

Tourism, Infrastructure & Energy Subcommittee

Tuesday, January 25, 2022
1:00 pm – 3:00 pm
Reed Hall (102 HOB)

Meeting Packet

Chris Sprowls
Speaker

Brad Drake
Chair

The Florida House of Representatives

Commerce Committee

Tourism, Infrastructure & Energy Subcommittee

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Meeting Agenda

Tuesday, January 25, 2022
1:00 PM – 3:00 PM
Reed Hall (102 HOB)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

HB 907 Florida Seaport Transportation and Economic Development Council by Payne

HB 1005 Advanced Air Mobility by Fischer

HB 1121 Pub. Rec./Crash Reports and Traffic Citations by Brannan

HB 1411 Floating Solar Facilities by Avila

HB 1469 Transportation Facility Designations by Grieco

Consideration of the following proposed committee substitute(s):

PCS for HB 101 -- Improvements to Real Property

V. Closing Remarks

VI. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, FL 32399-1300
(850) 717-4870

HB 907

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 907 Florida Seaport Transportation and Economic Development Council
SPONSOR(S): Payne
TIED BILLS: **IDEN./SIM. BILLS:** SB 1038

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee		Johnson	Keating
2) Infrastructure & Tourism Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Florida law designates 15 deepwater seaports: Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina. These seaports are designated by law to be represented on the Florida Seaport Transportation Economic Development (FSTED) Council, which allocates state funds to specified types of seaport projects.

The Putnam County Port District operates an inland river port, located along the St. Johns River in Putnam County. The county has plans to dredge the channel to the port in order to increase commerce.

The bill adds Putnam County as a member of the FSTED Council.

The bill provides that until July 1, 2024, Putnam County may apply for a grant through the FSTED Council to perform a feasibility study regarding the establishment of a port in Putnam County. The FSTED council must evaluate the grant application pursuant to specified requirements in law and if approved, the Department of Transportation must include the feasibility study in its Legislative Budget Request for FSTED funding. If the study determines that a port in Putnam County is not feasible, Putnam County's membership on the FSTED Council must terminate.

The bill reenacts various statutes that cross-reference the seaports making up the FSTED Council to incorporate Putnam County into those statutes.

The bill is not expected to have an impact on state or local revenues or expenditures.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida is home to 15 deepwater seaports: Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina,[1] which are independently governed and operated.[2]

The Department of Transportation's (DOT) Seaports Office works with the seaports to assist with planning and funding strategic seaport projects, as well as assisting with seaport-related issues. DOT's Seaports Office is responsible for statewide seaport system planning, coordinating with statewide freight planning, project management, and coordinating seaport infrastructure projects.[3]

Florida Seaport Transportation and Economic Development (FSTED) Program/FSTED Council

Created in 1990,[4] the Florida Seaport Transportation and Economic Development (FSTED) Program within DOT finances port transportation or port facilities projects that will improve the movement and intermodal transportation of cargo or passengers in commerce and trade and support the interests, purposes, and requirements of all 15 seaports.[5]

The FSTED Council is charged with carrying out the state's economic development mission through implementation of seaport capital improvement projects at the local level. The FSTED Council is created within DOT and consists of the port directors of the 15 deepwater seaports and representatives from DOT and the Department of Economic Opportunity (DEO).[6]

Under Florida law, a minimum of $25 million per year must be made available from the State Transportation Trust Fund for the FSTED Program. The FSTED Council must develop guidelines for project funding. Council staff, DOT, and DEO must work in cooperation to review projects and allocate funds in accordance with the schedule required for DOT to include these projects in its tentative work program.[7]

DOT must include FSTED funding in its annual legislative budget request, including funding for FSTED Council-approved projects which have been determined by DOT and DEO to be consistent with Florida law. DOT must include the approved FSTED projects during the ensuing fiscal year in its tentative work program. The total amount of funding to be allocated to the FSTED Program during the successive 4 fiscal years must also be included in DOT's tentative work program.[8]

FSTED Program funds must be used to fund approved projects on a 50-50 matching basis with the relevant deepwater seaport. However, program funds used to fund projects that involve the rehabilitation of wharves, docks, berths, bulkheads, or similar structures requires a 25-percent match of funds. Program funds also may be used by the FSTED Council for data and analysis that will assist Florida's seaports and international trade.[9]

Projects eligible for funding by grants under the FSTED Program are limited to the following port facilities or port transportation projects:

[1] S. 311.09(1), F.S.
[2] Department of Transportation (DOT), Agency Analysis of 2022 Senate Bill 1038 p.2. (Dec. 6, 2021)
[3] *Id.*
[4] Ch. 90-136, Laws of Fla.
[5] S. 311.07(1), F.S.
[6] S. 311.09(1), F.S. Florida Ports Council, *Florida Seaport Transportation and Economic Development Program*, https://flaports.org/about/florida-seaport-transportation-and-economic-development-program/ (last visited Dec. 15, 2021).
[7] S. 311.07(2), F.S. DOT's work program is developed pursuant to s. 339.135, F.S.
[8] S. 311.07(9), F.S.
[9] S. 311.07(3)(a), F.S.

- Transportation facilities within the jurisdiction of the port.
- The dredging or deepening of channels, turning basins, or harbors.
- The construction or rehabilitation of wharves, docks, structures, jetties, piers, storage facilities, cruise terminals, automated people mover systems, or any facilities necessary or useful in connection with any of the foregoing.
- The acquisition of vessel tracking systems, container cranes, or other mechanized equipment used in the movement of cargo or passengers in international commerce.
- The acquisition of land to be used for port purposes.
- The acquisition, improvement, enlargement, or extension of existing port facilities.
- Environmental protection projects which are necessary because of requirements imposed by a state agency as a condition of a permit or other form of state approval; which are necessary for environmental mitigation required as a condition of a state, federal, or local environmental permit; which are necessary for the acquisition of spoil disposal sites and improvements to existing and future spoil sites; or which result from the funding of eligible projects.
- Transportation facilities which are not otherwise part of DOTs adopted work program.
- Intermodal access projects.
- Construction or rehabilitation of port facilities, excluding any park or recreational facilities, in ports with operating revenues of $5 million or less, provided that such projects create economic development opportunities, capital improvements, and positive financial returns to such ports.
- Seaport master plan or strategic plan development or updates, including the purchase of data to support such plans.[10]

To be eligible for consideration by the FSTED Council, a project must be consistent with the port comprehensive master plan that is incorporated as part of the approved local government comprehensive plan.[11]

Putnam County Port District

Created in 1967 by special act,[12] the Putnam County Port District is a dependent special district consisting of all of Putnam County. Its board consists of the Putnam County Board of County Commissioners. The district operates an inland river port, located along the St. Johns River in Putnam County.

Putnam County proposes dredging a 5,000-foot branch channel on the St. Johns River from the current barge berth to the St. John's channel and adding a turning basin to enhance both navigability and safety. The current depth is 7 feet at low water. The proposed dredging will increase the depth to 12 feet at low water. This will allow the size and capacity vessels able to visit the port to increase substantially.[13]

Effect of the Bill

The bill adds Putnam County as a member the FSTED Council.

The bill provides that until July 1, 2024, Putnam County may apply for a grant through the FSTED Council to perform a feasibility study regarding the establishment of a port in Putnam County. The FSTED Council must evaluate the grant application pursuant to the statutory provisions that govern the council's review of other proposed port projects. If approved, DOT must include the feasibility study in its Legislative Budget Request for FSTED funding. If the study determines that a port in Putnam County is not feasible, Putnam County's membership on the FSTED Council must terminate.

The bill reenacts various statutes which cross-reference the seaports making up the FSTED Council to incorporate Putnam County into those statutes. These statutes include, but are not limited to, statutes

[10] S. 311.07(3)(a), F.S.
[11] S. 311.07(3)(c), F.S.
[12] Ch. 67-1961, Laws of Fla.
[13] Attachment to e-mail from SaraLynn Ard, Legislative Aide to Rep. Payne, FW: PowerPoint (Jan. 21, 2022).

relating to coastal management, seaport funding, seaport security, the confidentiality of certain records held by deepwater ports, exemptions from certain laws regarding stormwater management, and port conceptual permits.

The bill has an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1 Amends s. 311.09, F.S., relating to the Florida Seaport Transportation and Economic Development Council.

Section 2 Reenacts s. 163.3178, F.S., relating to coastal management.

Section 3 Reenacts s. 189.068, F.S., relating to special districts; authority for oversight; general oversight review process.

Section 4 Reenacts s. 311.07, F.S., relating to Florida seaport transportation and economic development funding.

Section 5 Reenacts s. 311.091, F.S., relating to entry into public-private infrastructure project agreements for port-related public infrastructure projects.

Section 6 Reenacts s. 311.10, F.S., relating to the Strategic Port Investment Initiative.

Section 7 Reenacts s. 311.101, F.S., relating to the Intermodal Logistics Center Infrastructure Support Program.

Section 8 Reenacts s. 311.12, F.S., relating to seaport security.

Section 9 Reenacts s. 311.121, .F.S., relating to qualifications, training, and certification of licensed security officers at Florida's seaports,

Section 10 Reenacts s. 311.14, F.S., relating to seaport planning.

Section 11 Reenacts s. 315.18, F.S., relating to the confidentiality of certain records held by deepwater ports.

Section 12 Reenacts s. 320.20, F.S., relating to the disposition of license tax moneys.

Section 13 Reenacts s. 334.27, F.S., relating to governmental transportation entities' property acquired for transportation purposes; limitation on soil and groundwater contamination liability.

Section 14 Reenacts s. 337.14, F.S., relating to application for qualification; certificate of qualification; restrictions; request for hearing.

Section 15 Reenacts s. 373.406, F.S., relating to exemptions regarding the management and storage of surface waters.

Section 16 Reenacts s. 373.4133, F.S., relating to port conceptual permits.

Section 17 Reenacts s. 373.4136, F.S., relating to the establishment and operation of mitigation banks.

