Tab 1	**SB 266** by **Passidomo**; (Identical to H 00617) Covenants and Restrictions

Tab 2	**SB 324** by **Young**; (Similar to H 00697) Impact Fees						
539088	D	S		RCS	CA, Young	Delete everything after	12/05 12:49 PM
652158	AA	S		FAV	CA, Young	Delete L.70 - 72:	12/05 12:49 PM
146388	AA	S	L	FAV	CA, Young	Delete L.58:	12/05 12:49 PM

Tab 3	**SB 688** by **Garcia**; (Similar to H 00243) Charter County and Regional Transportation System Surtax

Tab 4	**SB 612** by **Steube**; (Compare to H 00749) Sexual Offenders						
251524	D	S		RCS	CA, Steube	Delete everything after	12/05 12:49 PM

Tab 5	**SJR 452** by **Brandes**; (Similar to H 00501) Limitations on Homestead Property Tax Assessments

Tab 6	**SB 454** by **Brandes**; (Identical to H 00503) Limitations on Homestead Assessments						
371170	A	S		RCS	CA, Brandes	Delete L.288:	12/05 12:49 PM

Tab 7	**SB 658** by **Brandes**; (Similar to H 00585) Tourist Development Tax

Tab 8	**SB 494** by **Lee**; (Identical to H 00405) Linear Facilities

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Lee, Chair
Senator Bean, Vice Chair

MEETING DATE: Tuesday, December 5, 2017
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Office Building

MEMBERS: Senator Lee, Chair; Senator Bean, Vice Chair; Senators Brandes, Campbell, Perry, Rodriguez, and Simmons

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 266** Passidomo (Identical H 617)	Covenants and Restrictions; Designating the "Marketable Record Title Act"; revising the notice filing requirements for a person claiming an interest in land and other rights; exempting a specified summary notice and amendment from certain notice content requirements; authorizing the parcel owners of a community not subject to a homeowners' association to use specified procedures to revive certain covenants or restrictions, subject to certain exceptions and requirements, etc. CA 12/05/2017 Favorable JU RC	Favorable Yeas 6 Nays 0
2	**SB 324** Young (Similar H 697)	Impact Fees; Specifying the earliest time of collection that a local government may require for impact fees, etc. CA 12/05/2017 Fav/CS AFT AP	Fav/CS Yeas 6 Nays 0
3	**SB 688** Garcia (Similar H 243)	Charter County and Regional Transportation System Surtax; Requiring counties, except under certain circumstances, to use surtax proceeds only for specified purposes; prohibiting the use of such proceeds for nontransit purposes, etc. CA 12/05/2017 Favorable AFT AP	Favorable Yeas 5 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 612** Steube (Compare H 749)	Sexual Offenders; Creating "The Florida Sex Offender Rental Notification Act"; requiring that all residential rental agreements of a certain duration contain a distinct and prominent disclosure statement regarding the employment of sexual offenders; providing that the rental agreement is not complete until the acknowledgement of receipt in the disclosure statement has been signed by the tenant; authorizing a tenant to cancel the agreement within a specified period of time and to receive a refund of all deposit moneys without penalty if the agreement disclosed the employment of a sexual offender, etc. CA 12/05/2017 Fav/CS JU RC	Fav/CS Yeas 6 Nays 0
5	**SJR 452** Brandes (Similar HJR 501, Compare H 503, Linked S 454)	Limitations on Homestead Property Tax Assessments ; Proposing amendments to the State Constitution to increase the period when the accrued benefit from specified limitations on homestead property tax assessments may be transferred from a prior homestead to a new homestead, etc. CA 12/05/2017 Favorable AFT AP	Favorable Yeas 6 Nays 0
6	**SB 454** Brandes (Identical H 503, Compare HJR 501, Linked SJR 452)	Limitations on Homestead Assessments; Revising the timeframe when the accrued benefit from specified limitations on homestead property tax assessments may be transferred from a prior homestead to a new homestead, etc. CA 12/05/2017 Fav/CS AFT AP	Fav/CS Yeas 6 Nays 0
7	**SB 658** Brandes (Similar H 585)	Tourist Development Tax; Authorizing counties imposing the tax to use the tax revenues, under certain circumstances, for specified purposes and costs relating to public facilities, etc. CA 12/05/2017 Favorable AFT AP	Favorable Yeas 6 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**SB 494** Lee (Identical H 405)	Linear Facilities; Revising the definition of the term "development" to exclude work by certain utility providers on utility infrastructure on certain rights-of-way or corridors; requiring the consideration of a certain variance standard when including conditions for the certification of an electrical power plant; clarifying that the Public Service Commission has exclusive jurisdiction to require underground transmission lines, etc. CU 11/14/2017 Favorable CA 12/05/2017 Temporarily Postponed	Temporarily Postponed
9	Presentation on Hurricane Irma Structural Damage Report and Resilient Construction		Temporarily Postponed
	Other Related Meeting Documents		

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SB 266
INTRODUCER:	Senator Passidomo
SUBJECT:	Covenants and Restrictions
DATE:	December 4, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	**Favorable**
2.			JU	
3.			RC	

I. Summary:

SB 266 addresses the covenants and restrictions of property owners' associations and makes the following changes:

- Provides updated definitions and replaces the term "homeowners' association" with "property owners' association," which extends statutes authorizing the preservation and revival of covenants and restrictions to a broader range of associations, notably commercial property owners' associations;
- Updates the process for a homeowners' association to timely renew its covenants, and lowers the vote requirement from a two-thirds vote of the members of the board of directors to a majority vote for preservation of existing covenants and restrictions;
- Authorizes parcel owners who were subject to covenants and restrictions, but who do not have a homeowners' association, to use the same mechanisms as a homeowners' association to revitalize extinguished covenants and restrictions;
- Requires a homeowners' association to annually consider preservation of the covenants and restrictions and requires that the association file a summary preservation every 5 years; and
- Conforms statutory and definitional cross-references.

II. Present Situation:

The Marketable Record Title Act

The Marketable Record Title Act (MRTA) was enacted in 1963 to simplify and facilitate land transactions.[1] In general terms, MRTA provides that any person who has been vested with any estate in land of record for 30 years or more has a marketable record title, free and clear of most

[1] *Blanton v. City of Pinellas Park*, 887 So. 2d 1224, 1227 (Fla. 2004).

claims or encumbrances against the land. In essence, MRTA serves as the ultimate land statute of limitations.[2] The statutes contain nine exceptions in which MRTA does not apply.[3]

One unintended effect of MRTA, however, is that covenants and restrictions are extinguished 30 years after their creation. Therefore, homeowner associations' covenants and restrictions can expire and become unenforceable. In order to protect the covenants, MRTA has long provided a method for renewing the covenants. Even so, many homeowners' associations still fail to timely file a renewal of their covenants. In 2004, laws were enacted to provide a method for reviving the covenants and restrictions of a mandatory homeowners' association.[4] In 2007, nonmandatory homeowners' associations became eligible for revitalization.[5] Revitalization requires the creation of an organizing committee, notice to all affected property owners, approval by a majority of the homeowners, approval by the Department of Economic Opportunity, and the recording of notice in the public records.[6]

Two categories of property owners impacted by MRTA have not been included in the laws permitting renewal or revival of their covenants and restrictions: commercial landowners in office parks, industrial parks, and other commercial districts and neighborhoods with enforceable covenants but no formal homeowners' association. These property owners both enact and enforce covenants and restrictions regarding their property and that of their neighbors.

Due to the disparate issues in the bill, the present situation for each section is discussed in more detail below in conjunction with the Effect of Proposed Changes.

III. Effect of Proposed Changes:

Preservation of Existing Covenants

Present Situation

Sections 712.05 and 712.06, F.S., provide that a homeowners' association may timely renew its covenants by complying with the following conditions:

- The board must give written notice to every parcel owner of the impending preservation of the covenants;[7]
- The board must give written notice to every parcel owner of a meeting of the board of directors where the directors will decide whether to renew the covenants;[8]
- The board of directors of the association must approve the renewal by a two-thirds vote;[9] and
- Notice of the renewal must be recorded in the official records of the county.[10]

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[2] Gregory M. Cook, *The Marketable Record Title Act Made Easy*, The Florida Bar Journal, (Oct. 1992) available at https://www.floridabar.org/news/tfb-journal/?durl=/DIVCOM/JN/jnjournal01.nsf/Articles/E3897C8163A7258285256BD80071EED5.
[3] Section 712.03, F.S.
[4] Ch. 2004-345, s. 11, Laws of Fla.
[5] Ch. 2007-173, s. 1, Laws of Fla.
[6] Sections 720.403, 720.404, 720.405, 720.406, and 720.407, F.S.
[7] Section 712.06(1)(b), F.S.
[8] Section 712.05(1), F.S.
[9] *Id.*
[10] Section 712.06(2), F.S.

Sections 3 and 4 of the bill change this procedure to:

- Provide that compliance by a homeowners' association with newly created s. 720.3032, F.S. (see discussion below) may substitute for the requirements of ss. 712.05 and 712.06, F.S.;
- Provide that an amendment to a covenant or restriction indexed under the legal name of the property owners' association may also substitute for the requirements of ss. 712.05 and 712.06, F.S.;
- Repeal the requirement that the board achieve a two-thirds vote; and
- Repeal the requirement that affected property owners be furnished notice of the board meeting to vote on preservation.

These sections also contain conforming language.

Preservation and Revitalization of Covenants by a Commercial Property Owners' Association

Present Situation

Current law provides for the preservation and revitalization of covenants by a homeowners association.

Effect of the Bill

Section 2 provides a definition for the term "community covenant or restriction" and substitutes the term "property owners' association" for "homeowners' association." A property owners' association includes a homeowners' association as defined in s. 720.301, F.S., a corporation or entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, as well as an association of parcel owners authorized to enforce a community covenant or restriction. The bill also makes conforming changes for these new terms.

The bill replaces all uses of the term "homeowners' association" found in chapter 712, F.S., with the term "property owners' association." The effect is to expand MRTA laws on preservation and revitalization of covenants or restrictions to cover commercial associations.

Section 12 inserts language to provide that part III of chapter 720, F.S., Covenant Revitalization,[11] is intended to provide mechanisms for revitalization of covenants or restrictions by all types of communities and property associations, not just residential communities. This section also includes conforming changes.

Revitalization by an Owner Not Subject to Homeowners' Association

Present Situation

Some residential communities have recorded covenants and restrictions similar to those found in a homeowners' association, but never created an association. Current law permits individual

[11] Part III is comprised of sections 720.403 – 720.407, F.S.

owners to file a notice of preservation of covenants before they expire[12] but there are no means of revitalizing those covenants and restrictions.

Effect of the Bill

Section 6 provides for covenant or restriction revitalization by parcel owners who are not subject to a homeowners' association. The bill provides the following definitions:

- "Community" means the real property that is subject to a covenant or restriction that is recorded in the county where the property is located.
- "Covenant or restriction" means any agreement or limitation imposed by a private party and not required by a governmental agency as a condition of a development permit, as defined in s. 163.3164, F.S., which is contained in a document recorded in the public records of the county in which a parcel is located and which subjects the parcel to any use restriction that may be enforced by a parcel owner.
- "Parcel" means real property that is used for residential purposes and that is subject to exclusive ownership and any covenant or restriction that may be enforced by a parcel owner.
- "Parcel owner" means the record owner of legal title to a parcel.

Under this section, parcel owners may use the process available to a homeowners' association[13] to revive covenants or restrictions that have lapsed under MRTA. The parcel owners do not need to provide articles of incorporation or bylaws to revive the covenants or restrictions and only need the approval of a majority of the affected parcel owners in writing. The organizing committee of the community may execute the revived covenants or restrictions in the name of the community and the community name can be indexed as the grantee of the covenants with the parcel owners listed as grantors.

A parcel owner who has ceased to be subject to covenants or restrictions as of October 1, 2018, may commence an action by October 1, 2019, to determine if revitalization would unconstitutionally deprive the parcel owner of right or property. Revived covenants or restrictions do not affect the rights of a parcel owner that are recognized by a court order in an action commenced by October 1, 2019, and may not be subsequently altered without the consent of the affected parcel owner. Although a parcel owner has from October 1, 2018, to October 1, 2019, to file a legal action objecting to the revitalization of a covenant or restriction, the bill does not provide any mechanism to inform parcel owners of this right. Moreover, the bill allows parcel owners seeking to revitalize an extinguished covenant or restriction to proceed after October 1, 2019.

Requirements on the Board of Directors of a Homeowners' Association

Present Situation

While it is probably good practice for a homeowners' association to regularly consider the need for preservation of the covenants and restrictions of their neighborhood, there is no statutory requirement that a board of directors of a homeowners' association do so.

[12] See sections 712.05 and 712.06, F.S.
[13] See sections 720.403- 720.407, F.S.

Effect of the Bill

Section 7 amends s. 720.303(2), F.S., to require that the board of directors for a homeowners' association must consider whether to file a notice to preserve the covenants and restrictions affecting the community from extinguishment pursuant to MRTA. This must be considered at the first board meeting after the annual meeting of the members.

Section 8 creates s. 720.3032, F.S., to codify that a homeowners' association that wishes to preserve covenants from extinguishment may file in the official records of the county in which it is located a notice detailing:

- The legal name of the association;
- The mailing and physical addresses of the association;
- The names of the affected subdivision plats and condominiums, or the common name of the community;
- The name, address, and telephone number for the current community association management company or manager, if any;
- An indication as to whether the association desires to preserve the covenants or restrictions affecting the community from extinguishment pursuant to MRTA;
- The name and recording information of those covenants or restrictions affecting the community which the association wishes to preserve;
- A legal description of the community affected by the covenants or restrictions; and
- The signature of a duly authorized officer of the association.

The section creates a statutory form for the information. The bill further provides that the filing of the completed form is considered a substitute for the notice required for preservation of the covenants pursuant to ss. 712.05 and 712.06, F.S. As such, every 5-year filing of the form will have the effect of starting the MRTA 30-year period anew.

A copy of this notice must be included as a part of the next notice of meeting or other mailing sent to all members of the association. The original signed notice must be recorded in the official records of the clerk of the circuit court or other recorder for the county.

Other Changes Made by the Bill

Section 1 provides a short title of the "Marketable Record Title Act" for chapter 712, F.S.

Sections 5, 9, 10, 11, 13, 14, and 15 make changes to conform various statutory and definitional cross references.

Section 16 provides an effective date of October 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The State Constitution addresses the property rights of citizens in two pertinent provisions. Article 1, section 2 provides that all natural persons have the right to acquire, possess and protect property. Article 1, section 9 provides that "No person shall be deprived of life, liberty or property without due process of law . . . ." Additionally, the State Constitution, in Article 1, section 10, also prohibits any law that impairs the obligation of contracts.

Because of these constitutional property rights protections, two issues arise from the bill. The first is whether the expiration of covenants and restrictions vests additional property rights in the owner of a property. A vested right is defined as "an immediate, fixed right of present or future enjoyment."[14] For example, the expiration of covenants and restrictions might allow a property owner to build a nonconforming structure on the property or to use the property in a manner not allowed under the covenants and restrictions. The second issue is whether the bill, by allowing the reinstatement of expired covenants and restrictions, allows property rights to be taken in violation of the State Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A person who believes that the revitalization of an expired covenant or restriction is a taking of a vested property right or other constitutional violation may be required to spend substantial funds to vindicate his or her rights in court.

Section 8 of the bill requires associations to prepare and record a notice every 5 years. The recording fee is nominal ($10 for the first page, $8.50 for additional pages). Because the form is in statute, associations may be able to complete the task without assistance, or a community association manager can assist an association with preparation and filing without reference to a licensed attorney.

[14] *Coral Lakes Cmty. Ass'n v. Busey Bank, N.A.*, 30 So. 3d 579, 583 (Fla. 2nd DCA 2010) *quoting Pearsall v. Great N. Ry. Co.*, 161 U.S. 646, 673, (1896).

C. Government Sector Impact:

The bill requires the recording of documents in the public records of the county. Recording is subject to a fee of $10.00 for the first page and $8.50 for every subsequent page, payable to the recording department (in most counties, the clerk of the court).[15] The net revenues to county recorders, after deductions for incremental costs of recording and indexing documents, are unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 712.01, 712.05, 712.06, 712.11, 720.303, 702.09, 702.10, 712.095, 720.403, 720.404, 720.405, 720.407.
This bill creates the following sections of the Florida Statutes: 712.001, 712.12, and 720.3032.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

[15] Section 28.24(12), F.S.

By Senator Passidomo

28-00026A-18 2018266__

A bill to be entitled

An act relating to covenants and restrictions; creating s. 712.001, F.S.; providing a short title; amending s. 712.01, F.S.; defining and redefining terms; amending s. 712.05, F.S.; revising the notice filing requirements for a person claiming an interest in land and other rights; authorizing a property owners' association to preserve and protect certain covenants or restrictions from extinguishment, subject to specified requirements; providing that a failure in indexing does not affect the validity of the notice; extending the length of time certain covenants or restrictions are preserved; deleting a provision requiring a two-thirds vote by members of an incorporated homeowners' association to file certain notices; providing that a property owners' association or clerk of the circuit court is not required to provide certain additional notice for a specified notice that is filed; conforming provisions to changes made by the act; amending s. 712.06, F.S.; exempting a specified summary notice and amendment from certain notice content requirements; revising the contents required to be specified by certain notices; conforming provisions to changes made by the act; amending s. 712.11, F.S.; conforming provisions to changes made by the act; creating s. 712.12, F.S.; defining terms; authorizing the parcel owners of a community not subject to a homeowners' association to use specified procedures to revive certain covenants

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or restrictions, subject to certain exceptions and requirements; authorizing a parcel owner to commence an action by a specified date under certain circumstances for a judicial determination that the covenants or restrictions did not govern that parcel as of a specified date and that any revitalization of such covenants or restrictions as to that parcel would unconstitutionally deprive the parcel owner of rights or property; providing applicability; amending s. 720.303, F.S.; requiring a board to take up certain provisions relating to notice filings at the first board meeting; creating s. 720.3032, F.S.; requiring any property owners' association desiring to preserve covenants from potential termination after a specified period by certain operation to record in the official records of each county in which the community is located a notice subject to certain requirements; providing a document form for recording by an association to preserve certain covenants or restrictions; requiring a copy of the filed notice to be sent to all members; requiring the original signed notice to be recorded with the clerk of the circuit court or other recorder; amending ss. 702.09 and 702.10, F.S.; conforming provisions to changes made by the act; amending s. 712.095, F.S.; conforming a cross-reference; amending ss. 720.403, 720.404, 720.405, and 720.407, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Section 712.001, Florida Statutes, is created to read:

712.001 Short title.—This chapter may be cited as the "Marketable Record Title Act."

Section 2. Section 712.01, Florida Statutes, is reordered and amended to read:

712.01 Definitions.—As used in this chapter, the term ~~law~~:

(1) "Community covenant or restriction" means any agreement or limitation contained in a document recorded in the public records of the county in which a parcel is located which:

(a) Subjects the parcel to any use restriction that may be enforced by a property owners' association; or

(b) Authorizes a property owners' association to impose a charge or assessment against the parcel or the parcel owner.

