

**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.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/CS/SB 620

INTRODUCER: Appropriations Committee (Recommended by Appropriations Subcommittee on Finance and Tax); Commerce and Tourism Committee; and Senator Passidomo and others

SUBJECT: Taxation

DATE: March 5, 2018

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Little	McKay	CM	Fav/CS
2. Gross	Diez-Arguelles	AFT	<b>Recommend: Fav/CS</b>
3. Diez-Arguelles	Hansen	AP	Fav/CS

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 620 provides for a number of tax reductions and modifications. The bill:

- Creates a 3-day back-to-school tax holiday for clothing and school supplies from August 3, 2018, through August 5, 2018.
- Creates a 7-day disaster preparedness holiday from June 1, 2018, through June 7, 2018.
- Exempts from sales and use tax generators purchased for use at nursing homes or assisted living facilities from July 1, 2017, through December 31, 2018.
- Exempts from sales and use tax the purchase of fencing materials for repairs of fences on agricultural lands that were damaged by Hurricane Irma. The exemption runs from September 10, 2017, through May 31, 2018.
- Exempts from sales and use tax building materials used to repair nonresidential farm buildings damaged by Hurricane Irma. The exemption runs from September 10, 2017, through May 31, 2018.
- Provides a refund of fuel taxes paid during the period September 10, 2017, through June 30, 2018, for motor vehicles used for agricultural shipment.
- Authorizes a homestead owner whose homestead is significantly damaged by a named tropical storm or hurricane to treat the homestead as abandoned on the date of the tropical storm or hurricane for property tax purposes.
- Exempts from documentary stamp tax certain notes and mortgages made by a housing finance authority.

- Provides for a reduced property tax assessment on citrus fruit packing and processing equipment impacted by Hurricane Irma or citrus greening. The bill provides for a distribution to fiscally constrained counties to offset the impact of the reduced property tax assessment.
- Allows agricultural lands that are not currently productive due to Hurricane Irma to retain their agricultural classification for 5 years.
- Redirects certain filing fees from the General Revenue Fund to the State Courts Revenue Trust Fund.
- Provides for the assessment of multiple parcel buildings.
- Updates the list of deployments that qualify for the deployed servicemember property tax exemption.
- Authorizes surviving spouses of certain disabled veterans to continue to receive property tax benefits regardless of the time the spouses were married.
- Specifies the property liens that survive a tax sale.
- Exempts from documentary stamp tax certain deeds transferred between spouses.
- Exempts from documentary stamp tax certain loans related to the Florida Small Business Emergency Bridge Loan Program and the Agricultural Economic Development Program.
- Delays the imposition of Florida's natural gas fuel tax from 2019 to 2024.
- Requires reports from recipients of cigarette tax distributions.
- Expands the definition of "infrastructure" for purposes of the Local Government Infrastructure Surtax.
- Increases the Community Contribution Tax Credits available in Fiscal Year 2019-2020 for projects that provide housing opportunities for certain persons and households from \$10.5 million to \$17 million.
- Exempts from the sales and use tax certain tangible personal property donated to charities.
- Provides a sales and use tax exemption for steam or electricity purchased for use in recycling.
- Exempts from sales and use tax roll-off containers used by recyclers.
- Requires some entities that receive sales tax distributions to report certain information to the Office of Economic and Demographic Research.
- Expands the distance that farm trucks can travel with a restricted license plate.
- Increases the tax credits available in Fiscal Year 2018-2019 for the rehabilitation of brownfields from \$10 million to \$21 million.
- Exempts from property tax property owned by the Florida Governmental Utility Authority located within a non-member county.
- Reduces the aviation fuel tax rate for air carriers who conduct scheduled operations or all-cargo operations.

The bill will reduce state revenues by \$103.4 million in Fiscal Year 2018-2019, with a \$60.4 million recurring reduction. General Revenue Fund receipts will be reduced by \$73.8 million in Fiscal Year 2018-2019, with a \$39.3 million recurring reduction. State trust fund receipts will be reduced by \$4.0 million in Fiscal Year 2018-2019, with a \$14.5 million recurring reduction. Local government receipts will be reduced by \$25.7 million in Fiscal Year 2018-2019, with a \$6.5 million recurring reduction.

Non-recurring General Revenue Fund and local government receipts will be reduced by \$6.0 million and \$0.5 million in Fiscal Year 2019-2020, respectively.

The total tax reductions proposed by the bill are represented by the sum of the recurring impacts, reflecting the annual value of permanent tax reductions when fully implemented, and the 1-year only tax reductions, reflecting temporary tax reductions. The total of \$148.9 million in tax reductions proposed by the bill is the sum of \$60.4 million (recurring), \$82.0 million (1-year only tax cuts in Fiscal Year 2018-2019), and \$6.5 million (1-year only tax reductions after Fiscal Year 2019-2020).

The bill makes the following appropriations:

- For Fiscal Year 2017-2018, the bill appropriates \$243,814 in nonrecurring funds from the General Revenue Fund to the Department of Revenue to implement the back-to-school sales tax holiday.
- For Fiscal Year 2017-2018, the bill appropriates \$70,072 in nonrecurring funds from the General Revenue Fund to the Department of Revenue to implement the disaster preparedness sales tax holiday.
- For Fiscal Year 2018-2019, the bill appropriates \$91,319 in nonrecurring funds from the General Revenue Fund to the Department of Revenue to implement the provisions in the bill.
- For Fiscal Year 2018-2019, the bill appropriates \$650,000 in nonrecurring funds from the General Revenue Fund to the Department of Revenue for fiscally constrained counties affected by the provisions of the bill that reduce property tax assessments for tangible personal property impacted by Hurricane Irma and citrus greening.

The bill provides an effective date of July 1, 2018, unless another date is expressed in the bill.

## II. Present Situation:

The discussion of the present situation is included below in Section III, Effect of Proposed Changes.

## III. Effect of Proposed Changes:

### Sections 1 and 33 – Court Fees

*Present situation:* Section 28.241(6), F.S., imposes a \$100 filing fee on attorneys wishing to appear pro hac vice<sup>1</sup> in trial and appellate proceedings in the state. The fee is deposited into the General Revenue Fund.

Section 741.01, F.S., imposes on every application for a marriage license a fee of \$2, remitted to the clerk for receiving the application; a fee of \$25, remitted by the clerk to the Department of Revenue (DOR) for deposit into the Domestic Violence Trust Fund; and an additional fee of \$25, remitted by the clerk to DOR for deposit into the General Revenue Fund.

*Proposed change:* The bill redirects from the General Revenue Fund to the State Courts Revenue Trust Fund both the fee imposed for appearing pro hac vice and the additional marriage license fee.

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<sup>1</sup> An attorney licensed in another state, but not a member of the Florida Bar, may appear in trial and appellate proceedings under certain circumstances. This is referred to as appearing Pro Hac Vice. See: <https://www.floridabar.org/rules/upl/upl002/#E-FilingProHacVice> (last visited Mar. 1, 2018).

## **Section 2 – Loans Issued by Local Housing Finance Authorities**

*Present situation:* Current law authorizes each county to create by ordinance a Housing Finance Authority (HFA) to encourage investment in construction and rehabilitation of suitable affordable housing units.<sup>2</sup> HFAs have the authority to issue bonds and use the bond proceeds to raise capital for financing of qualifying housing projects.<sup>3</sup> Bonds issued by a HFA, and all notes, mortgages, or other instruments given to secure repayment of the bonds, are exempt from all taxes.<sup>4</sup>

HFAs also have the authority to make conventional loans with funds derived from sources other than bond proceeds,<sup>5</sup> for instance, loans made to persons who otherwise cannot borrow from conventional lending sources.<sup>6</sup> However, even though bonds issued by a HFA and financial instruments given to secure repayment of the bonds are tax exempt, notes and mortgages pertaining to loans made by a HFA other than as part of a bond transaction remain subject to documentary stamp tax at a rate of 35 cents per \$100 of the consideration paid therefor.<sup>7</sup>

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

## **Sections 3, 10, 11 and 12 – Multiple Parcel Buildings**

*Present situation:* Currently, a building is treated as a single parcel of property for property tax purposes, unless portions of the building are legally separated, such as a condominium. If the ownership of the property is not legally separated, the owner of the building may require the users of the building to contribute toward payment of taxes on the value of the land under the building. When a party fails to make its contribution, a tax certificate could be sold or the property could eventually be sold for nonpayment of taxes.

Section 197.572, F.S., provides that when any lands are sold for nonpayment of taxes, or any tax certificate is issued, the title to the land shall continue to be subject to any easement or public service purpose and shall continue to be subject to any easement for the purposes of drainage or of ingress and egress to and from other land.

Section 197.573, F.S., provides that when a deed in the chain of title contains restrictions and covenants running with the land, the restrictions and covenants shall survive and be enforceable after the issuance of a tax deed or master's deed, or a clerk's certificate of title upon foreclosure of a tax deed, tax certificate, or tax lien, to the same extent that it would be enforceable against a

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<sup>2</sup> Chapter 159, F.S.

<sup>3</sup> Section 159.612(2), F.S.

<sup>4</sup> Section 159.621, F.S.

<sup>5</sup> For example, funds from the State Housing Initiatives Partnership pursuant to ch. 420, F.S.

<sup>6</sup> Section 159.608(8), F.S.

<sup>7</sup> Section 201.08, F.S.

voluntary grantee of the owner of the title immediately before the delivery of the tax deed, master's deed, or clerk's certificate of title.