Section 18 Reenacts s. 403.061, F.S., relating to department; powers and duties.

Section 19 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not identify who may perform the feasibility study or what the feasibility study must address (e.g. economic feasibility, technical feasibility). As drafted, the bill may allow Putnam County to conduct the study that would determine its own feasibility and ongoing membership on the FSTED Council. If this is not the intent of the bill, the bill could be clarified to address these matters.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to the Florida Seaport Transportation and Economic Development Council; amending s. 311.09, F.S.; revising the membership of the Florida Seaport Transportation and Economic Development Council to include a representative of Putnam County; authorizing Putnam County to apply for a grant for a port feasibility study through the Florida Seaport Transportation and Economic Development Council; providing for the evaluation of the application; requiring the Department of Transportation to include the study in its budget request under certain circumstances; terminating the membership of Putnam County on the council under certain circumstances; reenacting ss. 163.3178(2)(k), (5), and (6), 189.068(6), 311.07(1) and (3)(a) and (b), 311.091, 311.10(1) and (2), 311.101(2), 311.12(2)(a), (3), and (6)(a), 311.121(2) and (3)(a), 311.14(1), 315.18, 320.20(3) and (4), 334.27(1), 337.14(7), 373.406(12), 373.4133(2) and (10), 373.4136(6)(d), and 403.061(38) and (39), F.S., relating to coastal management, the oversight of deepwater ports, Florida seaport transportation and economic development funding, entry into public-private infrastructure project agreements for port-related public infrastructure projects, the

Strategic Port Investment Initiative within the department, the Intermodal Logistics Center Infrastructure Support Program, seaport security, licensed security officers at Florida seaports, seaport planning, the confidentiality of certain records held by deepwater ports, the disposition of license tax moneys, the definition of the term "governmental transportation entity," seaport contractor services, exemptions for overwater piers, docks, or similar structures in deepwater ports, port conceptual permits, the authorized use of mitigation banks, and the duties of the Department of Environmental Protection in providing environmental resource permits, respectively, to incorporate the amendment made to s. 311.09, F.S., in references thereto; providing an effective date.

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

Section 1. Subsection (1) of section 311.09, Florida Statutes, is amended, and subsection (13) is added to that section, to read:

311.09 Florida Seaport Transportation and Economic Development Council.—

(1) The Florida Seaport Transportation and Economic

Development Council is created within the Department of Transportation. The council consists of the following 18 ~~17~~ members: the port director, or the port director's designee, of each of the ports of Jacksonville, Port Canaveral, Port Citrus, Fort Pierce, Palm Beach, Port Everglades, Miami, Port Manatee, St. Petersburg, Putnam County, Tampa, Port St. Joe, Panama City, Pensacola, Key West, and Fernandina; the secretary of the Department of Transportation or his or her designee; and the secretary of the Department of Economic Opportunity or his or her designee.

(13) Until July 1, 2024, Putnam County may apply for a grant through the Florida Seaport Transportation and Economic Development Council to perform a feasibility study regarding the establishment of a port in Putnam County. The council shall evaluate the grant application pursuant to subsections (5)-(8) and, if approved, the Department of Transportation must include the feasibility study in its budget request pursuant to subsection (9). If the study determines that a port in Putnam County is not feasible, the membership of Putnam County on the council must terminate.

Section 2. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in references thereto, paragraph (k) of subsection (2) and subsections (5) and (6) of section 163.3178, Florida Statutes, are reenacted to read:

163.3178 Coastal management.—

(2) Each coastal management element required by s. 163.3177(6)(g) shall be based on studies, surveys, and data; be consistent with coastal resource plans prepared and adopted pursuant to general or special law; and contain:

(k) A component which includes the comprehensive master plan prepared by each deepwater port listed in s. 311.09(1), which addresses existing port facilities and any proposed expansions, and which adequately addresses the applicable requirements of paragraphs (a)-(k) for areas within the port and proposed expansion areas. Such component shall be submitted to the appropriate local government at least 6 months prior to the due date of the local plan and shall be integrated with, and shall meet all criteria specified in, the coastal management element. "The appropriate local government" means the municipality having the responsibility for the area in which the deepwater port lies, except that where no municipality has responsibility, where a municipality and a county each have responsibility, or where two or more municipalities each have responsibility for the area in which the deepwater port lies, "the appropriate local government" means the county which has responsibility for the area in which the deepwater port lies. Failure by a deepwater port which is not part of a local government to submit its component to the appropriate local government shall not result in a local government being subject

to sanctions pursuant to s. 163.3184. However, a deepwater port which is not part of a local government shall be subject to sanctions pursuant to s. 163.3184.

(5) The appropriate dispute resolution process provided under s. 186.509 must be used to reconcile inconsistencies between port master plans and local comprehensive plans. In recognition of the state's commitment to deepwater ports, the state comprehensive plan must include goals, objectives, and policies that establish a statewide strategy for enhancement of existing deepwater ports, ensuring that priority is given to water-dependent land uses. As an incentive for promoting plan consistency, port facilities as defined in s. 315.02(6) on lands owned or controlled by a deepwater port as defined in s. 311.09(1), as of the effective date of this act shall not be subject to development-of-regional-impact review provided the port either successfully completes an alternative comprehensive development agreement with a local government pursuant to ss. 163.3220-163.3243 or successfully enters into a development agreement with the state land planning agency and applicable local government pursuant to s. 380.032 or, where the port is a department of a local government, successfully enters into a development agreement with the state land planning agency pursuant to s. 380.032. Port facilities as defined in s. 315.02(6) on lands not owned or controlled by a deepwater port as defined in s. 311.09(1) as of the effective date of this act

shall not be subject to development-of-regional-impact review provided the port successfully enters into a development agreement with the state land planning agency and applicable local government pursuant to s. 380.032 or, where the port is a department of a local government, successfully enters into a development agreement with the state land planning agency pursuant to s. 380.032.

(6) Each port listed in s. 311.09(1) and each local government in the coastal area which has spoil disposal responsibilities shall provide for or identify disposal sites for dredged materials in the future land use and port elements of the local comprehensive plan as needed to assure proper long-term management of material dredged from navigation channels, sufficient long-range disposal capacity, environmental sensitivity and compatibility, and reasonable cost and transportation. The disposal site selection criteria shall be developed in consultation with navigation and inlet districts and other appropriate state and federal agencies and the public. For areas owned or controlled by ports listed in s. 311.09(1) and proposed port expansion areas, compliance with the provisions of this subsection shall be achieved through comprehensive master plans prepared by each port and integrated with the appropriate local plan pursuant to paragraph (2)(k).

Section 3. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in a

reference thereto, subsection (6) of section 189.068, Florida Statutes, is reenacted to read:

189.068 Special districts; authority for oversight; general oversight review process.—

(6) This section does not apply to a deepwater port listed in s. 311.09(1) which is in compliance with a port master plan adopted pursuant to s. 163.3178(2)(k), or to an airport authority operating in compliance with an airport master plan approved by the Federal Aviation Administration, or to any special district organized to operate health systems and facilities licensed under chapter 395, chapter 400, or chapter 429.

Section 4. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in references thereto, subsection (1) and paragraphs (a) and (b) of subsection (3) of section 311.07, Florida Statutes, are reenacted to read:

311.07 Florida seaport transportation and economic development funding.—

(1) There is created the Florida Seaport Transportation and Economic Development Program within the Department of Transportation to finance port transportation or port facilities projects that will improve the movement and intermodal transportation of cargo or passengers in commerce and trade and support the interests, purposes, and requirements of all ports

listed in s. 311.09.

(3)(a) Florida Seaport Transportation and Economic Development Program funds shall be used to fund approved projects on a 50-50 matching basis with any of the deepwater ports, as listed in s. 311.09, which is governed by a public body or any other deepwater port which is governed by a public body and which complies with the water quality provisions of s. 403.061, the comprehensive master plan requirements of s. 163.3178(2)(k), and the local financial management and reporting provisions of part III of chapter 218. However, program funds used to fund projects that involve the rehabilitation of wharves, docks, berths, bulkheads, or similar structures shall require a 25-percent match of funds. Program funds also may be used by the Seaport Transportation and Economic Development Council for data and analysis that will assist Florida's seaports and international trade.

(b) Projects eligible for funding by grants under the program are limited to the following port facilities or port transportation projects:

1. Transportation facilities within the jurisdiction of the port.

2. The dredging or deepening of channels, turning basins, or harbors.

3. The construction or rehabilitation of wharves, docks, structures, jetties, piers, storage facilities, cruise

terminals, automated people mover systems, or any facilities necessary or useful in connection with any of the foregoing.

4. The acquisition of vessel tracking systems, container cranes, or other mechanized equipment used in the movement of cargo or passengers in international commerce.

5. The acquisition of land to be used for port purposes.

6. The acquisition, improvement, enlargement, or extension of existing port facilities.

7. Environmental protection projects which are necessary because of requirements imposed by a state agency as a condition of a permit or other form of state approval; which are necessary for environmental mitigation required as a condition of a state, federal, or local environmental permit; which are necessary for the acquisition of spoil disposal sites and improvements to existing and future spoil sites; or which result from the funding of eligible projects listed in this paragraph.

8. Transportation facilities as defined in s. 334.03(30) which are not otherwise part of the Department of Transportation's adopted work program.

9. Intermodal access projects.

10. Construction or rehabilitation of port facilities as defined in s. 315.02, excluding any park or recreational facilities, in ports listed in s. 311.09(1) with operating revenues of $5 million or less, provided that such projects create economic development opportunities, capital improvements,

and positive financial returns to such ports.

11. Seaport master plan or strategic plan development or updates, including the purchase of data to support such plans.

Section 5. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in a reference thereto, section 311.091, Florida Statutes, is reenacted to read:

311.091 Entry into public-private infrastructure project agreements for port-related public infrastructure projects.—A seaport listed in s. 311.09(1) may receive or solicit proposals from and enter into a public-private infrastructure project agreement with a private entity, or a consortium of private entities, to build, operate, manage, maintain, or finance a port-related public infrastructure project.

