The changes to ss. 202.27 and 202.28, F.S., are remedial in nature and apply retroactively; however, the bill provides that the changes do not provide a basis for an assessment of unpaid tax or create a right to a refund or credit of any tax paid before October 1, 2015. Returns filed on an

¹⁶ The statutory distribution formula changes are delayed until December 1, 2015, due to the lag time between tax collection by the communications services dealer and distribution of the revenue to local governments by the Department of Revenue.

¹⁷ Section 202.27, F.S.

¹⁸ Section 202.28, F.S. The collection allowance is equal to 0.75 percent of the taxes remitted. The collection allowance may be reduced to 0.25 percent in certain circumstances.

¹⁹ Section 202.28(1)(a), F.S.

alternative-period basis before October 1, 2015, are deemed to have been filed pursuant to the election provided in the bill.

Aviation Fuel Tax – Higher Education Reduction – Sections 13 and 14

Present Situation

Florida law imposes an excise tax of 6.9 cents on every gallon of aviation fuel sold in the state or brought into the state for use.²⁰

Aviation Accreditation Board International--The Aviation Accreditation Board International (AABI) is recognized by the Council for Higher Education Accreditation for its degree programs in aviation offered by colleges and universities in the United States and throughout the world.²¹ The goals of the AABI are to:²²

- Stimulate collegiate aviation program excellence and self-improvement.
- Establish uniform minimum educational quality standards.
- Increase the credibility, integrity, and acceptance of collegiate aviation programs within institutions of higher education and all aspects of the aviation community, to include industry, government, and the public-at-large.

There are 37 higher education institutions in the world that are accredited by the AABI, four of which are located in Florida.²³

Proposed Change

The bill amends s. 206.9825, F.S., to provide an aviation fuel tax exemption or refund for aviation fuel used for flight training through a school of aeronautics or college of aviation by any college based in this state that is tax exempt under s. 501(c)(3) of the Internal Revenue Code or any university based in this state that is accredited or has applied for accreditation by the AABI and offers a graduate program in aeronautical or aerospace engineering or offers flight training through a school of aeronautics or college of aviation.

The bill also creates a new distribution from sales tax to offset the impact of the exemption on the State Transportation Trust Fund.

²⁰ Section 206.9825, F.S. (Such fuel is not subject to taxes imposed by ss. 206.41(1)(d), (e), and (f) or 206.87(1)(b), (c), and (d), F.S., relating to motor fuel and diesel fuel, respectively.)

²¹ Council for Higher Education Accreditation (CHEA), Summary of Recognition Status, AABI, March 15, 2013. CHEA is a private, nonprofit national organization of 3,000 degree-granting colleges and universities that coordinates accreditation activity.

²² Aviation Accreditation Board International (AABI), Goals, *available at* <http://www.aabi.aero/goals.html> (last visited March 21, 2015).

²³ AABI, Accredited Programs, *available at* <http://www.aabi.aero/programs.html> (last visited March 21, 2015).

Sales Tax – Agriculture – Sections 15 and 16

Livestock

Present Situation

Sales of livestock by producers, sales of disinfectants and insecticides and similar products used to protect livestock, and sales of livestock feed are exempt from sales tax.²⁴ Livestock is defined to include all animals of the equine, bovine or swine class, including goats, sheep, mules, horses, hogs, cattle, ostriches, and other grazing animals raised for commercial purposes.²⁵

Proposed Change

The bill amends s. 212.02(29), F.S., to expand the definition of livestock to include all aquaculture products identified by the Department of Agricultural and Consumer Services.

Equipment Used to Store Raw Products on the Farm

Present Situation

The sale of power farm equipment used in agricultural production is exempt from sales tax.²⁶ Agricultural production is defined to include all practices necessary for production, up through the harvest phase.²⁷ Harvesting has been administered to end when an agricultural product is gathered from the place it is grown.²⁸ Thus, power farm equipment used to store raw products after they have been gathered is not exempt.

Proposed Change

The bill amends s. 212.02(32), F.S., to expand the definition of agricultural production to include the storage of raw products on a farm.

Power Farm Equipment

Present Situation

The sale of power farm equipment used in agricultural production is exempt from sales tax.²⁹ Power farm equipment is equipment that contains within itself its own means of power or propulsion or depends upon an external power source to perform its functions.³⁰ The exemption for power farm equipment does not include repairs, repair parts or accessories for power farm equipment, and the exemption does not include irrigation equipment, parts or accessories unless they constitute power farm equipment.

²⁴ Sections 212.07(5)(a), 212.08(5)(a), and 212.08(7)(d), F.S.

²⁵ Section 212.02(29), F.S.

²⁶ Section 212.08(3), F.S.

²⁷ Section 212.02(32), F.S.

²⁸ Rule 12A-1.087(2)(f), F.S.

²⁹ Section 212.08(3), F.S.

³⁰ Section 212.02(30), F.S.

Proposed Change

The bill amends s. 212.08(3), F.S., to specifically exempt irrigation equipment and the repair of power farm equipment or irrigation equipment, as well as repair parts and accessories for irrigation equipment and power farm equipment.

Farm Trailers***Present Situation***

Florida does not expressly exempt trailers used on a farm from the sales tax.

Proposed Change

The bill amends s. 212.08(3), F.S., to exempt from sales tax the sales price below \$20,000 for a trailer weighing 12,000 pounds or less and purchased by a farmer for exclusive use in agricultural production or to transport farm products from the farm to the first point of sale. The farmer is also permitted to use the trailer to transport his or her farm equipment. The lease or rental of trailers is not exempted.

Plant Stakes***Present Situation***

Florida does not expressly exempt stakes used by a farmer from the sales tax.

Proposed Change

The bill amends s. 212.08(5)(a), F.S., to exempt stakes used by a farmer to support plants during agricultural production from the sales tax.

Sales Tax – College Meal Plans – Section 16***Present Situation***

Chapter 2014-38, L.O.F., amended s. 212.07(r), F.S., to create an exemption for prepaid meal plans, which reads:

[P]repaid meal plans purchased from a college or other institution of higher learning by students currently enrolled at that college or other institution of higher learning are exempt. As used in this paragraph, “prepaid meal plans” means payment in advance to a college or institution of higher learning for the provision of a defined quantity of units that must expire at the end of an academic term, cannot be refunded to the student upon expiration, and which may only be exchanged for food.

Feedback from colleges and universities identified a number of issues for clarification. Many colleges contract out their meal plan service to a third party provider. Some students purchase the meal plan before they are enrolled. Some students pay for the plans after the plan begins as a result of financial assistance. Additionally, institutions of higher learning were uncertain on the

taxability of “flex” dollars that can be purchased with a meal plan but effectively act as cash equivalents rather than being restricted exclusively to meal plans.

