

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 284

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Brodeur

SUBJECT: Energy

DATE: March 13, 2023 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------------|----------------|-----------|--------------------|
| 1. | <u>Limones-Borja</u> | <u>McVaney</u> | <u>GO</u> | <u>Fav/CS</u> |
| 2. | <u>Gross</u> | <u>Babin</u> | <u>FT</u> | <u>Pre-meeting</u> |
| 3. | _____ | _____ | <u>FP</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 284 exempts from sales tax the components and labor used in an electric vehicle conversion. The bill defines “electric vehicle conversion” to mean replacing the gas or diesel powertrain technology of a motor vehicle with 100 percent battery electric powertrain technology.

The bill revises the vehicle procurement requirements for the state purchasing plan. Specifically, the bill requires vehicles of a given use class to be selected for procurement based on the lowest lifetime ownership costs, including costs for fuel, operations, and maintenance rather than on the greatest fuel efficiency available, when fuel economy data is available. The current exemption to this requirement is continued for emergency response vehicles.

The bill removes requirements that state agencies use ethanol and biodiesel fuel when available, and that certain entities procure biofuels for fleets when possible.

The bill requires the Department of Management Services to make recommendations before July 1, 2024, regarding the procurement of electric vehicles and natural gas fuel vehicles along with the best practices for integrating these vehicles into existing fleets.

The bill expands the definition of “single-trade inspection” for purposes of building code inspection services to include inspections of the installation of electric vehicle charging stations and solar energy and energy storage installations or alterations. This allows the property owner

to contract with a private provider for the inspection services rather than rely solely on the local government code inspectors.

The Revenue Estimating Conference determined that the effect of exempting electric vehicle conversions from the sales and use tax results in a \$0.5 million reduction to General Revenue Fund receipts and a \$0.1 million reduction to local government revenues beginning in Fiscal Year 2023-2024.

The Department of Management Services will incur costs modifying the configuration of the Fleet Management Information System. Local governments may have reduced workloads relating to code inspections, but will experience a similar decline in revenues associated with those inspections conducted by private providers.

The bill takes effect July 1, 2023.

II. Present Situation:

Florida Sales and Use Tax

Florida levies a 6 percent sales and use tax (sales tax) on the sale or rental of most tangible personal property, admissions,¹ transient rentals,² and a limited number of services,³ and a 5.5 percent sales and use tax on the rental of commercial real estate.⁴ Chapter 212, F.S., authorizes the levy and collection of Florida's sales tax, and provides exemptions and credits applicable to certain items or uses under specified circumstances. Florida requires a dealer to add the tax to the sales price of the taxable good or service and collect it from the purchaser at the time of sale.⁵

In addition to the state tax, counties may levy local discretionary surtax, comprised of separate surtaxes.⁶ A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202."⁷ Discretionary sales surtax rates currently levied vary by county in a range from 0.0 to 1.5 percent.⁸

Although Florida's sales tax is predominately limited to the taxation of tangible personal property, services that are a part of a sale must be included in the sales price charged to a consumer.⁹ Furthermore, the sales price must include the consideration for a transaction which requires both labor and material to alter, remodel, maintain, adjust, or repair tangible personal

¹ Section 212.04, F.S.

² Section 212.03, F.S.

³ Section 212.05(1)(i), F.S.

⁴ Section 212.031, F.S.

⁵ See ss. 212.07(2) and 212.06(3)(a), F.S.

⁶ Section 212.055, F.S.

⁷ Section 212.054, F.S.

⁸ Office of Economic and Demographic Research (EDR), The Florida Legislature, *Florida Tax Handbook*, 2022 Local Discretionary Sales Surtax Rates in Florida's Counties, 231-232 (2022), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited Mar. 07, 2023).

⁹ Section 212.02(16), F.S. See also 12A-1.006, F.A.C.

property.¹⁰ For example, the total charge made to a customer for a repair or modification of an automobile is subject to sales tax.

Procurement of Commodities or Contractual Services

Chapter 287, F.S., specifies the procedures for the state procurement of commodities or contractual services. The Department of Management Services (DMS) oversees state purchasing activity, including professional and contractual services, as well as commodities needed to support agency activities.¹¹ The DMS establishes purchasing agreements and procures state term contracts for commodities and contractual services, and establishes uniform procurement policies, rules, and procedures.¹² The DMS negotiates contracts and purchasing agreements that are intended to leverage the state's buying power. The DMS is directed to consider the life-cycle cost of commodities purchased by the state.¹³ The DMS is authorized to establish energy-efficiency standards for major energy-consuming products.¹⁴

State agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These methods include the following:

- Single source contracts,¹⁵ used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid,¹⁶ used when an agency determines that standard services or goods will meet needs, wide competition is available and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals,¹⁷ used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate,¹⁸ used when negotiations are determined to be necessary to obtain the best value and involve a request for highly complex, customized, mission-critical services, by an agency dealing with a limited number of vendors.