(4)~~(1)~~ ~~The term~~ "Person" includes the ~~as used herein denotes~~ singular or plural, natural or corporate, private or governmental, including the state and any political subdivision or agency thereof as the context for the use thereof requires or denotes and including any property owners' ~~homeowners'~~ association.

(6)~~(2)~~ "Root of title" means any title transaction purporting to create or transfer the estate claimed by any person ~~and~~ which is the last title transaction to have been recorded at least 30 years before ~~prior to~~ the time when marketability is being determined. The effective date of the root of title is the date on which it was recorded.

(7)~~(3)~~ "Title transaction" means any recorded instrument or

court proceeding that ~~which~~ affects title to any estate or interest in land and that ~~which~~ describes the land sufficiently to identify its location and boundaries.

(5)~~(4)~~ "Property owners' association" ~~The term "homeowners' association"~~ means a homeowners' association as defined in s. 720.301, a corporation or other entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, or an association of parcel owners which is authorized to enforce a community covenant or restriction ~~use restrictions~~ that is ~~are~~ imposed on the parcels.

(3)~~(5)~~ ~~The term~~ "Parcel" means any real property that ~~which is used for residential purposes that is subject to exclusive ownership and which~~ is subject to any covenant or restriction of a property owners' ~~homeowners'~~ association.

(2)~~(6)~~ ~~The term~~ "Covenant or restriction" means any agreement or limitation contained in a document recorded in the public records of the county in which a parcel is located which subjects the parcel to any use or other restriction or obligation ~~which may be enforced by a homeowners' association or which authorizes a homeowners' association to impose a charge or assessment against the parcel or the owner of the parcel or which may be enforced by the Florida Department of Environmental Protection pursuant to chapter 376 or chapter 403~~.

Section 3. Section 712.05, Florida Statutes, is amended to read:

712.05 Effect of filing notice.—

(1) A person claiming an interest in land or other right

subject to extinguishment under this chapter ~~a homeowners' association desiring to preserve a covenant or restriction~~ may preserve and protect such interest or right ~~the same~~ from extinguishment by the operation of this chapter ~~act~~ by filing for record, at any time during the 30-year period immediately following the effective date of the root of title, a written notice in accordance with s. 712.06 ~~this chapter~~.

(2) A property owners' association may preserve and protect a community covenant or restriction from extinguishment by the operation of this chapter by filing for record, at any time during the 30-year period immediately following the effective date of the root of title:

(a) A written notice in accordance with s. 712.06; or

(b) A summary notice in substantial form and content as required under s. 720.3032(2); or an amendment to a covenant or restriction that is indexed under the legal name of the property owners' association and references the recording information of the covenant or restriction to be preserved. Failure of a summary notice or amendment to be indexed to the current owners of the affected property does not affect the validity of the notice or vitiate the effect of the filing of such notice.

(3) A ~~Such~~ notice under subsection (1) or subsection (2) preserves an interest in land or other ~~such claim of~~ right subject to extinguishment under this chapter, or a ~~such~~ covenant or restriction or portion of such covenant or restriction, for not less than ~~up to~~ 30 years after filing the notice unless the notice is filed again as required in this chapter. A person's disability or lack of knowledge of any kind may not delay the commencement of or suspend the running of the 30-year period.

Such notice may be filed for record by the claimant or by any other person acting on behalf of a claimant who is:

(a) Under a disability;

(b) Unable to assert a claim on his or her behalf; or

(c) One of a class, but whose identity cannot be established or is uncertain at the time of filing such notice of claim for record.

~~Such notice may be filed by a homeowners' association only if the preservation of such covenant or restriction or portion of such covenant or restriction is approved by at least two-thirds of the members of the board of directors of an incorporated homeowners' association at a meeting for which a notice, stating the meeting's time and place and containing the statement of marketable title action described in s. 712.06(1)(b), was mailed or hand delivered to members of the homeowners' association at least 7 days before such meeting.~~ The property owners' ~~homeowners'~~ association or clerk of the circuit court is not required to provide additional notice pursuant to s. 712.06(3) for a notice filed under subsection (2). The preceding sentence is intended to clarify existing law.

(4) ~~(2)~~ It is ~~shall~~ not ~~be~~ necessary for the owner of the marketable record title, as described in s. 712.02 ~~herein defined~~, to file a notice to protect his or her marketable record title.

Section 4. Subsections (1) and (3) of section 712.06, Florida Statutes, are amended to read:

712.06 Contents of notice; recording and indexing.—

(1) To be effective, the notice referred to in s. 712.05,

other than the summary notice and the amendment referred to in s. 712.05(2)(b), must ~~shall~~ contain:

(a) The name or description and mailing address of the claimant or the property owners' ~~homeowners'~~ association desiring to preserve any covenant or restriction ~~and the name and particular post office address of the person filing the claim or the homeowners' association~~.

(b) The name and mailing ~~post office~~ address of an owner, or the name and mailing ~~post office~~ address of the person in whose name the ~~said~~ property is assessed on the last completed tax assessment roll of the county at the time of filing, who, for purpose of such notice, shall be deemed to be an owner; ~~provided,~~ however, if a property owners' ~~homeowners'~~ association is filing the notice, ~~then~~ the requirements of this paragraph may be satisfied by attaching to and recording with the notice an affidavit executed by the appropriate member of the board of directors of the property owners' ~~homeowners'~~ association affirming that the board of directors of the property owners' ~~homeowners'~~ association caused a statement in substantially the following form to be mailed or hand delivered to the members of that property owners' ~~homeowners'~~ association:

STATEMENT OF MARKETABLE TITLE ACTION

The [name of property owners' ~~homeowners'~~ association] (the "Association") has taken action to ensure that the [name of declaration, covenant, or restriction], recorded in Official Records Book ...., Page ...., of the public records of .... County, Florida, as may be amended from time to time, currently

burdening the property of each and every member of the Association, retains its status ~~as the source of marketable title~~ with regard to the affected real property ~~the transfer of a member's residence~~. To this end, the Association shall cause the notice required by chapter 712, Florida Statutes, to be recorded in the public records of .... County, Florida. Copies of this notice and its attachments are available through the Association pursuant to the Association's governing documents regarding official records of the Association.

(c) A full and complete description of all land affected by such notice, which description shall be set forth in particular terms and not by general reference, but if said claim is founded upon a recorded instrument or a covenant or a restriction, ~~then~~ the description in such notice may be the same as that contained in such recorded instrument or covenant or restriction, provided the same shall be sufficient to identify the property.

(d) A statement of the claim showing the nature, description, and extent of such claim or other right subject to extinguishment under this chapter or, in the case of a covenant or restriction, a copy of the covenant or restriction or a reference to the book and page or instrument number in which the same is recorded, except that it is ~~shall~~ not ~~be~~ necessary to show the amount of any claim for money or the terms of payment.

(e) If such claim or other right subject to extinguishment under this chapter is based upon an instrument of record or a recorded covenant or restriction, such instrument of record or recorded covenant or restriction shall be deemed sufficiently described to identify the same if the notice includes a

reference to the book and page in which the same is recorded.

(f) Such notice shall be acknowledged in the same manner as deeds are acknowledged for record.

(3) The person providing the notice referred to in s. 712.05, other than a notice for preservation of a community covenant or restriction, shall:

(a) Cause the clerk of the circuit court to mail by registered or certified mail to the purported owner of said property, as stated in such notice, a copy thereof and shall enter on the original, before recording the same, a certificate showing such mailing. For preparing the certificate, the claimant shall pay to the clerk the service charge as prescribed in s. 28.24(8) and the necessary costs of mailing, in addition to the recording charges as prescribed in s. 28.24(12). If the notice names purported owners having more than one address, the person filing the same shall furnish a true copy for each of the several addresses stated, and the clerk shall send one such copy to the purported owners named at each respective address. Such certificate shall be sufficient if the same reads substantially as follows:

I hereby certify that I did on this ...., mail by registered (or certified) mail a copy of the foregoing notice to each of the following at the address stated:

...(Clerk of the circuit court)...
of .... County, Florida,
By...(Deputy clerk)...

The clerk of the circuit court is not required to mail to the purported owner of such property any such notice that pertains solely to the preserving of any covenant or restriction or any portion of a covenant or restriction; or

(b) Publish once a week, for 2 consecutive weeks, the notice referred to in s. 712.05, with the official record book and page number in which such notice was recorded, in a newspaper as defined in chapter 50 in the county in which the property is located.

Section 5. Section 712.11, Florida Statutes, is amended to read:

712.11 Covenant revitalization.—A property owners' ~~homeowners'~~ association not otherwise subject to chapter 720 may use the procedures set forth in ss. 720.403-720.407 to revive covenants that have lapsed under the terms of this chapter.

Section 6. Section 712.12, Florida Statutes, is created to read:

712.12 Covenant or restriction revitalization by parcel owners not subject to a homeowners' association.—

(1) As used in this section, the term:

(a) "Community" means the real property that is subject to a covenant or restriction that is recorded in the county where the property is located.

(b) "Covenant or restriction" means any agreement or limitation imposed by a private party and not required by a governmental agency as a condition of a development permit, as defined in s. 163.3164, which is contained in a document recorded in the public records of the county in which a parcel is located and which subjects the parcel to any use restriction

that may be enforced by a parcel owner.

(c) "Parcel" means real property that is used for residential purposes and that is subject to exclusive ownership and any covenant or restriction that may be enforced by a parcel owner.

(d) "Parcel owner" means the record owner of legal title to a parcel.

(2) The parcel owners of a community not subject to a homeowners' association may use the procedures set forth in ss. 720.403-720.407 to revive covenants or restrictions that have lapsed under the terms of this chapter, except:

(a) A reference to a homeowners' association or articles of incorporation or bylaws of a homeowners' association under ss. 720.403-720.407 is not required to revive the covenants or restrictions.

(b) The approval required under s. 720.405(6) must be in writing, and not at a meeting.

(c) The requirements under s. 720.407(2) may be satisfied by having the organizing committee execute the revived covenants or restrictions in the name of the community.

(d) The indexing requirements under s. 720.407(3) may be satisfied by indexing the community name in the covenants or restrictions as the grantee and the parcel owners as the grantors.

(3) With respect to any parcel that has ceased to be governed by covenants or restrictions as of October 1, 2018, the parcel owner may commence an action by October 1, 2019, for a judicial determination that the covenants or restrictions did not govern that parcel as of October 1, 2018, and that any

revitalization of such covenants or restrictions as to that parcel would unconstitutionally deprive the parcel owner of rights or property.

(4) Revived covenants or restrictions that are implemented pursuant to this section do not apply to or affect the rights of the parcel owner which are recognized by any court order or judgment in any action commenced by October 1, 2019, and any such rights so recognized may not be subsequently altered by revived covenants or restrictions implemented under this section without the consent of the affected parcel owner.

Section 7. Paragraph (e) is added to subsection (2) of section 720.303, Florida Statutes, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(2) BOARD MEETINGS.—

(e) At the first board meeting, excluding the organizational meeting, which follows the annual meeting of the members, the board shall consider the desirability of filing notices to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, chapter 712, and to authorize and direct the appropriate officer to file notice in accordance with s. 720.3032.

Section 8. Section 720.3032, Florida Statutes, is created to read:

720.3032 Notice of association information; preservation from Marketable Record Title Act.—

(1) Any property owners' association desiring to preserve

covenants from potential termination after 30 years by operation of chapter 712 may record in the official records of each county in which the community is located a notice specifying:

(a) The legal name of the association.

(b) The mailing and physical addresses of the association.

(c) The names of the affected subdivision plats and condominiums or, if not applicable, the common name of the community.

(d) The name, address, and telephone number for the current community association management company or community association manager, if any.

(e) Indication as to whether the association desires to preserve the covenants or restrictions affecting the community or association from extinguishment under the Marketable Record Title Act, chapter 712.

(f) A listing by name and recording information of those covenants or restrictions affecting the community which the association desires to be preserved from extinguishment.

(g) The legal description of the community affected by the covenants or restrictions, which may be satisfied by a reference to a recorded plat.

(h) The signature of a duly authorized officer of the association, acknowledged in the same manner as deeds are acknowledged for record.

(2) Recording a document in substantially the following form satisfies the notice obligation and constitutes a summary notice as specified in s. 712.05(2)(b) sufficient to preserve and protect the referenced covenants and restrictions from extinguishment under the Marketable Record Title Act, chapter

712.

Notice of ...(name of association)... under s. 720.3032, Florida Statutes, and notice to preserve and protect covenants and restrictions from extinguishment under the Marketable Record Title Act, chapter 712, Florida Statutes.

Instructions to recorder: Please index both the legal name of the association and the names shown in item 3.

1. Legal name of association: ....

2. Mailing and physical addresses of association: ....

3. Names of the subdivision plats, or, if none, common name of community: ....

4. Name, address, and telephone number for management company, if any: .....

5. This notice does .... does not .... constitute a notice to preserve and protect covenants or restrictions from extinguishment under the Marketable Record Title Act.

6. The following covenants or restrictions affecting the community which the association desires to be preserved from extinguishment:

...(Name of instrument)...

...(Official Records Book where recorded & page)...

...(List of instruments)...

...(List of recording information)...

7. The legal description of the community affected by the listed covenants or restrictions is: ...(Legal description, which may be satisfied by reference to a recorded plat)...

This notice is filed on behalf of ...(Name of

association)... as of ...(Date)....

...(Name of association)...

By: ....

...(Name of individual officer)...

...(Title of officer)...

...(Notary acknowledgment)...

(3) A copy of the notice, as filed, must be included as part of the next notice of meeting or other mailing sent to all members.

(4) The original signed notice must be recorded in the official records of the clerk of the circuit court or other recorder for the county.

Section 9. Section 702.09, Florida Statutes, is amended to read:

702.09 Definitions.—For the purposes of ss. 702.07 and 702.08, the words "decree of foreclosure" shall include a judgment or order rendered or passed in the foreclosure proceedings in which the decree of foreclosure shall be rescinded, vacated, and set aside; the word "mortgage" shall mean any written instrument securing the payment of money or advances and includes liens to secure payment of assessments arising under chapters 718 and 719 and liens created pursuant to the recorded covenants of a property owners' ~~homeowners'~~ association as defined in s. 712.01; the word "debt" shall include promissory notes, bonds, and all other written obligations given for the payment of money; the words "foreclosure proceedings" shall embrace every action in the

circuit or county courts of this state wherein it is sought to foreclose a mortgage and sell the property covered by the same; and the word "property" shall mean and include both real and personal property.

Section 10. Subsection (1) of section 702.10, Florida Statutes, is amended to read:

702.10 Order to show cause; entry of final judgment of foreclosure; payment during foreclosure.—

(1) A lienholder may request an order to show cause for the entry of final judgment in a foreclosure action. For purposes of this section, the term "lienholder" includes the plaintiff and a defendant to the action who holds a lien encumbering the property or a defendant who, by virtue of its status as a condominium association, cooperative association, or property owners' ~~homeowners'~~ association, may file a lien against the real property subject to foreclosure. Upon filing, the court shall immediately review the request and the court file in chambers and without a hearing. If, upon examination of the court file, the court finds that the complaint is verified, complies with s. 702.015, and alleges a cause of action to foreclose on real property, the court shall promptly issue an order directed to the other parties named in the action to show cause why a final judgment of foreclosure should not be entered.

(a) The order shall:

1. Set the date and time for a hearing to show cause. The date for the hearing may not occur sooner than the later of 20 days after service of the order to show cause or 45 days after service of the initial complaint. When service is obtained by publication, the date for the hearing may not be set sooner than

30 days after the first publication.

2. Direct the time within which service of the order to show cause and the complaint must be made upon the defendant.

3. State that the filing of defenses by a motion, a responsive pleading, an affidavit, or other papers before the hearing to show cause that raise a genuine issue of material fact which would preclude the entry of summary judgment or otherwise constitute a legal defense to foreclosure shall constitute cause for the court not to enter final judgment.

4. State that a defendant has the right to file affidavits or other papers before the time of the hearing to show cause and may appear personally or by way of an attorney at the hearing.

5. State that, if a defendant files defenses by a motion, a verified or sworn answer, affidavits, or other papers or appears personally or by way of an attorney at the time of the hearing, the hearing time will be used to hear and consider whether the defendant's motion, answer, affidavits, other papers, and other evidence and argument as may be presented by the defendant or the defendant's attorney raise a genuine issue of material fact which would preclude the entry of summary judgment or otherwise constitute a legal defense to foreclosure. The order shall also state that the court may enter an order of final judgment of foreclosure at the hearing and order the clerk of the court to conduct a foreclosure sale.

6. State that, if a defendant fails to appear at the hearing to show cause or fails to file defenses by a motion or by a verified or sworn answer or files an answer not contesting the foreclosure, such defendant may be considered to have waived the right to a hearing, and in such case, the court may enter a

default against such defendant and, if appropriate, a final judgment of foreclosure ordering the clerk of the court to conduct a foreclosure sale.

7. State that if the mortgage provides for reasonable attorney fees and the requested attorney fees do not exceed 3 percent of the principal amount owed at the time of filing the complaint, it is unnecessary for the court to hold a hearing or adjudge the requested attorney fees to be reasonable.

8. Attach the form of the proposed final judgment of foreclosure which the movant requests the court to enter at the hearing on the order to show cause.

9. Require the party seeking final judgment to serve a copy of the order to show cause on the other parties in the following manner:

a. If a party has been served pursuant to chapter 48 with the complaint and original process, or the other party is the plaintiff in the action, service of the order to show cause on that party may be made in the manner provided in the Florida Rules of Civil Procedure.

b. If a defendant has not been served pursuant to chapter 48 with the complaint and original process, the order to show cause, together with the summons and a copy of the complaint, shall be served on the party in the same manner as provided by law for original process.

Any final judgment of foreclosure entered under this subsection is for in rem relief only. This subsection does not preclude the entry of a deficiency judgment where otherwise allowed by law. The Legislature intends that this alternative procedure may run

simultaneously with other court procedures.