*Proposed change:* The bill creates s. 193.0237, F.S., providing for assigning parcel numbers to sections of a building and then allocating the value of the land among the parcels. The bill defines a multiple parcel building as a building, other than one consisting entirely of a single condominium, timeshare, or cooperative, which contains separate parcels that are vertically located, in whole or in part, on or over the same land.

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

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

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

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

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

The bill amends s. 197.573(1), F.S., to provide that when a deed or other recorded instrument in the chain of title contains restrictions and covenants running the land, the restrictions and covenants shall survive and be enforceable after the issuance of a tax deed or master's deed, or a clerk's certificate of title upon foreclosure of a tax deed, tax certificate, or tax lien, to the same

extent that it would be enforceable against a voluntary grantee of the owner of the title immediately before the delivery of the tax deed, master's deed, or clerk's certificate of title.

### **Sections 4, 5, 24 and 25 – Assessment of Citrus Fruit Packing and Processing Equipment**

*Present situation:* Counties, municipalities, school districts, and some special districts have the authority to levy ad valorem (“property”) taxes.<sup>8</sup> Property tax applies to real property and tangible personal property.

“Tangible personal property” means all goods, chattels, and other articles of value (not including vehicles) capable of manual possession and whose chief value is intrinsic to the article itself.<sup>9</sup> All tangible personal property is subject to ad valorem taxation unless expressly exempted.<sup>10</sup> Household goods and personal effects,<sup>11</sup> items of inventory,<sup>12</sup> and up to \$25,000 of assessed value for each tangible personal property tax return<sup>13</sup> are exempt from ad valorem taxation.

For purposes of ad valorem property taxation, agricultural equipment that is located on property classified as agricultural under s. 193.461, F.S., and is obsolete and no longer usable for its intended purpose is deemed to have a market value no greater than its value for salvage.<sup>14</sup>

*Proposed change:* The bill creates s. 193.4516, F.S., providing that tangible personal property owned and operated by a citrus fruit packing or processing facility shall be deemed to have a market value no greater than its salvage value, provided the tangible personal property is no longer used in the operation of the facility due to the effects of Hurricane Irma or citrus greening. This valuation will be effective only for the 2018 tax year.

The bill also creates s. 218.135, F.S., to direct the legislature to provide fiscally constrained counties<sup>15</sup> an appropriation to offset the reduction in ad valorem tax revenue which occur as a direct result of the implementation of s. 193.4516, F.S. The affected counties must apply to DOR and provide supporting documentation to receive an appropriation. Appropriations will be distributed to the affected counties in January of each fiscal year in proportion of the total reduction in ad valorem tax revenue resulting from the implementation of s. 193.4516, F.S.

The bill appropriates \$650,000 for the 2018-2019 fiscal year from the General Revenue Fund to the Department of Revenue to provide the offset for fiscally constrained counties.

### **Sections 6 and 7 – Agricultural Classification of Lands impacted by Hurricane Irma**

*Present situation:* Florida requires all property to be assessed at its “just value” unless the state constitution provides an exception,<sup>16</sup> and just valuation requires property to be valued at its

<sup>8</sup> FLA. CONST. art VII, s. 9.

<sup>9</sup> Section 192.001(11)(d), F.S.

<sup>10</sup> Section 196.001(1), F.S.

<sup>11</sup> Section 196.181, F.S.

<sup>12</sup> Section 196.185, F.S.

<sup>13</sup> Section 196.183, F.S.

<sup>14</sup> Section 193.4615, F.S.

<sup>15</sup> See s. 218.67(1), F.S.

<sup>16</sup> FLA. CONST. art. VII, s. 4

highest and best use.<sup>17</sup> Agricultural land is one exception to the highest and best use requirement.<sup>18</sup> Agricultural land is assessed based on its current use as agricultural land, which generally results in a lower assessment. However, when agricultural land ceases to be used for bona fide agricultural purposes, it no longer qualifies for its agricultural assessment.<sup>19</sup>

*Proposed change:* The bill provides that lands that were classified as agricultural but are not actively used for agricultural production due to a hurricane that made landfall in Florida in 2017 must continue to be assessed as agricultural lands until December 31, 2022, unless the lands are converted to nonagricultural use. The bill applies this treatment to the 2018 property tax roll.

### **Section 8 – Ad Valorem Exemption for Deployed Servicemembers**

*Present situation:* The Florida Constitution grants an exemption for military servicemembers that have Florida homesteads and are deployed on active duty outside the continental United States, Alaska or Hawaii in support of military operations designated by the Legislature.<sup>20</sup> The exemption is equal to the taxable value of the qualifying servicemember’s homestead on January 1 of the year in which the exemption is sought, multiplied by the number of days that the servicemember was on a qualifying deployment in the preceding calendar year, and divided by the number of days in that year.<sup>21</sup>

By January 15 of each year, the Department of Military Affairs (DMA) must submit to the President of the Senate, the Speaker of the House of Representatives, and the tax committees of each house of the Legislature a report of all known and unclassified military operations outside the continental United States, Alaska, or Hawaii for which servicemembers based in the continental United States have been deployed during the previous calendar year.<sup>22</sup>

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

### **Section 9 – Ad Valorem Exemption for Unmarried Surviving Spouse of a Disabled Ex-Servicemember**

*Present situation:* Current law provides a \$5,000 property tax exemption to any resident ex-servicemember who was honorably discharged and has been disabled to a degree of 10 percent or more by misfortune or while serving during a period of wartime service.<sup>23</sup> This exemption is extended to the surviving spouse of the disabled ex-servicemember if, at the time of the disabled

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<sup>17</sup> See *Lanier v. Walt Disney World Co.*, 316 So. 2d 59 (Fla. 4<sup>th</sup> DCA 1975)

<sup>18</sup> FLA. CONST. art. VII, s.4(a)

<sup>19</sup> Section 193.461(4)(b), F.S.

<sup>20</sup> FLA. CONST. art. VII, s. 3(g); s. 196.173, F.S.

<sup>21</sup> Section 196.173(4), F.S.

<sup>22</sup> Section 196.173(3), F.S.

<sup>23</sup> Section 196.24, F.S.

ex-servicemember's death, the unremarried surviving spouse was married to the ex-servicemember for at least five years.<sup>24</sup>

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

### **Section 13 – Spousal Homestead Transfers**

*Present situation:* Florida imposes a documentary stamp tax on tax deeds and other documents related to real property at the rate of 70 cents per \$100 of the consideration paid therefor.<sup>25</sup> Consideration is defined to include, but is not limited to, the money paid or agreed to be paid; the discharge of an obligation; and the amount of any mortgage, purchase money mortgage lien, or other encumbrance, whether or not the underlying indebtedness is assumed.<sup>26</sup>

Current law provides a documentary stamp tax exemption for a deed, transfer, or conveyance between spouses or former spouses pursuant to an action for dissolution of their marriage if the real property is or was their marital home.<sup>27</sup> This exemption also applies to conveyances that occurred within one year before the dissolution of marriage.

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

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

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

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

### **Section 14 – Small Business Emergency Bridge Loans**

*Present situation:* The Excise Tax on Documents (documentary stamp tax) is levied on promissory notes, nonnegotiable notes, written obligations to pay money, and assignments of salaries, wages, or other compensation at the rate of 35 cents per \$100 or fraction thereof of the

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<sup>24</sup> *Id.*

<sup>25</sup> Section 201.02(1)(a), F.S.

<sup>26</sup> Section 201.02(1)(a), F.S.

<sup>27</sup> Section 201.02(7), F.S.

indebtedness or obligation evidenced thereby. The tax on these documents may not exceed \$2,450.<sup>28</sup>

The Florida Small Business Emergency Loan Program is part of Florida's response to disasters. The program's purpose is to provide short-term, interest-free working capital loans that are intended to "bridge the gap" between the time a major catastrophe hits and when a business has secured longer term recovery resources. Loans are awarded in amounts from \$1,000 to \$50,000, with terms of 90 or 180 days, and must be paid in full by the end of the loan term.<sup>29</sup>

The program was first activated following Hurricane Andrew and has been activated 20 additional times since then. In response to Hurricane Irma in September 2017, the program has made 829 small business loans totaling \$27,719,793 and 49 citrus-related loans totaling \$5,728,000.<sup>30</sup>

The Agricultural Economic Development Program<sup>31</sup> provides for disaster loans and grants for agricultural producers who have experienced losses from a natural disaster or a socio-economic condition or event. The loans and grants may be used to:

- Restore or replace essential physical property or remove debris from essential physical property;
- Pay all or part of production costs associated with the disaster year;
- Pay essential family living expenses; or
- Restructure farm debts.

Agricultural producers having parcels of land in production not exceeding 300 acres are eligible for loans under this program, and funds may be issued as direct loans or as loan guarantees for up to 90 percent of the total loan, in amounts not less than \$30,000 and not more than \$300,000. Loan applicants must provide at least ten percent equity.<sup>32</sup> This program has not been funded by the Legislature, and no loans have been made.<sup>33</sup>

*Proposed change:* The bill creates s. 201.25, F.S., providing an exemption from documentary stamp tax for any loan made by the Florida Small Business Emergency Loan Program in response to a disaster for which the governor declares a state of emergency pursuant to s. 252.36, F.S., or any loan made by the Agricultural Economic Development Program.

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<sup>28</sup> Section 201.08(1)(a), F.S.

<sup>29</sup> <http://www.floridadisasterloan.org/> (last visited Mar. 2, 2018).