Proposed Change

The bill clarifies the exemption for prepaid meal plans to make it clear that: sales by meal plan service providers are exempt, students can purchase exempt meal plans prior to enrollment, meal plans may be purchased with financial aid, and “flex” dollars are to be taxed based on what is purchased (essentially treating “flex” dollars like gift cards, which are taxed not at the point of sale but when they are used to make a taxable purchase).

Sales Tax – School Concessions – Section 16

Present Situation

Certain sales by parent-teacher organizations and associations are exempt if the entity pays tax to its suppliers on the cost price of the items sold.³¹ School support organizations are not covered by this exemption.

Proposed Change

The bill amends s. 212.08(7)(II), F.S., to allow school support organizations to make tax exempt sales of food, drink and related supplies by paying tax to their suppliers on the cost price of the food, drink and related supplies.

Sales Tax – Secondary Metals Recyclers Machinery and Equipment – Section 16

Present Situation: Permanent exemptions for machinery and equipment include:

- Section 212.08(5)(b), F.S., which exempts industrial machinery and equipment purchased and used exclusively for spaceport activities or to manufacture, process, compound, or produce for sale items of tangible personal property.³² This exemption is limited to new or expanding businesses.³³ In order to receive the exemption, a business must apply to DOR to request the issuance of a temporary tax exemption permit.
- Section 212.08(5)(d), F.S., which exempts industrial machinery and equipment purchased by an expanding business which manufactures tangible personal property in accordance with

³¹ Section 212.08(7)(II), F.S.

³² “Industrial Machinery and Equipment” means tangible personal property or other property that has a depreciable life of 3 years or more and is used as an integral part in the manufacturing, processing, compounding, or production of tangible personal property for sale or is exclusively used in spaceport activities. Buildings, structural components, and heating and air-conditioning systems, generally do not meet the definition of industrial machinery and equipment unless closely related to the industrial machinery and equipment that it houses, supports, or such building or structural component can be expected to be replaced when the machinery and equipment are replaced. Heating and air-conditioning systems are not industrial machinery and equipment unless the sole justification for their installation is to meet the requirements of the production process. The term may include parts and accessories that are consistent with the exemption provided in s. 212.08, F.S. “Spaceport Activities” means activities directed or sponsored by Space Florida on spaceport territory pursuant to its powers and responsibilities under the Space Florida Act.

³³ This exemption does not apply to industrial machinery or equipment purchased or used by electric utility companies, communications companies, oil or gas exploration or production operations, publishing firms that do not export at least 50 percent of their finished product out of the state, or any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

federal procurement regulations.³⁴ This exemption is limited to an expanding business that increases productive output by at least ten percent.³⁵

- Section 212.08(5)(j), F.S., which exempts industrial machinery and equipment purchased and used to manufacture, process, compound or produce semiconductor, defense or space technology products for sale or for use by qualifying facilities.³⁶ A business certified to receive this exemption may elect to designate one or more state universities or community colleges as the recipients of the refund. In order to qualify, a business must submit an application to Enterprise Florida, receive a two-year certification issue by DEO, and receive a tax exemption permit issued by DOR. DOR may conduct audits to enforce exemption requirements.

In 2013, the Legislature created a more general exemption for industrial machinery and equipment purchased by an eligible manufacturing business and used to manufacture, process, compound, or produce items of tangible personal property for sale created s. 212.08(7)(kkk), F.S. The exemption also includes parts and accessories for the industrial machinery and equipment if they are purchased before the date the machinery and equipment are placed in service.

An “eligible manufacturing business” means any business whose primary business activity at the location where the industrial machinery and equipment are located is within the industries classified under manufacturing (North American Industry Classification System) NAICS³⁷ codes 31, 32, and 33 published in 2007 by the Office of Management and Budget, Executive Office of the President. The primary business activity of an eligible business is that activity which represents more than 50 percent of the activities conducted at the location where the industrial machinery and equipment are located.

Examples of types of manufacturing establishments represented by the applicable NAICS codes include, but are not limited to, food, apparel, wood, paper, printing, chemical, pharmaceutical, plastic, rubber, metal, transportation, and furniture.³⁸ This exemption is scheduled for repeal effective April 30, 2017.

Proposed Change

The bill amends s. 212.08 (7)(kkk)2.c., F.S., to include tangible personal property or other property that has a depreciable life of three years or more that is used as an integral part in the

³⁴ Exempt purchases are limited to machinery and equipment as defined by s. 212.08(5)(d), F.S. This exemption does not apply to industrial machinery or equipment purchased or used by businesses listed in s. 212.08(5)(b)5., F.S., or any business that can measure an increase in productive output as provided in s. 212.08(5)(b)6., F.S.

³⁵ The percentage of increase is measured by calculating the deflated implicit productive output for the calendar year during which the installation of the machinery or equipment is completed or during which commencement of production utilizing such items is begun, divided by the implicit productive output for the preceding calendar year. Commencement of production must begin no later than two years following completion of installation of the machinery or equipment.

³⁶ This exemption also applies to building materials purchased to manufacture or expand clean room facilities.

³⁷ (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. *See* Introduction to NAICS at the Census Bureau, U.S. Department of Commerce, *available at* <http://www.census.gov/eos/www/naics/>, (last visited May March 21, 2015).

³⁸ *See* DOR, Tax Information Publication: *Sales and Use Tax Exemption for Purchases of Industrial Machinery and Equipment* (June 10, 2013).

recycling of metals for sale in the current temporary exemption for industrial machinery and equipment.

Sales Tax – Active Duty Military Motor Vehicles -- Section 16

Present Situation

Generally, the six percent sales and use tax rate applies to the sale of motor vehicles in Florida; however, there are specific rules that apply to isolated sales³⁹ and the rental of motor vehicles,⁴⁰ including a rental car surcharge.⁴¹

Section 212.06(7), F.S., allows a credit to be given on tangible personal property, including motor vehicles, brought into Florida where a like tax has been lawfully imposed and paid in another state. If the amount paid is equal to or greater than the amount imposed by Florida, no additional tax is due.⁴² If the amount is less than the amount imposed in Florida, only the difference between the two is due.⁴³ It is presumed that tangible personal property used in another state, territory of the U.S., or the District of Columbia for six months or longer before being brought into Florida was not purchased for use in Florida; and therefore, no Florida tax is due.⁴⁴

No credit of Florida tax is given for use in or taxes paid in another country. Therefore, tax applies and is due on any motor vehicle imported or caused to be imported from a foreign country into Florida, even if the motor vehicle was used in another country for a period of six months or more prior to the time it is brought into Florida.⁴⁵ Furthermore, tax paid in another country will not be recognized by the State of Florida when calculating the tax due.⁴⁶ The tax is calculated on the value of the vehicle at the time it is brought into Florida, not on the original purchase price.⁴⁷

Proposed Change

The bill provides a sales tax exemption for any motor vehicle purchased and used for six months or longer in a foreign country by an active member of the United States Armed Forces or that member's spouse. Proof of the active status of the member and, when applicable, proof of the spouse's relationship to the member, must be provided when the vehicle is titled and registered in this state.