Section 6. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in references thereto, subsections (1) and (2) of section 311.10, Florida Statutes, are reenacted to read:

311.10 Strategic Port Investment Initiative.—

(1) There is created the Strategic Port Investment Initiative within the Department of Transportation. Beginning in fiscal year 2012-2013, a minimum of $35 million annually shall be made available from the State Transportation Trust Fund to fund the Strategic Port Investment Initiative. The Department of Transportation shall work with the deepwater ports listed in s.

311.09 to develop and maintain a priority list of strategic investment projects. Project selection shall be based on projects that meet the state's economic development goal of becoming a hub for trade, logistics, and export-oriented activities by:

(a) Providing important access and major on-port capacity improvements;

(b) Providing capital improvements to strategically position the state to maximize opportunities in international trade, logistics, or the cruise industry;

(c) Achieving state goals of an integrated intermodal transportation system; and

(d) Demonstrating the feasibility and availability of matching funds through local or private partners.

(2) Prior to making final project allocations, the Department of Transportation shall schedule a publicly noticed workshop with the Department of Economic Opportunity and the deepwater ports listed in s. 311.09 to review the proposed projects. After considering the comments received, the Department of Transportation shall finalize a prioritized list of potential projects.

Section 7. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in a reference thereto, subsection (2) of section 311.101, Florida Statutes, is reenacted to read:

311.101 Intermodal Logistics Center Infrastructure Support Program.—

(2) For the purposes of this section, the term "intermodal logistics center," including, but not limited to, an "inland port," means a facility or group of facilities serving as a point of intermodal transfer of freight in a specific area physically separated from a seaport where activities relating to transport, logistics, goods distribution, consolidation, or value-added activities are carried out and whose activities and services are designed to support or be supported by conveyance or shipping through one or more seaports listed in s. 311.09.

Section 8. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in references thereto, paragraph (a) of subsection (2), subsection (3), and paragraph (a) of subsection (6) of section 311.12, Florida Statutes, are reenacted to read:

311.12 Seaport security.—

(2) SECURITY PLAN.—

(a) Each seaport listed in s. 311.09 shall adopt and maintain a security plan specific to that seaport which provides for a secure seaport infrastructure that promotes the safety and security of state residents and visitors and the flow of legitimate trade and travel.

(3) SECURE AND RESTRICTED AREAS.—Each seaport listed in s. 311.09 must clearly designate in seaport security plans, and

clearly identify with appropriate signs and markers on the premises of a seaport, all secure and restricted areas as defined by 33 C.F.R. part 105.

(a)1. All seaport employees and other persons working at the seaport who have regular access to secure or restricted areas must comply with federal access control regulations as prescribed in this section.

2. All persons and objects in secure and restricted areas are subject to search by a sworn state-certified law enforcement officer, a Class D seaport security officer certified under Maritime Transportation Security Act of 2002 guidelines, or an employee of the seaport security force certified under the Maritime Transportation Security Act of 2002 guidelines.

3. Persons found in these areas without the proper permission are subject to the trespass provisions of ss. 810.08 and 810.09.

(b) The seaport must provide clear notice of the prohibition against possession of concealed weapons and other contraband material on the premises of the seaport. Any person in a restricted area who has in his or her possession a concealed weapon, or who operates or has possession or control of a vehicle in or upon which a concealed weapon is placed or stored, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. This paragraph does not apply to active-duty certified federal or state law enforcement

personnel or persons so designated by the seaport director in writing.

(c) During a period of high terrorist threat level, as designated by the United States Department of Homeland Security, the management or controlling authority of the port may temporarily designate any part of the seaport property as a secure or restricted area. The duration of such designation is limited to the period in which the high terrorist threat level is in effect or a port emergency exists.

(6) GRANT PROGRAM.—

(a) The Florida Seaport Transportation and Economic Development Council shall establish a Seaport Security Grant Program for the purpose of assisting in the implementation of security plans and security measures at the seaports listed in s. 311.09(1). Funds may be used for the purchase of equipment, infrastructure needs, cybersecurity programs, and other security measures identified in a seaport's approved federal security plan. Such grants may not exceed 75 percent of the total cost of the request and are subject to legislative appropriation.

Section 9. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in references thereto, subsection (2) and paragraph (a) of subsection (3) of section 311.121, Florida Statutes, are reenacted to read:

311.121 Qualifications, training, and certification of

licensed security officers at Florida seaports.—

(2) The authority or governing board of each seaport identified under s. 311.09 that is subject to the seaport security standards referenced in s. 311.12 shall require that a candidate for certification as a seaport security officer:

(a) Has received a Class D license as a security officer under chapter 493.

(b) Has successfully completed the certified training curriculum for a Class D license or has been determined by the Department of Agriculture and Consumer Services to have equivalent experience as established by rule of the department.

(c) Has completed the training or training equivalency and testing process established by this section for becoming a certified seaport security officer.

(3) The Seaport Security Officer Qualification, Training, and Standards Coordinating Council is created under the Department of Law Enforcement.

(a) The executive director of the Department of Law Enforcement shall appoint 11 members to the council, to include:

1. The seaport administrator of the Department of Law Enforcement.

2. The Commissioner of Education or his or her designee.

3. The director of the Division of Licensing of the Department of Agriculture and Consumer Services.

4. The administrator of the Florida Seaport Transportation

and Economic Development Council.

5. Two seaport security directors from seaports designated under s. 311.09.

6. One director of a state law enforcement academy.

7. One representative of a local law enforcement agency.

8. Two representatives of contract security services.

9. One representative of the Department of Highway Safety and Motor Vehicles.

Section 10. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in a reference thereto, subsection (1) of section 311.14, Florida Statutes, is reenacted to read:

311.14 Seaport planning.—

(1) The Department of Transportation shall develop, in coordination with the ports listed in s. 311.09(1) and other partners, a Statewide Seaport and Waterways System Plan. This plan shall be consistent with the goals of the Florida Transportation Plan developed pursuant to s. 339.155 and shall consider needs identified in individual port master plans and those from the seaport strategic plans required under this section. The plan will identify 5-year, 10-year, and 20-year needs for the seaport system and will include seaport, waterway, road, and rail projects that are needed to ensure the success of the transportation system as a whole in supporting state economic development goals.

Section 11. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in a reference thereto, section 315.18, Florida Statutes, is reenacted to read:

315.18 Confidentiality of certain records held by deepwater ports.—Any proposal or counterproposal exchanged between a deepwater port listed in s. 311.09(1) and any nongovernmental entity, relating to the sale, use, or lease of land or of port facilities, and any financial records submitted by any nongovernmental entity to such a deepwater port for the purpose of the sale, use, or lease of land or of port facilities, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. However, 30 days before any such proposal or counterproposal is considered for approval by the governing body of such a deepwater port, the proposal or counterproposal shall cease to be exempt. If no proposal or counterproposal is submitted to the governing body for approval, such a proposal or counterproposal shall cease to be exempt 90 days after the cessation of negotiations.

Section 12. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in references thereto, subsections (3) and (4) of section 320.20, Florida Statutes, are reenacted to read:

320.20 Disposition of license tax moneys.—The revenue derived from the registration of motor vehicles, including any

delinquent fees and excluding those revenues collected and distributed under the provisions of s. 320.081, must be distributed monthly, as collected, as follows:

(3) Notwithstanding any other provision of law except subsections (1) and (2), $15 million shall be deposited annually into the State Transportation Trust Fund solely for the purposes of funding the Florida Seaport Transportation and Economic Development Program as provided in chapter 311. Such revenues shall be distributed on a 50-50 matching basis to any port listed in s. 311.09(1) to be used for funding projects as described in s. 311.07(3)(b). Such revenues may be assigned, pledged, or set aside as a trust for the payment of principal or interest on bonds, tax anticipation certificates, or any other form of indebtedness issued by an individual port or appropriate local government having jurisdiction thereof, or collectively by interlocal agreement among any of the ports, or used to purchase credit support to permit such borrowings. However, such debt is not a general obligation of the state. The state covenants with holders of such revenue bonds or other instruments of indebtedness issued that it will not repeal or impair or amend in any manner that will materially and adversely affect the rights of such holders so long as bonds authorized by this section are outstanding. Any revenues that are not pledged to the repayment of bonds authorized by this section may be used for purposes authorized under the Florida Seaport Transportation

and Economic Development Program. This revenue source is in addition to any amounts provided and appropriated in accordance with s. 311.07. The Florida Seaport Transportation and Economic Development Council shall approve the distribution of funds to ports for projects that have been approved pursuant to s. 311.09(5)-(8). The council and the Department of Transportation may perform acts required to facilitate and implement this subsection. To better enable the ports to cooperate to their mutual advantage, the governing body of each port may exercise powers provided to municipalities or counties in s. 163.01(7)(d) subject to chapter 311 and special acts, if any, pertaining to a port. The use of funds provided pursuant to this subsection are limited to eligible projects listed in this subsection. Income derived from a project completed with the use of program funds, beyond operating costs and debt service, is restricted solely to further port capital improvements consistent with maritime purposes. Use of such income for nonmaritime purposes is prohibited. The revenues available under this subsection may not be pledged to the payment of any bonds other than the Florida Ports Financing Commission Series 1996 and Series 1999 Bonds currently outstanding; however, such revenues may be pledged to secure payment of refunding bonds to refinance the Florida Ports Financing Commission Series 1996 and Series 1999 Bonds. Refunding bonds secured by revenues available under this subsection may not be issued with a final maturity later than

the final maturity of the Florida Ports Financing Commission Series 1996 and Series 1999 Bonds or which provide for higher debt service in any year than is currently payable on such bonds. Any revenue bonds or other indebtedness issued after July 1, 2000, other than refunding bonds shall be issued by the Division of Bond Finance at the request of the Department of Transportation pursuant to the State Bond Act.