<sup>30</sup> Total amounts as of January 8, 2018.

<sup>31</sup> Section 570.82, F.S.

<sup>32</sup> *Id.*

<sup>33</sup> Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Disaster Loans, Proposed Language*, Jan 12, 2018 Revenue Impact Results, available at [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/\\_pdf/page278-281.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/page278-281.pdf).

## Sections 15, 16 and 17 – Natural Gas Fuel Tax

*Present situation:* In 2013, CS/CS/HB 579 established a fuel tax rate structure for motor vehicles powered by natural gas and repealed the decal fee imposed on “alternative fuel” vehicles.<sup>34</sup> The bill also provided an exemption from the new rate structure until December 31, 2018, and exempted from the sales and use tax natural gas and natural gas fuel when placed into the fuel system of a motor vehicle.<sup>35</sup>

Beginning January 1, 2019, the following taxes are imposed on natural gas fuel:

- An excise tax of 4 cents upon each motor fuel equivalent gallon of natural gas fuel.
- An additional tax of 1 cent upon each motor fuel equivalent gallon<sup>36</sup> of natural gas fuel, which is designated as the “ninth-cent fuel tax.”
- An additional tax of 1 cent on each motor fuel equivalent gallon of natural gas fuel by each county, which is designated as the “local option fuel tax.”
- An additional tax on each motor fuel equivalent gallon of natural gas fuel, which is designated as the “State Comprehensive Enhanced Transportation System (SCETS) Tax,” at a rate determined by statute.<sup>37</sup>
- An additional tax is imposed on each motor fuel equivalent gallon of natural gas fuel “for the privilege of selling natural gas fuel,” designated as the “fuel sales tax,” at a rate determined by statute.<sup>38</sup>

*Proposed change:* The bill clarifies s. 206.9955, F.S., to delay the imposition of the tax on natural gas fuel used in motor vehicles from January 1, 2019, to January 1, 2024.

In addition, the bill clarifies the formula used to adjust the tax rates and sets the 12-month period ending September 30, 2013, as the base year in the formula.

The bill also:

- Amends s. 206.9952(3), F.S.:
  - to delay the expiration of a \$200 penalty for each month a person acts as a natural gas retailer without a valid natural gas fuel retailer license from December 31, 2018, to December 31, 2023.

<sup>34</sup> The bill created a new Part V of Ch. 206, F.S., consisting of ss. 206.9951 – 206.998, entitled ‘NATURAL GAS FUEL.’ It repealed various provisions, including ss. 206.877 and 206.89, F.S.; and it amended and relocated various provisions to the new Part V. *See supra* note 4 for a detailed analysis of the bill.

<sup>35</sup> *See* s. 212.08(4)(a)2., F.S.

<sup>36</sup> “Motor fuel equivalent gallon” is defined in s. 206.9951(1), F.S., to mean the volume of natural gas fuel it takes to equal the energy content of one gallon of motor fuel. Section 206.9955, F.S., currently defines the motor fuel equivalent gallon for compressed natural gas, liquefied natural gas, and liquefied petroleum gas.

<sup>37</sup> Paragraph (d) of s. 206.9955(2), F.S., currently requires the DOR, each calendar year, to determine the tax rate applicable to the sale of natural gas fuel for the following 12-month period beginning January 1, rounded to the nearest tenth of a cent, by adjusting the initially established rate of **5.8 cents per gallon** by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30.

<sup>38</sup> Paragraph (e) of s. 206.9955(2), F.S., currently requires the DOR, each calendar year, to determine the tax rate applicable to the sale of natural gas fuel, rounded to the nearest tenth of a cent, for the following 12-month period beginning January 1. The tax rate is to be calculated by adjusting the initially established tax rate of **9.2 cents per gallon** by the percentage change in the average of the Consumer Price Index for the most recent 12-month period ending September 30.

- to delay the effective date of the penalty of 25 percent of the tax that is assessed on the total purchases made during the person's unlicensed period until January 1, 2024.
- Amends s. 206.966, F.S., to delay the date on which natural gas fuel retailers are required to begin filing related monthly reports with the DOR from February 2019 to February 2024.

### **Section 18 – Moffitt Distribution**

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

From the total amount of cigarette tax collections:<sup>39</sup>

- 8.0 percent service charge to the General Revenue Fund;<sup>40</sup> and
- 0.9 percent to the Alcoholic Beverage and Tobacco Trust Fund.

From the remaining net collections:<sup>41</sup>

- 2.9 percent to the Revenue Sharing Trust Fund for Counties;
- 29.3 percent to the Public Medical Assistance Trust Fund;
- 4.04 percent of fiscal year 2001-2002 cigarette tax collections to the Moffitt Center;<sup>42</sup> and
- 1.0 percent, not to exceed \$3 million annually, to the Biomedical Research Trust Fund in the Department of Health (DOH).

After the above distributions are made, the remaining balance of net cigarette tax collections is deposited in the General Revenue Fund.<sup>43</sup>

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

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

<sup>39</sup> See s. 210.20(2)(a), F.S.

<sup>40</sup> See s. 215.20(1), F.S. concerning the appropriation of the eight percent service charge to the General Revenue Fund.

<sup>41</sup> See s. 210.20(2)(a), F.S.

<sup>42</sup> See s. 210.20(2)(b), F.S. The distribution of cigarette tax funds to the Moffitt Center was initiated in 1998, using 2.59 percent for the calculation on net cigarette tax collections. See ch. 98-286, Laws of Fla. The last adjustment to the percentage for the calculation occurred in 2014, when the percentage was set at the current 4.04 percent from July 1, 2014 through June 30, 2017. See s. 8 of ch. 2014-38, Laws of Fla.

<sup>43</sup> See s. 210.20(b), F.S.

## Section 19 – Sales Tax on Commercial Rent

*Present situation:* Since 1969, Florida has imposed a sales tax on the total rent charged for the rental, lease, or license to use commercial real property.<sup>44</sup> Sales tax is due at the rate of 5.8 percent on the total rent paid and county sales surtax can also be levied.<sup>45</sup> 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 several commercial rentals that are not subject to tax, including:

- Rentals of real property assessed as agricultural;
- Rentals to nonprofit organizations that hold a current Florida consumer's certificate of exemption;
- Rentals to federal, state, county, or city government agencies;
- Properties used exclusively as dwelling units; and
- Public streets or roads used for transportation purposes.<sup>46</sup>

*Proposed change:* The bill reduces the state tax rate on rental, lease or license to use commercial real property from 5.8 percent to 5.7 percent, beginning January 1, 2019.

## Section 20 – Local Government Infrastructure Surtax

*Present situation:* There are nine discretionary sales surtaxes that serve as revenue sources for county and municipal governments and school districts.<sup>47</sup> A surtax applies to all taxable transactions that are subject to Florida's sales and use tax.

The local government infrastructure surtax allows a qualifying county to levy a discretionary sales surtax of 0.5 percent or one percent pursuant to an ordinance enacted by a majority of the members of the county and approved by a majority of the electors of the county voting in a referendum on the surtax.<sup>48</sup> Surtax proceeds are distributed to the county and the municipalities within the county according to an interlocal agreement between the county governing authority and the governing bodies of the municipalities representing a majority of the county's municipal population. If there is no interlocal agreement, the proceeds are distributed according to the formula in s. 218.62, F.S.<sup>49</sup>

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

<sup>44</sup> Chapter 1969-222, Laws of Fla.

<sup>45</sup> Section 212.031, F.S., and Rule 12A-1.070, F.A.C.

<sup>46</sup> See s. 212.031(1)(a)1.-13., F.S.

<sup>47</sup> Section 212.055, F.S.

<sup>48</sup> Section 212.055(2)(a)1., F.S.

<sup>49</sup> Section 212.055(2)(c)1., F.S. The agreement may include a school district with the consent of the county governing authority and the governing bodies of the municipalities.

- Finance, plan, and construct infrastructure;
- Acquire land for public recreation, conservation, or protection of natural resources;
- Provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing the use is approved by referendum; or
- Finance the closure of county-owned or municipally owned solid waste landfills that are closed or are required to be closed by order of the Department of Environmental Protection.<sup>50</sup>

The term “infrastructure” includes any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 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.<sup>51</sup>

Prior to 2016, the term “public facilities” was not specifically defined. In 2016, the Legislature defined the term “public facilities” to mean facilities as defined in three other sections of law (ss. 163.3164(38), 163.3221(13), and 189.012(5), F.S.), regardless of whether the facilities are owned by the local taxing authority or another governmental entity.

Generally, the three incorporated sections define “public facilities” as major capital improvements, including transportation, sanitary sewer, solid waste, drainage, potable water, educational, parks and recreational facilities (two of the three sections also include health system facilities). However, the incorporation of the specific statutory definitions into the definition of “public facilities” may have had the unintended consequence of limiting the authorized use of the surtax revenues to only the listed facilities.

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

The bill also adds to the definition of “infrastructure” instructional technology used in a school district’s classroom. Instructional technology is defined as an interactive device that assists a teacher in instructing as class or a group of students. The hardware and software necessary to operate the interactive device and a support system in which an interactive device may mount are also included as authorized expenditures.

### **Sections 21, 26 and 32 – Community Contribution Tax Credit Program**

*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.<sup>52</sup> Broadly, the CCTCP offers tax credits to businesses or persons (“taxpayers”)

<sup>50</sup> Section 212.055(2)(d), F.S.