³⁹ Section 212.05(1)(a)(1)b., F.S.

⁴⁰ Section 212.05(1)(c), F.S.

⁴¹ Section 212.0606, F.S.

⁴² Section 212.06(7), F.S.

⁴³ Section 212.06(7), F.S.

⁴⁴ Section 212.06(8), F.S.

⁴⁵ DOR, TIP # 14A01-01 (February 25, 2014), available at <http://dor.myflorida.com/dor/tips/tip14a01-01.html> (last visited March 21, 2015).

⁴⁶ DOR, TIP # 14A01-01, (February 25, 2014), available at <http://dor.myflorida.com/dor/tips/tip14a01-01.html> (last visited March 21, 2015).

⁴⁷ Section 212.05, F.S.; DOR, TIP # 14A01-01 (February 25, 2014), available at <http://dor.myflorida.com/dor/tips/tip14a01-01.html> (last visited March 21, 2015).

Sales Tax – Commercial Rent Rate Reduction -- Section 18

Present Situation

Since 1969, Florida has imposed a sales tax on the total rent charged under a commercial lease.⁴⁸ The administration of sales tax for commercial rentals is the same as the sales tax for tangible personal property. Sales tax is due at the rate of six percent on the total rent paid for the right to use or occupy commercial real property and county sales surtax can also be levied on total rent.⁴⁹ If the tenant makes payments such as mortgage, ad valorem taxes, or insurance on behalf of the property owner, such payments are also classified as rent and are subject to the tax.

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

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

Florida is the only state to charge sales tax on commercial rentals. The Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) and the Office of Economic and Demographic Research (EDR) both reviewed and issued reports on the commercial rental tax in 2014.⁵⁰ These reports did not establish a direct link between the commercial rental tax and Florida's ability to compete with other states economically.

Proposed Change

Effective January 1, 2016, the bill permanently reduces the sales tax rate on commercial rentals from 6 percent to 5.6 percent with an additional temporary reduction to 5.5 percent between January 1, 2017 and December 31, 2017.

Sales Tax – Admissions to Gun Clubs -- Section 19

Present Situation

Section 212.04, F.S., governs the state sales tax on admissions. Sales tax is levied at the rate of six percent of the sales price or the actual value received from admissions. "Admissions" is defined as the net sum of money after deduction of any federal taxes for admitting a person or vehicle or persons to any:

⁴⁸ Chapter 1969-222, Laws of Fla.

⁴⁹ Section 212.031, F.S., and Rule 12A-1.070, F.A.C.

⁵⁰ Office of Program Policy Analysis and Government Accountability, *OPPAGA Review of Sales Tax on the Rental of Real Property* (Nov. 24, 2014); Office of Economic and Demographic Research, *Economic Impact: Sales Tax on the Rental of Real Property* (Nov. 15, 2014).

- Place of amusement, sport, or recreation, including, but not limited to, theaters, shows, exhibitions, games, races.
- Place where charge is made by way of sale of tickets, gate charges, and similar fees or charges.
- Receipts of anything of value measured on an admission or entrance or length of stay or seat box accommodations in any place where there is any exhibition, amusement, sport, or recreation.
- All dues and fees paid to private clubs and membership clubs providing recreational or physical fitness facilities, including, but not limited to, golf, tennis, swimming, yachting, boating, athletic, exercise, and fitness facilities.

Several exceptions and exemptions exist, such as:

- Memberships for physical fitness facilities owned or operated by any hospital.
- Admissions to athletic or other events sponsored by a school.
- Fees or charges imposed by certain not-for-profits.
- Events sponsored by a governmental entity, nonprofit sports authority, or nonprofit sports commission under certain circumstances.
- Certain admissions to professional sports championship games.
- Entry fees for freshwater fishing tournaments.
- Participation or entry fees charged to participants in a game, race, or other sport or recreational event if spectators are charged a taxable admission to such event.
- Admissions to any postseason collegiate football game sanctioned by the National Collegiate Athletic Association.

Proposed Change

The bill exempts admissions and membership fees for gun clubs. The term "gun club" is defined as an organization whose primary purpose is to offer its members access to one or more shooting ranges for target or skeet shooting.

Estate Tax – Repeal -- Sections 20 - 31

Present Situation

Florida imposes an estate tax on the estates of certain decedents,⁵¹ but limits the tax to the amount that the federal government will allow as a credit against the federal estate tax.⁵² Otherwise known as a “pick-up” tax, this approach allows the state to impose an estate tax without imposing any additional financial burden on the taxpayer – the state tax merely “picks up” taxes that would have otherwise been paid to the federal government.

In 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act of 2001.⁵³ That federal legislation began a five-year phase out of the federal credit for state death taxes. As part of the phase out, the federal credit converted to a deduction in 2005, effectively eliminating Florida’s estate tax. Unless Congress acts to reinstate the credit for state taxes or the Florida

⁵¹ See generally sections 198.02 and 198.03, F.S.

⁵² FLA. CONST. art. VII, s. 5(a).

⁵³ Pub. Law No. 107-16 (June 7, 2001); 115 Stat. 38.

Constitution is amended to allow for imposition of the tax independently of the federal credit, Florida's tax will remain effectively zero.

Currently, there are limited situations when the Florida estate tax is still due. These situations relate to estates that were taxable before the federal law changes took effect. The Department of Revenue has identified the following scenarios when Florida estate tax may still be due:

- The decedent's estate entered into an installment agreement at the federal level.
- The estate is still in litigation.
- The decedent was not a resident of Florida, but owned Florida property and never filed an estate tax return in Florida (the fact that estate taxes were never paid will arise in future title searches on the property).
- A Florida resident who marries a citizen of another country may create a Qualified Domestic Trust (QDOT) for estate planning purposes. If the non-citizen is the beneficiary of the QDOT, any property held in the QDOT is not taxable until the property is distributed out of the trust or the beneficiary dies.