For procurement of commodities or contractual services in excess of \$35,000, agencies must use a competitive solicitation process.¹⁹ However, specific contractual services and commodities are not subject to competitive solicitation requirements.²⁰

¹⁰ *Id.*

¹¹ Sections 287.032 and 287.042, F.S.

¹² *Id.*; see Rule 60A-1002, F.A.C.

¹³ Section 287.083(1), F.S.

¹⁴ Section 287.083(3), F.S.

¹⁵ Section 287.057(3)(c), F.S.

¹⁶ Section 287.057(1)(a), F.S.

¹⁷ Section 287.057(1)(b), F.S.

¹⁸ Section 287.057(1)(c), F.S.

¹⁹ Section 287.057(1), F.S.

²⁰ Section 287.057(3)(e), F.S.

Climate-friendly Public Business

Section 286.29, F.S., requires state agencies to:

- Consult with the “Florida Climate-Friendly Preferred Products List,”²¹ in procuring products from state term contracts.²² If the price is comparable, then they shall procure such products.²³
- Contract only with hotels or conference facilities for meetings and conferences as recognized by the Green Lodging Program.^{24,25}
- Ensure vehicles meet minimum maintenance schedules shown to reduce fuel consumption and report such compliance to the DMS.²⁶ When procuring new vehicles, to define the intended purpose for such vehicle which will then be chosen based on greatest fuel efficiency available for a given use class, when fuel economy data is available.²⁷
- Use ethanol and biodiesel blended fuels when available.²⁸
- Procure biofuels for fleet, to the greatest extent practicable, if the agency administers central fueling operations.²⁹

Florida Building Codes

The purpose and intent of the Florida Building Code (building code) is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code.³⁰ The Building Code consists of a single set of documents that apply to the design, construction, erection, alteration, modification, repair or demolition of public or private buildings, structures, or facilities in Florida. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.³¹

Contractors and property owners are permitted to hire licensed Building Code administrators, engineers, and architects, referred to as “private providers,” to review building plans, perform

²¹ The DMS keeps a Florida Climate-Friendly Preferred Products List at https://www.dms.myflorida.com/business_operations/state_purchasing/state_contracts_and_agreements/florida_climate_friendly_preferred_products_list, (last visited Mar. 07, 2023).

²² Section 286.29(1), F.S.

²³ *Id.*

²⁴ The Florida Department of Environmental Protection designates and recognizes lodging facilities that make a commitment to conserve and protect Florida’s natural resources through the Florida Green Lodging Program. To become designated, facilities must conduct a thorough property assessment and implement a specified number of environmental practices in five areas of sustainable operations: (1) communication and education with customers, employees, and the public; (2) waste reduction, reuse and recycling; (3) water conservation; (4) energy efficiency; and (5) indoor air quality. *See, Green Lodging*, <https://floridadep.gov/osi/green-lodging/content/about-florida-green-lodging-program> (Last visited Mar. 07, 2023).

²⁵ Section 286.29(2), F.S.

²⁶ Section 286.29(3), F.S., requires state agencies to report compliance to the DMS through the Equipment Management Information System database. The DMS is implementing a new Statewide Fleet Management Information System that can be used to manage cost information and reports to ensure the effective and efficient use, operation, maintenance, repair, and replacement of motor vehicles, watercraft, and aircraft. *See, Fleet Management Information System*, https://www.dms.myflorida.com/business_operations/fleet_management_and_federal_property_assistance/fleet_management/fleet_management_information_system (Last visited Mar. 07, 2023).

²⁷ *Id.*

²⁸ Section 286.29(5), F.S.

²⁹ *Id.*

³⁰ See Part IV, ch. 553, F.S.