<sup>51</sup> Section 212.055(2)(d)1.a., F.S.

<sup>52</sup> Chapter 80-249, Laws of Fla. The CCTCP is one of the state incentives available under the Florida Enterprise Zone Act, which was partially repealed on December 31, 2015. Sections 290.007(3) and 290.016, F.S.

anywhere in Florida that contribute<sup>53</sup> to certain projects undertaken by approved CCTCP sponsors.<sup>54</sup>

Eligible sponsors under the CCTCP include a wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards.<sup>55</sup> As of February 2018, the CCTCP had 124 approved sponsors.<sup>56</sup>

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

- To construct, improve, or substantially rehabilitate housing that is affordable to low-income households or very-low-income households as those terms are defined in s. 420.9071;
- To provide commercial, industrial, or public resources and facilities; or
- To improve entrepreneurial and job-development opportunities for low-income persons.<sup>57</sup>

In addition, eligible projects must be located in an area that was designated as an enterprise zone as of May 1, 2015,<sup>58</sup> or a Front Porch Florida Community, with two exceptions. First, any project designed to construct or rehabilitate housing for low-income households or very-low-income households as those terms are defined in s. 420.9071, F.S., is exempt from the area requirement. Second, any project designed to provide increased access to high-speed broadband capabilities that includes coverage in a rural community that had an enterprise zone designation as of May 1, 2015, may locate the project's infrastructure in any area of a rural county (inside or outside of the zone).

The CCTCP 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.<sup>59</sup> The taxpayer may use the credit against corporate income tax, insurance premiums tax, or as a refund against sales tax.<sup>60</sup> Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years.<sup>61</sup> Unused credits against sales taxes may be carried forward for three years.<sup>62</sup>

DOR may approve \$10.5 million in annual funding for projects that provide homeownership opportunities for low-income and very-low-income households or housing opportunities for persons with special needs and \$3.5 million for all other projects.

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<sup>53</sup> 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.

<sup>54</sup> See ss. 212.08(5)(p); 220.183; and 624.5105, F.S.

<sup>55</sup> See ss. 212.08(5)(p)2.c.; 220.183(2)(c); and 624.5105(2)(c), F.S.

<sup>56</sup> Email correspondence with DEO staff, Feb. 8, 2018, on file with the Senate Appropriations Subcommittee on Finance and Tax.

<sup>57</sup> Sections 212.08(5)(p)2.b.; 220.183(2)(d); 624.5105(2)(b); and 220.03(1)(t), F.S.

<sup>58</sup> The Florida Enterprise Zone Act was partially repealed as of December 31, 2015- see ch. 2015-221, Laws of Fla.; s. 290.016, F.S.

<sup>59</sup> Sections 212.08(5)(p)1.; 220.183 (1)(a) and (b); and 624.5105(1), F.S.

<sup>60</sup> See ss. 212.08(5)(p); 220.183; and 624.5105, F.S.

<sup>61</sup> Sections 220.183(1)(e) and (g); and 624.5105, F.S.

<sup>62</sup> Section 212.08(5)(p)1.b. and f., F.S.

The Legislature extended the CCTCP in 1984, 1994, 2005, 2014, and 2015,<sup>63</sup> and made the program permanent in 2017.<sup>64</sup> It has also amended the annual tax credit allocation of the CCTCP on numerous occasions.<sup>65</sup> The CCTCP cap, which started at \$3 million annually, is currently set at \$21.4 million for fiscal year 2017-18; for fiscal years after 2017-18, the cap is set at \$14 million.

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

## **Section 21 – Donations to Charities; Exemptions for Recycling Containers and Electricity**

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions,<sup>66</sup> transient rentals,<sup>67</sup> rental of commercial real estate,<sup>68</sup> and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. There are currently more than 250 exemptions, exclusions, deductions, and credits from the sales and use tax.<sup>69</sup> Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.<sup>70</sup>

Florida imposes sales tax<sup>71</sup> at the rate of 4.35 percent and gross receipts tax<sup>72</sup> at the rate of 2.6 percent on charges for electrical power or energy.

### ***Donations to Charities***

*Present situation:* Section 212.08(7), F.S., exempts from the sales and use tax the sale or lease of tangible personal property made to an organization determined to be exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986. However, donations made by entities that purchase items for resale must pay tax on the acquisition cost of the tangible personal property that is subsequently donated.

*Proposed change:* The bill amends s. 212.08(7)(p), F.S., to exempt from the sales and use tax tangible personal property that was purchased for resale by a dealer but whose purchase was subsequently donated to a tax-exempt entity.

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<sup>63</sup> Chapters 84-356, 94-136, 2005-282, 2014-38, and 2015-221, Laws of Fla.

<sup>64</sup> Chapter 2017-36, Laws of Fla.

<sup>65</sup> See chs. 94-136, 98-219, 99-265, 2005-282, 2006-78, 2008-153, 2015-221, and 2017-36, Laws of Fla.

<sup>66</sup> Section 212.04, F.S.

<sup>67</sup> Section 212.03, F.S.

<sup>68</sup> Section 212.031, F.S.

<sup>69</sup> See Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, 164-170 (2017).

<sup>70</sup> Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities*, available at [http://dor.myflorida.com/dor/taxes/sales\\_tax.html](http://dor.myflorida.com/dor/taxes/sales_tax.html) (last visited Mar. 3, 2018).

<sup>71</sup> Section 212.05(1)(e)1.c., F.S.

<sup>72</sup> Section 203.01(1)(b)4., F.S.

***Exemption for Electricity Used by Certain Recyclers***

*Present situation:* Section 212.08(7)(ff), F.S., exempts electricity or steam used to operate machinery and equipment at a fixed location in this state. Such machinery and equipment must be used to manufacture, process, compound, produce, or prepare for shipment items of tangible personal property for sale, or to operate pollution control equipment, recycling equipment, maintenance equipment, or monitoring or control equipment used in such operations. This exemption applies only to specific industries classified under the Standard Industrial Classification (SIC) Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President.

*Proposed change:* The bill amends s. 212.08(7)(ff), F.S., to add “Recyclable Material Merchant Wholesalers” as classified under the North American Classification System code 423930 to the industries exempted from the tax on electricity or steam. Businesses under this NAICS code primarily engage in the merchant wholesale distribution of automotive scrap, industrial scrap, and other recyclable materials. Included in this industry are auto wreckers primarily engaged in dismantling motor vehicles for the purpose of wholesaling scrap.<sup>73</sup>

***Exemption for Roll-off Containers Used by Certain Recyclers***

*Present situation:* Current law imposes sales and use tax on roll-off containers purchased and used by a business primarily engaged in the distribution of recycled materials.

*Proposed change:* The bill creates s. 212.08(7)(ooo), F.S., to exempt roll-off containers purchased by a business classified under NAICS code 423930 and engages in the distribution of recycled materials. The roll-off containers must be used exclusively by the business for recycling purposes.

**Section 22 – Tax Amounts and Tax Brackets**

*Present situation:* The DOR must make available the tax amounts and tax brackets applicable for:

- Transactions that occur in counties that have a surtax at a rate other than 1 percent.
- Sales of electrical power or energy taxed at a rate of 4.35 percent.
- Transactions that would otherwise have been taxable in counties that have adopted a discretionary sales tax.

*Proposed change:* The bill amends s. 212.12(11), F.S., to provide that the DOR must make available the tax amounts and tax brackets applicable to the commercial rental tax rate under s. 212.031,(1), F.S.

**Section 23 – Sales Tax Distribution Reporting**

*Present situation:* Section 212.20, F.S., provides for the distribution of all tax or fee revenue collected or received by DOR under ch. 212, F.S., as well as certain communication service taxes

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<sup>73</sup> United State Census Bureau, *North American Industry Classification System, 2007 NAICS Definition*, available at: <https://www.census.gov/cgi-bin/sssd/naics/naicsrch?input=423930&search=2007+NAICS+Search> (last visited Mar. 3, 2018).

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

- \$166,667 monthly to professional sports franchise facilities certified pursuant to s. 288.1162, F.S., and \$41,667 monthly to spring training franchise facilities certified pursuant to s. 288.11621, F.S.<sup>74</sup>
- \$166,667 monthly to the professional golf hall of fame certified pursuant to s. 288.1168, F.S.<sup>75</sup>
- \$83,333 monthly to certain spring training franchise facilities certified pursuant to s. 288.11631, F.S.<sup>76</sup>
- Monthly distributions of an amount to be determined by DEO to each local government that is certified pursuant to s. 288.11625, F.S., for the public purpose of constructing, reconstructing, renovating, or improving a sports facility.<sup>77</sup>

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

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

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

### **Sections 27 and 31 – Voluntary Cleanup Tax Credit Program - Brownfields Tax Credit**

*Present situation:* The Department of Environmental Protection (DEP) is authorized to issue \$10 million annually in tax credits as an 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;<sup>78</sup>

<sup>74</sup> Section 212.20(6)(d)6.b., F.S.

<sup>75</sup> Section 212.20(6)(d)6.c., F.S.

<sup>76</sup> Section 212.20(6)(d)6.e., F.S.

<sup>77</sup> Section 212.20(6)(d)6.f., F.S.

<sup>78</sup> Section 376.30781, F.S.