(b) The right to be heard at the hearing to show cause is waived if a defendant, after being served as provided by law with an order to show cause, engages in conduct that clearly shows that the defendant has relinquished the right to be heard on that order. The defendant's failure to file defenses by a motion or by a sworn or verified answer, affidavits, or other papers or to appear personally or by way of an attorney at the hearing duly scheduled on the order to show cause presumptively constitutes conduct that clearly shows that the defendant has relinquished the right to be heard. If a defendant files defenses by a motion, a verified answer, affidavits, or other papers or presents evidence at or before the hearing which raise a genuine issue of material fact which would preclude entry of summary judgment or otherwise constitute a legal defense to foreclosure, such action constitutes cause and precludes the entry of a final judgment at the hearing to show cause.

(c) In a mortgage foreclosure proceeding, when a final judgment of foreclosure has been entered against the mortgagor and the note or mortgage provides for the award of reasonable attorney fees, it is unnecessary for the court to hold a hearing or adjudge the requested attorney fees to be reasonable if the fees do not exceed 3 percent of the principal amount owed on the note or mortgage at the time of filing, even if the note or mortgage does not specify the percentage of the original amount that would be paid as liquidated damages.

(d) If the court finds that all defendants have waived the right to be heard as provided in paragraph (b), the court shall promptly enter a final judgment of foreclosure without the need

for further hearing if the plaintiff has shown entitlement to a final judgment and upon the filing with the court of the original note, satisfaction of the conditions for establishment of a lost note, or upon a showing to the court that the obligation to be foreclosed is not evidenced by a promissory note or other negotiable instrument. If the court finds that a defendant has not waived the right to be heard on the order to show cause, the court shall determine whether there is cause not to enter a final judgment of foreclosure. If the court finds that the defendant has not shown cause, the court shall promptly enter a judgment of foreclosure. If the time allotted for the hearing is insufficient, the court may announce at the hearing a date and time for the continued hearing. Only the parties who appear, individually or through an attorney, at the initial hearing must be notified of the date and time of the continued hearing.

Section 11. Section 712.095, Florida Statutes, is amended to read:

712.095 Notice required by July 1, 1983.—Any person whose interest in land is derived from an instrument or court proceeding recorded subsequent to the root of title, which instrument or proceeding did not contain a description of the land as specified by s. 712.01(7) ~~s. 712.01(3)~~, and whose interest had not been extinguished prior to July 1, 1981, shall have until July 1, 1983, to file a notice in accordance with s. 712.06 to preserve the interest.

Section 12. Section 720.403, Florida Statutes, is amended to read:

720.403 Preservation of ~~residential~~ communities; revival of

declaration of covenants.—

(1) Consistent with required and optional elements of local comprehensive plans and other applicable provisions of the Community Planning Act, property owners ~~homeowners~~ are encouraged to preserve existing residential and other communities, promote available and affordable housing, protect structural and aesthetic elements of their ~~residential~~ community, and, as applicable, maintain roads and streets, easements, water and sewer systems, utilities, drainage improvements, conservation and open areas, recreational amenities, and other infrastructure and common areas that serve and support the ~~residential~~ community by the revival of a previous declaration of covenants and other governing documents that may have ceased to govern some or all parcels in the community.

(2) In order to preserve a ~~residential~~ community and the associated infrastructure and common areas for the purposes described in this section, the parcel owners in a community that was previously subject to a declaration of covenants that has ceased to govern one or more parcels in the community may revive the declaration and the ~~homeowners'~~ association for the community upon approval by the parcel owners to be governed thereby as provided in this act, and upon approval of the declaration and the other governing documents for the association by the Department of Economic Opportunity in a manner consistent with this act.

(3) Part III of this chapter is intended to provide mechanisms for the revitalization of covenants or restrictions for all types of communities and property associations and is

not limited to residential communities.

Section 13. Section 720.404, Florida Statutes, is amended to read:

720.404 Eligible ~~residential~~ communities; requirements for revival of declaration.—Parcel owners in a community are eligible to seek approval from the Department of Economic Opportunity to revive a declaration of covenants under this act if all of the following requirements are met:

(1) All parcels to be governed by the revived declaration must have been once governed by a previous declaration that has ceased to govern some or all of the parcels in the community;

(2) The revived declaration must be approved in the manner provided in s. 720.405(6); and

(3) The revived declaration may not contain covenants that are more restrictive on the parcel owners than the covenants contained in the previous declaration, except that the declaration may:

(a) Have an effective term of longer duration than the term of the previous declaration;

(b) Omit restrictions contained in the previous declaration;

(c) Govern fewer than all of the parcels governed by the previous declaration;

(d) Provide for amendments to the declaration and other governing documents; and

(e) Contain provisions required by this chapter for new declarations that were not contained in the previous declaration.

Section 14. Subsections (1), (3), (5), and (6) of section

720.405, Florida Statutes, are amended to read:

720.405 Organizing committee; parcel owner approval.—

(1) The proposal to revive a declaration of covenants and an ~~a homeowners'~~ association for a community under the terms of this act shall be initiated by an organizing committee consisting of not less than three parcel owners located in the community that is proposed to be governed by the revived declaration. The name, address, and telephone number of each member of the organizing committee must be included in any notice or other document provided by the committee to parcel owners to be affected by the proposed revived declaration.

(3) The organizing committee shall prepare the full text of the proposed articles of incorporation and bylaws of the revived ~~homeowners'~~ association to be submitted to the parcel owners for approval, unless the association is then an existing corporation, in which case the organizing committee shall prepare the existing articles of incorporation and bylaws to be submitted to the parcel owners.

(5) A copy of the complete text of the proposed revised declaration of covenants, the proposed new or existing articles of incorporation and bylaws of the ~~homeowners'~~ association, and a graphic depiction of the property to be governed by the revived declaration shall be presented to all of the affected parcel owners by mail or hand delivery not less than 14 days before the time that the consent of the affected parcel owners to the proposed governing documents is sought by the organizing committee.

(6) A majority of the affected parcel owners must agree in writing to the revived declaration of covenants and governing

documents of the ~~homeowners'~~ association or approve the revived declaration and governing documents by a vote at a meeting of the affected parcel owners noticed and conducted in the manner prescribed by s. 720.306. Proof of notice of the meeting to all affected owners of the meeting and the minutes of the meeting recording the votes of the property owners shall be certified by a court reporter or an attorney licensed to practice in the state.

Section 15. Subsection (3) of section 720.407, Florida Statutes, is amended to read:

720.407 Recording; notice of recording; applicability and effective date.—

(3) The recorded documents shall include the full text of the approved declaration of covenants, the articles of incorporation and bylaws of the ~~homeowners'~~ association, the letter of approval by the department, and the legal description of each affected parcel of property. For purposes of chapter 712, the association is deemed to be and shall be indexed as the grantee in a title transaction and the parcel owners named in the revived declaration are deemed to be and shall be indexed as the grantors in the title transaction.

Section 16. This act shall take effect October 1, 2018.

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Community Affairs
ITEM: SB 266
FINAL ACTION: Favorable
MEETING DATE: Tuesday, December 5, 2017
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Office Building

FINAL VOTE								
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Brandes						
X		Campbell						
X		Perry						
X		Rodriguez						
X		Simmons						
X		Bean, VICE CHAIR						
		Lee, CHAIR						
6	0	**TOTALS**						
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable, UNF=Unfavorable, -R=Reconsidered, RCS=Replaced by Committee Substitute, RE=Replaced by Engrossed Amendment, RS=Replaced by Substitute Amendment, TP=Temporarily Postponed, VA=Vote After Roll Call, VC=Vote Change After Roll Call, WD=Withdrawn, OO=Out of Order, AV=Abstain from Voting

REPORTING INSTRUCTION: Publish
12052017.1249

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/SB 324
INTRODUCER:	Community Affairs Committee and Senator Young
SUBJECT:	Impact Fees
DATE:	December 5, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Fav/CS**
2.			AFT	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 324 requires an impact fee adopted by ordinance of a county or municipality or by resolution of a special district to specify that the collection of the impact fee be no earlier than the issuance of the building permit for the property that is subject to the fee.

The bill also codifies the dual rational nexus test. Specifically, the bill requires that an impact fee be reasonably connected to, or have a rational nexus with:

- The need for additional capital facilities and the increased impact generated by the new residential or commercial construction; and
- The expenditures of the funds collected and the benefits accruing to the new residential or commercial construction.

Additionally, the local government must specifically earmark funds collected by the impact fees for use in acquiring capital facilities to benefit the new residents. Finally, the bill prohibits the use of impact fee revenues to pay existing debt or for prior approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction.

II. Present Situation:

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by

general or special law.[1] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[2] Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.[3]

The Florida Statutes enumerate the powers and duties of all county governments, unless preempted on a particular subject by general or special law.[4] Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.[5] Article VIII, Section 2 of the State Constitution and s. 166.021, F.S., grant municipalities broad home rule powers.

Given these constitutional and statutory powers, local governments may use a variety of revenue sources to fund services and improvements without express statutory authorization.[6] Special assessments, impact fees, franchise fees, and user fees or service charges are examples of these home rule revenue sources.[7]

Impact Fees

Impact fees are enacted by local ordinance. These fees are tailored to pay the cost of additional infrastructure necessitated by new development. As a result, impact fee calculations vary from jurisdiction to jurisdiction and from fee to fee. Impact fees also vary extensively depending on local costs, capacity needs, resources, and the local government's determination to charge the full cost or only part of the cost of the infrastructure improvement through utilization of the impact fee.

In 2015, 38 counties reported impact fee revenues of approximately $504 million, and 193 cities reported impact fee revenues of approximately $225.3 million.[8] In 2016, 28 school districts reported impact fee revenues of approximately $265.3 million.[9]

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[1] FLA. CONST. art VIII, s. 1(f).

[2] FLA. CONST. art VIII, s. 1(g).

[3] FLA. CONST. art VIII, s. 2(b). See also s. 166.021(1), F.S.

[4] Section 125.01, F.S.

[5] *Id.*

[6] The exercise of home rule powers by local governments is constrained by whether an inconsistent provision or outright prohibition exists in the constitution or a general law or special law regarding the power at issue. Article VII, s. 1 of the State Constitution prohibits counties and municipalities from levying a tax without express statutory authorization. However, local governments may levy special assessments and a variety of fees absent any general law prohibition, provided such home rule funding source meets the relevant legal sufficiency tests.

[7] For a catalogue of such revenue sources, see the most recent editions of the Florida Legislature's *Local Government Financial Information Handbook* and the *Florida Tax Handbook*.

[8] Office of Economic Demographic Research, The Florida Legislature, *Impact Fees, available at* http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm. County Revenues were updated July 25, 2017, and City Revenues were updated September 28, 2017.

[9] *Id.* School District Revenues were updated October 5, 2017.

Statutory Authority for Impact Fees

In 2006, the Legislature enacted s. 163.31801, F.S., to provide requirements and procedures to be followed by a county, municipality, or special district when it adopts an impact fee. An impact fee ordinance adopted by local government must:

- Require that the calculation of the impact fee be based on the most recent and localized data.
- Provide for accounting and reporting of impact fee collections and expenditures. If a local government imposes an impact fee to address its infrastructure needs, the entity must account for the revenues and expenditures of such impact fee in a separate accounting fund.
- Limit administrative charges for the collection of impact fees to actual costs.
- Require that notice be provided at least 90 days before the effective date of an ordinance or resolution imposing a new or increased impact fee.[10]

The Dual Rational Nexus Test

Impact fees have their roots in the common law. A number of court decisions have addressed challenges to the legality of impact fees.[11] In *Hollywood, Inc. v. Broward County*,[12] the Fourth District Court of Appeal addressed the validity of a county ordinance that required a developer, as a condition of plat approval, to dedicate land or pay a fee for the expansion of the county level park system to accommodate the new residents of the proposed development. The court found that a reasonable dedication or impact fee requirement is permissible if (1) it offsets reasonable needs that are sufficiently attributable to the new development and (2) the fees collected are adequately earmarked for the acquisition of capital assets that will benefit the residents of the new development.[13] These two requirements are called the dual rational nexus test. In order to show the impact fee meets those requirements, the local government must demonstrate a rational relationship between the need for additional capital facilities and the proposed development. In addition, the local government must show the funds are earmarked for the provision of public facilities to benefit the new residents.[14]

In *Volusia County v. Aberdeen at Ormond Beach*, the Florida Supreme Court ruled that when a residential development has no potential to increase school enrollment, public school impact fees may not be imposed.[15] The county in that case had imposed a school impact fee on a deed-restricted community for adults 55 years old and older. In *City of Zephyrhills v. Wood*, the Second District Court of Appeal upheld an impact fee on a recently purchased and renovated building, finding that structural changes had corresponding impacts on the city's water and sewer system.[16]

As developed under case law, an impact fee must have the following characteristics to be legal:

[10] Section 163.31801, F.S. Other sections of law also address the ability of local governments or special districts to levy impact fees. *See* ss. 163.3202(3), 191.009(4), and 380.06, F.S.
[11] *See, e.g., Contractors & Builders Ass'n v. City of Dunedin*, 329 So.2d 314 (Fla. 1976); *Home Builders and Contractors' Association v. Board of County Commissioners of Palm Beach County*, 446 So.2d 140 (Fla. 4th DCA 1983).
[12] *Hollywood, Inc. v. Broward County*, 431 So.2d 606 (Fla. 4th DCA 1983).
[13] *Id.* at 611.
[14] *Id.* at 611-12.
[15] *Volusia County v. Aberdeen at Ormond Beach*, 760 So.2d 126, 134 (Fla. 2000).
[16] *City of Zephyrhills v. Wood*, 831 So.2d 223, 225 (Fla. 2d DCA 2002).

- The fee is levied on new development, the expansion of existing development, or a change in land use that requires additional capacity for public facilities;
- The fee represents a proportionate share of the cost of public facilities needed to serve new development;
- The fee is earmarked and expended for the benefit of those in the new development who have paid the fee;
- The fee is a one-time charge, although collection may be spread over a period of time;
- The fee is earmarked for capital outlay only and is not expended for operating costs; and
- The fee-payers receive credit for the contributions toward the cost of the increased capacity for public facilities.[17]

Time of Collection for Impact Fees

The Florida Statutes do not specify when a local government must collect impact fees. As a result, the applicable local government makes this decision, and the time of collection varies. For example, in Orange County, residential impact fees are due when the building permit is issued, although the county allows the fee to be deferred in certain circumstances.[18] In contrast, in Volusia County, impact fees are due before the issuance of a certificate of occupancy or business tax receipt.[19]

III. Effect of Proposed Changes:

The bill provides that an impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum, specify that the collection of an impact fee be no earlier than the issuance of the building permit for the property that is subject to the fee.

The bill also codifies the dual rational nexus test. Specifically, the bill requires that an impact fee be reasonably connected to, or have a rational nexus with:

- The need for additional capital facilities and the increased impact generated by the new residential or commercial construction; and
- The expenditures of the funds collected and the benefits accruing to the new residential or commercial construction.

Additionally, the local government must specifically earmark funds collected by the impact fees for use in acquiring capital facilities to benefit the new residents. Finally, the bill prohibits the use of impact fee revenues to pay existing debt or for prior approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction.

The bill takes effect July 1, 2018.

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[17] The Florida Senate, Issue Brief 2010-310, 4 (Sept. 2009), *available at* http://archive.flsenate.gov/data/Publications/2010/Senate/reports/interim_reports/pdf/2010-310ca.pdf (last visited Nov. 14, 2017).

[18] Orange County, Residential Impact Fees, http://www.orangecountyfl.net/PermitsLicenses/Permits/ResidentialImpactFees.aspx#.WgnLs0kUmUl.

[19] Volusia County, Frequently Asked Questions on Impact Fees, https://www.volusia.org/services/growth-and-resource-management/impact-fees/faqs-impact-fees.stml.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection 18(b) of article VII of the Florida Constitution provides that the Legislature, except upon approval by a two-thirds vote, may not enact a general law if the anticipated effect of doing so would be to reduce the *authority* that counties or municipalities have to raise revenues in the aggregate. However, the mandate requirements do not apply to laws having an insignificant fiscal impact, which for Fiscal Year 2017-2018 was $2 million or less.

In 1991, Senate President Margolis and House Speaker Wetherell created a memo to guide the House and Senate in the review of local government mandates. In the memo, the guidelines define the term "authority" to mean the power to levy a tax; the vote required to levy the tax, e.g., increasing the required vote from majority to majority plus one; the tax rate which can be levied; and the base against which the tax is levied, e.g., a bill providing a sales tax exemption should be considered a reduction in authority because counties have authority to levy local option sales taxes against the state sales tax base.

The county/municipality mandates provision of Art. VII, S. 18 of the Florida Constitution may apply because the bill restricts the time at which a county or municipality may collect its impact fees. An impact fee collected at the platting stage is theoretically worth more than an amount collected no earlier than the issuance of the building permit due to the time value of money. It is unclear if this bill lessens the type of *authority* contemplated by President Margolis and Speaker Wetherell.

However, the mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was $2 million or less.[20,21,22] If the bill is determined to reduce the *authority* that counties and municipalities have to raise revenues in the aggregate and exceeds the threshold for insignificant fiscal impact, the bill may qualify as a mandate and require final passage by a two-thirds vote of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[20] FLA. CONST. art. VII, s. 18(d).

[21] An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times $0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf (last visited Nov. 20, 2017).

[22] Based on the Demographic Estimating Conference's population adopted on November 1, 2016. The conference packet is available at http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf (last visited Nov. 20, 2017).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Developers will not have to pay impact fees prior to the issuance of the building permit for a property.

C. Government Sector Impact:

Counties, municipalities, and special districts will not be able to collect impact fees prior to the issuance of the building permit for a property.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.31801 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs Committee on December 5, 2017:

- Provides that collection of impact fees may not occur before the issuance of the building permit, rather than the issuance of the certificate of occupancy, for the property that is subject to the fee.
- Requires that the impact fee be reasonably connected to, or have a rational nexus with:
  - The need for additional capital facilities and the increased impact generated by the new residential or commercial construction; and
  - The expenditures of the funds collected and the benefits accruing to the new residential or commercial construction.
- Requires the local government to specifically earmark funds collected by the impact fees for use in acquiring capital facilities to benefit the new residents.
- Prohibits the use of impact fee revenues to pay existing debt or for prior approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction.

B. Amendments:

None.

539088

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/05/2017	.	
	.	
	.	
	.	

The Committee on Community Affairs (Young) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

163.31801 Impact fees; short title; intent; minimum requirements; audits; challenges ~~definitions; ordinances levying impact fees~~.—

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

Act.”

(2) The Legislature finds that impact fees are an important source of revenue for a local government to use in funding the infrastructure necessitated by new growth. The Legislature further finds that impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction. Due to the growth of impact fee collections and local governments’ reliance on impact fees, it is the intent of the Legislature to ensure that, when a county or municipality adopts an impact fee by ordinance or a special district adopts an impact fee by resolution, the governing authority complies with this section.