³¹ Section 553.72(1), F.S.

building inspections, and prepare certificates of completion.³² A private provider and any duly authorized representative may only perform building code inspection services that are set forth in statute, including single-trade inspections. A “single-trade inspection” is defined as:

[a]ny inspection focused on a single construction trade, such as plumbing, mechanical, or electrical. The term includes, but is not limited to, inspections of door or window replacements; fences and block walls more than 6 feet high from the top of the wall to the bottom of the footing; stucco or plastering; reroofing with no structural alteration; HVAC replacements; ductwork or fan replacements; alteration or installation of wiring, lighting, and service panels; water heater changeouts; sink replacements; and repiping.³³

A private provider cannot provide building code inspection services to any building designed or constructed by the private provider or the private provider’s firm.³⁴ A fee owner or the fee owner’s contractor who uses a private provider to provide building code inspection services must notify the local building official in writing that a private provider has been contracted to perform the required inspections of construction, including single-trade inspections.³⁵ If the fee owner or the fee owner’s contractor makes any changes to the listed private providers or the services to be provided by such private providers the fee owner’s contractors must update the notice to reflect such changes.³⁶

III. Effect of Proposed Changes:

Section 1 amends s. 212.08, F.S., to exempt from sales tax the components and labor used in an electric vehicle conversion. The bill defines “electric vehicle conversion” to mean replacing the gas or diesel powertrain technology of a motor vehicle with 100 percent battery electric powertrain technology.

Section 2 amends s. 286.29, F.S., to require any governmental entity that purchases under the state purchasing plan to select vehicles based on the lowest lifetime ownership costs, including costs for fuel, operations, and maintenance, rather than based on the greatest fuel efficiency available when fuel economy data is available. The section deletes the current law requirement that state agencies use ethanol and biodiesel fuel when available. It also removes the requirement that state agencies that administer central fueling operations for state-owned vehicles procure biofuels for fleet needs to the greatest extent practicable. The current exemption to this requirement continues for emergency response vehicles.

Section 3 requires the DMS to make recommendations before July 1, 2024, to state agencies, including state colleges and universities, and local governments regarding the procurement of electric vehicles and natural gas fuel vehicles and the best practices for integrating those vehicles into existing fleets.

³² Section 553.791, F.S.

³³ *Id.*

³⁴ *Id.*

³⁵ Section 553.791(4), F.S.

³⁶ *Id.*

Section 4 amends s. 553.791, F.S., to expand the definition of “single-trade inspection” to include the inspection of an installation of electric vehicle charging stations and solar energy and energy storage installations or alterations.

Section 5 provides the bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of Art. VII, s. 18 of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,^{37,38} which is \$2.3 million or less for Fiscal Year 2023-2024.³⁹

The Revenue Estimating Conference determined the effect of exempting electric vehicle conversions from the sales and use tax would limit the ability local governments have to raise revenue through the local option sales tax by \$0.1 million. Therefore, the bill may not be a mandate subject to the requirements in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not create or increase a state tax or fee as specified in Article VII, s. 19 of the Florida Constitution.

³⁷ FLA. CONST. art. VII, s. 18(d).

³⁸ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited March 7, 2023).

³⁹ Based on the Demographic Estimating Conference’s estimated population adopted on July 18, 2022. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/archives/220718demographic.pdf> (last visited March 7, 2023).

E. Other Constitutional Issues:

None identified.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

The Revenue Estimating Conference determined the effect of exempting electric vehicle conversions from the sales and use tax results in a \$0.5 million reduction to General Revenue Fund receipts and \$0.1 million reduction to local government revenues beginning in Fiscal Year 2023-2024.

B. Private Sector Impact:

Section 4 of the bill, allowing the use of private providers to inspect the installation of electric vehicle charging stations and solar energy and energy storage installations or alterations, may increase efficiencies and lower costs for its owners. Additionally, persons qualified to be a private provider will be able to offer official inspection services, increasing business opportunities.

C. Government Sector Impact:

To implement section 3 of the bill, the DMS states that modifications, including a possible configuration in the Fleet Management Information System, will be necessary to capture information needed to make recommendations.⁴⁰

Section 4 of the bill, allowing the use of private providers to inspect the installation of electric vehicle charging stations and solar energy and energy storage installations or alterations, may reduce the workload of the local governments relating to inspections; however, each inspection performed by a private provider will reduce the revenue otherwise collected by the local governmental entity that would have conducted the inspection.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

The Department of Management Services has stated that the July 1, 2024, implementation date would be challenging due to the need to consult with outside experts on best practices for integrating electric vehicles into the existing fleet.⁴¹

⁴⁰ Department of Management Services, *2023 Agency Legislative Bill Analysis*, available at: <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=34198> (Last visited Mar. 07, 2023).

⁴¹ *Id.*

VIII. Statutes Affected:

This bill substantially amends sections 212.08, 286.29, and 553.791 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 Governmental Oversight and Accountability on February 20, 2023:

The committee substitute:

- Exempts from sales tax the components and labor used in an electric vehicle conversion.
- Defines “electric vehicle conversion” to mean replacing the gas or diesel powertrain technology of a motor vehicle with 100 percent battery electric powertrain technology.

- B. **Amendments:**

None.