- A drycleaning solvent contaminated site at which the real property owner undertakes voluntary cleanup, provided that the real property owner has never been the owner or operator of the drycleaning facility; or
- A brownfield site in a designated brownfield area.<sup>79</sup>

Eligible tax credit applicants may receive up to \$500,000 per site per year in tax credits plus 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. In the event that approved tax credit applications exceed the \$10 million annual authorization, the statute provides for remaining applications to roll over into the next fiscal year to receive tax credits in first come, first served order from the next year's authorization. These tax credits may be applied toward corporate income tax in Florida. The tax credits may be transferred one time, although they may succeed to a surviving or acquiring entity after merger or acquisition.

Since 1998, the VCTC Program has approved \$81.7 million in VCTCs,<sup>80</sup> and total requests for tax credits have met or exceeded the annual authorization since 2007.<sup>81</sup> As of February 1, 2018, DEP had a backlog of \$10.2 million in approved tax credits that have not been funded.<sup>82</sup> On July 1, 2018, the \$10 million annual authorization for Fiscal Year 2018-19 becomes available which will reduce the current backlog to \$200,000. However, the \$12.8 million in tax credits applied for 2017 costs when added to the \$200,000 tax credits outstanding will create a backlog of approximately \$13 million<sup>83</sup> that will be partially funded when the \$10 million annually authorized credit amount becomes available on July 1, 2019.

*Proposed Change:* The bill provides a one-time additional tax credit authorization of \$11 million for Fiscal Year 2018-19.

### **Sections 28 and 29 – Traffic Fine Reduction for Driver Improvement Course Attendance**

*Present situation:* A person who commits a noncriminal traffic infraction and is issued a citation, must elect to appear before a designated official, pay the citation, or enter into a payment plan

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<sup>79</sup> Section 220.1845, F.S.

<sup>80</sup> Florida Brownfields Redevelopment Program, 2016-17 Annual Report, on file with the Senate Appropriations Subcommittee on Finance and Tax. Unavailable online as of Feb. 1, 2018.

<sup>81</sup> DEP, Florida Brownfields Redevelopment Program, 2016 Annual Report, no longer available at: [http://www.dep.state.fl.us/Waste/quick\\_topics/publications/wc/brownfields/AnnualReport/2016/2015-16\\_FDEP\\_Annual.pdf](http://www.dep.state.fl.us/Waste/quick_topics/publications/wc/brownfields/AnnualReport/2016/2015-16_FDEP_Annual.pdf) (last visited March 22, 2017).

<sup>82</sup> Email correspondence with DEP staff, Feb. 1, 2018, on file with Senate Appropriations Subcommittee on Finance and Tax.

<sup>83</sup> Note that, for various reasons, not all of the \$12.8 million in tax credits applied for will be approved.

with the clerk of court within 30 days after the citation is issued to avoid having his or her driver license suspended.<sup>84</sup>

Section 318.14(9), F.S., provides that a person who does not hold a commercial driver license or commercial learner's permit and who is cited while driving a noncommercial motor vehicle for a noncriminal traffic infraction may, in lieu of a court appearance, elect to attend a basic driver improvement course.<sup>85</sup> If a driver improvement course is completed, adjudication is withheld and points<sup>86</sup> are not assessed against the person's driver license.

If a person completes a basic driver improvement course, 18 percent of the civil penalty imposed<sup>87</sup> is deposited in the State Courts Revenue Trust Fund.

A person who elects to attend driver improvement school and has paid the civil penalty,<sup>88</sup> but who subsequently fails to attend the driver improvement school within the time specified by the court is deemed to have admitted the infraction and is adjudicated guilty.<sup>89</sup> In such a case, the clerk of the court notifies the Department of Highway Safety and Motor Vehicles (DHSMV) of the person's failure to attend driver improvement school and points are assessed on the person's driver license.

The cost of driver improvement courses range from \$15 to \$40, depending on the provider.<sup>90</sup>

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

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

### **Section 30 – Transportation of Agriculture, Horticulture, and Forestry Products**

*Present situation:* Florida imposes an annual license tax for the operation of motor vehicles, which is paid to the Department of Highway Safety and Motor Vehicles upon the registration or renewal of each vehicle. The amount of the tax depends on the type and size of the vehicle.

Currently, restricted license plates with a reduced annual license tax are available for an eligible truck tractor or heavy truck not operated as a for-hire vehicle, which is engaged exclusively in

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<sup>84</sup> Section 318.14, F.S.

<sup>85</sup> Driver improvement courses must be approved by the DHSMV.

<sup>86</sup> Points are provided for in s. 322.27, F.S.

<sup>87</sup> See s. 318.18(3), F.S. The civil penalty varies by violation.

<sup>88</sup> The civil penalty is provided for in s. 318.14(9), F.S.

<sup>89</sup> Section 318.15(1)(b), F.S.

<sup>90</sup> DHSMV, *2017 Agency Legislative Bill Analysis: HB 547*, on file with the Senate Appropriations Subcommittee on Finance and Tax.

transporting raw, unprocessed, and non-manufactured agriculture or horticultural products or forestry products within a 150-mile radius of its home address.

*Proposed change:* The bill amends s. 320.08, F.S, to expand the eligibility for the restricted license plate to include such trucks that operate anywhere within the state.

## **Sections 34 and 35 – Back to School and Disaster Preparedness Sales Tax Holidays**

### ***Back-to-school***

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

The “Florida Residents’ Tax Relief Act of 1998” established Florida’s first back-to-school sales tax holiday, during which time clothing purchases of \$50 or less were exempt from tax.<sup>91</sup> In 1999, the legislature added backpacks to the tax holiday;<sup>92</sup> and included school supplies in 2001.<sup>93</sup> In 2013, personal computers and related accessories that were purchased for noncommercial home or personal use with a sales price of \$750 or less were exempt.<sup>94</sup> Since 1998, the duration of back-to-school sales tax holidays have varied from 3 to 10 days, as have the type and value of exempt items.

For the 2017-2018 school year, 41 of Florida school districts (61 percent) held their opening day for students during the first week of August (Aug. 7 – 11). Another 23 districts (34 percent) had opening days during the second week of August.

*Proposed change:* The bill provides for a 3-day sales tax holiday from August 3, 2018, through August 5, 2018. During the holiday, the following items that cost \$60 or less are exempt from the state sales tax and county discretionary sales surtaxes:

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

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

The bill allows the back-to-school sales tax holiday to apply at the option of the dealer if less than five percent of the dealer’s gross sales of tangible personal property in the prior calendar year are comprised of items that would be exempt under the holiday. If a qualifying dealer

<sup>91</sup> Chapter 98-341, Laws of Fla.

<sup>92</sup> Chapter 99-229, Laws of Fla.

<sup>93</sup> Chapter 2001-148, Laws of Fla.

<sup>94</sup> Chapter 2013-42, s. 42 Laws of Fla.

chooses not to participate in the tax holiday, by August 1, 2018, the dealer must notify the DOR in writing of its election to collect sales tax during the holiday and must post a copy of that notice in a conspicuous location at its place of business. The bill authorizes the DOR to adopt emergency rules to implement the provisions of the holidays.

The bill appropriates \$243,814 in nonrecurring funds from the General Revenue Fund for the 2017-2018 fiscal year to the Department of Revenue to administer this sales tax holiday.

### ***Disaster Preparedness***

*Present situation:* In 2017, the Florida Office of Insurance Regulation estimated a gross probable loss of over \$7 billion due to Hurricane Irma in 2017, \$1 billion due to hurricanes Hermine and Mathew in 2016,<sup>95</sup> \$25 billion due to four hurricanes in 2004, and \$10.8 billion due to four hurricanes in 2005.<sup>96</sup> Tropical Storm Fay was estimated to have resulted in \$242 million of damage in 2008.<sup>97</sup> The Florida Division of Emergency Management recommends having a disaster supply kit with items such as a battery operated radio, flashlight, batteries, and first-aid kit.<sup>98</sup>

*Proposed change:* The bill provides for a 7-day sales tax holiday from June 1, 2018, through June 7, 2018, for specified items related to disaster preparedness. During the holiday, the following items are exempt from the state sales tax and county discretionary sales surtaxes:

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

The bill appropriates \$70,072 in nonrecurring funds from the General Revenue Fund for the 2017-2018 fiscal year to the Department of Revenue to administer this sales tax holiday.

Both the back-to-school and disaster preparedness sales tax holidays in the bill do not apply to the following sales:

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<sup>95</sup> Florida Office of Insurance Regulation, Catastrophe Report, available at:

<https://www.floir.com/Office/HurricaneSeason/HurricaneIrmaClaimsData.aspx> (last visited Mar. 03, 2018).

<sup>96</sup> Florida Office of Insurance Regulation, *Florida Office of Insurance Regulation Hurricane Summary Data*, available at: <http://www.floir.com/siteDocuments/HurricaneSummary20042005.pdf>

<sup>97</sup> Florida Office of Insurance Regulation, *Florida Office of Insurance Regulation Hurricane Summary Data*, available at: <http://www.floir.com/siteDocuments/HurricaneSummary2008.pdf>.

<sup>98</sup> Florida Division of Emergency Management, *Disaster Supply Kit*, <https://www.floridadisaster.org/plan--prepare/disaster-supply-kit/> (last visited Mar. 03, 2018).