(3) At a minimum, impact fees ~~An impact fee~~ adopted by ordinance of a county or municipality or by resolution of a special district must~~, at minimum~~ satisfy the following conditions:

(a) ~~Require that~~ The calculation of the impact fees must ~~fee~~ be based on the most recent and localized data.

(b) The local government must provide for accounting and reporting of impact fee collections and expenditures. If a local governmental entity imposes an impact fee to address its infrastructure needs, the entity shall account for the revenues and expenditures of such impact fee in a separate accounting fund.

(c) ~~Limit~~ Administrative charges for the collection of impact fees must be limited to actual costs.

(d) ~~Require that~~ Notice must be provided no less than 90 days before the effective date of an ordinance or resolution imposing ~~a~~ new or increased impact fees ~~fee~~. A county or

539088

municipality is not required to wait 90 days to decrease, suspend, or eliminate ~~an~~ impact fees ~~fee~~.

(e) Collection of the impact fees may not occur earlier than the issuance of the building permit for the property that is subject to the fee.

(f) The impact fee must be reasonably connected to, or have a rational nexus with, the need for additional capital facilities and the increased impact generated by the new residential or commercial construction.

(g) The impact fee must be reasonably connected to, or have a rational nexus with, the expenditures of the funds collected and the benefits accruing to the new residential or commercial construction.

(h) The local government must specifically earmark funds collected by the impact fees for use in acquiring capital facilities to benefit the new residents.

(i) The collection or expenditure of the impact fee revenues may not be used, in whole or part, to pay existing debt or be used for prior approved projects.

(4) Audits of financial statements of local governmental entities and district school boards which are performed by a certified public accountant pursuant to s. 218.39 and submitted to the Auditor General must include an affidavit signed by the chief financial officer of the local governmental entity or district school board stating that the local governmental entity or district school board has complied with this section.

(5) In any action challenging an impact fee, the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee meets the requirements

539088

of state legal precedent or this section. The court may not use a deferential standard. Attorney fees may be recovered by a prevailing challenger to the implementation of an impact fee that violates this section.

Section 2. This act shall take effect July 1, 2018.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to impact fees; amending s. 163.31801, F.S.; revising the minimum requirements for impact fees; allowing prevailing challengers to such fees to recover attorney fees; providing an effective date.

652158

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
12/05/2017	.	
	.	
	.	
	.	

The Committee on Community Affairs (Young) recommended the following:

Senate Amendment to Amendment (539088) (with title amendment)

Delete lines 70 - 72
and insert:
a deferential standard.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 82 - 83

652158

and insert:

fees; providing an effective date.

146388

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
12/05/2017	.	
	.	
	.	
	.	

The Committee on Community Affairs (Young) recommended the following:

Senate Amendment to Amendment (539088)

Delete line 58
and insert:
or be used for prior approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction.

652158

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
12/05/2017	.	
	.	
	.	
	.	

The Committee on Community Affairs (Young) recommended the following:

Senate Amendment to Amendment (539088) (with title amendment)

Delete lines 70 - 72
and insert:
a deferential standard.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete lines 82 - 83

652158

and insert:

fees; providing an effective date.

146388

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
12/05/2017	.	
	.	
	.	
	.	

The Committee on Community Affairs (Young) recommended the following:

Senate Amendment to Amendment (539088)

Delete line 58
and insert:
or be used for prior approved projects unless the expenditure is reasonably connected to, or has a rational nexus with, the increased impact generated by the new residential or commercial construction.

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/05/2017
Meeting Date

324
Bill Number (if applicable)

539088
Amendment Barcode (if applicable)

Topic Impact Fees

Name Eileen Fernández

Job Title Associate General Counsel

Address 445 W. Amelia St.
Street

Phone 407.317.3200

Orlando FL 32801
City *State* *Zip*

Email EileenFernández@ocps.net

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Orange County Public Schools

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/5/17
Meeting Date

324 - HB Amended
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Gary Hunter

Job Title _____

Address 119 S. Monroe St Suite 300
Street

Phone 850/222-7500

Tallahassee FL 32301
City *State* *Zip*

Email garyh@hgslaw.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing Florida Chamber and Florida Association of Community Developers

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12-5-17
Meeting Date

SB 324
Bill Number (if applicable)

539088
Amendment Barcode (if applicable)

Topic IMPACT FEE COLLECTION

Name Kari Hebrank

Job Title

Address 113 East College Ave.
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850-566-7824

Email Khebrank@wilsonmgmt.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLORIDA HOME BUILDERS ASSOC.

Appearing at request of Chair: ☑ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12-5-17
Meeting Date

SB 324
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic IMPACT FEE COLLECTION

Name KARL HEBRANK

Job Title

Address 113 EAST COLLEGE AVE. *Street*

TALLAHASSEE FL 32301 *City* *State* *Zip*

Phone 850-566-7824

Email khebrank@wilsonmgt.com

Speaking: ☑ For ☐ Against ☐ Information

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

Representing FLORIDA HOME BUILDERS ASSOC.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/5/17
Meeting Date

324
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Impact Fees

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757
Street

Phone 227 9684

Tallahassee FL 32301
City *State* *Zip*

Email rohara@flcities.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Fla. League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

By Senator Young

18-00450-18 2018324__

A bill to be entitled

An act relating to impact fees; amending s. 163.31801, F.S.; specifying the earliest time of collection that a local government may require for impact fees; providing an effective date.

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

Section 1. Paragraph (e) is added to subsection (3) of section 163.31801, Florida Statutes, to read:

163.31801 Impact fees; short title; intent; definitions; ordinances levying impact fees.—

(3) An impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at minimum:

(e) Specify that the collection of an impact fee be no earlier than the issuance of the certificate of occupancy for the property that is subject to the fee.

Section 2. This act shall take effect July 1, 2018.

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

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Community Affairs
ITEM: SB 324
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, December 5, 2017
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Office Building

FINAL VOTE			12/05/2017 1 Amendment 539088 Young		12/05/2017 2 Amendment 652158 Young		12/05/2017 3 Amendment 146388 Young	
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Brandes						
X		Campbell						
X		Perry						
X		Rodriguez						
X		Simmons						
X		Bean, VICE CHAIR						
		Lee, CHAIR						
6	0	**TOTALS**	RCS	-	FAV	-	FAV	-
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SB 688
INTRODUCER:	Senator Garcia
SUBJECT:	Charter County and Regional Transportation System Surtax
DATE:	December 4, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Favorable**
2.			AFT	
3.			AP	

I. Summary:

SB 688 requires each county, as defined in s. 125.011(1), F.S., to the extent not prohibited by contracts or bond covenants in effect on July 1, 2018, to use Charter County and Regional Transportation System Surtax proceeds only for the following purposes:

- The planning, design, engineering, and construction of fixed guideway rapid transit systems.
- The acquisition of right-of-way for fixed guideway rapid transit systems, provided that the current owner of the right-of-way is a willing seller or lessor.
- The purchase of buses and other capital costs for a bus system.
- The payment of principal and interest on bonds previously issued related to fixed guideway rapid transit systems or bus systems.
- As security by the governing body of the county to refinance existing bonds or to issue new bonds for the planning, design, engineering, and construction of fixed guideway rapid transit systems or bus systems.

Additionally, the bill prohibits the use of such surtax proceeds for nontransit purposes for each county as defined in s. 125.011(1), F.S.

II. Present Situation:

Charter County and Regional Transportation System Surtax

Any county that has adopted a home rule charter, any county government that has consolidated with one or more municipalities, and any county that is within or under an interlocal agreement with a regional transportation or transit authority created under ch. 343 or 349, F.S., may levy

this surtax at a rate of up to 1 percent, subject to approval by a majority vote of the county's electorate or a charter amendment approved by a majority vote of the county's electorate.[1]

Based on these criteria, 31 counties (i.e., Alachua, Bay, Brevard, Broward, Charlotte, Citrus, Clay, Columbia, Duval, Escambia, Franklin, Gulf, Hernando, Hillsborough, Lee, Leon, Manatee, Miami-Dade, Okaloosa, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Santa Rosa, Sarasota, Seminole, Volusia, Wakulla, and Walton) are eligible to levy the surtax. During the 2017 calendar year, only 2 of 31 eligible counties (i.e., Duval and Miami-Dade) will be levying the surtax at a rate of 0.5 percent. This surtax, in addition to the Emergency Fire Rescue Services and Facilities Surtax and the School Capital Outlay Surtax, is not subject to a combined rate limitation that impacts the other discretionary sales surtax levies.

Generally, the use of the proceeds is for the development, construction, operation, and maintenance of fixed guideway rapid transit systems; bus systems; on-demand transportation services; and roads and bridges.[2] Counties eligible to levy the surtax may also use up to 25 percent of the proceeds for nontransit purposes.[3]

In 2017-18, the Revenue Estimating Conference estimates that the Charter County and Regional Transportation System Surtax will collect $329.5 million.[4]

The Department of Revenue shall distribute the surtax proceeds to the county government for deposit into the county trust fund or remittance by the county's governing body to an expressway, transit, or transportation authority created by law.

Section 125.011(1), F.S.

Miami-Dade County is the only county that comports with the description contained in s. 125.011(1), F.S., of a "county operating under a home rule charter" adopted under constitutional authority and which "by resolution of its board of county commissioners, elects the powers" conferred by that statutory section.[5] General laws used by Miami-Dade County, and only Miami-Dade County, have survived various legal challenges claiming such general laws are, in actuality, special laws.[6]

[1] Section 212.055(1), F.S. *See also* Florida Revenue Estimating Conference, *2017 Florida Tax Handbook Including Fiscal Impact of Potential Changes*, pp. 226-227, available at: http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2017.pdf (last visited Nov. 28, 2017).
[2] Section 212.055(1)(d), F.S.
[3] Section 212.055(1)(d)3., F.S.
[4] Florida Revenue Estimating Conference, *2017 Florida Tax Handbook Including Fiscal Impact of Potential Changes*, pp. 226-227.
[5] Memorandum from Florida Legislative Committee on Intergovernmental Relations, (dated Apr. 20, 2006).
[6] *See* Metropolitan Dade County v. Golden Nugget Group, 448 So. 515 (Fla. 3rd DCA 1984), aff'd, 464 So. 2d 535 (Fla. 1985); City of Miami v. McGrath, 824 So. 143 (Fla. 2002); and Homestead Hospital v. Miami-Dade County, 829 So. 2d 259 (Fla. 3rd DCA 1992).

III. Effect of Proposed Changes:

The bill requires each county, as defined in s. 125.011(1), F.S., to the extent not prohibited by contracts or bond covenants in effect on July 1, 2018, to use Charter County and Regional Transportation System Surtax proceeds only for the following purposes:

- The planning, design, engineering, and construction of fixed guideway rapid transit systems.
- The acquisition of right-of-way for fixed guideway rapid transit systems, provided that the current owner of the right-of-way is a willing seller or lessor.
- The purchase of buses and other capital costs for a bus system.
- The payment of principal and interest on bonds previously issued related to fixed guideway rapid transit systems or bus systems.
- As security by the governing body of the county to refinance existing bonds or to issue new bonds for the planning, design, engineering, and construction of fixed guideway rapid transit systems or bus systems.

Additionally, the bill prohibits the use of such surtax proceeds for nontransit purposes for each county as defined in s. 125.011(1), F.S.

The bill also makes several editorial, nonsubstantive changes such that present s. 212.055(1)(d)3., F.S., is combined with s. 212.055(1)(d)4., F.S., to create a new s. 212.055(1)(d)1.c., F.S.

The bill provides that the act takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Each county as defined in s. 125.011(1), F.S., may use Charter County and Regional Transportation System Surtax proceeds only for those purposes provided above and may not use the surtax for nontransit purposes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.055 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Garcia

36-00717A-18 2018688__

A bill to be entitled

An act relating to the charter county and regional transportation system surtax; amending s. 212.055, F.S.; requiring counties, except under certain circumstances, to use surtax proceeds only for specified purposes; prohibiting the use of such proceeds for nontransit purposes; providing an effective date.

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

Section 1. Paragraph (d) of subsection (1) of section 212.055, Florida Statutes, is amended to read:

212.055 Discretionary sales surtaxes; legislative intent; authorization and use of proceeds.—It is the legislative intent that any authorization for imposition of a discretionary sales surtax shall be published in the Florida Statutes as a subsection of this section, irrespective of the duration of the levy. Each enactment shall specify the types of counties authorized to levy; the rate or rates which may be imposed; the maximum length of time the surtax may be imposed, if any; the procedure which must be followed to secure voter approval, if required; the purpose for which the proceeds may be expended; and such other requirements as the Legislature may provide. Taxable transactions and administrative procedures shall be as provided in s. 212.054.

(1) CHARTER COUNTY AND REGIONAL TRANSPORTATION SYSTEM SURTAX.—

(d) 1. Except as set forth in subparagraph 2., proceeds from

36-00717A-18 2018688__

the surtax shall be applied to as many or as few of the uses enumerated below in whatever combination the county commission deems appropriate:

a. ~~1.~~ Deposited by the county in the trust fund and shall be used for the purposes of development, construction, equipment, maintenance, operation, supportive services, including a countywide bus system, on-demand transportation services, and related costs of a fixed guideway rapid transit system;

b. ~~2.~~ Remitted by the governing body of the county to an expressway, transit, or transportation authority created by law to be used, at the discretion of such authority, for the development, construction, operation, or maintenance of roads or bridges in the county, for the operation and maintenance of a bus system, for the operation and maintenance of on-demand transportation services, for the payment of principal and interest on existing bonds issued for the construction of such roads or bridges, and, upon approval by the county commission, such proceeds may be pledged for bonds issued to refinance existing bonds or new bonds issued for the construction of such roads or bridges; and

~~3. Used by the county for the development, construction, operation, and maintenance of roads and bridges in the county; for the expansion, operation, and maintenance of bus and fixed guideway systems; for the expansion, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or~~

~~new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges and no more than 25 percent used for nontransit uses; and~~

c.~~4.~~ Used by the county for the planning, development, construction, operation, and maintenance of roads and bridges in the county; for the planning, development, expansion, operation, and maintenance of bus and fixed guideway systems; for the planning, development, construction, expansion, operation, and maintenance of on-demand transportation services; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges; and such proceeds may be pledged by the governing body of the county for bonds issued to refinance existing bonds or new bonds issued for the construction of such fixed guideway rapid transit systems, bus systems, roads, or bridges and no more than 25 percent used for nontransit uses. Pursuant to an interlocal agreement entered into pursuant to chapter 163, the governing body of the county may distribute proceeds from the tax to a municipality, or an expressway or transportation authority created by law to be expended for the purpose authorized by this paragraph. Any county that has entered into interlocal agreements for distribution of proceeds to one or more municipalities in the county shall revise such interlocal agreements no less than every 5 years in order to include any municipalities that have been created since the prior interlocal agreements were executed.

2. To the extent not prohibited by contracts or bond covenants in effect on July 1, 2018, each county, as defined in s. 125.011(1), shall use surtax proceeds only for the following purposes:

a. The planning, design, engineering, and construction of fixed guideway rapid transit systems.

b. The acquisition of right-of-way for fixed guideway rapid transit systems, provided that the current owner of the right-of-way is a willing seller or lessor.

c. The purchase of buses and other capital costs for a bus system.

d. The payment of principal and interest on bonds previously issued related to fixed guideway rapid transit systems or bus systems.

e. As security by the governing body of the county to refinance existing bonds or to issue new bonds for the planning, design, engineering, and construction of fixed guideway rapid transit systems or bus systems.

Surtax proceeds may not be used for nontransit purposes.

Section 2. This act shall take effect July 1, 2018.

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Community Affairs
ITEM: SB 688
FINAL ACTION: Favorable
MEETING DATE: Tuesday, December 5, 2017
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Office Building

FINAL VOTE								
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
		Brandes						
X		Campbell						
X		Perry						
X		Rodriguez						
X		Simmons						
X		Bean, VICE CHAIR						
		Lee, CHAIR						
5	0	**TOTALS**						
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/SB 612
INTRODUCER:	Community Affairs Committee and Senator Steube
SUBJECT:	Sexual Offenders
DATE:	December 5, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	**Fav/CS**
2.			JU	
3.			RC	

I. Summary:

CS/SB 612 creates "The Florida Tenant Notification Act," which requires that all residential rental agreements contain a prominent disclosure statement regarding whether the landlord has required any of his or her current or potential employees to undergo a level 1 background screening. If the landlord has required the screening, the disclosure must also state whether the employee was convicted of credit card theft, a crime involving violence, or sexual battery. The bill provides that the rental agreement is not complete until the tenant has signed the acknowledgement of receipt in the disclosure statement. The bill authorizes a tenant to cancel the rental agreement within a specified period of time if the agreement disclosed the employment of someone convicted of credit card theft, a crime involving violence, or sexual battery. The bill also authorizes a tenant to cancel the rental agreement if the agreement failed to disclose that any of the landlord's current or recently hired employees were convicted of credit card theft, a crime involving violence, or sexual battery.

II. Present Situation:

Florida Residential Landlord and Tenant Act

Part II of ch. 83, F.S., titled "Florida Residential Landlord and Tenant Act," governs the relationship between landlords and tenants under a residential lease agreement. The Landlord and Tenant Act contains certain mandatory provisions and disclosures that a landlord must provide to a tenant or prospective tenant. Specifically, a landlord must disclose in writing or a lease agreement:

- Whether the tenant's security deposit will be held in an interest or non-interest-bearing account; the name of the account depository and disclose the rate and time of interest payments within 30 days after receiving the security deposit.[1]
- The name and address of the landlord or person authorized to receive notices and demands on the landlord's behalf.[2]
- Notice of the potential liquidated damages, if there is a liquidated damages provision in the lease.[3]
- A specific notice if the landlord has no liability for storing or disposing the tenant's personal property after the tenant surrenders the dwelling.[4]
- A specific warning of the health risks of radon gas and which also refers the tenant to the county health department for additional information.[5]

Level 1 Background Screenings

In 1995, the Legislature created standard procedures for criminal history background screening of prospective employees in order to protect vulnerable persons. Chapter 435, F.S., outlines the screening standards for Level 1 and Level 2 employment screening.[6] The Florida Department of Law Enforcement provides criminal history checks to the employer. The primary difference between Level 1 and Level 2 screenings is that Level 2 screenings require the submission of fingerprint information for applicants, while Level 1 screenings are name-based demographic screenings. The list of disqualifying offenses for both Level 1 and Level 2 screenings covers includes 52 separate offenses, and 6 entire chapters of Florida law. Offenses relating to domestic violence are also grounds for disqualification.[7] Additionally, the security investigations under this section must ensure no person subject to this section has been found guilty of any offense that constitutes domestic violence as defined in s. 741.28, F.S.