(4) Notwithstanding any other provision of law except subsections (1), (2), and (3), $10 million shall be deposited annually into the State Transportation Trust Fund solely for the purposes of funding the Florida Seaport Transportation and Economic Development Program as provided in chapter 311 and for funding seaport intermodal access projects of statewide significance as provided in s. 341.053. Such revenues shall be distributed to any port listed in s. 311.09(1), to be used for funding projects as follows:

(a) For any seaport intermodal access projects that are identified in the 1997-1998 Tentative Work Program of the Department of Transportation, up to the amounts needed to offset the funding requirements of this section.

(b) For seaport intermodal access projects as described in s. 341.053(6) which are identified in the 5-year Florida Seaport Mission Plan as provided in s. 311.09(3). Funding for such projects shall be on a matching basis as mutually determined by the Florida Seaport Transportation and Economic Development

Council and the Department of Transportation if a minimum of 25 percent of total project funds come from any port funds, local funds, private funds, or specifically earmarked federal funds.

(c) On a 50-50 matching basis for projects as described in s. 311.07(3)(b).

(d) For seaport intermodal access projects that involve the dredging or deepening of channels, turning basins, or harbors; or the rehabilitation of wharves, docks, or similar structures. Funding for such projects requires a 25 percent match of the funds received pursuant to this subsection. Matching funds must come from port funds, federal funds, local funds, or private funds.

Such revenues may be assigned, pledged, or set aside as a trust for the payment of principal or interest on bonds, tax anticipation certificates, or other form of indebtedness issued by an individual port or appropriate local government having jurisdiction thereof, or collectively by interlocal agreement among any of the ports, or used to purchase credit support to permit such borrowings. However, such debt is not a general obligation of the state. This state covenants with holders of such revenue bonds or other instruments of indebtedness issued hereunder that it will not repeal, impair, or amend this subsection in a manner that will materially and adversely affect the rights of holders while bonds authorized by this subsection

remain outstanding. Revenues that are not pledged to the repayment of bonds as authorized by this section may be used for purposes authorized under the Florida Seaport Transportation and Economic Development Program. This revenue source is in addition to any amounts provided for and appropriated in accordance with s. 311.07 and subsection (3). The Florida Seaport Transportation and Economic Development Council shall approve distribution of funds to ports for projects that have been approved pursuant to s. 311.09(5)-(8), or for seaport intermodal access projects identified in the 5-year Florida Seaport Mission Plan as provided in s. 311.09(3) and mutually agreed upon by the Florida Seaport Transportation and Economic Development Council and the Department of Transportation. All contracts for actual construction of projects authorized by this subsection must include a provision encouraging employment of participants in the welfare transition program. The goal for such employment is 25 percent of all new employees employed specifically for the project, unless the Department of Transportation and the Florida Seaport Transportation and Economic Development Council demonstrate that such a requirement would severely hamper the successful completion of the project. In such an instance, CareerSource Florida, Inc., shall establish an appropriate percentage of employees who are participants in the welfare transition program. The council and the Department of Transportation may perform such acts as are required to

facilitate and implement the provisions of this subsection. To better enable the ports to cooperate to their mutual advantage, the governing body of each port may exercise powers provided to municipalities or counties in s. 163.01(7)(d) subject to the provisions of chapter 311 and special acts, if any, pertaining to a port. The use of funds provided pursuant to this subsection is limited to eligible projects listed in this subsection. The revenues available under this subsection may not be pledged to the payment of any bonds other than the Florida Ports Financing Commission Series 1996 and Series 1999 Bonds currently outstanding; however, such revenues may be pledged to secure payment of refunding bonds to refinance the Florida Ports Financing Commission Series 1996 and Series 1999 Bonds. Refunding bonds secured by revenues available under this subsection may not be issued with a final maturity later than the final maturity of the Florida Ports Financing Commission Series 1996 and Series 1999 Bonds and may not provide for higher debt service in any year than is currently payable on such bonds. Any revenue bonds or other indebtedness issued after July 1, 2000, other than refunding bonds shall be issued by the Division of Bond Finance at the request of the Department of Transportation pursuant to the State Bond Act.

Section 13. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in a reference thereto, subsection (1) of section 334.27, Florida

Statutes, is reenacted to read:

334.27 Governmental transportation entities; property acquired for transportation purposes; limitation on soil or groundwater contamination liability.—

(1) For the purposes of this section, the term "governmental transportation entity" means the department; an authority created pursuant to chapter 343, chapter 348, or chapter 349; airports as defined in s. 332.004(14); a port enumerated in s. 311.09(1); a county; or a municipality.

Section 14. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in a reference thereto, subsection (7) of section 337.14, Florida Statutes, is reenacted to read:

337.14 Application for qualification; certificate of qualification; restrictions; request for hearing.—

(7) A "contractor" as defined in s. 337.165(1)(d) or his or her "affiliate" as defined in s. 337.165(1)(a) qualified with the department under this section may not also qualify under s. 287.055 or s. 337.105 to provide testing services, construction, engineering, and inspection services to the department. This limitation does not apply to any design-build prequalification under s. 337.11(7) and does not apply when the department otherwise determines by written order entered at least 30 days before advertisement that the limitation is not in the best interests of the public with respect to a particular contract

for testing services, construction, engineering, and inspection services. This subsection does not authorize a contractor to provide testing services, or provide construction, engineering, and inspection services, to the department in connection with a construction contract under which the contractor is performing any work. Notwithstanding any other provision of law to the contrary, for a project that is wholly or partially funded by the department and administered by a local governmental entity, except for a seaport listed in s. 311.09 or an airport as defined in s. 332.004, the entity performing design and construction engineering and inspection services may not be the same entity.

Section 15. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in a reference thereto, subsection (12) of section 373.406, Florida Statutes, is reenacted to read:

373.406 Exemptions.—The following exemptions shall apply:

(12) An overwater pier, dock, or a similar structure located in a deepwater port listed in s. 311.09 is not considered to be part of a stormwater management system for which this chapter or chapter 403 requires stormwater from impervious surfaces to be treated if:

(a) The port has a stormwater pollution prevention plan for industrial activities pursuant to the National Pollutant Discharge Elimination System Program; and

(b) The stormwater pollution prevention plan also provides similar pollution prevention measures for other activities that are not subject to the National Pollutant Discharge Elimination System Program and that occur on the port's overwater piers, docks, and similar structures.

Section 16. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in references thereto, subsections (2) and (10) of section 373.4133, Florida Statutes, are reenacted to read:

373.4133 Port conceptual permits.—

(2) Any port listed in s. 311.09(1) may apply to the department for a port conceptual permit, including any applicable authorization under chapter 253 to use sovereignty submerged lands under a joint coastal permit pursuant to s. 161.055 or an environmental resource permit issued pursuant to this part, for all or a portion of the area within the geographic boundaries of the port. A private entity with a controlling interest in property used for private industrial marine activities in the immediate vicinity of a port listed in s. 311.09(1) may also apply for a port conceptual permit under this section. A port conceptual permit may be issued for a period of up to 20 years and extended one time for an additional 10 years. A port conceptual permit constitutes the state's conceptual certification of compliance with state water quality standards for purposes of s. 401 of the Clean Water Act and the

state's conceptual determination that the activities contained in the port conceptual permit are consistent with the state coastal zone management program.

(10) In lieu of meeting the generally applicable stormwater design standards in rules adopted under this part, which create a presumption that stormwater discharged from the system will meet the applicable state water quality standards in the receiving waters, any port listed in s. 311.09(1) may propose alternative stormwater treatment and design criteria for the construction, operation, and maintenance of stormwater management systems serving overwater piers. The proposal shall include such structural components or best management practices to address the stormwater discharge from the pier, including consideration of activities conducted on the pier, as are necessary to provide reasonable assurance that stormwater discharged from the system will meet the applicable state water quality standards in the receiving waters.

Section 17. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in a reference thereto, paragraph (d) of subsection (6) of section 373.4136, Florida Statutes, is reenacted to read:

373.4136 Establishment and operation of mitigation banks.—

(6) MITIGATION SERVICE AREA.—The department or water management district shall establish a mitigation service area for each mitigation bank permit. The department or water

management district shall notify and consider comments received on the proposed mitigation service area from each local government within the proposed mitigation service area. Except as provided herein, mitigation credits may be withdrawn and used only to offset adverse impacts in the mitigation service area. The boundaries of the mitigation service area shall depend upon the geographic area where the mitigation bank could reasonably be expected to offset adverse impacts. Mitigation service areas may overlap, and mitigation service areas for two or more mitigation banks may be approved for a regional watershed.

(d) If the requirements in s. 373.414(1)(b) and (8) are met, the following projects or activities regulated under this part shall be eligible to use a mitigation bank, regardless of whether they are located within the mitigation service area:

1. Projects with adverse impacts partially located within the mitigation service area.

2. Linear projects, such as roadways, transmission lines, distribution lines, pipelines, railways, or seaports listed in s. 311.09(1).

3. Projects with total adverse impacts of less than 1 acre in size.

Section 18. For the purpose of incorporating the amendment made by this act to section 311.09, Florida Statutes, in references thereto, subsections (38) and (39) of section 403.061, Florida Statutes, are reenacted to read:

403.061 Department; powers and duties.—The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to:

(38) Provide a supplemental permitting process for the issuance of a joint coastal permit pursuant to s. 161.055 or environmental resource permit pursuant to part IV of chapter 373, to a port listed in s. 311.09(1), for maintenance dredging and the management of dredged materials from maintenance dredging of all navigation channels, port harbors, turning basins, and harbor berths. Such permit shall be issued for a period of 5 years and shall be annually extended for an additional year if the port is in compliance with all permit conditions at the time of extension. The department is authorized to adopt rules to implement this subsection.

(39) Provide a supplemental permitting process for the issuance of a conceptual joint coastal permit pursuant to s. 161.055 or environmental resource permit pursuant to part IV of chapter 373, to a port listed in s. 311.09(1), for dredging and the management of materials from dredging and for other related activities necessary for development, including the expansion of navigation channels, port harbors, turning basins, harbor berths, and associated facilities. Such permit shall be issued for a period of up to 15 years. The department is authorized to adopt rules to implement this subsection.