Proposed Change

The bill repeals the Florida estate tax. The bill provides that only current estate tax liabilities (pre-2005 decedents) will continue to be collected, and an estate that overpaid estate taxes may make a refund claim, subject to current time limitations. As a conforming change, the proposal retains a requirement for circuit court judges to report the names of certain decedents to the Agency for Health Care Administration.

Corporate Income Tax – Community Contribution Tax Credit – Sections 16, and 32 – 36

Present Situation

In 1980, the Legislature established the Community Contribution Tax Credit Program (“CCTCP”) to encourage private sector participation in community revitalization and housing projects.⁵⁴ Broadly, the CCTCP offers tax credits to businesses or persons (“taxpayer”) anywhere in Florida that contribute⁵⁵ to certain projects undertaken by approved CCTCP sponsors.⁵⁶

As of January 1, 2015, the CCTCP had 126 approved sponsors.⁵⁷

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

- To construct, improve, or substantially rehabilitate housing that is affordable to low-income households or very-low-income households as those terms are defined in s. 420.9071, F.S.
- To provide commercial, industrial, or public resources and facilities.

⁵⁴ Chapter 80-249, Laws of Fla. The CCTCP is one of the state incentives available under the Florida Enterprise Zone Act, which is scheduled to be repealed on December 31, 2015. Sections 290.007(3) and 290.016, F.S.

⁵⁵ Sections 212.08(5)(p)2.a., 220.183(2)(a), and 624.5105(5)(a), F.S require community contributions to be in the form of cash or other liquid assets, real property, goods or inventory, or other physical resources.

⁵⁶ See Sections 212.08(5)(p); 220.183; and 624.5105, F.S.

⁵⁷ DEO, Division of Community Development, Email to House Economic Development and Tourism staff (Feb. 23, 2015) (on file with the House Economic Development and Tourism Committee).

- To improve entrepreneurial and job-development opportunities for low-income persons.⁵⁸

In addition, eligible projects must be located in an area designated as an enterprise zone⁵⁹ or a Front Porch Florida Community, with two exceptions. First, any project designed to construct or rehabilitate housing for low-income households or very-low-income households as those terms are defined in s. 420.9071, F.S., is exempt from the area requirement.⁶⁰ Second, any project designed to provide increased access to high-speed broadband capabilities that includes coverage of a rural enterprise zone may locate the project's infrastructure in any area of a rural county (inside or outside of the zone).⁶¹ The Enterprise Zone program is scheduled to sunset on December 31, 2015.⁶²

The credit is calculated as 50 percent of the taxpayer's annual contribution, but a taxpayer may not receive more than \$200,000 in credits in any one year.⁶³ The taxpayer may use the credit against corporate income tax, insurance premium tax, or as a refund against sales tax.⁶⁴ Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years.⁶⁵ Unused credits against sales taxes may be carried forward for three years.⁶⁶

DOR may approve a total of \$18.4 million annually in credits for projects that provide homeownership opportunities for low-income and very-low-income households and \$3.5 million in credits for all other projects.⁶⁷

The Legislature extended the CCTCP in 1984, 1994, 2005, and 2014.⁶⁸ It has also amended the annual tax credit allocation of the CCTCP on numerous occasions.⁶⁹ The CCTCP cap, which started at \$3 million annually, is currently set at \$21.9 million. The cap has been reached every fiscal year since Fiscal Year 2001-2002.

The CCTCP expires June 30, 2016.⁷⁰

Proposed Change

The bill extends the expiration date of the Community Contribution Tax Credit Program to June 30, 2017, and provides \$11.2 million in funding for projects that provide homeownership opportunities for low-income and very-low-income households and \$3.5 million for all other projects during Fiscal Year 2016-2017. The bill also allows projects that are required to take

⁵⁸ Sections 212.08(5)(p)2.b.; 220.183(2)(d); 624.5105(2)(b); and 220.03(1)(t), F.S.

⁵⁹ The Florida Enterprise Zone Act is scheduled for repeal on December 31, 2015. Section 290.016, F.S.

⁶⁰ Section 212.08(5)(p)2.d, F.S.

⁶¹ *Id.*

⁶² Section 290.016, F.S.

⁶³ Sections 212.08(5)(p)1.; 220.183 (1)(a) and (b); and 624.5105(1), F.S.

⁶⁴ *See* Sections 212.08(5)(p); 220.183; and 624.5105, F.S.

⁶⁵ Sections 220.183(1)(e) and (g); and 624.5105, F.S.

⁶⁶ Section 212.08(5)(p)1.b. and f., F.S.

⁶⁷ Sections 212.08(5)(p)1.e.; 220.183(1)(c); and 624.5105(1)(c), F.S.

⁶⁸ Chapters 84-356, 94-136, 2005-282, and 2014-38, Laws of Fla.

⁶⁹ *See* Chapters 94-136, 98-219, 99-265, 2005-282, 2006-78, and 2008-153, Laws of Fla. In 2008, the Legislature raised the cap to \$16.5 million for FY 2008-2009. The cap reverted back to \$14 million for subsequent fiscal years. *See* Chapter 2008-153, Section 35, Laws of Fla.

⁷⁰ Chapter 2014-038, s. 15 Laws of Fla.

place in a designated Enterprise Zone to continue to qualify for the Community Contribution Tax Credit after the Enterprise Zone program sunsets by stating that a project may qualify if it is in an area that was in an Enterprise Zone as of May 1, 2015. The bill also prevents the definitions of “community contribution” and “project” needed for administration of the program from sunset prior to the sunset of the program.

Corporate Income Tax – Research and Development Tax Credit – Section 37

Present Situation

Florida provides a corporate income tax credit for businesses meeting the definition of a target industry business that incur research and development (R&D) expenses in Florida.⁷¹ In order to qualify for Florida R&D tax credit, the taxpayer must qualify for the related federal R&D tax credit for the same expenses.⁷²

The tax credit is equal to 10 percent of the difference between the current tax year’s R&D expenses in Florida and the average of R&D expenses in Florida over the previous four tax years. If the business has existed for fewer than four years, the credit amount is reduced by 25 percent for each year the business or predecessor corporation did not exist.

Florida limits the total R&D tax credits awarded during any calendar year to \$9 million. Credits are awarded in the order applications are received. Taxpayers must apply to the Department of Revenue for a credit award in March of every year. In March 2014, the Department of Revenue received 70 applications requesting a total of \$18.8 million in credit. Twenty-five applications were approved and 45 applications were denied because they were received after the \$9 million cap was reached. The \$9 million cap was reached within nine minutes of the department beginning to accept applications.⁷³

Proposed Change

The bill increases the total amount of credits that may be annually awarded from \$9 million to \$12.3 million. It also provides that in the event applications for more than the annual cap are received, the credits shall be distributed on a pro rata basis rather than in the order applications are received.