The fee for a Level 1 screening request is $24.00.[8]

Exemptions from Disqualification

Section 435.07, F.S., provides a mechanism to obtain an exemption from disqualification if a person is disqualified from employment with an agency through either a Level 1 or Level 2 background screening. An exemption may be granted if the applicant was disqualified for:

- Felonies committed more than 3 years prior to the date of disqualification;
- Misdemeanors;
- Offenses that were felonies when committed but now are misdemeanors; or
- Findings of delinquency.

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[1] Section 83.49, F.S.
[2] Section 83.50, F.S.
[3] Section 83.595(4), F.S.
[4] Section 83.67(5), F.S.
[5] Section 404.056(5), F.S.
[6] Sections 435.03 and 435.04, F.S.
[7] Section 435.03(2), F.S. (Level 1 screening standards), refers to the list of offenses set forth in s. 435.04(2), F.S. (Level 2 screening standards). Section 435.03(3) adds domestic violence offenses defined in s. 741.28, F.S.
[8] Florida Department of Law Enforcement, Criminal History Information, available at https://cchinet.fdle.state.fl.us/search/app/default?0 (last visited December 5, 2017).

The person seeking an exemption must demonstrate by clear and convincing evidence that he or she should not be disqualified. This evidence may include:

- An explanation of the circumstances surrounding the criminal incident for which the exemption is sought;
- The time period that has elapsed since the incident;
- The nature of the harm caused to the victim;
- The history of the applicant since the incident; or
- Any other evidence indicating that the applicant will not present a danger if employment or continued employment is allowed.[9]

III. Effect of Proposed Changes:

The bill creates s. 83.684, F.S., as the "Florida Tenant Notification Act." Definitional references are given for the following terms: "credit card theft" (s. 817.60, F.S.), "employee" (s. 440.02(15)(a), F.S.), and "sexual battery" (s. 794.011). The definition for a "crime involving violence" means an offense involving the use or threat of physical force or violence against an individual, including, but not limited to, a violent felony listed in s. 775.084(1)(c)1., F.S.

The bill provides that a landlord may require any current or potential employees who will have access to a premises undergo a level 1 background screening pursuant to s. 435.03, F.S., at the expense of the landlord. If a current or potential employee refuses to undergo the screening, they may be terminated or disqualified for employment by the landlord.

The bill requires that all residential rental agreements must contain a disclosure advising the tenant whether the landlord has required any of his or her current or potential employees to undergo the background screening. If the landlord has required the screening, the disclosure must also include the date of the screening, the full name and job description of the employee, and whether the results indicated the employee was convicted of credit card theft, a crime involving violence, or sexual battery.

The bill also provides that the disclosure statement must contain an acknowledgement of receipt to be signed by the tenant in the presence of a witness. The disclosure statement must be available to the tenant upon request. Any rental agreements subject to this section are deemed incomplete until the acknowledgement is signed.

If a disclosure statement identifies any employee or potential employee convicted of credit card theft, a crime involving violence, or sexual battery, a tenant may cancel the residential rental agreement within three business days after completing it, and all deposit moneys must be returned to the tenant without penalty. Additionally, a rental agreement is voidable if the agreement fails to disclose any current employees were convicted of a listed offense. The tenant may also terminate an agreement if within five business days after its completion, the landlord hires an employee who was convicted of one of the listed offenses. In the event the agreement is voided, all deposit moneys, minus any amount payable for physical damage to the property

[9] Section 435.07(3), F.S.

caused by the tenant, must be returned to the tenant upon their request without penalty and without regard to any remaining tenant obligation under the rental agreement.

Finally, the disclosure statement must be updated upon renewal of a residential rental agreement.

The bill provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Landlords deciding to require level 1 background screenings for existing and potential employees will bear the burden of the cost of the screenings. Additionally, there could be a rise in administrative costs or burdens due to the bill's requirement that the disclosure be signed with a witness present.

C. Government Sector Impact:

The cost for a Florida criminal history record check is $24 and goes into the Florida Department of Law Enforcement's Operating Trust Fund.[10]

VI. Technical Deficiencies:

None.

VII. Related Issues:

There appears to be a conflict between lines 32-35 and lines 39-44 that could cause confusion as to the duties of a landlord. At line 32 a landlord may require an employee to undergo level 1

[10] Florida Department of Law Enforcement, House Bill 749 Analysis (December 1, 2017).

screening. At line 42-43 the phrase "screening required under paragraph (2)(a)" appears. Whether or not a landlord "requires" an employee to be screened is discretionary pursuant to lines 32-35. The confusion could be eliminated by removing the word 'required' found at line 42.[11]

VIII. Statutes Affected:

This bill creates section 83.684 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on December 5, 2017:
Requires that all residential rental agreements contain a prominent disclosure statement regarding whether the landlord has required any of his or her current or potential employees to undergo a level 1 background screening. If the landlord has required the screening, the disclosure must also state whether the employee was convicted of credit card theft, a crime involving violence, or sexual battery. The bill provides that the rental agreement is not complete until the tenant has signed the acknowledgement of receipt in the disclosure statement. The bill authorizes a tenant to cancel the rental agreement within a specified period of time if the agreement disclosed the employment of someone convicted of credit card theft, a crime involving violence, or sexual battery. The bill also authorizes a tenant to cancel the rental agreement if the agreement failed to disclose that any of the landlord's current or recently hired employees were convicted of credit card theft, a crime involving violence, or sexual battery.

B. Amendments:

None.

[11] *Id*.

251524

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/05/2017	.	
	.	
	.	
	.	

The Committee on Community Affairs (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 83.684, Florida Statutes, is created to read:

83.684 Florida Tenant Notification Act.—

(1) As used in this section, the term:

(a) "Credit card theft" means an offense listed in s. 817.60.

(b) "Crime involving violence" means an offense involving the use or threat of physical force or violence against an individual, including, but not limited to, a violent felony listed in s. 775.084(1)(c)1.

(c) "Employee" has the same meaning as in s. 440.02(15)(a).

(d) "Sexual battery" has the same meaning as in s. 794.011.

(2)(a) A landlord may require any of his or her current or potential employees who have or will have access to a premises to undergo a level 1 background screening pursuant to s. 435.03 at the expense of the landlord.

(b) A current or potential employee who refuses to undergo the background screening required under paragraph (a) may be terminated or disqualified for employment by the landlord.

(3)(a) A rental agreement or rental agreement renewal must contain a prominent written disclosure expressly stating whether the landlord has required any of his or her current or potential employees to undergo the background screening required under paragraph (2)(a). If the landlord has required such screening, such disclosure must also state:

1. The date of the background screening.

2. The full name and job description of the current employee, or the full name and anticipated job description of the potential employee, whose background screening results indicated that he or she was convicted of:

a. Credit card theft;

b. A crime involving violence; or

c. Sexual battery.

(b) The written disclosure shall also contain a prominent acknowledgement of receipt that shall be signed by the tenant in

the presence of a witness. A rental agreement or rental agreement renewal is not complete until such acknowledgement is signed. Such disclosure and acknowledgment shall be maintained by the landlord within the tenant's file and be made available to the tenant upon request.

(4) A tenant may, within 3 business days after completing a rental agreement or rental agreement renewal and upon written notice to the landlord, terminate such agreement or renewal and receive a refund of all deposit money without penalty if such agreement or renewal disclosed, and the tenant acknowledged, that any of the landlord's current or potential employees were convicted of an offense listed in subparagraph (3)(a)2.

(5)(a) A rental agreement or rental agreement renewal is void, and a tenant may, at any time after completing it and upon written notice to the landlord, terminate such agreement or renewal if:

1. It failed to disclose that any of the landlord's current employees were convicted of an offense listed in subparagraph (3)(a)2.; or

2. Within 5 business days after its completion, the landlord hired an employee who was convicted of an offense listed in subparagraph (3)(a)2.

(b) If a tenant terminates a rental agreement or rental agreement renewal pursuant to paragraph (a), he or she shall receive a refund of all deposit money without penalty, including, but not limited to, any early termination fees, and all further obligations of the tenant under such agreement or renewal are void. However, the tenant is responsible for any physical damage he or she caused to a premises.

Section 2. This act shall take effect July 1, 2018.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to residential tenancies; creating s. 83.684, F.S.; providing definitions; authorizing landlords to require certain employees to undergo level 1 background screenings; providing for the termination or disqualification of certain employees; requiring a written disclosure and signed acknowledgement of receipt in rental agreements and rental agreement renewals; providing requirements for such disclosure and acknowledgement; authorizing tenants to terminate such agreements and renewals under certain circumstances; requiring deposit money to be refunded to tenants upon such termination; providing that tenants are responsible for any damage he or she caused to the premises; providing an effective date.

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/5/17
Meeting Date

SB 612
Bill Number (if applicable)

251524DE
Amendment Barcode (if applicable)

Topic SB 612 As amended

Name Courtney Barnard

Job Title Government affairs Director / FL Apartment Association

Address 105 E. Robinson St. STE 301
Street

Phone 407-960-2910

ORLANDO FL 32801
City *State* *Zip*

Email Courtney@FAAHQ.ORG

Speaking: ☐ For ☐ Against ☒ Information

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

Representing FLORIDA APARTMENT ASSOCIATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

By Senator Steube

23-00814-18 2018612__

A bill to be entitled

An act relating to sexual offenders; creating s. 83.495, F.S.; providing a short title; defining terms; requiring that all residential rental agreements of a certain duration contain a distinct and prominent disclosure statement regarding the employment of sexual offenders; requiring that the disclosure statement contain an acknowledgement of receipt to be signed by the tenant in the presence of a witness; requiring the disclosure statement to be maintained within the tenant file and available to the tenant upon request; providing that the rental agreement is not complete until the acknowledgement of receipt in the disclosure statement has been signed by the tenant; authorizing a tenant to cancel the agreement within a specified period of time and to receive a refund of all deposit moneys without penalty if the agreement disclosed the employment of a sexual offender; authorizing a tenant to void a rental agreement at any time if such disclosure was not made; requiring that all deposit moneys less a deduction for certain damages be returned to the tenant upon the tenant's request under such circumstances; requiring the disclosure statement, including the acknowledgement of receipt, to be updated upon renewal of a residential rental agreement; providing an effective date.

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

23-00814-18 2018612__

Section 1. Section 83.495, Florida Statutes, is created to read:

83.495 Duty to warn residential rental tenants of a sex offender with access to premises.—

(1) This section may be cited as "The Florida Sex Offender Rental Notification Act."

(2) As used in this section, the term:

(a) "Employee" includes an owner, landlord, manager, and maintenance or other personnel who have or are entitled to have access by key, access code, or other means of entry into a rental residence.

(b) "Sexual offender" has the same meaning as in s. 943.0435(1)(h)1.a.(I).

(3) All residential rental agreements having a duration of five or more consecutive days must contain a distinct and prominent disclosure statement that advises the tenant of all of the following:

(a) Whether all employees have been screened for offenses qualifying under s. 943.0435, and, if so, whether they are subject to annual rescreening.

(b) The manner, method, and date of all employee screenings performed pursuant to this section, including the jurisdictions searched, for offenses qualifying under 943.0435.

(c) The results of the screening, specifically identifying the name, job description, and offense of any employee who is a sexual offender.

(4) The disclosure statement must contain an acknowledgement of receipt to be signed by the tenant in the

presence of a witness. The disclosure statement must be maintained within the tenant file and available to the tenant upon request.

(5) A residential rental agreement that is subject to this section is not deemed complete until the tenant signs the acknowledgement of receipt contained in the disclosure statement.

(6) If the disclosure statement identifies an employee as a sexual offender, a tenant may cancel the residential rental agreement within 3 business days after completing it, and all deposit moneys must be returned to the tenant without penalty.

(7) A residential rental agreement is voidable by the tenant at any time if the disclosure statement failed to disclose the employment of a sexual offender who was employed at the time that the disclosure statement was prepared. In the event the residential rental agreement is voided, all deposit moneys, less any amount payable for physical damage to the property caused by the tenant, must be returned to the tenant upon his or her request without penalty and without regard to any remaining tenant obligation under the rental agreement.

(8) The disclosure statement required in this section, including the acknowledgement of receipt, must be updated upon renewal of a residential rental agreement.

Section 2. This act shall take effect July 1, 2018.

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Community Affairs
ITEM: SB 612
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, December 5, 2017
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Office Building

FINAL VOTE			12/05/2017 1 Amendment 251524 Steube					
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Brandes						
X		Campbell						
X		Perry						
X		Rodriguez						
X		Simmons						
X		Bean, VICE CHAIR						
		Lee, CHAIR						
6	0	**TOTALS**	RCS	-				
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
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The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SJR 452
INTRODUCER:	Senator Brandes
SUBJECT:	Limitations on Homestead Property Tax Assessments
DATE:	December 4, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Favorable**
2.			AFT	
3.			AP	

I. Summary:

SJR 452 proposes an amendment to the Florida Constitution to extend from 2 to 3 years the "portability" period during which a Florida citizen has the ability to transfer up to $500,000 of accumulated Save our Homes Cap Benefits from an existing or prior homestead property to a new homestead property.

If adopted by the Legislature, the proposed amendment will be submitted to Florida's electors for approval or rejection at the next general election in November 2018.

If approved by at least 60 percent of the electors, the proposed amendment will take effect on January 1, 2019.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.[1] The property appraiser annually determines the "just value"[2] of property within the taxing authority and then applies relevant exclusions, assessment limitations, and

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

[2] Property must be valued at "just value" for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

exemptions to determine the property's "taxable value."[3] Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes[4] and limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.[5]

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;[6] however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes;[7] land used for conservation purposes;[8] historic properties when authorized by the county or municipality;[9] and certain working waterfront property.[10]

Save Our Homes Assessment Limitation and Portability

In 1992, Florida voters approved an amendment to the Florida Constitution known as the Save Our Homes amendment.[11] Article VII, section 4(d) of the Florida Constitution limits the amount that the assessed value of a homestead property may increase annually to the lesser of 3 percent or the percentage increase in the Consumer Price Index (CPI).[12] The accumulated difference between the assessed value and the just value is the Save Our Homes Benefit. The assessed value may increase even if the value of the home decreases, but only by this limited amount. In addition, the assessed value of a homestead property will never be more than the just value.

In 2008, Florida voters approved an additional amendment to Article VII, section 4(d) of the Florida Constitution to provide for the portability of the accrued benefit under the Save Our Homes assessment limitation.[13] This amendment allows homestead property owners who relocate to a new homestead to transfer, or "port," up to $500,000 of the accrued benefit to the new homestead. To transfer the Save Our Homes benefit, you must establish a homestead exemption for the new home within 2 years of January 1 of the year you abandoned the old homestead (not 2 years after the sale).[14]

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[3] *See* s. 192.001(2) and (16), F.S.
[4] FLA. CONST. art. VII, s. 1(a).
[5] *See* FLA. CONST. art. VII, s. 4.
[6] Section 193.011(2), F.S.
[7] FLA. CONST. art. VII, s. 4(a).
[8] FLA. CONST. art. VII, s. 4(b).
[9] FLA. CONST. art. VII, s. 4(e).
[10] FLA. CONST. art. VII, s. 4(j).
[11] The Florida Legislature implemented the Saves Our Homes amendment in s. 193.155, F.S.
[12] FLA. CONST. art. VII, s. 4(d).
[13] The Florida Legislature implemented the Saves Our Homes amendment in s. 193.155(8), F.S.
[14] *See* Department of Revenue, Save Our Homes Assessment Limitation and Portability Transfer Brochure at http://floridarevenue.com/dor/property/brochures/pt112.pdf.

III. Effect of Proposed Changes:

The joint resolution proposes an amendment to the Florida Constitution to extend from 2 to 3 years the "portability" period during which a Florida citizen has the ability to transfer up to $500,000 of accumulated Save our Homes Cap Benefits from an existing or prior homestead property to a new homestead property.

If adopted by the Legislature, the proposed amendment will be submitted to Florida's electors for approval or rejection at the next general election in November 2018.

If approved by at least 60 percent of the electors, the proposed amendment will take effect on January 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article XI, Section 1 of the Florida Constitution authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by a three-fifths vote of the membership of each house. The amendment must be placed before the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose. Article XI, Section 5(a) of the Florida Constitution and s. 101.161(1), F.S., require constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking "first, whether the ballot title and summary 'fairly inform the voter of the chief purpose of the amendment,' and second, 'whether the language of the title and summary, as written, misleads the public.'"[15]

Article XI, Section 5(d) of the Florida Constitution requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published

[15] *Roberts v. Doyle*, 43 So. 3d 654, 659 (Fla. 2010), citing *Florida Dep't of State v. Slough,* 992 So. 2d 142, 147 (Fla. 2008).

once in the 10th week and again in the 6th week immediately preceding the week the election is held.

Article XI, Section 5(e) of the Florida Constitution requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective after the next general election or at an earlier special election specifically authorized by law for that purpose.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference adopted a zero/negative indeterminate impact because this is a joint resolution proposing an amendment to be submitted to the voters. If the constitutional amendment does not pass, the impact is zero. However, if approved, the Revenue Estimating Conference adopted a recurring fiscal impact of negative $6.8 million in ad valorem revenues. Specifically, there will be a recurring reduction of $2.7 million in school taxes and $4.1 million in non-school taxes.

B. Private Sector Impact:

If the proposed amendment is approved by a 60 percent vote of the electors, homeowners will have an additional year to transfer their existing homestead Save Our Homes benefit to a new homestead property.

C. Government Sector Impact:

The Division of Elections is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The Division is also required to provide each Supervisor of Elections with either booklets or posters displaying the full text of proposed amendments. According to the Division, the cost to advertise constitutional amendments for the 2016 primary and general election cycle was $117.56 per word.

If the proposed amendment is approved by a 60 percent vote of the electors, the Department of Revenue would need to amend Forms DR-490PORT, DR-501, and DR-501RVSH; and Rule 12D-8.0065(2)(a), F.A.C. However, the department will implement those changes with existing fiscal resources.

If the proposed amendment is approved by a 60 percent vote of the electors, local governments may receive less ad valorem tax revenue.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends Article VII, section 4 of the Florida Constitution. This bill creates a new section in Article XII of the Florida Constitution.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Brandes

24-00301-18 2018452__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 4 of Article VII and the creation of a new section in Article XII of the State Constitution to increase the period when the accrued benefit from specified limitations on homestead property tax assessments may be transferred from a prior homestead to a new homestead and to provide an effective date.

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

That the following amendment to Section 4 of Article VII and the creation of a new section in Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 4. Taxation; assessments.—

By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land

24-00301-18 2018452__

used for conservation purposes shall be classified by general law and assessed solely on the basis of character or use.

(c) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(d) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) No assessment shall exceed just value.

(3) After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year, unless the provisions of paragraph (8) apply. Thereafter, the homestead shall be assessed as provided in this subsection.