The department shall implement such programs in conjunction with its other powers and duties and shall place special emphasis on reducing and eliminating contamination that presents a threat to humans, animals or plants, or to the environment.

Section 19. This act shall take effect July 1, 2022.

TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

HB 907 by Rep. Payne
Florida Seaport Transportation and Economic Development Council

AMENDMENT SUMMARY
January 25, 2022

Amendment 1 by Rep. Payne (Line 63):

- Clarifies that the feasibility study for a port in Putnam County must examine the economic, technical, and operational viability of the port.
- Requires the Florida Seaport Transportation and Economic Development Council to review the feasibility study and make a determination regarding the viability of a port in Putnam County.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Committee/Subcommittee hearing bill: Tourism, Infrastructure & Energy Subcommittee

Representative Payne offered the following:

Amendment (with title amendment)

Remove lines 63-70 and insert:

Development Council to perform a study examining the economic, technical, and operational viability of the establishment of a port in Putnam County. The council shall evaluate the grant application pursuant to subsections (5)-(8) and, if approved, the Department of Transportation must include the feasibility study in its budget request pursuant to subsection (9). The council shall review the study upon completion to determine if a port in Putnam County is viable. If the council does not approve the study, the membership of Putnam County on the council must terminate.

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

Remove line 13 and insert:
circumstances; requiring the council to review the study and make a determination; terminating the membership of Putnam

HB 1005

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1005 Advanced Air Mobility
SPONSOR(S): Fischer
TIED BILLS: **IDEN./SIM. BILLS:** SB 728

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee		Neuffer	Keating
2) Infrastructure & Tourism Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The bill creates the Advanced Air Mobility Study Task Force (task force), adjunct to the Florida Department of Transportation (FDOT), to study the current state of development of the advanced air mobility industry and related laws and regulations. The bill instructs composition of the task force to include the FDOT secretary, or the secretary's designee, as the chair. The bill sets forth additional members to be on the task force, either by designation within the bill or by appointment of the Governor. Appointed members serve at the pleasure of the respective appointing authority.

The task force is directed to hold public hearings in locations throughout the state, or by electronic means, and receive public comments through a website or by email. Specifically, the task force must focus on:

- The deployment of VTOL aircraft, defined within the bill as aircraft capable of taking off and landing vertically without the use of a runway.
- Identification and discussion of federal requirements which must be met in order to deploy advanced air mobility in the state.
- Recommendations for revisions to current state law which impact the advanced air mobility industry, such as revisions to create jurisdictional consistency for industry operations across the state.
- Collaboration with local governments to evaluate potential integration of advanced air mobility into transportation plans.

By October 1, 2023, the task force must submit its report of the findings and recommendations to the Governor, President of the Senate, and Speaker of the House. Any additional material which the task force deems appropriate may also be included in the report. Upon submission of the report, the task force is abolished.

The bill does not impact state or local government revenues. The bill does not specify the source of funding or staffing for the task force.

The bill provides for its expiration on December 31, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Vertical takeoff and landing (VTOL) aircraft are able to take off and land without the use of a runway. Their ability to maneuver in smaller spaces offers new opportunities for mobility. Electric VTOL (eVTOL) aircraft, offer the additional qualities of reduced environmental impact and noise pollution. EVTOL aircraft are large enough to carry passengers without conventional helicopter flight controls.[1] The aircraft uses electric propulsion to lift and move itself through the air. The current direction of the industry suggests the intended use of eVTOL aircraft for urban air mobility, drone delivery, and various industrial applications.[2]

At present, VTOL aircraft, particularly eVTOL aircraft, remain in the developmental stage. The Federal Aviation Administration (FAA) has approved certain types of VTOL aircraft, such as helicopters, for commercial use. To date, no eVTOL aircraft have received final FAA approval. Agreements have been made between private entities and FAA for G1 certification, which is the first step towards final approval.[3] It is unclear when the first eVTOL will receive final FAA certification, with Joby Aviation claiming it still has "several years of aircraft testing ahead of [it]."[4]

One company, Lilium, has announced plans to build an eVTOL port in Lake Nona, Florida, with an estimated completion date of 2025.[5] The City of Orlando has declared this site as the country's first urban and regional air mobility network.[6] Lilium's goal is to connect more than 20 million Floridians within a 186-mile radius, serving several major cities, and create more than 100 jobs in the Orlando area with hundreds more following across the state. The company created a "vertiport" architecture for its newly proclaimed hub which it claims will offer functional and aesthetically unique characteristics that can easily be incorporated into existing transportation structures in both urban and suburban developments.[7]

Effect of the Bill

The bill creates the Advanced Air Mobility Study Task Force (task force), adjunct to the Florida Department of Transportation (FDOT), to study the advanced air mobility industry's current state of development and related laws and regulations. Task force members are not provided compensation for their service but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061, F.S.[8] The task force is composed of the following members:

- The secretary of FDOT or the secretary's designee, serving as chair of the task force.
- One member of the Senate, appointed by the Senate President.
- One member of the House of Representatives, appointed by the House Speaker.
- The executive director of the Florida League of Cities or the director's designee.
- The executive director of the Florida Association of Counties or the director's designee.
- The president of Space Florida or the president's designee.

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[1] *See* Vertical Flight Society, https://evtol.news/ (last visited January 21, 2022).
[2] *See* NASA, Fixed Wing Angle eVTOL, https://technology.nasa.gov/patent/LAR-TOPS-338 (last visited January 21, 2022).
[3] *See* Archer Aviation, FAA Approves G-1 Certification Basis for Archer, Propelling it Forward on its Path to FAA Type Certification, GlobeNewswire (September 7, 2021), https://www.globenewswire.com/ (last visited January 20, 2022).
[4] *See* Grace Nehls, *Joby Aviation accelerates eVTOL aircraft certification*, CompositesWorld (February 9, 2021), https://www.compositesworld.com/news/joby-aviation-accelerates-evtol-aircraft-certification (last visited January 21, 2022).
[5] *See* Lilium, *Lilium partners with Tavistock development and City of Orlando to establish first region in the US*, https://lilium.com/newsroom-detail/lilium-partners-with-tavistock-and-orlando (last visited January 21, 2022).
[6] *Id.*
[7] *Id.*
[8] *See* s. 112.061, F.S. (governing per diem and travel expenses of public officers, employees, and authorized persons).

- Fourteen members appointment by the Governor, including:
    - Two members, each representing a different city having a population of more than 250,000 persons.
    - One member representing a city having a population of fewer than 250,000 persons.
    - One member representing a metropolitan planning organization.
    - One member representing the State University System.
    - Three members representing the advanced air mobility industry.
    - Two members representing the business community.
    - One member representing an organization in the state which advocates for persons with disabilities.
    - One member representing an organization in the state which advocates for underserved transportation areas.
    - One member representing a public airport located in a county having a population of more than 1 million persons.
    - One member representing a public airport located in a county having a population of fewer than 1 million persons.

All appointed members serve at the pleasure of the appointing authority.

The task force is directed to hold public hearings in locations throughout the state, or by electronic means, and receive public comments through a website or by email. Specifically, the task force must focus on:

- The deployment of VTOL aircraft, defined within the bill as aircraft capable of taking off and landing vertically without the use of a runway.
- Identification and discussion of federal requirements which must be met to deploy advanced air mobility in the state.
- Recommendations for revisions to current state law which impact the advanced air mobility industry, such as revisions to create jurisdictional consistency for industry operations across the state.
- Collaboration with local governments to evaluate potential integration of advanced air mobility into transportation plans.

After completion of its review, but before October 1, 2023, the task force must submit a report of its findings and recommendations to the Governor, President of the Senate, and Speaker of the House. Any additional material which the task force deems appropriate may also be included in the report. Upon submission of the report, the task force is abolished.

The bill provides for its expiration on December 31, 2023.

B. SECTION DIRECTORY:

Section 1 Creates the Advanced Air Mobility Study Task Force; providers for membership and duties.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill does not specify the source of funding or staffing for the task force.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not specify if FDOT will assume responsibility for the expenses incurred by the task force and its members.

Clarification as to the type of electronic meetings permitted would allow a better understanding of in-person meeting alternatives for members of the task force and the public.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to advanced air mobility; creating the Advanced Air Mobility Study Task Force adjunct to the Department of Transportation; specifying the composition of the task force; providing that task force members serve at the pleasure of their appointing authority; providing that task force members shall serve without compensation but are entitled to certain reimbursement; specifying duties of the task force; defining the term "VTOL aircraft"; requiring the task force to submit a certain report to the Governor and the Legislature by a specified date; providing for abolishment of the task force; providing for expiration; providing an effective date.

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

Section 1. Advanced Air Mobility Study Task Force.—

(1) The Advanced Air Mobility Study Task Force, a task force as defined in s. 20.03(8), Florida Statutes, is created adjunct to the Department of Transportation. The task force is composed of the following members:

(a) The secretary of the Department of Transportation or the secretary's designee, who shall serve as chair of the task force.

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

(b) One member of the Senate appointed by the President of the Senate.

(c) One member of the House of Representatives appointed by the Speaker of the House of Representatives.

(d) The executive director of the Florida League of Cities or the director's designee.

(e) The executive director of the Florida Association of Counties or the director's designee.

(f) The president of Space Florida or the president's designee.

(g) Appointed by the Governor:

1. Two members, each representing a different city having a population of more than 250,000 persons.

2. One member representing a city having a population of fewer than 250,000 persons.

3. One member representing a metropolitan planning organization.

4. One member representing the State University System.

5. Three members representing the advanced air mobility industry.

6. One member representing an organization in this state which advocates for persons with disabilities.

7. Two members representing the business community.

8. One member representing an organization in this state which advocates for underserved transportation areas.

9. One member representing a public airport located in a county having a population of more than 1 million persons.

10. One member representing a public airport located in a county having a population of fewer than 1 million persons.

(2) Appointed members shall serve at the pleasure of the appointing authority.