The bill also limits the credit to the following Qualified Target Industries:

- Manufacturing.
- Life Sciences.
- Information Technology.
- Aviation & Aerospace.
- Homeland Security & Defense.
- Cloud Information Technology.
- Marine Sciences.
- Materials Science.

⁷¹ See Sections 288.106 and 220.194, F.S.

⁷² Section 220.196(2), F.S.

⁷³ Department of Revenue Tax Information Publication 15C01-02.

- Nanotechnology.

The bill requires applicants to provide a letter from the Department of Economic Opportunity certifying that the applicant meets the Qualified Target Industry requirement.

Corporate Income Tax – Brownfield Credits -- Sections 38 and 39

Present Situation

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

- A site eligible for state-funded cleanup under the Drycleaning Solvent Cleanup Program (DSCP).⁷⁴
- A drycleaning solvent contaminated site at which the real property owner undertakes voluntary cleanup, provided that the real property owner has never been the owner or operator of the drycleaning facility.
- A brownfield site in a designated brownfield area.⁷⁵

Eligible tax credit applicants may receive up to \$500,000 per site per year in tax credits. Due to concern that some participants in a voluntary cleanup might only conduct enough work to eliminate or minimize their exposure to third party lawsuits, the VCTC statute also provides a completion incentive in the form of an additional 25 percent supplemental tax credit for those applicants that completed site rehabilitation and received a Site Rehabilitation Completion Order from the DEP. This additional supplemental credit has a \$500,000 cap. Businesses are also allowed a one-time application for an additional 25 percent of the total site rehabilitation costs, up to \$500,000, for brownfield sites at which the land use is restricted to affordable housing. They may also submit a one-time application claiming 50 percent of the costs, up to \$500,000 for removal, transportation and disposal of solid waste at a brownfield site.

Site rehabilitation tax credit applications must be complete and submitted by January 31 of each year. The total amount of tax credits for all sites that may be granted by the DEP is \$5 million annually. In the event that approved tax credit applications exceed the \$5 million annual authorization, the statute provides for remaining applications to roll over into the next fiscal year to receive tax credits in first come, first served order from the next year's authorization. These tax credits may be applied toward corporate income tax in Florida. The tax credits may be transferred one time, although they may succeed to a surviving or acquiring entity after merger or acquisition.

Total requests for tax credits have met or exceeded the annual authorization since 2006.⁷⁶

Between 2008 and 2013, 359 applications for credits were submitted, resulting in an average

⁷⁴ s. 376.30781, F.S.

⁷⁵ s. 220.1845, F.S.

⁷⁶ Department of Environmental Protection, *Florida Brownfields Redevelopment Program Annual Report July 2013-June 2014*, p. 7.

approved credit of approximately \$101,500 per application. All tax credit authorizations have been exhausted to date. The total current backlog of approved credits is \$21.5 million as of June, 2015.⁷⁷

Proposed Change

The bill increases the annual amount of credits that may be awarded from \$5 million to \$20.3 million in Fiscal Year 2015-2016, and from \$5 million to \$8.3 million each year thereafter.

Beverage Tax – Pear Cider -- Section 40

Present Situation

Chapter 564, F.S., governs the regulation and taxation of wine and cider. Wine is defined as any beverage made from fresh fruits, berries, or grapes by natural fermentation, including sparkling wines, champagnes, vermouths, and wines fermented with brandy. Wine coolers and other similar beverages are also included.

The tax rates on wines are as follows:

- For wines, other than natural sparkling wines, cider, and malt beverages, containing between 0.5 and 17.259 percent alcohol by volume, \$2.25 per gallon.
- For wines other than natural sparkling wines containing greater than 17.259 percent alcohol by volume, \$3 per gallon.
- For natural sparkling wines, \$3.50 per gallon.
- For ciders, which are made from the fermentation of apples and contain between 0.5 and 7 percent alcohol by volume, \$0.89 per gallon.
- For wine coolers and similar beverages, \$2.25 per gallon.

Proposed Change

The bill amends the definition of cider to include cider made from pears. Consequently, cider made from pears would be taxed at a rate of \$0.89 per gallon as opposed to the current rate of \$2.25 per gallon.

Back to School Sales Tax Holiday – Section 41

Present Situation

Florida has enacted a “back to school” sales tax holiday 13 times since 1998. The length of the exemption periods has varied from three to 10 days. The type and value of exempt items has also varied. Clothing and footwear have always been exempted at various thresholds, most recently \$100. Books valued at \$50 or less were exempted in five periods. School supplies have been included starting in 2001, with the value threshold increasing from \$10 to \$15. In 2013, personal computers and related accessories purchased for noncommercial home or personal use with a sales price of \$750 or less were exempted. In 2014, the first \$750 of the sales price of personal

⁷⁷ E-mail from Teresa Booeshagi, Department of Environmental Protection, to Derek Underwood, Department of Revenue (June 9, 2015) (on file with the Senate Committee on Finance and Tax).

computers and related accessories purchased for noncommercial home or personal use were exempted.

Proposed Change

The bill provides for a three-day sales tax holiday beginning August 7, 2015, and ending August 9, 2015. During the holiday, the following items that cost \$100 or less are exempt from the state sales tax and county discretionary sales surtaxes:

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

The bill also exempts “school supplies” that cost \$15 or less per item.

Also exempt will be the first \$750 of the sales price for personal computers and related accessories purchased for noncommercial home or personal use. This would include tablets, laptops, monitors, input devices, and non-recreational software. Cell phones, furniture and devices or software intended primarily for recreational use are not exempted.

The “back to school” sales tax holiday does not apply to the following sales:

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

The bill authorizes a nonrecurring appropriation of \$233,730 from the General Revenue Fund to the Department of Revenue to implement this section.

Small Business Saturday Sales Tax Holiday – Section 42

Present Situation

In 2010, American Express instituted a “Small Business Saturday” incentive for their cardholders who shopped at small, independent business on the Saturday after “Black Friday.”⁷⁸ It is estimated that consumers spent \$5.5 billion at small, independent businesses on Small Business Saturday in 2012, with pre-holiday surveys estimated at \$5.3 billion.

Proposed Change

The bill provides for a one day sales tax holiday on November 28, 2015. During the holiday, items priced \$1,000 or less that are sold by certain “small businesses” are exempt from the state sales tax and county discretionary sales surtaxes.