(4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead, unless the provisions of paragraph (8) apply. That

assessment shall only change as provided in this subsection.

(5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(7) The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

(8)

a. A person who establishes a new homestead as of January 1~~, 2009, or January 1 of any subsequent year~~ and who has received a homestead exemption pursuant to Section 6 of this Article as of January 1 of any ~~either~~ of the three ~~two~~ years immediately preceding the establishment of the new homestead is entitled to have the new homestead assessed at less than just value. ~~If this revision is approved in January of 2008, a person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007.~~ The assessed value of the newly established homestead shall be determined as follows:

1. If the just value of the new homestead is greater than or equal to the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the

assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of $500,000 or the difference between the just value and the assessed value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned. Thereafter, the homestead shall be assessed as provided in this subsection.

2. If the just value of the new homestead is less than the just value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be equal to the just value of the new homestead divided by the just value of the prior homestead and multiplied by the assessed value of the prior homestead. However, if the difference between the just value of the new homestead and the assessed value of the new homestead calculated pursuant to this sub-subparagraph is greater than $500,000, the assessed value of the new homestead shall be increased so that the difference between the just value and the assessed value equals $500,000. Thereafter, the homestead shall be assessed as provided in this subsection.

b. By general law and subject to conditions specified therein, the legislature shall provide for application of this paragraph to property owned by more than one person.

(e) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by

general law.

(f) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

(g) For all levies other than school district levies, assessments of residential real property, as defined by general law, which contains nine units or fewer and which is not subject to the assessment limitations set forth in subsections (a) through (d) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent (10%) of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) After a change of ownership or control, as defined by general law, including any change of ownership of a legal entity that owns the property, such property shall be assessed at just value as of the next assessment date. Thereafter, such property

shall be assessed as provided in this subsection.

(4) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided in this subsection.

(h) For all levies other than school district levies, assessments of real property that is not subject to the assessment limitations set forth in subsections (a) through (d) and (g) shall change only as provided in this subsection.

(1) Assessments subject to this subsection shall be changed annually on the date of assessment provided by law; but those changes in assessments shall not exceed ten percent (10%) of the assessment for the prior year.

(2) No assessment shall exceed just value.

(3) The legislature must provide that such property shall be assessed at just value as of the next assessment date after a qualifying improvement, as defined by general law, is made to such property. Thereafter, such property shall be assessed as provided in this subsection.

(4) The legislature may provide that such property shall be assessed at just value as of the next assessment date after a change of ownership or control, as defined by general law, including any change of ownership of the legal entity that owns the property. Thereafter, such property shall be assessed as provided in this subsection.

(5) Changes, additions, reductions, or improvements to such property shall be assessed as provided for by general law; however, after the adjustment for any change, addition,

reduction, or improvement, the property shall be assessed as provided in this subsection.

(i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property:

(1) Any change or improvement to real property used for residential purposes made to improve the property's resistance to wind damage.

(2) The installation of a solar or renewable energy source device.

(j)

(1) The assessment of the following working waterfront properties shall be based upon the current use of the property:

a. Land used predominantly for commercial fishing purposes.

b. Land that is accessible to the public and used for vessel launches into waters that are navigable.

c. Marinas and drystacks that are open to the public.

d. Water-dependent marine manufacturing facilities, commercial fishing facilities, and marine vessel construction and repair facilities and their support activities.

(2) The assessment benefit provided by this subsection is subject to conditions and limitations and reasonable definitions as specified by the legislature by general law.

ARTICLE XII

SCHEDULE

Transfer of the accrued benefit from specified limitations on homestead property tax assessments; increased portability period.—This section and the amendment to Section 4 of Article

VII, which extends to three years the time period when the accrued benefit from specified limitations on homestead property tax assessments may be transferred from a prior homestead to a new homestead, shall take effect January 1, 2019.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 4

ARTICLE XII

LIMITATIONS ON HOMESTEAD PROPERTY TAX ASSESSMENTS; INCREASED PORTABILITY PERIOD TO TRANSFER ACCRUED BENEFIT.—Proposing an amendment to the State Constitution, effective January 1, 2019, to increase the period from 2 years to 3 years when accrued Save-Our-Homes benefits may be transferred from a prior homestead to a new homestead.

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Community Affairs
ITEM: SJR 452
FINAL ACTION: Favorable
MEETING DATE: Tuesday, December 5, 2017
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Office Building

FINAL VOTE								
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Brandes						
X		Campbell						
X		Perry						
X		Rodriguez						
X		Simmons						
X		Bean, VICE CHAIR						
		Lee, CHAIR						
6	0	**TOTALS**						
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
RE=Replaced by Engrossed Amendment
RS=Replaced by Substitute Amendment
TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/SB 454
INTRODUCER:	Community Affairs Committee and Senator Brandes
SUBJECT:	Limitations on Homestead Assessments
DATE:	December 5, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Fav/CS**
2.			AFT	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 454 is the implementing bill for SJR 452 which proposes an amendment to the Florida Constitution to extend from 2 to 3 years the "portability" period during which a Florida citizen has the ability to transfer up to $500,000 of accumulated Save our Homes Cap Benefits from an existing or prior homestead property to a new homestead property.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.[1] The property appraiser annually determines the "just value"[2] of property within the taxing authority and then applies relevant exclusions, assessment limitations, and

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

[2] Property must be valued at "just value" for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

exemptions to determine the property's "taxable value."[3] Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes[4] and limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.[5]

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;[6] however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes;[7] land used for conservation purposes;[8] historic properties when authorized by the county or municipality;[9] and certain working waterfront property.[10]

Save Our Homes Assessment Limitation and Portability

In 1992, Florida voters approved an amendment to the Florida Constitution known as the Save Our Homes amendment.[11] Article VII, section 4(d) of the Florida Constitution limits the amount that the assessed value of a homestead property may increase annually to the lesser of 3 percent or the percentage increase in the Consumer Price Index (CPI).[12] The accumulated difference between the assessed value and the just value is the Save Our Homes Benefit. The assessed value may increase even if the value of the home decreases, but only by this limited amount. In addition, the assessed value of a homestead property will never be more than the just value.

In 2008, Florida voters approved an additional amendment to Article VII, section 4(d) of the Florida Constitution to provide for the portability of the accrued benefit under the Save Our Homes assessment limitation.[13] This amendment allows homestead property owners who relocate to a new homestead to transfer, or "port," up to $500,000 of the accrued benefit to the new homestead. To transfer the Save Our Homes benefit, you must establish a homestead exemption for the new home within 2 years of January 1 of the year you abandoned the old homestead (not 2 years after the sale).[14]

[3] *See* s. 192.001(2) and (16), F.S.
[4] FLA. CONST. art. VII, s. 1(a).
[5] *See* FLA. CONST. art. VII, s. 4.
[6] Section 193.011(2), F.S.
[7] FLA. CONST. art. VII, s. 4(a).
[8] FLA. CONST. art. VII, s. 4(b).
[9] FLA. CONST. art. VII, s. 4(e).
[10] FLA. CONST. art. VII, s. 4(j).
[11] The Florida Legislature implemented the Saves Our Homes amendment in s. 193.155, F.S.
[12] FLA. CONST. art. VII, s. 4(d).
[13] The Florida Legislature implemented the Saves Our Homes amendment in s. 193.155(8), F.S.
[14] *See* Department of Revenue, Save Our Homes Assessment Limitation and Portability Transfer Brochure at http://floridarevenue.com/dor/property/brochures/pt112.pdf.

III. Effect of Proposed Changes:

Section 1 amends s. 193.155, F.S., to extend from 2 to 3 years the "portability" period during which a Florida citizen has the ability to transfer up to $500,000 of accumulated Save our Homes Cap Benefits from an existing or prior homestead property to a new homestead property.

Section 2 provides that this act applies beginning with the 2019 tax roll.

Section 3 provides that the act shall take effect on the effective date of the amendment to the Florida Constitution proposed by SJR 452 or a similar joint resolution having substantially the same specific intent and purpose, if such amendment to the Florida Constitution is approved at the general election held in November 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference adopted a zero/negative indeterminate fiscal impact due to the requirement for a state referendum. If the constitutional amendment does not pass, the impact is zero. However, if approved, the Revenue Estimating Conference adopted a recurring fiscal impact of negative $6.8 million in ad valorem revenues. Specifically, there will be a recurring reduction of $2.7 million in school taxes and $4.1 million in non-school taxes.

B. Private Sector Impact:

If the proposed amendment is approved by a 60 percent vote of the electors, homeowners will have an additional year to transfer their existing homestead Save Our Homes benefit to a new homestead property.

C. Government Sector Impact:

If the proposed amendment is approved by a 60 percent vote of the electors, local governments may receive less ad valorem tax revenue.

If the proposed amendment is approved by a 60 percent vote of the electors, the Department of Revenue would need to amend Forms DR-490PORT, DR-501, and DR-501RVSH; and Rule 12D-8.0065(2)(a), F.A.C. However, the department will implement those changes with existing fiscal resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 193.155 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs Committee on December 5, 2017:

- Makes a technical change to insert the number of companion bill, SJR 452, into the effective date clause.

B. Amendments:

None.

371170

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
12/05/2017	.	
	.	
	.	
	.	

The Committee on Community Affairs (Brandes) recommended the following:

Senate Amendment

Delete line 288
and insert:
of the amendment to the State Constitution proposed by SJR 452

By Senator Brandes

24-00270A-18 2018454__

A bill to be entitled

An act relating to limitations on homestead assessments; amending s. 193.155, F.S.; revising the timeframe when the accrued benefit from specified limitations on homestead property tax assessments may be transferred from a prior homestead to a new homestead; deleting obsolete provisions; conforming provisions to changes made by the act; providing applicability; providing a contingent effective date.

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

Section 1. Subsection (8) of section 193.155, Florida Statutes, is amended to read:

193.155 Homestead assessments.—Homestead property shall be assessed at just value as of January 1, 1994. Property receiving the homestead exemption after January 1, 1994, shall be assessed at just value as of January 1 of the year in which the property receives the exemption unless the provisions of subsection (8) apply.

(8) Property assessed under this section shall 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 any ~~either~~ of the 3 ~~2~~ immediately preceding years. ~~A person who establishes a new homestead as of January 1, 2008, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2007, and only if this subsection applies retroactive to January 1, 2008.~~ For purposes of this subsection, a husband and wife who

24-00270A-18 2018454__

owned and both permanently resided on a previous homestead shall each be considered to have received the homestead exemption even though only the husband or the wife applied for the homestead exemption on the previous homestead. The assessed value of the newly established homestead shall be determined as provided in this subsection.

(a) If the just value of the new homestead as of January 1 is greater than or equal to the just value of the immediate prior homestead as of January 1 of the year in which the immediate prior homestead was abandoned, the assessed value of the new homestead shall be the just value of the new homestead minus an amount equal to the lesser of $500,000 or the difference between the just value and the assessed value of the immediate prior homestead as of January 1 of the year in which the prior homestead was abandoned. Thereafter, the homestead shall be assessed as provided in this section.

(b) If the just value of the new homestead as of January 1 is less than the just value of the immediate prior homestead as of January 1 of the year in which the immediate prior homestead was abandoned, the assessed value of the new homestead shall be equal to the just value of the new homestead divided by the just value of the immediate prior homestead and multiplied by the assessed value of the immediate prior homestead. However, if the difference between the just value of the new homestead and the assessed value of the new homestead calculated pursuant to this paragraph is greater than $500,000, the assessed value of the new homestead shall be increased so that the difference between the just value and the assessed value equals $500,000. Thereafter, the homestead shall be assessed as provided in this

section.

(c) If two or more persons who have each received a homestead exemption as of January 1 of any ~~either~~ of the 3 ~~2~~ immediately preceding years and who would otherwise be eligible to have a new homestead property assessed under this subsection establish a single new homestead, the reduction from just value is limited to the higher of the difference between the just value and the assessed value of either of the prior eligible homesteads as of January 1 of the year in which either of the eligible prior homesteads was abandoned, but may not exceed $500,000.

(d) If two or more persons abandon jointly owned and jointly titled property that received a homestead exemption as of January 1 of any ~~either~~ of the 3 ~~2~~ immediately preceding years, and one or more such persons who were entitled to and received a homestead exemption on the abandoned property establish a new homestead that would otherwise be eligible for assessment under this subsection, each such person establishing a new homestead is entitled to a reduction from just value for the new homestead equal to the just value of the prior homestead minus the assessed value of the prior homestead divided by the number of owners of the prior homestead who received a homestead exemption, unless the title of the property contains specific ownership shares, in which case the share of reduction from just value shall be proportionate to the ownership share. In the case of a husband and wife abandoning jointly titled property, the husband and wife may designate the ownership share to be attributed to each spouse by following the procedure in paragraph (f). To qualify to make such a designation, the

husband and wife must be married on the date that the jointly owned property is abandoned. In calculating the assessment reduction to be transferred from a prior homestead that has an assessment reduction for living quarters of parents or grandparents pursuant to s. 193.703, the value calculated pursuant to s. 193.703(6) must first be added back to the assessed value of the prior homestead. The total reduction from just value for all new homesteads established under this paragraph may not exceed $500,000. There shall be no reduction from just value of any new homestead unless the prior homestead is reassessed at just value or is reassessed under this subsection as of January 1 after the abandonment occurs.

(e) If one or more persons who previously owned a single homestead and each received the homestead exemption qualify for a new homestead where all persons who qualify for homestead exemption in the new homestead also qualified for homestead exemption in the previous homestead without an additional person qualifying for homestead exemption in the new homestead, the reduction in just value shall be calculated pursuant to paragraph (a) or paragraph (b), without application of paragraph (c) or paragraph (d).

(f) A husband and wife abandoning jointly titled property who wish to designate the ownership share to be attributed to each person for purposes of paragraph (d) must file a form provided by the department with the property appraiser in the county where such property is located. The form must include a sworn statement by each person designating the ownership share to be attributed to each person for purposes of paragraph (d) and must be filed prior to either person filing the form

required under paragraph (h) to have a parcel of property assessed under this subsection. Such a designation, once filed with the property appraiser, is irrevocable.

(g) For purposes of receiving an assessment reduction pursuant to this subsection, a person entitled to assessment under this section may abandon his or her homestead even though it remains his or her primary residence by notifying the property appraiser of the county where the homestead is located. This 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.

(h) In order to have his or her homestead property assessed under this subsection, a person must file a form provided by the department as an attachment to the application for homestead exemption, including a copy of the form required to be filed under paragraph (f), if applicable. The form, which must include a sworn statement attesting to the applicant's entitlement to assessment under this subsection, shall be considered sufficient documentation for applying for assessment under this subsection. The department shall require by rule that the required form be submitted with the application for homestead exemption under the timeframes and processes set forth in chapter 196 to the extent practicable.

(i)1. If the previous homestead was located in a different county than the new homestead, the property appraiser in the county where the new homestead is located must transmit a copy of the completed form together with a completed application for homestead exemption to the property appraiser in the county where the previous homestead was located. If the previous

homesteads of applicants for transfer were in more than one county, each applicant from a different county must submit a separate form.

2. The property appraiser in the county where the previous homestead was located must return information to the property appraiser in the county where the new homestead is located by April 1 or within 2 weeks after receipt of the completed application from that property appraiser, whichever is later. As part of the information returned, the property appraiser in the county where the previous homestead was located must provide sufficient information concerning the previous homestead to allow the property appraiser in the county where the new homestead is located to calculate the amount of the assessment limitation difference which may be transferred and must certify whether the previous homestead was abandoned and has been or will be reassessed at just value or reassessed according to the provisions of this subsection as of the January 1 following its abandonment.

3. Based on the information provided on the form from the property appraiser in the county where the previous homestead was located, the property appraiser in the county where the new homestead is located shall calculate the amount of the assessment limitation difference which may be transferred and apply the difference to the January 1 assessment of the new homestead.

4. All property appraisers having information-sharing agreements with the department are authorized to share confidential tax information with each other pursuant to s. 195.084, including social security numbers and linked

information on the forms provided pursuant to this section.

5. The transfer of any limitation is not final until any values on the assessment roll on which the transfer is based are final. If such values are final after tax notice bills have been sent, the property appraiser shall make appropriate corrections and a corrected tax notice bill shall be sent. Any values that are under administrative or judicial review shall be noticed to the tribunal or court for accelerated hearing and resolution so that the intent of this subsection may be carried out.

6. If the property appraiser in the county where the previous homestead was located has not provided information sufficient to identify the previous homestead and the assessment limitation difference is transferable, the taxpayer may file an action in circuit court in that county seeking to establish that the property appraiser must provide such information.

7. If the information from the property appraiser in the county where the previous homestead was located is provided after the procedures in this section are exercised, the property appraiser in the county where the new homestead is located shall make appropriate corrections and a corrected tax notice and tax bill shall be sent.

8. This subsection does not authorize the consideration or adjustment of the just, assessed, or taxable value of the previous homestead property.

9. The property appraiser in the county where the new homestead is located shall promptly notify a taxpayer if the information received, or available, is insufficient to identify the previous homestead and the amount of the assessment limitation difference which is transferable. Such notification

shall be sent on or before July 1 as specified in s. 196.151.

10. The taxpayer may correspond with the property appraiser in the county where the previous homestead was located to further seek to identify the homestead and the amount of the assessment limitation difference which is transferable.

11. If the property appraiser in the county where the previous homestead was located supplies sufficient information to the property appraiser in the county where the new homestead is located, such information shall be considered timely if provided in time for inclusion on the notice of proposed property taxes sent pursuant to ss. 194.011 and 200.065(1).

12. If the property appraiser has not received information sufficient to identify the previous homestead and the amount of the assessment limitation difference which is transferable before mailing the notice of proposed property taxes, the taxpayer may file a petition with the value adjustment board in the county where the new homestead is located.

(j) Any person who is qualified to have his or her property assessed under this subsection and who fails to file an application by March 1 may file an application for assessment under this subsection and may, pursuant to s. 194.011(3), file a petition with the value adjustment board requesting that an assessment under this subsection be granted. Such petition may be filed at any time during the taxable year on or before the 25th day following the mailing of the notice by the property appraiser as provided in s. 194.011(1). Notwithstanding s. 194.013, such person must pay a nonrefundable fee of $15 upon filing the petition. Upon reviewing the petition, if the person is qualified to receive the assessment under this subsection and

demonstrates particular extenuating circumstances judged by the property appraiser or the value adjustment board to warrant granting the assessment, the property appraiser or the value adjustment board may grant an assessment under this subsection. ~~For the 2008 assessments, all petitioners for assessment under this subsection shall be considered to have demonstrated particular extenuating circumstances.~~

(k) Any person who is qualified to have his or her property assessed under this subsection and who fails to timely file an application for his or her new homestead in the first year following eligibility may file in a subsequent year. The assessment reduction shall be applied to assessed value in the year the transfer is first approved, and refunds of tax may not be made for previous years.