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

### **Section 36 – Generators for Nursing Homes and Assisted Living Facilities**

*Present situation:* There is currently no sales tax exemption for the purchase of generators for assisted living facilities or nursing homes. In September 2017, in response to electrical outages caused by Hurricane Irma, the Agency for Health Care Administration (AHCA) and the Department of Elder Affairs (DEA) published Emergency Rules to require nursing homes and assisted living facilities to comply with an emergency power plan.<sup>99</sup> Nursing homes and assisted living facilities were required to provide a detailed plan which included the acquisition of a sufficient generator or generators to ensure ambient temperatures at facilities will be maintained at 80 degrees or less for a minimum of 96 hours in the event of a loss of power. Facilities must also acquire and maintain sufficient fuel to ensure that in an emergency the generators can function as required, and must acquire services necessary to install, maintain, and test the equipment to ensure the safe and sufficient operation of the generator system. Facilities must have implemented their plan within sixty days of September 16, 2017. Additional Emergency Rules were subsequently published to provide for exceptions for the implementation timeline.<sup>100</sup>

DEA and AHCA have certified to the Department of State permanent rules concerning emergency environmental control for assisted living facilities<sup>101</sup> and nursing homes<sup>102</sup> and both have requested that these rules be ratified during the 2018 Legislative Session.<sup>103</sup> Each rule requires that facilities licensed prior to the effective date of the rule shall have implemented the plan no later than June 1, 2018, but provides for extensions up to January 1, 2019 under certain conditions.

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

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

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<sup>99</sup> Florida Emergency Rules 58AER17-1 and 59AER17-1.

<sup>100</sup> Florida Emergency Rules 58AER17-2 and 59AER17-2.

<sup>101</sup> Rule 58A-5.036, as certified by the Agency for Elder Affairs, Feb. 2, 2018.

<sup>102</sup> Rule 59A-4.1265, as certified by the Agency for Health Care Administration, Feb. 2, 2018.

<sup>103</sup> Letters of request on file with the Senate Appropriations Subcommittee on Finance and Tax.

### **Section 37 – Fencing Materials / Hurricane Irma**

*Present situation:* Current law exempts from the sales and use tax certain items used for agricultural purposes and nets used by commercial fisheries.<sup>104</sup> The exemption is not allowed unless the purchaser or lessee signs a certificate stating that the item to be exempted is for the exclusive use designated in s. 212.08(5)(a), F.S.

Hurricane Irma's path coincided with some of Florida's most productive agricultural regions in the state, and consequently it caused major losses to all segments of agriculture production, including crop losses and damaged infrastructure (such as destroyed fences, shade structures, and ground cover for row crops). Preliminary estimates for total losses (crops and infrastructure) reported by the Department of Agriculture and Consumer Services (DACCS) to Florida's agricultural sectors are over \$2 billion.<sup>105</sup>

*Proposed change:* The bill provides an exemption from the sales and use tax for the purchase of fencing materials used in the repair of farm fences on lands classified as agricultural under s. 193.461, F.S., if the fencing materials will be or were used to repair damage to fences that occurred as a direct result of the impact of Hurricane Irma.

The exemption is available through a refund of previously paid taxes and applies to purchases made between September 10, 2017, and May 31, 2018.

To receive a refund, the owner of the fencing materials or the real property into which the materials were incorporated must apply to the DOR by December 31, 2018 and include the following information:

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

### **Section 38 – Building Materials for Nonresidential Farm Buildings / Hurricane Irma**

*Present situation:* Current law defines a “nonresidential farm building” as any temporary or permanent building or support structure that is classified as a nonresidential farm building on a farm under s. 553.73(10)(c) or that is used primarily for agricultural purposes, is located on land that is an integral part of a farm operation or is classified as agricultural land under s. 193.461,

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<sup>104</sup> Section 212.08(5)(a), F.S.

<sup>105</sup> Florida Department of Agriculture and Consumer Services (DACCS), *Hurricane Irma's Damage to Florida Agriculture*, October 4, 2017, available at:

<https://www.freshfromflorida.com/content/download/77515/2223098/FDACS+Irma+Agriculture+Assessment.pdf>

F.S., and is not intended to be used as a residential dwelling.<sup>106</sup> The term includes barns, greenhouses, shade houses, farm offices, storage buildings, and poultry houses.

Generally, sales and use tax are currently levied on the purchase of tangible personal property that is used in the construction or repair of buildings and other projects, unless specifically exempted under current law.<sup>107</sup> There is currently no general sales tax exemption for the purchase of tangible personal property used in the construction or repair of nonresidential farm buildings.

Hurricane Irma caused major losses to Florida's agricultural landscapes, and damage to nonresidential farm building is a part of the agricultural infrastructure losses.

*Proposed change:* The bill provides an exemption from the sales and use tax for the purchase of certain building materials used to repair nonresidential farm buildings that were damaged as a direct result of Hurricane Irma. The exemption is available through a refund of previously paid taxes and applies to purchases made between September 10, 2017, and May 31, 2018. The exempt building materials are broadly defined as tangible personal property that becomes a component part of a nonresidential farm building.

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

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

### **Section 39 – Refund of Fuel Taxes / Hurricane Irma**

*Present situation:* Motor fuel and diesel fuel are subject to state taxation pursuant to ch. 206, F.S. The tax rate is a combination of several state and local rates, and the revenue collected is distributed to various state trust funds and to local governments for revenue sharing purposes.<sup>108</sup> For 2017, the combined state tax rate is 24.8 cents per gallon.<sup>109</sup> In addition, the retail sale of motor and diesel fuel is subject to sales tax under ch. 212, F.S., under certain circumstances if fuel taxes have not been paid.<sup>110</sup>

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<sup>106</sup> Section 604.50, F.S.

<sup>107</sup> For example, s. 212.08(7)(r), F.S., exempts the sale of building materials that are used in new construction located in a rural area of opportunity.

<sup>108</sup> Section 206.41, F.S.

<sup>109</sup> Revenue Estimating Conference, 2018 FLORIDA TAX HANDBOOK, pp. 126-127, available at: <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf>

<sup>110</sup> Sections 212.18(3) and 212.0501, F.S.; Rule 12B-5.120, F.A.C.

Current law exempts the sale or use of motor and diesel fuel for agricultural or farm purposes;<sup>111</sup> however, agricultural or farm purposes are generally defined to mean “used exclusively on a farm or for processing farm products on the farm, and does not include fuel used in any vehicle or equipment operated upon public highways of the state.”<sup>112</sup>

*Proposed change:* The bill creates an exemption from state and local taxes imposed on motor fuel and diesel under parts I and II, ch. 206, F.S.,<sup>113</sup> for fuel that is used for the transportation of agricultural products from the farm or agricultural land to a facility used to process, package, or store the product.

The exemption is available through a refund of previously paid taxes and applies to purchases made between September 10, 2017, and June 30, 2018. Excluded from this exemption are the “constitutional fuel tax” levied under s. 9(c), Art. XII of the 1968 State Constitution, and the 0.125 cents per gallon levied to defray expenses for motor fuel inspection, testing and analysis by the Department of Agriculture and Consumer Services.<sup>114</sup>

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

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

#### **Section 40 – Save Our Homes Portability Affected by Storm Damage**

*Present situation:* The “Save Our Homes” amendment to the Florida Constitution was approved by voters in 1992.<sup>115</sup> This amendment limits annual assessment increases to the lower of: 3% of the assessment for the prior year or the change in the Consumer Price Index (CPI) for all urban consumers. See Fla. Const., art. VII, s. 4(d)(1). The operation of this provision over time results in the market value of a homestead property exceeding its assessed value for property tax purposes if the property owner does not sell the property.

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<sup>111</sup> Sections 206.41(4)(c), 206.64, 206.874(2)-(3), and 212.0501, F.S.

<sup>112</sup> The restriction does not apply to fuel used on highways to move equipment from one farm to another.

<sup>113</sup> The exemption does not include the 2 cent per gallon “second gas tax” imposed pursuant to art. XII, sec. 9(c), Fla. Const. under s. 206.41(1)(a), F.S., or the 0.125 cents per gallon inspection fee imposed under s. 206.41(1)(h), F.S.

<sup>114</sup> Sections 206.41(1)(a) and (h), F.S.

<sup>115</sup> Section 193.155(1), F.S.

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

Section 193.155(8)(g), F.S., provides that for purposes of receiving an assessment reduction pursuant to this subsection, a person entitled to assessment under this section may abandon his or her property even though it remains his or her primary residence by notifying the property appraiser of the county where the homestead is located. The notification must be in writing and delivered at the same time as or before timely filing a new application for homestead exemption on the property.