(3) Task force members shall serve without compensation but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061, Florida Statutes.

(4) The task force shall hold public hearings in locations throughout this state, or by electronic means, and receive public comments through a website or by mail. The task force shall:

(a) Assess and describe the current state of development of the advanced air mobility industry, specifically, deployment of VTOL aircraft. As used in this section, the term "VTOL aircraft" means aircraft capable of taking off and landing vertically without use of a runway.

(b) Identify and discuss any federal requirements that must be met for deployment of advanced air mobility in this state.

(c) Recommend any revisions to current state law that may impact the advanced air mobility industry, including, but not limited to, any revisions that would create jurisdictional consistency for advanced air mobility operations throughout this

state.

(d) Collaborate with local governments to evaluate potential integration of advanced air mobility into transportation plans. Such collaboration shall be summarized in the report submitted pursuant to subsection (5).

(5) By October 1, 2023, the task force shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report including the information specified in subsection (4), as well as any other relevant material deemed appropriate by the task force. Upon submission of the report, the task force is abolished.

(6) This section expires December 31, 2023.

Section 2. This act shall take effect July 1, 2022.

TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

HB 1005 by Rep. Fischer
Advanced Air Mobility

AMENDMENT SUMMARY
January 25, 2022

Amendment 1 by Rep. Fischer (line 57):

- Clarifies that task force members will be reimbursed from the State Transportation Trust Fund for reasonable and necessary travel and per diem expenses incurred in serving.
- Specifies that the Department of Transportation shall provide staff, assistance, and facilities as are deemed necessary for the task force.
- Clarifies that the chair of the task force will determine the time and location of meetings.
- Specifies that eVTOL aircraft are the focus of the task force and defines eVTOL.
- Clarifies the matters to be addressed by the task force.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Tourism, Infrastructure & Energy Subcommittee

Representative Fischer offered the following:

Amendment (with title amendment)

Remove lines 57-86 and insert:

(3) Task force members shall serve without compensation but are entitled to reimbursement for reasonable and necessary per diem and travel expenses incurred in the performance of their duties as provided in s. 112.061, Florida Statutes.

(4) The Department of Transportation shall provide staff, assistance, and facilities as are deemed necessary for the task force to perform its duties. Funding for the task force shall be paid from the State Transportation Trust Fund.

(5) The committee shall meet at the time and location as the chair determines. The task force shall hold public hearings

and receive public comment in locations throughout this state, or by electronic means, such as teleconference, provided that a means for active participation is accommodated.

(6) The task force shall:

(a) Assess and describe the current state of development of the advanced air mobility industry, specifically, the deployment of eVTOL aircraft. As used in this section, the term "eVTOL aircraft" means a type of aircraft that uses electric power to hover, take off, and land vertically without a runway.

(b) Identify federal, state, and local laws, rules, regulations, and other requirements that may impact the development of the advanced air mobility industry in this state, including the potential deployment of eVTOL aircraft and infrastructure.

(c) Recommend any changes to state laws and regulations necessary to facilitate the continued development of the advanced air mobility industry and deployment of eVTOL aircraft and infrastructure in this state.

(d) Evaluate the potential integration of advanced air mobility into local government transportation plans.

(7) By October 1, 2023, the task force shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report including the information, findings, and recommendations required pursuant to subsection (6) and any other relevant material deemed appropriate by the

task force. Upon submission of the report, the task force is abolished.

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

Remove lines 9-10 and insert:
entitled to certain reimbursement; providing for task force funding; specifying duties of the task force; defining the term "eVTOL aircraft";

HB 1121

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1121 Pub. Rec./Crash Reports and Traffic Citations
SPONSOR(S): Brannan
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1614

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee		Johnson	Keating
2) Government Operations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Under current law, motor vehicle crash reports held by agencies that regularly receive or prepare motor vehicle crash reports are exempt from disclosure as public records for 60 days after the reports have been filed. The statute provides a list of entities that may receive crash reports during that 60-day period. Under current law, traffic citations are considered public records.

The bill revises the public record exemption for written crash reports to:

- Provide that the exemption applies to crash reports held by any agency subject to the public record law.
- Create a permanent exemption for such crash reports beyond the current 60-day limit.
- Revise the list of entities to which the report may be made available.
- Require certain entities to enter into memoranda of understanding in order to obtain such information;
- Revise conditions required to access the report.
- Exempt certain computerized crash report data.

The bill also creates a public record exemption for certain driver information contained in a traffic citation and authorizes the release of this information as provided in the federal Driver Privacy Protection Act.

The bill also provides these the public record exemptions are subject to repeal under the Open Government Sunset Review Act unless the Legislature reviews and reenacts the exemptions by specified dates.

The bill provides a public necessity statement for each exemption as required by the Florida Constitution.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

The bill has an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. This section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of art. I, s. 24(a) of the Florida Constitution.[1] The general law must state with specificity the public necessity justifying the exemption[2] and must be no broader than necessary to accomplish its purpose.[3]

Public policy regarding access to government records is addressed further in s. 119.07(1)(a), F.S., which guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act[4] provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protect trade or business secrets.[5]

Federal Driver Privacy Protection Act

Motorist personal information, when held by the Department of Highway Safety and Motor Vehicles (DHSMV) in motor vehicle records, is confidential pursuant to the federal Driver Privacy Protection Act (DPPA).[6] Personal information covered by the DPPA include: social security number, driver license or identification card number, name, address, telephone number and a person's medical or disability information.[7]

Under DPPA, personal information in motor vehicle and driver license records may be released for the following purposes:[8]

- For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a government agency in carrying out its functions;
- For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities; and removal of non-owner records from the original owner records of motor vehicle manufacturers;

[1] Article I, s. 24(c), FLA. CONST.
[2] This portion of a public record exemption is commonly referred to as a "public necessity statement."
[3] Article I. s. 24(c), FLA. CONST.
[4] S. 119.15, F.S.
[5] S. 119.15(6)(b), F.S.
[6] 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), F.S.
[7] Department of Highway Safety and Motor Vehicles (DHSMV), *Privacy Statement Driver Privacy Protection Act*, available at https://www.flhsmv.gov/privacy-statement/driver-privacy-protection-act/ (last visited on Jan. 13, 2022).
[8] 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), F.S. ; Florida Department of Highway Safety and Motor Vehicles forms HSMV 90511 (Revised 11/19) available at https://www.flhsmv.gov/pdf/forms/90511.pdf (last visited Jan. 13, 2022) and HSMV 90510 (Revised 03/19) available at https://www.flhsmv.gov/pdf/forms/90510.pdf (last visited Jan. 13, 2022).

- For use in the normal course of business by a legitimate business or its agents, employees, or contractors, to verify the accuracy of personal information submitted by the individual, and if such information is incorrect, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual;
- For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or agency or before any self-regulatory body, including service of process, investigation in anticipation of litigation, and execution or enforcement of judgments and orders, or pursuant to an order of a court;
- For use in research activities and producing statistical reports;
- For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting;
- For use in providing notice to the owners of towed or impounded vehicles;
- For use by any licensed private investigative agency or licensed security service for any purpose permitted by DPPA;
- For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license;
- For use in connection with the operation of private toll facilities;
- For any other use in response to requests for individual motor vehicle records if the state has obtained the express consent of the person to whom such personal information pertains;
- For bulk distribution for surveys, marketing, or solicitations if the state has obtained the express consent of the person to whom such personal information pertains;
- For use by any requester, if the requester demonstrates it has obtained the written consent of the individual to whom the information pertains; and
- For any other use specifically authorized under the law of the state that holds the record, if such use is related to the operation of a motor vehicle or public safety.

Information that is not covered by DPPA is non-personal information. Under Florida law, such non-personal information contained in motor vehicle and driver license records, such as vehicular crash records, driving violations, and driver status information is considered public information.[9]

Motor Vehicle Crash Reports in Florida

Florida law requires written reports of motor vehicle crashes, which must contain the following information:

- The date, time, and location of the crash.
- A description of the vehicles involved.
- The names and addresses of the parties involved, including all drivers and passengers, and the identification of the vehicle in which each was a driver or a passenger.
- The names and addresses of witnesses.
- The name, badge number, and law enforcement agency of the officer investigating the crash.
- The names of the insurance companies for the respective parties involved in the crash.[10]

An investigating law enforcement agency must submit a written crash report to DHSMV within 10 days after completing the investigation of a traffic crash that results in death or personal injury, involves a violation of leaving the scene or driving under the influence, renders a vehicle inoperable to a degree that a wrecker must remove it from the scene, or involves a commercial motor vehicle.[11] Approximately 94 percent of crash reports are submitted by law enforcement agencies to DHSMV electronically, while about six percent of reports are submitted to DHSMV on paper and must be scanned and converted into an electronic format.[12]

[9] DHSMV, *supra* note 7.
[10] Ss. 316.066(1)(b) and (c), F.S.
[11] S. 316.066(1)(a), F.S.
[12] Department of Highway Safety and Motor Vehicle (DHSMV), Agency Analysis of 2022 Senate Bill 1614 p..2 (Jan 14, 2022).