(l) The property appraisers of the state shall, as soon as practicable after March 1 of each year and on or before July 1 of that year, carefully consider all applications for assessment under this subsection which have been filed in their respective offices on or before March 1 of that year. If, upon investigation, the property appraiser finds that the applicant is entitled to assessment under this subsection, the property appraiser shall make such entries upon the tax rolls of the county as are necessary to allow the assessment. If, after due consideration, the property appraiser finds that the applicant is not entitled to the assessment under this subsection, the property appraiser shall immediately prepare a notice of such disapproval, giving his or her reasons therefor, and a copy of the notice must be served upon the applicant by the property appraiser by personal delivery or by registered mail to the post

office address given by the applicant. The applicant may appeal the decision of the property appraiser refusing to allow the assessment under this subsection to the value adjustment board, and the board shall review the application and evidence presented to the property appraiser upon which the applicant based the claim and hear the applicant in person or by agent on behalf of his or her right to such assessment. Such appeal shall be heard by an attorney special magistrate if the value adjustment board uses special magistrates. The value adjustment board shall reverse the decision of the property appraiser in the cause and grant assessment under this subsection to the applicant if, in its judgment, the applicant is entitled to the assessment or shall affirm the decision of the property appraiser. The action of the board is final in the cause unless the applicant, within 60 days following the date of refusal of the application by the board, files in the circuit court of the county in which the homestead is located a proceeding against the property appraiser for a declaratory judgment as is provided under chapter 86 or other appropriate proceeding. The failure of the taxpayer to appear before the property appraiser or value adjustment board or to file any paper other than the application as provided in this subsection does not constitute a bar to or defense in the proceedings.

Section 2. This act applies beginning with the 2019 tax roll.

Section 3. This act shall take effect on the effective date of the amendment to the State Constitution proposed by SJR ____ or a similar joint resolution having substantially the same specific intent and purpose, if such amendment to the State

Constitution is approved at the general election held in November 2018.

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

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Community Affairs
ITEM: SB 454
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Tuesday, December 5, 2017
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Office Building

FINAL VOTE			12/05/2017 1 Amendment 371170 Brandes					
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Brandes						
X		Campbell						
X		Perry						
X		Rodriguez						
X		Simmons						
X		Bean, VICE CHAIR						
		Lee, CHAIR						
6	0	**TOTALS**	RCS	-				
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable
UNF=Unfavorable
-R=Reconsidered
RCS=Replaced by Committee Substitute
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TP=Temporarily Postponed
VA=Vote After Roll Call
VC=Vote Change After Roll Call
WD=Withdrawn
OO=Out of Order
AV=Abstain from Voting

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SB 658
INTRODUCER:	Senator Brandes
SUBJECT:	Tourist Development Tax
DATE:	December 4, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Favorable**
2.			AFT	
3.			AP	

I. Summary:

SB 658 authorizes counties imposing the tourist development tax to use revenues from the tax to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities if the public facilities are needed to increase tourist-related business activities in the applicable county or subcounty special district and are recommended by the county tourist development council.

Additionally, the bill authorizes the use of tax revenues for 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. The term "public facilities" means major capital improvements that have a life expectancy of 5 or more years, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, and pedestrian facilities.

II. Present Situation:

Tourist Development Taxes

Florida law permits counties to impose local option taxes on rentals or leases of accommodations for a term of six months or less.[1] The taxes are generally referred to as "tourist development taxes," but consist of several separate levied taxes.

- 1 or 2 Percent Tax:[2] This tax may be levied by the county's governing board at a rate of 1 or 2 percent on the total amount charged for transient rental transactions.
- Additional 1 Percent Tax:[3] This tax may be levied by an extraordinary vote of a county's governing board, in addition to the 1 or 2 percent tax on the total amount charged for

[1] Section 125.0104, F.S.
[2] Section 125.0104(3)(c), F.S.
[3] Section 125.0104(3)(d), F.S.

transient rental transactions. To be eligible to levy the tax, a county must have levied the 1 or 2 percent tax for at least 3 years.

- High Tourism Impact Tax:[4] By extraordinary vote of the governing board of the county, a county with high tourism impact may levy an additional 1 percent tax on the total amount charged for transient rental transactions.[5]
- Professional Sports Franchise Facility Tax:[6] In addition to any other tourist development taxes, a 1 percent tax on the total amount charged for transient rental transactions may be levied to pay debt service on bonds issued to finance professional sports franchise facilities, retained spring training franchise facilities, and convention centers. These funds may also be used to promote tourism in the state.
- Additional Professional Sports Franchise Facility Tax:[7] Counties that levy the professional sports franchise facility tax may levy an additional tax no greater than 1 percent to be used for the same purposes by a majority plus one vote of the membership of the board of county commissioners.

Depending on a county's eligibility, the maximum tax rate varies from 3 to 6 percent. The table below displays the five local option tourist development taxes available to counties, the number of counties eligible to levy a specific tourist development tax, and the number of counties currently levying such tax.[8]

	Original Tax (1% or 2%)	Additional Tax (1%)	Professional Sports Franchise Facility Tax (up to 1%)	High Tourism Impact Tax (1%)	Additional Professional Sports Franchise Facility Tax (up to 1%)
Eligible to Levy:	67	59	67	8	65
Levying:	63	48	41	5	27

These local option taxes may be administered by the Department of Revenue or by one or more units of local government. These taxes may be levied within a subcounty special district. If the tax is levied in a subcounty special district, the additional taxes must be levied only in that district.[9]

As a requirement for adopting tourist development taxes, a county's tourist development council[10] must prepare a plan for tourist development and present it before the governing board of the county. The plan must include the anticipated revenue derived from the tax for the first 24 months, the tax district where it will be imposed, and a list prioritizing the use of the revenue. The county's governing board must approve any changes to the plan after the levy has been enacted.[11]

[4] Section 125.0104(3)(m), F.S.
[5] A county may be designated as having a "high tourism impact" by the Department of Revenue as provided by s. 125.0104(3)(m)2, F.S.
[6] Section 125.0104(3)(l), F.S.
[7] Section 125.0104(3)(n), F.S.
[8] Office of Economic Demographic Research, The Florida Legislature, *County Tax Rates: CY 2007-2017, Local Option Tourist Taxes, available at* http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm (Published June 1, 2017).
[9] See ss. 125.0104(3)(b) and (d), F.S.
[10] Also referred to as a "tourism" development council.
[11] See ss. 125.0104(4), F.S. The provisions found in ss. 125.0104(4)(a)-(d), F.S., do not apply to the high tourism impact tax, the professional sports franchise facility tax, or the additional professional sports franchise facility tax.

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

- To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more:
  - Publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums; or
  - Aquariums and museums that are publicly owned and operated, or owned and operated by a non-profit organization that is open to the public;
- To promote zoological parks that are publicly owned and operated or owned and operated by a non-profit organization that is open to the public;
- To promote and advertise tourism in the state;
- To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies; or
- To finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control. [12]

III. Effect of Proposed Changes:

The bill authorizes counties imposing the tourist development tax to use revenues from the tax to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities[13] within the boundaries of the county or subcounty special taxing district in which the tax is levied, if the public facilities are needed to increase tourist-related business activities in the county or subcounty special district and are recommended by the county tourist development council created pursuant to s. 125.0104(4)(e), F.S.

Tax revenues may be used for 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.

The bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

[12] Section 125.0104(5)(a), F.S.

[13] The term "public facilities" means major capital improvements that have a life expectancy of 5 or more years, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, and pedestrian facilities.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Counties may use revenues from the tourist development tax on public facilities in certain circumstances.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 125.0104 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/05/17
Meeting Date

0658
Bill Number (if applicable)

Topic Tourist Development Tax

Amendment Barcode (if applicable)

Name Richard Turner

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Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Restaurant & Lodging Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12-5-17
Meeting Date

SB 658
Bill Number (if applicable)

Topic Tourist Development Tax

Amendment Barcode (if applicable)

Name Skylar Zander

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing Americans for Prosperity

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/5/17
Meeting Date

658
Bill Number (if applicable)

Topic Tourist Development Tax

Amendment Barcode (if applicable)

Name Mat Forrest

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Speaking: ☐ For ☑ Against ☐ Information

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

Representing Florida Assoc. of Destination Marketing Organizations (FADMO)

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

12/5/17
Meeting Date

658
Bill Number (if applicable)

Topic TDT

Amendment Barcode (if applicable)

Name Chris Carmody

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Speaking: ☐ For ☒ Against ☐ Information

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

Representing Central Florida Hotel & Lodging Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

By Senator Brandes

24-00875-18 2018658__

A bill to be entitled

An act relating to the tourist development tax; amending s. 125.0104, F.S.; authorizing counties imposing the tax to use the tax revenues, under certain circumstances, for specified purposes and costs relating to public facilities; defining the term "public facilities"; providing an effective date.

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

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

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—

(5) AUTHORIZED USES OF REVENUE.—

(a) All tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by that county for the following purposes only:

1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more:

a. Publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums within the boundaries of the county or subcounty special taxing district in which the tax is levied;

b. Auditoriums that are publicly owned but are operated by organizations that are exempt from federal taxation pursuant to 26 U.S.C. s. 501(c)(3) and open to the public, within the boundaries of the county or subcounty special taxing district in which the tax is levied; or

24-00875-18 2018658__

c. Aquariums or museums that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public, within the boundaries of the county or subcounty special taxing district in which the tax is levied;

2. To promote zoological parks that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public;

3. To promote and advertise tourism in this state and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event must have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists;

4. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county, which may include any indirect administrative costs for services performed by the county on behalf of the promotion agency; ~~or~~

5. To finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river. However, any funds identified by a county as the local matching source for beach renourishment, restoration, or erosion control projects included in the long-range budget plan of the state's Beach Management Plan, pursuant to s. 161.091, or funds contractually obligated

by a county in the financial plan for a federally authorized shore protection project may not be used or loaned for any other purpose. In counties of fewer than 100,000 population, up to 10 percent of the revenues from the tourist development tax may be used for beach park facilities; or ~~.~~

6. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or finance public facilities within the boundaries of the county or subcounty special taxing district in which the tax is levied, if the public facilities are needed to increase tourist-related business activities in the county or subcounty special district and are recommended by the county tourist development council created pursuant to paragraph (4)(e). Tax revenues may be used for 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. As used in this subparagraph, the term "public facilities" means major capital improvements that have a life expectancy of 5 or more years, including, but not limited to, transportation, sanitary sewer, solid waste, drainage, potable water, and pedestrian facilities.

Subparagraphs 1. and 2. may be implemented through service contracts and leases with lessees that have sufficient expertise or financial capability to operate such facilities.

Section 2. This act shall take effect July 1, 2018.

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Community Affairs
ITEM: SB 658
FINAL ACTION: Favorable
MEETING DATE: Tuesday, December 5, 2017
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Office Building

FINAL VOTE								
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
X		Brandes						
X		Campbell						
X		Perry						
X		Rodriguez						
X		Simmons						
X		Bean, VICE CHAIR						
		Lee, CHAIR						
6	0	**TOTALS**						
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

CODES: FAV=Favorable, UNF=Unfavorable, -R=Reconsidered, RCS=Replaced by Committee Substitute, RE=Replaced by Engrossed Amendment, RS=Replaced by Substitute Amendment, TP=Temporarily Postponed, VA=Vote After Roll Call, VC=Vote Change After Roll Call, WD=Withdrawn, OO=Out of Order, AV=Abstain from Voting

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	SB 494
INTRODUCER:	Senator Lee
SUBJECT:	Linear Facilities
DATE:	December 4, 2017
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	**Favorable**
2.	Cochran	Yeatman	CA	**Pre-meeting**

I. Summary:

SB 494 amends the exemptions from the land-use-consistency provisions of the Power Plant Siting Act (PPSA)[1] and Transmission Line Siting Act (TLSA)[2] to provide that they apply to established rights-of-way and corridors, to rights-of-way and corridors yet to be established, and to the creation of distribution and transmission corridors.

The bill establishes the standard to be used in authorizing variances in a site certification under the PPSA and the TLSA.

It also provides that the PPSA and TLSA cannot affect in any way the Public Service Commission's (PSC) exclusive jurisdiction to require transmission lines to be located underground.

II. Present Situation:

The bill partially overturns a Third District Court of Appeal (the court) decision in a power plant siting case.[3] The bill addresses two issues: application of specific local laws in a siting proceeding and the authority of the Siting Board to order undergrounding, or burying, of a transmission or distribution power line.

[1] Sections 403.501-403.519, F.S.

[2] Sections 403.52-403.539, F.S.

[3] *Miami-Dade County, et al, v. In Re: Florida Power & Light Co., etc., et al*, Opinion filed April 20, 2016, available at http://www.3dca.flcourts.org/opinions/3D14-1467.pdf. The Florida Supreme Court denied Florida Power and Light's petition for review, Friday, February 24, 2017, available at https://efactssc-public.flcourts.org/casedocuments/2016/2277/2016-2277_disposition_137996.pdf.

Application of Local Laws / "Development"

Statutes

Under the PPSA, the application for certification of a site for a power plant and associated facilities must include a statement on the consistency of the site, and any associated facilities[4] that constitute a "development," with existing land use plans and zoning ordinances that were in effect on the date the application was filed and a full description of the consistency.[5] The statement must include an identification of those associated facilities that the applicant believes are exempt from the requirements of land use plans and zoning ordinances under the Community Planning Act provisions of ch. 163 and s. 380.04(3), F.S. Each affected local government must file a determination of the consistency of the site and non-exempt associated facilities with existing land use plans and zoning ordinances in effect on the date the application was filed. Any substantially affected person may file a petition with the designated administrative law judge (ALJ) to dispute the local government's determination.[6] If a petition is filed, the ALJ must hold a land use hearing at which the sole issue for determination is whether the proposed site or nonexempt associated facility is consistent and in compliance with existing land use plans and zoning ordinances.[7] After the hearing, if the Siting Board determines that the proposed site or non-exempt associated facility does not conform with existing land use plans and zoning ordinances, the board may authorize a variance or other necessary approval to the adopted land use plan and zoning ordinances required to render the site consistent with the local land use plans and zoning ordinances.[8]

Associated facilities that are exempt from the term "development" are not subject to the land use consistency and compliance requirements. The relevant definition of "development" is set out in s. 380.04, F.S., which expressly excludes the following activities from the term development:

- Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, renewing, or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like.
- The creation or termination of rights of access, riparian rights, easements, covenants concerning development of land, or other rights in land.[9]

[4] "Associated facilities" means, for the purpose of certification, those onsite and offsite facilities which directly support the construction and operation of the electrical power plant such as electrical transmission lines, substations, and fuel unloading facilities; pipelines necessary for transporting fuel for the operation of the facility or other fuel transportation facilities; water or wastewater transport pipelines; construction, maintenance, and access roads; and railway lines necessary for transport of construction equipment or fuel for the operation of the facility. Section 403.503(7), F.S.
[5] Section 403.50665(1), F.S.
[6] Section 403.50665(2)(a), F.S.
[7] Section 403.508, F.S.
[8] Section 403.508(1)(f), F.S. To do this, the Siting Board must determine after notice and hearing and upon consideration of the recommended order on land use and zoning issues that it is in the public interest to authorize the use of the land for a site or associated facility.
[9] Section 380.04(3)(b) and (h), F.S.

Administrative Orders

Several administrative orders on this issue have held that siting of the transmission line is exempt from "development" and thus exempt from application of the land-use-consistency provisions. This interpretation turns on the meaning of the term "established."

One illustration of this interpretation is the following quote:

> First, Gulf Power will create a new right-of-way for the powerline. A right-of-way is a 'right of access,' an easement, or an "other right" in land. Second, Gulf Power will construct the powerline on the newly established right-of-way. Gulf Power is a utility engaged in the distribution or transmission of electricity. The construction of the powerline in the established right-of-way falls within s. 380.04(3)(b). See, *Bd. Of County Commrs. of Monroe County v. Dept. of Community Affairs*, 560 So.2d 240 (Fla. 3d DCA 1990); *Friends of Mantanzas, Inc. v. Dept. of Environmental Protection*, 729 So.2d 437 (Fla. 5th DCA 1999), and *1000 Friends of Florida, Inc. v. St. Johns County*, 765 So.2d 216 (Fla. 5th DCA 2000), interpreting the similar exemption for road improvements within the right-of-way in s. 380.04(3)(a), *Fla. Stat.* (2004).
>
> Therefore, the proposed powerline is not 'development' as defined in section 380.04, *Fla. Stat.* (2003).[10]

In another case, the exemption was applied as follows:

> After certification of this project, TECO will acquire the necessary property interests in a ROW within the certified corridor for placement of the line. Construction of transmission lines on such established ROWs is excepted from the definition of 'development' in Section 163.3164(5), Florida Statutes. Accordingly, the provisions of the local comprehensive plans related to 'development' that have been adopted by the local governments crossed by the line are not applicable to this project.[11]

Miami-Dade County vs. In Re: Florida Power & Light

In this case, Florida Power & Light Company (FPL) filed an application under the PPSA to obtain a permit to construct and operate two new nuclear generating units and associated facilities at Turkey Point, including new transmission lines. They obtained a recommended order and a final order on certification, both approving FPL's West Preferred Corridor as a back-up western transmission corridor if adequate right-of-way could not be obtained in the primary corridor in a timely manner and at a reasonable cost. Neither order considered local regulations nor required FPL to underground its lines.

The final order was appealed and the court reversed and remanded the final order based on three errors, including holding that the order incorrectly applied the "development" exemption based on an erroneous interpretation of the exemption for:

[10] *In re Petition for Declaratory Statement by Hughes*, 2004 Fla. ENV LEXIS 166, 4 ER FALR 113.

[11] *In Re: Tampa Electric Company Willow Oak-Wheeler-Davis Transmission Line Siting Application*, 2008 Fla. ENV LEXIS 115, 2008 ER FALR 175, at 50 (DOAH May 13, 2008), adopted in toto 2008 E.R. F.A.L.R. 175 (Siting Bd. Aug. 1, 2008).

> Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, renewing, or constructing on established rights-of-way any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like.[12]

The court found the following errors in the Siting Board's application of the exemption law:

- In the siting process, the Siting Board certifies a corridor, not a right-of-way, and the exemption cannot be applied to the entire corridor.[13]
- The record reflects that the corridor is made up of parcels within and outside established rights-of-way, so the board has no way of knowing whether construction will take place in a right-of-way or an easement.[14]
- The exemption is for work conducted on "established rights-of-way." "And as the City of Miami contends, were this Court to accept FPL's argument on this issue, that an established right-of-way is not the same as an existing right-of-way, this would make the word 'established' meaningless."[15]

Analysis of Decisions

The court does not cite or quote previous administrative law. The court's interpretation is supported by the plain English meaning of the words in the statute: establish means to institute, to make firm, to bring into existence, to put on a firm basis, to gain full recognition or acceptance, or to put beyond doubt.[16] The past tense usage means the act has been accomplished, that the right-of-way is in existence at the time of the siting proceedings.