⁷⁸ American Express, *Small Business Saturday*, available at <https://www.americanexpress.com/us/content/small-business/shop-small/about/?linknav=us-open-shops-small-homepage-about> (last visited June 1, 2015).

The bill defines “small business” as a dealer, as defined in s. 212.06, F.S., that registered with the DOR and began operation no later than March 3, 2015, and that owed and remitted less than \$200,000 in sales tax to the DOR during the one-year period ending September 30, 2015. If the business has not been in operation for a complete year as of September 30, 2015, the business may qualify if it owed and remitted less than \$200,000 in sales tax from the first day of operation until September 30, 2015.

If the business is eligible to file a consolidated return (e.g., has multiple places of business), the total sales tax owed and remitted by the business’ locations must be less than \$200,000 during the applicable period ending September 30, 2015.

The bill authorizes a nonrecurring appropriation of \$118,121 from the General Revenue Fund to the Department of Revenue to implement this section.

Textbook Sales Tax Holiday – Section 43

Present Situation

At present, college and university textbooks are taxable.⁷⁹

Proposed Change

The bill creates three, one-day sales tax holidays for college textbooks and instructional materials on August 21, 2015, January 8, 2016, and May 13, 2016. The bill exempts textbooks, and other printed and digital materials required or recommended for a course offered by a public postsecondary educational institution or a nonpublic postsecondary educational institution that is eligible to participate in the tuition assistance programs.

To obtain the tax exemption, the student must provide either a physical or an electronic copy of the following to the vendor:

- His or her student identification number.
- Either an applicable course syllabus or list of required and recommended textbooks and instructional materials.

The vendor must maintain proper documentation, as prescribed by rule, to identify either complete transactions or the portion of a transaction which involves the sale of tax-exempted textbooks.

Similar to the “back-to-school” tax holiday, the textbook sales tax holiday does not apply to the following sales:

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

⁷⁹ Section 212.08(7)(r), F.S.

Insurance Premium Tax – Title Insurance -- Section 44

Present Situation

Florida imposes an annual tax on premiums collected by insurance companies doing business in the state.⁸⁰ This tax applies to life, health, property and casualty, title insurance, and most other types of policies at a rate of 1.75 percent, with deductions allowed for reinsurance accepted, return premiums and assessments.⁸¹ It applies to self-insurance funds at a rate of 1.6 percent.⁸² It applies to annuities at a rate of 1 percent.⁸³ It applies to wet marine and transportation insurance at a rate of 0.75 percent of gross underwriting profit, defined as net premiums minus net losses paid.⁸⁴

There are a number of credits allowed against insurance premiums tax liability. These include:

- 100 percent of corporate income tax paid pursuant to ch. 220, F.S.⁸⁵
- 15 percent of salaries paid by the company to its Florida-based employees.⁸⁶
- 50 percent of a community contribution made pursuant to the Community Contribution Tax Credit Program for enterprise zones.⁸⁷
- 100 percent of donations made to eligible scholarship funding organizations pursuant to s. 1002.395, F.S.⁸⁸

The sum of the credits granted for corporate income tax and employee salaries may not exceed 65 percent of the insurer's premium tax liability.⁸⁹

Title Insurance--Title insurance companies insure owners of real property and others with an interest in real property against loss due to encumbrance, defective titles, invalidity, or adverse claim to title.⁹⁰ The Financial Services Commission, consisting of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture and Consumer Services,⁹¹ must adopt a rule setting the rates charged by title insurance companies and determining the minimum portion of those premiums retained by the title insurer.⁹² This percentage varies depending on the total coverage of the policy, and ranges from 30 percent to 40 percent.⁹³ The portion not retained by the title insurer goes to the title insurance agent.

Insurance premium tax may not be imposed on any portion of a title insurance premium retained by a title insurance agent or agency.⁹⁴ To provide proof to the Legislature of the effectiveness of

⁸⁰ Section 624.509, F.S.

⁸¹ Section 624.509(1)(a), F.S.

⁸² Section 624.4625(4), F.S.

⁸³ Section 624.509(1)(b), F.S.

⁸⁴ Section 624.510, F.S.

⁸⁵ Section 624.509(4), F.S.

⁸⁶ Section 624.509(5), F.S.

⁸⁷ Section 624.5105, F.S.

⁸⁸ Section 624.51055, F.S.

⁸⁹ Section 624.509(6)(a), F.S.

⁹⁰ Section 624.608, F.S.

⁹¹ Section 20.121(3), F.S.

⁹² Section 627.782, F.S.

⁹³ Rule 69O-186, F.A.C.

⁹⁴ Section 624.509(8)(a), F.S.

the exemption, title insurers are required to demonstrate to the DEO by July 1, 2016, that in the aggregate they have added a minimum of 600 Florida-based employees since this exemption was put in place in 2014. This exemption will expire December 31, 2017, unless the Legislature reenacts it.

Proposed Change

The bill repeals the expiration date of the exemption for portions of title insurance premiums retained by agents or agencies, making the exemption permanent.

Appropriations – Section 46

The bill appropriates \$44,060 from the General Revenue Fund in Fiscal Year 2015-2016 to the Department of Revenue for the purpose of implementing the changes to the communications services tax and related gross receipts tax provisions.

The bill appropriates \$52,093 from the General Revenue Fund in Fiscal Year 2015-2016 to the Department of Revenue for the purpose of implementing the changes to the commercial rent services tax and related gross receipts tax provisions.

Emergency Rules -- Sections 17 and 45

The bill authorizes the Department of Revenue to promulgate emergency rules to implement the changes to sales tax exemptions, communications services tax rates, and communications services tax reporting and remittance.

Effective Date

The effective date of the bill is July 1, 2015, except as otherwise provided in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by 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.