Crash reports contain various personal information about the parties to a crash, witnesses, and others whose property is damaged in a crash, including names, addresses, telephone numbers, dates of birth, driver license numbers, and certain insurance information.[13]

In 2001, the Legislature limited access to crash reports during the 60-day period after a crash report is filed.[14] During that 60-day period, crash reports may only be released to parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, law enforcement agencies, the Department of Transportation, county traffic operations, victim services programs, radio and television stations, and certain newspapers.[15]

Additionally, any local, state, or federal agency authorized by law to have access to crash reports must be granted such access in the furtherance of its statutory duties.[16]

To access a crash report within the 60-day time frame, a person must demonstrate his or her qualifications to access that information and file a written sworn statement with the state or local agency in possession of the information stating that information from the report will not be used for any commercial solicitation of accident victims, or knowingly disclosed to any third party for the purpose of such solicitation, during the period of time that the information remains confidential and exempt.[17]

According to the public necessity statement supporting this exemption, the 60-day exemption was created to protect the public from unscrupulous individuals who promote the filing of fraudulent insurance claims by obtaining such information immediately after a crash and exploiting the individual at a time of emotional distress.[18]

The Florida Highway Patrol (FHP)[19] routinely receives public records requests for its crash reports. In addition, DHSMV routinely makes crash reports available to the public through the Florida Crash Portal.[20] The portal comprises crash reports transmitted by FHP, county sheriff offices, local police departments, and other law enforcement agencies throughout the state. Crash reports provided by DHSMV are subject to a statutory fee of $10 per report.[21]

To facilitate releasing crash reports to authorized persons within the 60-day exemption period, DHSMV has prescribed a Sworn Statement to Obtain Traffic Crash Report Information (DHSMV Form 94010).[22] In lieu of the printed form, users of the Florida Crash Portal may electronically submit the sworn statement when obtaining a crash report through the portal.[23]

In addition to providing crash reports in their original format, crash reports transmitted to the Florida Crash Portal are maintained in a computerized database. The database contains all of the original report elements except for the law enforcement officer's narrative description of the crash and any crash diagrams.[24]

In 2021, 671,993 crash reports were completed in Florida, which included information on 1,839,532 individuals (drivers, passengers, witnesses, and pedestrians).[25]

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[13] *See, e.g.,* DHSMV, *Uniform Traffic Crash Report Manual (90010S)* (Rev. Feb. 5, 2019), *available at* https://www.flhsmv.gov/pdf/courts/crash/CrashManualComplete.pdf. (last visited Jan 18. 2022).
[14] Ch. 2001-163, Laws of Fla.
[15] S. 316.066(2)(b), F.S.
[16] S. 316.066(2)(c),F.S.
[17] S. 316.066(2)(d), F.S.
[18] CH. 2001-163, Laws of Fla.
[19] The Florida Highway Patrol is a division of DHSMV.
[20] DHSMV, *Florida Crash Portal, at* https://www.flhsmv.gov/traffic-crash-reports (last visited Jan. 18, 2022).
[21] S. 321.23(2)(a), F.S.; DHSMV, Agency Analysis of 2022 Senate Bill 1614. P.3.
[22] *See* DHSMV, *Sworn Statement to Obtain Traffic Crash Report Information (HSMV Form 94010)*, *available at* https://www.flhsmv.gov/pdf/forms/94010.pdf.
[23] DHSMV, Agency Analysis of 2022 Senate Bill 1614. P.3.
[24] *Id*.
[25] E-mail from Kevin Jacobs, DSHMV Legislative Affairs Director, RE. 1125 Question. (Jan 14, 2022)

Uniform Traffic Citations

Under Florida law, DHSMV has the duty of prescribing and providing to every traffic enforcement agency in the state prenumbered traffic citation books.[26] In lieu of using printed citation books, traffic enforcement agencies may produce uniform traffic citations by electronic means.[27] FHP is among the agencies who routinely prepare citations electronically.[28]

Traffic citations contain various personal information about drivers who are issued citations, including their names, dates of birth, addresses, telephone numbers, and driver license numbers.[29]

Traffic enforcement agencies, including FHP, submit traffic citations to the clerks of court. The clerks routinely provide searchable traffic court dockets on their Internet websites, which typically allow for viewing and downloading of unredacted copies of uniform traffic citations.[30]

Electronic citation data is also transmitted to the clerks through the Comprehensive Case Information System maintained by the Florida Association of Court Clerks and Comptrollers, Inc.[31] Uniform traffic citation, arrest, disposition, and criminal financial obligation files are electronically transmitted by the clerks to DHSMV through the Traffic Citation Accounting and Transmission System. These files are used by DHSMV to post court dispositions to the driver history records of individual drivers.[32]

Under current law, all traffic citations, including all personal identifying information on the citations, is a public record and can be freely distributed.

In 2021, 2,428,821 traffic citations were issued in Florida.[33]

Effect of the Bill

Motor Vehicle Crash Reports

The bill makes motor vehicle crash reports confidential and exempt from public disclosure on a permanent basis. This exemption applies to crash reports held by any agency as defined in s. 119.011, F.S.[34]

The bill retains the existing list of entities that are eligible to receive copies of crash reports despite the exemption and adds to that list the Department of Health, municipal traffic operations, and any private person acting on behalf of a federal, state, or local government agency in carrying out its functions.

The bill removes radio stations, television stations, and newspapers, from the list of entities eligible to receive crash reports but authorizes an agency to provide news media with summary reports of crashes, comprising specified details about the crashes, including whether traffic citations were issued or arrests were made.

The bill also makes confidential certain personal information in computerized crash report data but allows the release of data extracts that exclude personal information.

[26] S 316.650(1)(a), Fla. Stat.
[27] S 316.650(1)(c), Fla. Stat.
[28] DHSMV, Agency Analysis of 2022 Senate Bill 1614 p.3 (Jan 14, 2022).
[29] *See, e.g.,* DHSMV, *Uniform Traffic Citation Procedures Manual* (Rev. Nov. 2019), *available at* https://www.flhsmv.gov/pdf/courts/utc/UTCCombinedManual.pdf. (last visited Jan. 18, 2022).
[30] DHSMV, Agency Analysis of 2022 Senate Bill 1614 p.3 (Jan 14, 2022).
[31] *See* s 28.2405, F.S.
[32] DHSMV, Agency Analysis of 2022 Senate Bill 1614 p.3 (Jan 14, 2022).
[33] E-mail from Kevin Jacobs, DSHMV Legislative Affairs Director, RE. 1125 Question. (Jan 14, 2022)
[34] Section 119.011(2), F.S., defines the term "agency" to mean any state, county, district, authority, or municipal officer, dep artment, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

The bill requires persons requesting a crash report to submit a sworn statement attesting to the person's eligibility to receive the report. It further restricts persons who obtain crash reports from disclosing personal information from the reports to third parties who are not themselves eligible to obtain the crash reports. The bill also allows federal, state, and local governmental agencies, and private persons acting on their behalf, to obtain crash reports.

The bill authorizes eligible private entities, in lieu of the sworn statements, to obtain crash reports through memoranda of understanding (MOUs) with the agency. It also requires governmental agencies obtaining crash reports to do so through MOUs.

The bill provides that if crash reports are created by or submitted to an agency electronically as data elements within a computerized database, or if personal information from a crash report is entered into a computerized database, such crash report data is confidential and exempt under the same terms as the written crash report. This does not prevent an agency from disclosing:

- A crash report which is rendered as an individual report in its original format, whether printed as a paper document or provided in electronic format such as a portable document format or tagged image file format.
- Extracts of crash report data if all personal information is omitted from the extracts.

This exemption applies retroactively to records already held by an agency and prospectively to future records. This exemption stands repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature, pursuant to the Open Government Sunset Review Act.

The bill removes obsolete statutory language prohibiting some free newspapers from receiving certain crash report information. This language was repealed on October 2, 2019, under the Open Government Sunset Review Act since this part of the public records exemption was not saved from repeal through reenactment by the Legislature.

The bill revises current penalty provisions to broaden the definition of the term agency, providing that the term is as defined in s. 119.011, F.S., and provides for violations of a MOU.

The bill provides a public necessity statement as required by art. I, s. 24(c) of the Florida Constitution. The statement provides that:

- Crash reports reveal significant personal information, not only about drivers involved in a crash but also about motor vehicle owners, motor vehicle passengers, and other witnesses and about owners of nonvehicle property damaged in a crash.
- Use of the Internet and related technologies allows those with malicious purposes to exploit the use of personal information, such as a motorist's date of birth, driver license number, and address, threatening motorist privacy and security.
- Increasing use of information technology for the preparation, submission, and management of crash reports has led agencies to hold vast repositories of computerized crash report data, which includes such personal information.
- Motorist personal information, when held by DHSMV in motor vehicle records, is confidential pursuant to the federal DPPA and s. 119.0712(2), F.S.
- Restrictions on disclosure of motorist personal information have not applied to personal information contained in crash reports.
- When crash reports and computerized crash report data are made available to the public, because they comprise much of the same personal information contained in motor vehicle records, the protections afforded by the federal DPPA are undermined, eroding the privacy and safety of motorists.

Uniform Traffic Citations

The bill creates a public record exemption for driver information contained in a traffic citation. The bill defines the term "driver information" to mean a driver's date of birth, driver license number, address

(excluding the five-digit zip code), telephone number, motor vehicle license plate number, and trailer tag number. The term does not include the driver's name.

The bill authorizes an agency to release the covered driver information in accordance with DPPA in the same manner as the release of personal information contained in a motor vehicle record.

An agency may release driver information in accordance with any of the permissible uses listed in DPPA in the same manner applicable to the release of personal information contained in a motor vehicle record pursuant to s. 119.0712(2)(b), F.S.

This exemption applies retroactively to records already held by an agency and prospectively to future records. This exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2027, unless reviewed and saved from repeal by the Legislature.

The bill provides a public necessity statement as required by art. I, s. 24(c) of the Florida Constitution. The statement provides that:

- Uniform traffic citations reveal signification personal information about drivers issued a citation.
- Use of the Internet and related technologies allows those with malicious purpose to exploit the use of personal information, such as a motorist's date of birth, driver license number, and address, threatening motorist's privacy and security
- Motorist personal information, when held by DHSMV in motor vehicle records, is confidential pursuant to DPPA and s. 119.0712(2), F.S.
- Restrictions on disclosure of motorist personal information have not applied to driver information contained in uniform traffic citations.
- When driver information contained in uniform traffic citations is made available to the public, the protections are afforded by federal DPPA are undermined, eroding the privacy and safety of motorists.

Effective Date

The bill has an effective date of July 1, 2022.

B. SECTION DIRECTORY:

Section 1 Amends s. 316.066, F.S., relating to written reports of crashes.