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

#### **Section 41 – Ad Valorem Taxes on Water and Wastewater Utilities**

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

An interlocal agreement may provide for a separate legal or administrative entity to administer or execute the agreement, which may be a commission, board, or council constituted pursuant to the agreement. Section 163.01(7), F.S. provides a separate legal entity may acquire, own, construct, improve, operate, and manage public facilities, or finance facilities on behalf of any person, relating to a governmental function or purpose, including, but not limited to, wastewater facilities, water or alternative water supply facilities, and water reuse facilities, which may serve populations within or outside of the members of the entity. Since the legal entities created under the Florida Interlocal Act of 1969 perform essential governmental functions they are not required to pay any taxes or assessments of any kind on property acquired to perform such functions. In a recent circuit court case, the court concluded that water and wastewater facilities owned by an entity created under ch. 163 were not exempt from ad valorem taxes, despite the exemption provided in s. 163.01(7), F.S.<sup>116</sup> The court reasoned that the facilities did not serve a governmental function or purpose for members located within the entity when the facilities only

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<sup>116</sup> *Florida Governmental Utility Authority v. Tim Parker and Linda Myers*, Case Number 2014-CA-000472, Fla. 7<sup>th</sup> Judicial Circuit (December 8, 2016), per curiam affirmed, *Florida Governmental Utility Authority v. Tim Parker and Linda Myers*, Case No. 5D17-93, Slip Opinion 2017 WL 6624263, (Fla. 5<sup>th</sup> DCA Dec. 26, 2017)

served members located outside the entity. The court also declined to interpret the exemption provided in s. 163.01(7) as an ad valorem exemption because the language in the statute does not specifically mention ad valorem taxation. Lastly, the court reasoned that the facilities were subject to taxation when the entity contracted a private entity to perform the water treatment services because that private entity would be subject to tax had it owned the property,

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

## **Section 42 – Export of Motor Fuels**

*Present situation:* Chapter 206, F.S., provides for the licensing of a person engaged in business as a terminal supplier, importer, exporter, blender, biodiesel manufacturer, or wholesaler of motor fuel within this state.<sup>117</sup> Generally, taxes on motor fuel are imposed on all of the following:<sup>118</sup>

- The removal of motor fuel in this state from a terminal<sup>119</sup> if the motor fuel is removed at the rack.<sup>120</sup>
- The removal of motor fuel in this state from any refinery under certain circumstances.
- The entry of motor fuel into this state for sale, consumption, use, or warehousing under certain circumstances.
- The removal of motor fuel in this state to an unregistered person, unless there was a prior taxable removal, entry, or sale of the motor fuel.
- The removal or sale of blended motor fuel in this state by the blender thereof.

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

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

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<sup>117</sup> Section 206.02, F.S.

<sup>118</sup> Section 206.41(6), F.S.

<sup>119</sup> “Terminal” means a storage and distribution facility for taxable motor or diesel fuel, supplied by pipeline or marine vessel, that has the capacity to receive and store a bulk transfer of taxable motor or diesel fuel. *See* s. 206.01(18), F.S.

<sup>120</sup> “Rack” means the part of a terminal or refinery by which fuel is physically removed into tanker trucks or rail cars. *See* s. 206.01(12), F.S.

- The terminal supplier collects and remits to the state of destination all taxes imposed on said fuel by the destination state.

If a licensed exporter pays Florida motor fuel taxes, the exporter can take a credit on its monthly fuel tax return or apply for a refund of Florida fuel tax paid on fuel exported from the state.<sup>121</sup> Terminal suppliers may exchange fuel above the loading rack of a terminal with other terminal suppliers without paying motor fuel taxes,<sup>122</sup> but fuel tax must be paid by a terminal supplier that purchases motor fuel at the rack from another terminal supplier.

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

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

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

### **Section 43 – Aviation Fuel Taxes**

*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.<sup>123</sup> Aviation fuel is defined as “fuel for use in aircraft, and includes aviation gasoline and aviation turbine fuels and kerosene, as determined by the American Society for Testing Materials specifications D-910 or D-1655 or current specifications.”<sup>124</sup>

In 2016, the Legislature amended the fuel tax laws by removing an exemption available to certain air carriers and reducing the tax rate on all air carriers.<sup>125</sup> The 2016 law changes provided a delayed effective date to July 1, 2019. Beginning in fiscal year 2019-2020, the excise tax on

<sup>121</sup> Section 206.051(4), F.S.

<sup>122</sup> Rule 12B-5.050, F.A.C.

<sup>123</sup> Section 206.9825, F.S.

<sup>124</sup> Section 206.9815, F.S.

<sup>125</sup> Chapter 2016-220, Laws of Fla.

aviation fuel will be 4.27 per gallon, and collections of aviation fuel tax in fiscal year 2019-20 are estimated to be \$27.7 million, net of refunds.

The Federal Aviation Administration (FAA) is the agency within the United States Department of Transportation (USDOT) that, among other things, regulates the air transportation system in the United States.<sup>126</sup> Title 14 of the Code of Federal Regulations, in part, provides the licensing, certification, and operational specifications for all aviation activities in the United States. Federal regulations define “air carrier” to mean a person who undertakes directly by lease, or other arrangement, to engage in air transportation. Part 121 provides the operating requirements for domestic, flag, and supplemental operations. Part 125 provides for the certification and operation requirements for airplanes having a seating capacity of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more; part 125 also provides rules governing person on board such aircrafts. Part 135 provides the operating requirements for commuter and on-demand operations and rules governing persons on board such aircrafts.

The FAA imposes certain restrictions on the uses of revenues for airport operators that accept Federal assistance.<sup>127</sup> Generally, revenues from state and local taxes on aviation fuel may only be used for certain aviation-related purposes such as airport operating costs, or in the case of state taxes, a “state aviation program.”<sup>128</sup> However, the revenue from state and local taxes on aviation fuel which were in effect prior to December 30, 1987, is considered “grandfathered” and is eligible for use for otherwise impermissible expenditures.<sup>129</sup> On November 7, 2014, the FAA clarified its interpretation of the federal requirements for the use of revenue derived from taxes on aviation fuel, and requested each state to validate compliance with this FAA regulation.<sup>130</sup> On April 26, 2016, the Florida Department of Transportation validated the state’s compliance with the FAA regulation.<sup>131</sup>

Any air carrier that is in the business of transporting persons or property for compensation or hire by air is entitled to receive a refund of aviation fuel taxes paid on fuel purchased by the carrier, not to exceed 0.6 percent of the wages paid by the carrier to employees located or based within this state and covered by the reemployment compensation provisions of ch. 443, F.S.<sup>132</sup>

*Proposed change:* Beginning July 1, 2019, the bill provides a refund of 1.42 cent per gallon of the aviation fuel taxes imposed on fuel purchased by an air carrier who conducts scheduled operations or all-cargo operations that are authorized under 14 C.F.R. parts 121, 129, or 135,

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<sup>126</sup> USDOT, Administrations, available at: <http://www.dot.gov/administrations> (last visited Mar. 03, 2018).

<sup>127</sup> 49 U.S.C. §§ 47107(b) and 47133; Public Law Nos. 97-248 and 100-223.

<sup>128</sup> “State aviation program” is not defined, but generally refers to state programs that support capital improvements or operating costs of airports; FAA, Policy and Procedures Concerning the use of Airport Revenue: Proceeds from Taxes on Aviation Fuel, 79 FR 66282, available at: [https://www.faa.gov/airports/resources/publications/federal\\_register\\_notices/](https://www.faa.gov/airports/resources/publications/federal_register_notices/) (last visited Mar. 03, 2018).

<sup>129</sup> Dec. 30, 1987, is the “grandfather” deadline because The Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223, passed on that date, which first required state and local taxes on aviation fuel to be spent on airport-related purposes.

<sup>130</sup> FAA, Policy and Procedures Concerning the use of Airport Revenue: Proceeds from Taxes on Aviation Fuel, 79 FR 66282, available at: [https://www.faa.gov/airports/resources/publications/federal\\_register\\_notices/](https://www.faa.gov/airports/resources/publications/federal_register_notices/) (last visited Mar. 03, 2018).

<sup>131</sup> Florida DOT, correspondence from FDOT State Aviation Manager to FAA Director of Office of Airport Compliance and Management Analysis, April 26, 2016, on file with the Senate Appropriations Subcommittee on Finance and Tax.

<sup>132</sup> Section 206.9855, F.S.

reducing the effective tax rate to 2.85 cents per gallon. The refund provided under this section plus the wages-based refund provided under s. 206.9855, F.S., may not exceed 4.27 cent per gallon of aviation fuel purchased by the carrier.

**Section 44** provides that the provisions related to multiple parcel buildings first apply to taxes and special assessments levied in 2018.

**Section 45** appropriates, for the 2018-2019 fiscal year, the sum of \$91,319 in nonrecurring funds from the General Revenue Fund to the Department of Revenue to implement the provisions of the bill.

**Section 46** provides an effective date of July 1, 2018, unless another date is expressed in the bill.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenues.

Subsection (b) of s. 18, Art. VII, 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. However, the mandates requirements do not apply to laws having an insignificant impact,<sup>133</sup> which for Fiscal Year 2017-2018, is \$2.05 million or less.<sup>134</sup>

The bill reduces local government revenues by more than an insignificant amount and it does not appear that any exemption or exception applies. Therefore, the bill may qualify as a mandate requiring a two-thirds vote of the membership.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

<sup>133</sup> 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*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Mar. 03, 2018).

<sup>134</sup> Based on the Demographic Estimating Conference's population adopted on December 5, 2017. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Mar. 03, 2018).

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

CS/CS/SB 620 will reduce state revenues by \$103.4 million in Fiscal Year 2018-2019, with a \$60.4 million recurring reduction. General Revenue Fund receipts will be reduced by \$73.8 million in Fiscal Year 2018-2019, with a \$39.3 million recurring reduction. State trust fund receipts will be reduced by \$4.0 million in Fiscal Year 2018-2019, with a \$14.5 million recurring reduction. Local government receipts will be reduced by \$25.7 million in Fiscal Year 2018-2019, with a \$6.5 million recurring reduction.

Non-recurring General Revenue Fund and local government receipts will be reduced by \$6.0 million and \$0.5 million in Fiscal Year 2019-2020, respectively.

The total tax reductions proposed by the bill are represented by the sum of the recurring impacts, reflecting the annual value of permanent tax reductions when fully implemented, and the 1-year only tax reductions, reflecting temporary tax reductions. The total of \$148.9 million in tax reductions proposed by the bill is the sum of \$60.4 million (recurring), \$82.0 million (1-year only tax cuts in Fiscal Year 2018-2019), and \$6.5 million (1-year only tax reductions after Fiscal Year 2019-2020).