The mandates provision may apply because the bill provides sales tax and ad valorem exemptions that will reduce municipalities' and counties' revenue-raising authority.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

HB 33-A has the following estimated fiscal impacts:
SEE TABLE ON NEXT PAGE

Fiscal Year 2015-16 Estimated Fiscal Impacts (millions of \$)								
Issue	General Revenue		State Trust Funds		Local		Total	
	1st Yr	Recur.	1st Yr	Recur.	1st Yr	Recur.	1st Yr	Recur.
<u>Communication Serv Tax</u> : Rate Cut of 0.9% + 0.9% 2nd Yr Only	(78.4)	(117.6)	-	-	-	-	(78.4)	(117.6)
<u>Sales Tax</u> : Agriculture-related Exemptions	(10.3)	(11.0)	(*)	(*)	(2.1)	(2.4)	(12.4)	(13.4)
<u>Sales Tax</u> : Back-to-School Holiday	(36.0)	-	(*)	-	(8.0)	-	(44.0)	-
<u>Sales Tax</u> : College Textbooks Holidays	(20.4)	-	(*)	-	(4.7)	-	(25.1)	-
<u>Sales Tax</u> : Commercial Rent Rate Cut of 0.4% + 0.1% 2nd Yr Only	(39.1)	(94.0)	(*)	(*)	(5.1)	(12.1)	(44.2)	(106.1)
<u>Sales Tax</u> : Gun Club Membership Fees	(1.0)	(1.0)	(*)	(*)	(0.2)	(0.2)	(1.2)	(1.2)
<u>Sales Tax</u> : Motor Vehicles/Military Deployed Overseas	(0.7)	(0.7)	(*)	(*)	(0.1)	(0.1)	(0.8)	(0.8)
<u>Sales Tax</u> : Machinery/Equipment Used by Metal Recyclers	(0.7)	-	(*)	-	(0.2)	-	(0.9)	-
<u>Sales Tax</u> : Small Business Saturday Tax Holiday	(32.9)	-	(*)	-	(7.4)	-	(40.3)	-
<u>Sales Tax</u> : School Concessions	(1.5)	(1.5)	(*)	(*)	(0.2)	(0.2)	(1.7)	(1.7)
<u>Corp Inc Tax</u> : Brownfield Credits	(15.3)	(3.3)	-	-	-	-	(15.3)	(3.3)
<u>Corp Inc Tax</u> : Research & Development Credits	(2.4)	(3.3)	-	-	-	-	(2.4)	(3.3)
<u>Ad Valorem</u> : Deployed Service Members/ Exemption Update	-	-	-	-	(0.2)	(0.2)	(0.2)	(0.2)
<u>Ad Valorem</u> : Widows/Disabled	-	-	-	-	-	(41.3)	-	(41.3)
<u>Ad Valorem</u> : Homestead Denial Alternative	-	-	-	-	(5.3)	(5.3)	(5.3)	(5.3)
<u>Aviation Fuel Tax</u> : Higher Ed Reduction	(0.2)	(0.2)	-	-	-	-	(0.2)	(0.2)
<u>Bev Tax</u> : Pear Cider Tax Rate Reduction	(0.3)	(0.3)	-	-	-	-	(0.3)	(0.3)
<u>Insurance Prem Tax</u> : Title Insurance	-	(4.6)	-	-	-	-	-	(4.6)
Tax Holidays & Tax Rate Cuts: Appropriations	(0.45)	-	-	-	-	-	(0.45)	-
FY 2015-16 Total	(239.7)	(237.5)	-	-	(33.5)	(61.8)	(273.2)	(299.3)
Non-recurring Impacts After FY 2015-16	Cash		Cash		Cash		Cash	
<u>Communication Serv Tax</u> : Rate Cut of 0.9% + 0.9% 2nd Yr Only (FY 2016-17)	(119.1)	-	(*)	-	-	-	(119.1)	-
<u>Sales Tax</u> : Commercial Rent Rate Cut of 0.1% (FYs 2016-17)	(25.3)	-	(*)	-	(3.2)	-	(28.5)	-
<u>Sales/Corporate</u> : Community Contribution Tax Credits (FY 2016-17)	(13.3)	-	-	(*)	(1.4)	-	(14.7)	-
<u>Sales Tax</u> : Machinery/Equipment Used by Metal Recyclers (FY 2016-17)	(0.8)	-	-	-	(0.2)	-	(1.0)	-
Bill Total	(398.2)	(237.5)	-	-	(38.3)	(61.8)	(436.5)	(299.3)
* Impact less than \$50,000.								
(1) Ad valorem tax impacts assume current tax rates.								

B. Private Sector Impact:

The bill provides a number of tax exemptions that will benefit the purchasers of the exempt items.

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: 196.161, 196.173, 196.202, 202.12, 202.12001, 202.18, 202.27, 202.28, 203.001, 206.9825, 212.20, 212.02, 212.08, 212.031, 212.04, 72.011, 95.091, 213.015, 213.05, 213.053, 213.21, 213.285, 215.26, 220.03, 220.183, 220.196, 220.1845, 376.30781, 564.06, 624.509, and 624.5105.

The bill reenacts the following sections of the Florida Statutes: 220.183(1)(c), 220.183(1)(g), 220.02(8), and 377.809(4)(a).

The bill creates section 733.7011 of the Florida Statutes.

The bill repeals chapter 198 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:**Barcode 252976 by Appropriations on June 11, 2015:**

The following provisions of HB 33-A are amended:

- **Communications Services Tax Rate Reduction** -- The two 0.9 percentage point reductions in the communications services tax rates beginning October 1, 2015, are amended to be a permanent 1.73 percentage point reduction beginning July 1, 2015. Dealers are required to implement the rate change by October 1, 2015, and to provide a credit to customers for any taxes collected in excess of the new rates by December 31, 2015. Dealers are authorized to take a credit on their communications services tax return for the amounts that they credit to their customers. Communications services

tax distribution percentages are amended to ensure that the portion of revenues shared with local governments does not decrease due to the rate change.

- Corporate Tax Credit for Research and Development –The amount of credits allowed under the program is increased by \$14 million (from \$9 million to \$23 million) for calendar year 2016.
- Community Contribution Tax Credit Program –The program is extended through June 30, 2018, and the total amount of available credits is increased to \$24.9 million in Fiscal Year 2016-2017 and 2017-2018. Also, credits are made available to housing opportunities for persons with special needs.
- Brownfield Rehabilitation Tax Credit -- The amount of available tax credits is increased to \$21.6 million for Fiscal Year 2015-2016, and returns to \$5 million annually thereafter.
- Insurance Premium Tax on Title Insurance – The tax exemption for title insurance premiums retained by a title insurance agent or agency will not expire December 31, 2017, if the Department of Economic Opportunity determines that, by July 1, 2017, title insurers have increased their Florida employment by 600 full-time positions since July 1, 2014.
- “Back-to-School” sales tax holiday – Changes the 3-day sales tax holiday to 10 days beginning August 7, 2015.
- Textbook Holiday – The amendment exempts college textbooks from sales tax for fiscal year 2015-2016 instead of three single-day holidays.