However, the decision appears to conflict with the legislative intent for the PPSA and TLSA. The stated intent for the siting acts is to establish a centralized, efficient procedure for approving a single license for power plant and transmission line sites, through application of both the state and local standards and recommendations of all involved agencies, while balancing the need for additional electricity against the need to minimize adverse effects on citizens and the environment, without undue conflict with the goals established by the applicable local comprehensive plan.[17]

The local land use laws classify property uses into multiple types of residential, commercial, and industrial property, with different permitted uses for each type. Each municipality and county is a different patchwork of these types of property, but application of the land use laws of each would likely restrict a transmission line to industrial use property. A transmission line cannot be constructed across multiple local governments using only the unconnected industrial property within each; as such, if the statutes were interpreted and implemented as the court has held, it would be difficult for a transmission line to be sited.

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[12] *Miami-Dade County*, supra note 1, at 11.
[13] *Miami-Dade County*, supra note 1, at 12.
[14] *Miami-Dade County*, supra note 1, at 12.
[15] *Miami-Dade County*, supra note 1, at 13-14.
[16] *See*, e.g., https://www.merriam-webster.com/dictionary/establish and https://ahdictionary.com/word/search.html?q=establish
[17] Sections 403.502 and 403.521, F.S., respectively.

The previous administrative orders, on the other hand, appear to achieve the statutory intent, but appear to do so by a different interpretation of the word "established" within the context of "development."

It appears that the s. 380.04, F.S., standard for "development," incorporated into the PPSA and TLSA by cross reference, is ambiguous in those contexts. The apparent intent of the bill is to clarify this ambiguity.

Authority of the Siting Board to Order Undergrounding of Transmission Lines

Statutes

The PPSA and TLSA authorize the Siting Board to include conditions in the certification.[18] Both also contain a limitation that the act does not affect in any way the ratemaking powers of the PSC under ch. 366, F.S.

Miami-Dade County vs. In Re: Florida Power & Light

In the *Miami-Dade* decision, the court also reversed and remanded based on a finding that the Siting Board erroneously thought it did not have the power to require FPL to install the lines underground at FPL's expense.

The court made the following finding:

> The general grant of power in the PPSA to "impose conditions" upon certification, other than those listed in the PPSA, gave the Siting Board the power to impose the condition of requiring that the power lines be installed underground, at FPL's expense. See s. 403.511(1), Fla. Stat.; s. 403.511(2)(b)(2). Undergrounding of the transmission lines is a condition upon certification encompassed by the Siting Board's ability to impose "site specific criteria, standards, or limitations" on FPL's project. As such, the Siting Board had the power to require it, contrary to the Siting Board's conclusion that it had no such power. Accordingly, reversal is required on this point.[19]

FPL had argued that the Siting Board did not have jurisdiction to order undergrounding based on a previous case on an issue unrelated to the siting act. The court distinguished that case on the basis that it contained nothing regarding whether undergrounding could be required as a condition of certification in a siting case.

> The Seminole holding was made in the context of rate-making with regard to the power vested in the Public Service Commission and not in the context of any of the Siting Board's powers. The Siting Board's power in no way infringes on the PSC's authority with regard to rate-making, and there is no conflict with the PSC's role. The Seminole case is simply inapplicable to the case before us.[20]

[18] Sections 403.511 and 403.531, F.S., respectively.
[19] *Miami-Dade County*, supra note 1, at 14-15.
[20] *Miami-Dade County*, supra note 1, at 18.

Analysis

Again, the court appears to have based its decision solely on interpretation of the siting statutes. Interpretation and implementation is more complex when ch. 366, F.S., and the facts of economic regulation and undergrounding of power lines are considered as well.

Undergrounding of transmission lines is more expensive than placing them overhead on poles. The actual amount of the cost difference depends on the actual circumstances of the transmission line site. For the Turkey Point line, the estimate was that undergrounding would cost nine times more; $13.3-$18.5 million per mile compared to $1.5-$2.5 million. An estimated average is that the costs are around ten times more to underground a transmission line.[21]

Additionally, when an agency with regulatory authority over a regulated public utility orders that public utility to incur costs, the PSC *must* allow the utility to recover those costs. This affects the ratemaking power of the PSC under ch. 366, F.S., in at least two significant ways:

- It denies the PSC its oversight and ratemaking function of making the initial determination of whether the higher costs of undergrounding the transmission line are prudent and reasonable under the circumstances. This determination is an essential element of determining what utility costs are recoverable, which, in turn, is the first step in ratemaking.
- It denies the PSC the ability to make a determination of how undergrounding would affect grid reliability. Grid reliability is a part of ratemaking through the underlying regulatory compact, which includes customer service requirements.

III. Effect of Proposed Changes:

The bill amends paragraphs 380.04(b) and (h), F.S., which contain the exemptions from "development" discussed above. The bill extends the existing exemption for work done on established rights-of-way to established corridors and to rights-of way and corridors yet to be established. It also provides that the exemption for the creation of specified types of property rights applies to creation of distribution and transmission corridors.

The bill makes the same changes to s. 163.3221, F.S., which provides definitions for use in the Florida Local Government Development Agreement Act, which provides for agreements between local governments and developers to improve the growth management and public planning processes.

The bill also amends ss. 403.511 and 403.531, F.S., which relate to the effect of certification under the PPSA and the TLSA, respectively. First, the bill specifies that the standard for granting variances in the certification is to be the standards set forth in s. 403.201, F.S. Section 403.201, F.S., authorizes variances in the following conditions:

- There is no practicable means known or available for the adequate control of the pollution involved.
- Compliance with the particular requirement or requirements from which a variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time. A variance granted for this reason shall prescribe a timetable for the taking of the measures required.

[21] Email from David Childs; Hopping Green & Sams, on March 10, 2017.

- To relieve or prevent hardship of a kind other than those provided for above. Variances and renewals thereof granted under authority of this paragraph shall each be limited to a period of 24 months, except that variances granted pursuant to part II may extend for the life of the permit or certification.

Second, the bill provides that the PPSA and TLSA cannot affect in any way the PSC's exclusive jurisdiction to require transmission lines to be located underground.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will clarify the application of local land use laws to transmission line corridors in siting cases under the PPSA and TLSA. This will provide certainty to both the utilities and the local governments, and will reduce expenses of siting and legal proceedings.

The express prohibition against the Siting Board ordering undergrounding of transmission lines will save utility ratepayers additional costs. As the PSC is a party to PPSA proceedings and may be a party to TLSA proceedings, it is possible that some coordination of siting proceedings and PSC ratemaking could be accomplished to incorporate undergrounding as a condition of certification while still maintaining PSC ratemaking authority.

C. Government Sector Impact:

The bill will clarify the application of local land use laws to transmission line corridors in siting cases under the PPSA and TLSA. This will provide certainty to both the utilities and the local governments, and will reduce expenses of siting and legal proceedings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 163.3221, 380.04, 403.511, and 403.531.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Lee

20-00438-18 2018494__

A bill to be entitled

An act relating to linear facilities; amending s. 163.3221, F.S.; revising the definition of the term "development" to exclude work by certain utility providers on utility infrastructure on certain rights-of-way or corridors; revising the definition to exclude the creation or termination of distribution and transmission corridors; amending s. 380.04, F.S.; revising the definition of the term "development" to exclude work by certain utility providers on utility infrastructure on certain rights-of-way or corridors; revising the definition to exclude the creation or termination of distribution and transmission corridors; amending s. 403.511, F.S.; requiring the consideration of a certain variance standard when including conditions for the certification of an electrical power plant; clarifying that the Public Service Commission has exclusive jurisdiction to require underground transmission lines; amending s. 403.531, F.S.; requiring the consideration of a certain variance standard when including conditions for the certification of a proposed transmission line corridor; clarifying that the Public Service Commission has exclusive jurisdiction to require underground transmission lines; providing an effective date.

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

20-00438-18 2018494__

Section 1. Paragraph (b) of subsection (4) of section 163.3221, Florida Statutes, is amended to read:

163.3221 Florida Local Government Development Agreement Act; definitions.—As used in ss. 163.3220-163.3243:

(4) "Development" means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels.

(b) The following operations or uses shall not be taken for the purpose of this act to involve "development":

1. Work by a highway or road agency or railroad company for the maintenance or improvement of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way.

2. Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, or renewing on established rights-of-way or corridors, or constructing on established or to be established rights-of-way or corridors, any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like.

3. Work for the maintenance, renewal, improvement, or alteration of any structure, if the work affects only the interior or the color of the structure or the decoration of the exterior of the structure.

4. The use of any structure or land devoted to dwelling uses for any purpose customarily incidental to enjoyment of the dwelling.

5. The use of any land for the purpose of growing plants,

crops, trees, and other agricultural or forestry products; raising livestock; or for other agricultural purposes.

6. A change in use of land or structure from a use within a class specified in an ordinance or rule to another use in the same class.

7. A change in the ownership or form of ownership of any parcel or structure.

8. The creation or termination of rights of access, riparian rights, easements, distribution and transmission corridors, covenants concerning development of land, or other rights in land.

Section 2. Paragraphs (b) and (h) of subsection (3) of section 380.04, Florida Statutes, are amended to read:

380.04 Definition of development.—

(3) The following operations or uses shall not be taken for the purpose of this chapter to involve "development" as defined in this section:

(b) Work by any utility and other persons engaged in the distribution or transmission of gas, electricity, or water, for the purpose of inspecting, repairing, or renewing on established rights-of-way or corridors, or constructing on established or to be established rights-of-way or corridors, any sewers, mains, pipes, cables, utility tunnels, power lines, towers, poles, tracks, or the like. This provision conveys no property interest and does not eliminate any applicable notice requirements to affected land owners.

(h) The creation or termination of rights of access, riparian rights, easements, distribution and transmission corridors, covenants concerning development of land, or other

rights in land.

Section 3. Paragraph (b) of subsection (2) and subsection (4) of section 403.511, Florida Statutes, are amended to read:

403.511 Effect of certification.—

(2)

(b)1. Except as provided in subsection (4), and in consideration of the standard for granting variances pursuant to s. 403.201, the certification may include conditions which constitute variances, exemptions, or exceptions from nonprocedural requirements of the department or any agency which were expressly considered during the proceeding, including, but not limited to, any site specific criteria, standards, or limitations under local land use and zoning approvals which affect the proposed electrical power plant or its site, unless waived by the agency and which otherwise would be applicable to the construction and operation of the proposed electrical power plant.

2. No variance, exemption, exception, or other relief shall be granted from a state statute or rule for the protection of endangered or threatened species, aquatic preserves, Outstanding National Resource Waters, or Outstanding Florida Waters or for the disposal of hazardous waste, except to the extent authorized by the applicable statute or rule or except upon a finding in the certification order that the public interests set forth in s. 403.509(3) in certifying the electrical power plant at the site proposed by the applicant overrides the public interest protected by the statute or rule from which relief is sought.

(4) This act shall not affect in any way the Public Service Commission's ratemaking powers or its exclusive jurisdiction to

require transmission lines to be located underground ~~of the Public Service Commission~~ under chapter 366; nor shall this act in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with applicable building construction codes.

Section 4. Paragraph (b) of subsection (2) and subsection (4) of section 403.531, Florida Statutes, are amended to read:

403.531 Effect of certification.—

(2)

(b) In consideration of the standard for granting variances pursuant to s. 403.201, the certification may include conditions that constitute variances and exemptions from nonprocedural standards or rules of the department or any other agency which were expressly considered during the certification review unless waived by the agency as provided in s. 403.526 and which otherwise would be applicable to the location of the proposed transmission line corridor or the construction, operation, and maintenance of the transmission lines.

(4) This act does not in any way affect the commission's ratemaking powers or its exclusive jurisdiction to require transmission lines to be located underground ~~of the commission~~ under chapter 366. This act does not in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with the National Electrical Safety Code, as prescribed by the commission.

Section 5. This act shall take effect upon becoming a law.

The Florida Senate

COMMITTEE VOTE RECORD

COMMITTEE: Community Affairs
ITEM: SB 494
FINAL ACTION:
MEETING DATE: Tuesday, December 5, 2017
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Office Building

FINAL VOTE			12/05/2017 1 Temporarily Postponed					
Yea	**Nay**	**SENATORS**	**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**
		Brandes						
		Campbell						
		Perry						
		Rodriguez						
		Simmons						
		Bean, VICE CHAIR						
		Lee, CHAIR						
		TOTALS						
Yea	**Nay**		**Yea**	**Nay**	**Yea**	**Nay**	**Yea**	**Nay**

FINAL ACTION:

CODES: FAV=Favorable, UNF=Unfavorable, -R=Reconsidered, RCS=Replaced by Committee Substitute, RE=Replaced by Engrossed Amendment, RS=Replaced by Substitute Amendment, TP=Temporarily Postponed, VA=Vote After Roll Call, VC=Vote Change After Roll Call, WD=Withdrawn, OO=Out of Order, AV=Abstain from Voting

REPORTING INSTRUCTION: Publish
12052017.1249

CourtSmart Tag Report

Room: SB 301 **Case No.:** **Type:**
Caption: Community Affairs Committee **Judge:**

Started: 12/5/2017 10:05:41 AM
Ends: 12/5/2017 11:24:15 AM Length: 01:18:35

10:05:41 AM Call to Order
10:05:44 AM
10:05:48 AM Roll Call
10:05:59 AM Quorum is Present
10:06:33 AM Tab 9, Hurricane Irma Presentation, is TP'd
10:06:52 AM Senator Bean Acting Chair
10:07:17 AM Tab 1 SB266 by Passidomo
10:07:29 AM Senator Passidomo presents SB 266
10:08:24 AM Senator Rodriguez Question
10:08:52 AM Senator Passidomo Answers
10:09:18 AM Senator Passidomo Closes on SB 266
10:09:42 AM SB 266 is reported favorably
10:09:51 AM Tab 5 SJR 452
10:10:01 AM Senator Brandes presents SJR 452
10:11:17 AM Senator Brandes waives close
10:11:38 AM SJR 452 passes favorably
10:12:03 AM SB 454 Amendment Barcode 371170
10:12:17 AM Amendment Barcode 371170 Adopted to SB 454
10:12:48 AM SB 454 passes favorably
10:13:10 AM Tab 7 SB 658 Presented by Senator Brandes
10:14:36 AM Senator Bean Question
10:14:46 AM Senator Brandes Responds
10:15:15 AM Senator Simmons Question
10:17:23 AM Senator Brandes Responds
10:18:46 AM Senator Simmons Question
10:18:51 AM Senator Brandes Responds
10:20:04 AM Senator Simmons Question
10:21:28 AM Senator Brandes Responds
10:21:34 AM Senator Rodriguez Question
10:22:25 AM Senator Brandes Answers
10:23:46 AM Chris Carmody Representing Central Florida Hotel and Lodging Association Speaks Against
10:25:09 AM Mat Forrest Respresenting Florida Association of Destination Marketing Organizations Waives Against
10:25:26 AM Skylar Zander Representing Americans for Prosperity Waives Against
10:25:41 AM Richard Turner Representing the Florida Restaurant and Lodging Association Speaks Against
10:29:01 AM Senator Brandes Question to Richard Turner
10:29:18 AM Turner Responds
10:29:34 AM Brandes and Turner back and forth
10:30:54 AM Senator Rodriguez in Debate
10:31:24 AM Senator Simmons in Debate
10:33:44 AM Senator Brandes Closes on SB 658
10:34:34 AM SB 658 is reported favorably
10:34:40 AM Tab 3 SB 688
10:34:55 AM Senator Garcia Presents SB 688
10:36:12 AM Senator Rodriguez Question
10:37:21 AM Senator Garcia Closes on SB 688
10:38:09 AM SB 688 passes favorably
10:38:48 AM Tab 2, SB 324, Presented by Senator Young
10:39:03 AM Amendment Barcode 539088
10:39:26 AM Senator Young Presents Amendment Barcode 539088
10:41:38 AM Senator Bean Question
10:41:45 AM Senator Young Responds
10:43:36 AM Senator Young Presents Amendment Barcode 652158

10:44:00 AM Amendment Barcode Adopted 652158
10:44:14 AM Amendment barcode 146388 late filed amendment
10:44:23 AM Senator Young Explains Late Filed Amendment Barcode 146388
10:45:14 AM Amendment Barcode 146388 Adopted
10:45:40 AM Amendment Strike All Adopted
10:45:49 AM Rebecca O'Hara representing Fla. League of Cities Speaking Against
10:49:41 AM Question from Senator Simmons for Rebecca O'Hara
10:50:20 AM Rebecca O'Hara Answers
10:50:39 AM Kari Hebrank Representing Florida Home Builders Association Speaking in Support
10:52:17 AM Gary Hunter Representing Florida Chamber waives in support
10:52:35 AM Eileen Fernandez Representing Orange County Public Schools Speaking Against
10:54:01 AM Senator Young Closes on SB 324
10:55:13 AM SB 324 passes favorably
10:55:44 AM Recess
10:58:04 AM Called Back to Order
10:58:13 AM Tab 4 SB 612 with Strike All Amendment 251524 Presented by Senator Steube
10:59:40 AM Senator Bean Question
11:00:19 AM Senator Steube Responds
11:01:56 AM Amedment Barcode 251524 Adopted
11:02:08 AM Senator Brandes Question
11:03:08 AM Senator Steube Responds
11:03:57 AM Senator Brandes Question
11:04:19 AM Senator Brandes and Senator Steube back and forth
11:04:31 AM Senator Campbell Question
11:05:20 AM Senator Steube Answers
11:06:00 AM Courtney Barnard Representing the Florida Apartment Association Providing Information
11:09:40 AM Senator Brandes Question
11:09:54 AM Courtney Barnard Responds
11:11:01 AM Senator Brandes Question
11:11:18 AM Barnard and Senator Brandes back and forth
11:15:51 AM Senator Simmons Question
11:16:14 AM Courtney Barnard Responds
11:17:24 AM Senator Simmons Further Questions
11:18:58 AM Courtney Barnard Responds
11:19:54 AM Senator Simmons Question
11:20:14 AM Courtney Barnard Responds
11:20:34 AM Senator Brandes in Debate
11:22:23 AM Senator Bean in Debate
11:22:43 AM Senator Steube closes on SB 612
11:23:47 AM SB 612 Passes Favorably
11:24:06 AM Meeting Adjourned