The table on page 32 shows the details of the revenue impacts.

**CS/CS/SB 620**  
**Fiscal Year 2018-19 Estimated Fiscal Impacts (millions of \$)**

<u>Issues</u>	<u>General Reve</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>Sales Tax</u> : Business Rent Tax Rate Cut (0.1 reduction)	(11.4)	(27.4)	(*)	(*)	(1.5)	(3.5)	(12.9)	(31.0)
<u>Sales Tax</u> : Tax Holiday/"Back-to-School" (3-day, \$60/\$15, No Computers)	(26.0)	-	(*)	-	(6.7)	-	(32.7)	-
<u>Sales Tax</u> : Tax Holidays/Disaster Preparedness (1 week)	(4.6)	-	(*)	-	(1.2)	-	(5.8)	-
<u>Sales Tax</u> : Agriculture Building Materials	(7.0)	-	(*)	-	(1.8)	-	(8.8)	-
<u>Sales Tax</u> : Agriculture Fencing (all farm fences)	(2.2)	-	(*)	-	(0.6)	-	(2.8)	-
<u>Sales Tax</u> : Generators for Nursing Homes/ALFs	(5.3)	-	(*)	-	(1.4)	-	(6.7)	-
<u>Sales Tax</u> : Donations to Charities (Jan. 1, 2019)	(2.2)	(5.2)	(*)	(*)	(0.5)	(1.3)	(2.7)	(6.5)
<u>Sales Tax</u> : Recyclers--exempt roll-off containers and electricity	(0.7)	(0.7)	(0.3)	(0.3)	(0.2)	(0.2)	(1.2)	(1.2)
<u>Corp Income Tax</u> : Brownfields Credit Increase	(11.0)	-	-	-	-	-	(11.0)	-
<u>Ad Valorem</u> : Citrus Processing/Packing Hurr Relief	-	-	-	-	(10.5)	-	(10.5)	-
<u>Ad Valorem</u> : Dis.Vet/Surviving Spouse	-	-	-	-	-	(0.1)	-	(0.1)
<u>Ad Valorem</u> : FGUA Clarification	-	-	-	-	-	(*)	-	(*)
<u>Ad Valorem</u> : Save Our Homes Portability	-	-	-	-	-	(1.2)	-	(1.2)
<u>Ad Valorem</u> : Agriculture Classification - 5-yr assessment, 2017 Hurricane Damage	-	-	-	-	-	-	-	-
<u>Doc Stamp Tax</u> : Housing Authority Obligations	(0.2)	(0.2)	(0.3)	(0.3)	-	-	(0.5)	(0.5)
<u>Doc Stamp Tax</u> : Spousal Transfers	(0.6)	(0.6)	(0.9)	(0.9)	-	-	(1.5)	(1.5)
<u>Doc Stamp</u> : Disaster Loans	(**)	(**)	(**)	(**)	-	-	(**)	(**)
<u>Fuel Tax</u> : Aviation Tax Rate Reduction	-	(1.1)	-	(13.0)	-	-	-	(14.1)
<u>Fuel Tax</u> : Refunds for Agricultural Transportation	-	-	(2.5)	-	(1.2)	-	(3.7)	-
<u>Fuel Tax</u> : Supplier Export Exemption	-	-	(*)	(*)	(*)	(*)	(*)	(*)
<u>Fuel Tax</u> : Natural Gas Fuels Extension	(*)	(0.1)	(0.1)	(0.4)	(0.1)	(0.2)	(0.2)	(0.7)
<u>Highway Safety</u> : Truck License Taxes (ag and forestry trucks)	(*)	(*)	(*)	(*)	-	-	(*)	(*)
<u>Spec. Assessments/Ad Valorem</u> : Multiparcel Buildings	-	-	-	-	(**)	(**)	(**)	(**)
<u>Traffic Fines</u> : 18% Discount (Jan. 1, 2019)	(1.5)	(4.0)	0.2	0.4	-	-	(1.4)	(3.6)
<u>Appropriation</u> : Administration	(0.09)	-	-	-	-	-	(0.09)	-
<u>Appropriation</u> : Back-to-School	(0.24)	-	-	-	-	-	(0.24)	-
<u>Appropriation</u> : Disaster Holiday (FY 17-18)	(0.07)	-	-	-	-	-	(0.1)	-
<u>Appropriation</u> : Fiscally Constrained Counties (citrus processing and greening)	(0.65)	-	-	-	-	-	(0.65)	-
<b>2018-19 Total</b>	<b>(73.8)</b>	<b>(39.3)</b>	<b>(4.0)</b>	<b>(14.5)</b>	<b>(25.7)</b>	<b>(6.5)</b>	<b>(103.4)</b>	<b>(60.4)</b>
<b>Non-recurring Impacts After FY 2018-19</b>								
<u>Sales Tax/Corp Inc. Tax</u> : Comm Cont Tax Credits	(6.0)	-	-	-	(0.5)	-	(6.5)	-
<b>Bill Total</b>	<b>(79.8)</b>	<b>(39.3)</b>	<b>(4.0)</b>	<b>(14.5)</b>	<b>(26.2)</b>	<b>(6.5)</b>	<b>(109.9)</b>	<b>(60.4)</b>
1-year only issues =								<b>(88.5)</b>
Recurring + 1-year only issues (1) =								<b>(148.9)</b>

(\*) Impact less than \$50,000; (\*\*) Impact is indeterminate.

**B. Private Sector Impact:**

The bill provides tax relief to agricultural producers affected by Hurricane Irma and citrus greening.

The bill removes, either during specific periods of time or on an ongoing basis, the sales tax on various purchases of tangible personal property, and it reduces the sales tax rate on the rental of commercial real property.

The bill provides surviving spouses of disabled military veterans increased homestead property tax exemptions, and reduces the documentary stamp tax burden on spouses that transfer property between one another.

**C. Government Sector Impact:**

The bill contains the following appropriations totaling \$1,000,205:

- \$243,814 in Fiscal Year 2017-2018 from the General Revenue Fund to the Department of Revenue to implement the back-to-school sales tax holiday;
- \$70,072 in Fiscal Year 2017-2018 from the General Revenue Fund to the Department of Revenue to implement the disaster preparedness sales tax holiday;
- \$91,319 in Fiscal Year 2018-2019 from the General Revenue Fund to the Department of Revenue to implement the provisions in the bill; and
- \$650,000 in Fiscal Year 2018-2019 from the General Revenue Fund to the Department of Revenue for fiscally constrained counties affected by the reduced property tax assessments for tangible personal property impacted by Hurricane Irma and citrus greening.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill amends the following sections of the Florida Statutes: 28.241, 159.621, 163.01, 193.155, 193.461, 196.173, 196.24, 197.3631, 197.572, 197.573, 201.02, 206.052, 206.9952, 206.9955, 206.996, 212.031, 212.055, 212.08, 212.12, 220.183, 220.1845, 318.14, 318.15, 320.08, 376.30781, 624.5105, and 741.01.

The bill creates the following sections of the Florida Statutes: 193.0237, 193.4516, 201.25, 206.9826, 210.205, 212.205, and 218.135.

The bill creates undesignated sections of Florida law.

**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 Appropriations on March 2, 2018:**

The committee substitute:

- Redirects certain fees from the General Revenue Fund to the State Courts Trust Fund.
- Provides a documentary stamp tax exemption related to housing finance authorities.
- Provides for the assessment of multiple parcel buildings.
- Reduces property taxes for agricultural equipment affected by citrus greening and Hurricane Irma.
- Extends agricultural assessments for 5 years for certain lands affected by Hurricane Irma.
- Updates the deployed servicemember property tax exemption.
- Expands homestead exemptions for surviving spouses of disabled veterans.
- Limits the property liens that survive a tax sale.
- Exempts from documentary stamp tax certain deeds between spouses and certain loans related to the Florida Small Business Emergency Bridge Loan Program and the Agricultural Economic Development Program.
- Delays the imposition of Florida's natural gas fuel tax from 2019 to 2024.
- Requires additional reporting on cigarette tax distributions.
- Expands the use of Local Government Infrastructure Surtax revenue.
- Authorizes community contribution tax credits for Fiscal Year 2018-2019.
- Exempts from the sales and use tax property donations to charities.
- Expands the manufacturing sales and use tax exemption for steam or electricity.
- Exempts from sales and use tax recycling roll-off containers.
- Requires reporting on certain sales tax distributions.
- Expands the distance that certain farm trucks can travel with a restricted license plate.
- Increases brownfield tax credits.
- Creates a 3-day back-to-school tax holiday.
- Creates a 7-day disaster preparedness holiday.
- Exempts from sales tax generators for nursing homes or assisted living facilities.
- Exempts from sales tax repair materials for certain agricultural fences.
- Exempts from sales tax repair materials nonresidential farm buildings.
- Provides a refund of certain fuel taxes paid for agricultural shipment.
- Authorizes homestead owners significantly affected by 2017 hurricanes to treat the homestead as abandoned on the date of the tropical storm or hurricane for property tax purposes.
- Extends the property tax exemption for water and wastewater utility equipment.

**CS by Commerce and Tourism Committee on November 13, 2017:**

The bill is amended to specify the amount of the appropriation to the DOR to administer the sales tax exemption. For the 2017-2018 fiscal year, the bill appropriates \$70,072 in nonrecurring funds from the General Revenue Fund to the DOR.

B. Amendments:

None.

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

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