The amendment retains the following provisions of HB 33-A, without amendment:

- Alternative-period reporting for communications services tax.
- Partial collection allowance for communications services tax.
- Agricultural sales tax exemptions for aquaculture, power farm equipment, etc.
- Sales tax exemption for school support organizations.
- Clarifies the sales tax exemption for college meal plans.
- Sales tax exemption for automobiles imported by active duty military members.
- Sales tax exemption for admissions to and membership fees for gun clubs.

The amendment includes the following new provisions:

Subdivision Common Elements

Present Situation

- For ad valorem taxes and non-ad valorem assessments, the common elements within a subdivision are not assessed independently; the value of the common elements is prorated among the lots within the subdivision.⁹⁵

⁹⁵ Section 193.0235(1), F.S. The term “common element” includes a) subdivision property not included within lots of the developer that constitute inventory intended to be conveyed into property ownership, b) an easement through the subdivision property which has been dedicated to the public or retained for the benefit of the subdivision, and c) any other part of the subdivision which has been designated on the plat or is required to be designated on the site plan as a retention pond, for the exclusive benefit of the subdivision. *See Id.*

Proposed Change

- The definition of a subdivision's "common element" is expanded to include property located within the same county as the subdivision and used for at least 10 years exclusively for the benefit of the lot owners within the subdivision.

Boat Repairs***Present Situation***

- The sales of boats and boat repairs are presently taxed. The maximum amount of tax imposed under ch. 212 and collected on each sale or use of a boat in this state may not exceed \$18,000.

Proposed Change

- The amendment limits the amount of sales tax collected on each repair of a boat in this state to \$60,000.

Enterprise Zone Incentive Extension for Certain Projects***Present Situation***

The Enterprise Zone Program, which is scheduled to expire on December 31, 2015, provides sales and use tax exemptions and refunds, certain property tax exemptions and credits, and sales and corporate tax credits for jobs created by businesses located in the enterprise zone.

Proposed Change

The amendment allows a business to apply for these incentives for an additional three years (January 1, 2016 - December 31, 2018) for a project located in an enterprise zone that existed as of May 1, 2015, if the business has entered into a contract with Department of Economic Opportunity for the project under one of several economic incentive programs under ch. 288, F.S., between January 1, 2012, and July 1, 2015, and the contract is deemed active and has not expired or been terminated.

The amendment does not include the following provisions of HB 33-A:

- Homestead exemption denial alternative for property owners that claim a residency-based exemption in another state.
- Update of the military operations that qualify for the deployed servicemember ad valorem exemption.
- Increase in the widow, widower, blind and totally and permanently disabled exemption from \$500 to \$5,000.
- A temporary sales tax exemption for machinery and equipment used by secondary metals recyclers.
- Reduction in the sales tax rate on commercial rent from 6 percent to 5.6 percent, effective January 1, 2016, and a temporary 5.5 percent tax rate for calendar year 2017.

- Elimination of the Estate Tax.
- Decrease in the alcoholic beverage tax rate for pear cider.
- A Small Business Saturday tax holiday for November 28, 2015.

Fiscal Impact of Amendment

The effect of the amendment on state and local government revenues is detailed in the following table:

<u>Issue</u>	<u>General Revenue</u>		<u>State Trust Funds</u>		<u>Local</u>		<u>Total</u>	
	<u>1st Yr</u>	<u>Recur.</u>	<u>1st Yr</u>	<u>Recur.</u>	<u>1st Yr</u>	<u>Recur.</u>	<u>1st Yr</u>	<u>Recur.</u>
<u>Communication Serv Tax</u> : Rate Cut of 1.73 Percentage Points	(207.3)	(226.1)	-	-	-	-	(207.3)	(226.1)
<u>CST</u> : Alternative Base Period Calculation	-	-	-	-	-	-	-	-
<u>Sales Tax</u> : Agriculture-related Exemptions	(10.3)	(11.0)	(*)	(*)	(2.1)	(2.4)	(12.4)	(13.4)
<u>Sales Tax</u> : Back-to-School Holiday - 10 days	(55.4)	-	(*)	-	(12.4)	-	(67.8)	-
<u>Sales Tax</u> : College Textbooks - 1 year	(35.7)	-	(*)	-	(8.0)	-	(43.7)	-
<u>Sales Tax</u> : Gun Club Membership Fees	(1.0)	(1.0)	(*)	(*)	(0.2)	(0.2)	(1.2)	(1.2)
<u>Sales Tax</u> : Boat Repairs - Capped at \$60,000	(4.5)	(4.9)	(*)	(*)	(0.5)	(0.6)	(5.0)	(5.5)
<u>Sales Tax</u> : Motor Vehicles/Military Deployed Overseas	(0.7)	(0.7)	(*)	(*)	(0.1)	(0.1)	(0.8)	(0.8)
<u>Sales Tax</u> : Prepaid College Meal Plans Glitch	-	-	-	-	-	-	-	-
<u>Sales Tax</u> : School Concessions	(1.5)	(1.5)	(*)	(*)	(0.2)	(0.2)	(1.7)	(1.7)
<u>Corp Inc Tax</u> : Brownfield Credits - 1 year increase to cover backlog	(16.6)	-	-	-	-	-	(16.6)	-
<u>Corp Inc Tax</u> : Research & Development Credits	(14.0)	-	-	-	-	-	(14.0)	-
<u>Ad Valorem</u> : Common Elements	-	-	-	-	-	-	-	-
<u>Aviation Fuel Tax</u> : Higher Ed Exemption	(0.2)	(0.2)	-	-	-	-	(0.2)	(0.2)
<u>Insurance Prem Tax</u> : Title Insurance	-	(4.6)	-	-	-	-	-	(4.6)
<u>Sales/Corporate/Insurance</u> : Enterprise Zone Extension	(1.2)	-	(*)	-	(0.2)	-	(1.4)	-
<u>Tax Holidays & Tax Rate Cuts</u> : Appropriations	(0.3)	-	-	-	-	-	(0.3)	-
FY 2015-16 Total	(348.7)	(250.0)	-	-	(23.7)	(3.5)	(372.4)	(253.5)
<u>Non-recurring Impacts After FY 2015-16</u>								
<u>Sales/Corporate/Insurance</u> : Enterprise Zone Extension (FY 2016-17 to 2019-20)	(6.4)	-	-	-	(0.4)	-	(6.8)	-
<u>Sales/Corporate</u> : Community Contribution Tax Credits - 2 yr extension; add housing for persons with special needs (FY 2016-17 and 2017-18)	(45.0)	-	-	(*)	(4.8)	-	(49.8)	-
Bill Total	(400.0)	(250.0)	-	-	(28.9)	(3.5)	(428.9)	(253.5)

(WITH TITLE AMENDMENT)

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