Section 2 Amends s. 316.605, F.S., relating to traffic citations.

Section 3 Provides statements of public necessity.

Section 4 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. Under current law, DSHMV-provided crash reports are subject to a statutory fee of $10 per report.[35] It is not known how many crash reports subject to the statutory fee would be exempt from disclosure as public records under the bill.

2. Expenditures:

[35] S. 321.23(2)(a), F.S.

The bill may have an insignificant negative fiscal impact on various state agencies because state agency staff responsible for complying with public record requests may require training related to the newly created public record exemption. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of each state agency.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant negative fiscal impact on local government agencies because agency staff responsible for complying with public record request may require training related to the newly created public record exemption. These costs, however, would be absorbed, as they are part of the day-to-day responsibilities of each agency.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Vote Requirement
Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement
Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill includes a public necessity statement for each newly created exemption in the bill.

Breadth of Exemption
Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law.

The bill provides a public record exemption for all information included in motor vehicle crash reports. This exemption appears to be broader than necessary because the bill makes confidential and exempt the entire crash report and not just the personal identifying information contained in the crash report.

The bill provides a public record exemption for specified driver information in traffic citations. This exemption does not appear to be broader than necessary since it exempts only the driver information, as defined in the bill, contained on the citation.

B. RULE-MAKING AUTHORITY:

This bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

While the bill refers to the definition of the term “agency” as it applies to public records law for purposes of the crash reports exemption, it does not define the term “agency” for purposes of the public record exemption for traffic citations.

The bill provides for legislative review and repeal of the traffic citations exemption on October 2, 2027, consistent with the Open Government Sunset Review Act. However, the bill provides for repeal of the crash reports exemption on October 2, 2026, one year earlier than required by the Open Government Sunset Review Act.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to public records; amending s. 316.066, F.S.; revising an exemption from public records requirements for written reports of crashes; revising the agencies that hold records to which the exemption applies; removing a time limit for the exemption; providing applicability; revising entities to which records may be made available; requiring certain entities to enter into a memorandum of understanding; revising conditions precedent to accessing a crash report; exempting certain computerized crash report data; providing construction; providing for future review and repeal; providing penalties; amending s. 316.650, F.S.; defining the term "driver information"; providing an exemption from public records requirements for driver information contained in a uniform traffic citation; providing applicability; authorizing release of driver information under certain circumstances; providing for future review and repeal; providing statements of public necessity; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 316.066,

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

Florida Statutes, are amended to read:

316.066 Written reports of crashes.—

(2)(a) Crash reports that reveal the identity of, home or employment telephone number or home or employment address of, or other personal information concerning the parties involved in the crash and that are held by an ~~any~~ agency as defined in s. 119.011 ~~that regularly receives or prepares information from or concerning the parties to motor vehicle crashes~~ are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such crash reports held by an agency before, on, or after the effective date of the exemption ~~for a period of 60 days after the date the report is filed~~.

(b) Crash reports held by an agency under paragraph (a) may be made ~~immediately~~ available to the parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, law enforcement agencies, the Department of Transportation, the Department of Health, county and municipal traffic operations, victim services programs, and any private person or entity acting on behalf of a federal, state, or local governmental agency in carrying out its functions ~~radio and television stations licensed by the Federal Communications~~

~~Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, and, in accordance with paragraph (f), free newspapers of general circulation, published once a week or more often, of which at least 7,500 copies are distributed by mail or by carrier as verified by a postal statement or by a notarized printer's statement of press run, which are intended to be generally distributed and circulated, and which contain news of general interest with at least 10 pages per publication, available and of interest to the public generally for the dissemination of news. For the purposes of this section, the following products or publications are not newspapers as referred to in this section: those intended primarily for members of a particular profession or occupational group; those with the primary purpose of distributing advertising; and those with the primary purpose of publishing names and other personal identifying information concerning parties to motor vehicle crashes~~.

(c) A federal, state, or ~~Any~~ local governmental~~, state, or federal~~ agency, or any private person or entity acting on behalf of a federal, state, or local governmental agency in carrying out its functions, which ~~that~~ is authorized to ~~have~~ access ~~to~~ crash reports by any provision of law shall be granted such access in the furtherance of the agency's statutory duties pursuant to a memorandum of understanding approved by the agency holding the crash reports which requires that personal

information contained in the crash reports remain confidential and exempt.

(d) As a condition precedent to accessing a crash report ~~within 60 days after the date the report is filed~~, a person must submit to the agency that holds the crash report, in a format prescribed by the agency, ~~present a valid driver license or other photographic identification, proof of status, or identification that demonstrates his or her qualifications to access that information and file~~ a ~~written~~ sworn statement attesting to the person's identity, authority to access the crash report under paragraph (b), and agreement to keep the ~~with the state or local agency in possession of the information stating that information from a~~ crash report ~~made~~ confidential and refrain from using the crash report ~~exempt by this section will not be used~~ for ~~any~~ commercial solicitation ~~of accident victims~~, ~~or~~ knowingly disclosing the crash report ~~disclosed~~ to any third party for the purpose of such solicitation, or knowingly disclosing the crash report to any third party that is not authorized by this section to access such personal information ~~during the period of time that the information remains confidential and exempt~~. Such ~~written~~ sworn statement must be completed and sworn to by the requesting party for each individual crash report that is being requested ~~within 60 days after the report is filed~~. In lieu of requiring the ~~written~~ sworn statement, an agency may provide crash reports by

electronic means pursuant to a memorandum of understanding that requires ~~third-party vendors under contract with one or more insurers, but only when such contract states~~ that personal information contained in ~~from~~ a crash report remain ~~made~~ confidential and exempt and prohibits such personal information from being ~~by this section will not be~~ used for ~~any~~ commercial solicitation ~~of accident victims by the vendors,~~ or knowingly disclosed ~~by the vendors~~ to any third party who is not authorized by this section to access such personal information ~~for the purpose of such solicitation, during the period of time that the information remains confidential and exempt, and only when a copy of such contract is furnished to the agency as proof of the vendor's claimed status~~.

(e) This subsection does not prohibit an agency from providing summary reports of crashes to radio and television stations, newspapers, and other news media, which reports may disclose information about crashes, including, but not limited to, the time, date, and location of a crash; the name, age, gender, race, and ethnicity of any driver involved in the crash; a general description of any vehicle involved in the crash, including the vehicle's color, make, model, body style, and year; the names of the law enforcement agencies and officers responding to the scene or investigating the crash; the circumstances of the crash; and whether any arrests were made or traffic citations were issued ~~prevent the dissemination or~~

~~publication of news to the general public by any legitimate media entitled to access confidential and exempt information pursuant to this section~~.

(f) If crash reports are created by or submitted to an agency electronically as data elements within a computerized database, or if personal information from a crash report is entered into a computerized database, such crash report data held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to such crash report data held by an agency before, on, or after the effective date of the exemption. This paragraph does not prevent an agency from disclosing:

1. A crash report pursuant to paragraphs (b)-(d) which is rendered as an individual report in its original format, whether printed as a paper document or provided in electronic format such as portable document format or tagged image file format.

2. Extracts of crash report data if all personal information is omitted from the extracts.

(g)~~(f) Free newspapers of general circulation published once a week or more often, of which at least 7,500 copies are distributed by mail or by carrier as verified by a postal statement or by a notarized printer's statement of press run, which are intended to be generally distributed and circulated, which contain news of general interest with at least 10 pages per publication, available and of interest to the public~~

~~generally for the dissemination of news, and which request 10 or more crash reports within a 24-hour period before 60 days have elapsed after the report is filed may not have access to the home, cellular, employment, or other telephone number or the home or employment address of any of the parties involved in the crash.~~ This subsection ~~paragraph~~ is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026 ~~2019~~, unless reviewed and saved from repeal through reenactment by the Legislature.

(3)(a) A ~~Any~~ driver failing to file the written report required under subsection (1) commits a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(b) An ~~Any~~ employee of an ~~a state or local~~ agency, as defined in s. 119.011, in possession of information made confidential and exempt by this section who knowingly discloses such confidential and exempt information to a person not entitled to access such information under this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A ~~Any~~ person who, knowing that he or she is not entitled to obtain information made confidential and exempt by this section, ~~who~~ obtains or attempts to obtain such information commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) A ~~Any~~ person who knowingly uses confidential and exempt information in violation of a filed ~~written~~ sworn statement, memorandum of understanding, or contractual agreement required by this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Subsection (11) of section 316.650, Florida Statutes, is amended to read:

316.650 Traffic citations.—

(11)(a) As used in this subsection, the term "driver information" means a driver's date of birth, driver license number, address excluding the five-digit zip code, telephone number, motor vehicle license plate number, and trailer tag number. The term does not include the driver's name.

(b)1. Driver information contained in a uniform traffic citation held by an agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph applies to driver information held by an agency before, on, or after the effective date of the exemption.

2. An agency may release driver information in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b) in the same manner applicable to the release of personal information contained in a motor vehicle record pursuant to s. 119.0712(2)(b).

3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed

on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

(c) Driver information contained in a uniform traffic citation may~~, which includes but is not limited to, the accused person's name and address, shall~~ not be used for commercial solicitation purposes. ~~However, the use of such driver information contained in a uniform traffic citation shall not be considered a commercial purpose when used for publication in a newspaper or other news periodical, when used for broadcast by radio or television, or when used to inform a person of the availability of driver safety training.~~

Section 3. (1) The Legislature finds that it is a public necessity that crash reports that reveal personal information concerning parties involved in a crash and computerized crash report data be confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Crash reports reveal significant personal information, not only about drivers involved in a crash but also about motor vehicle owners, motor vehicle passengers, and other witnesses and about owners of nonvehicle property damaged in a crash. Pervasive use of the Internet and related technologies abet those with malicious purposes in exploiting the use of personal information, such as a motorist's date of birth, driver license number, and address, creating ever-expanding threats to motorist privacy and security never envisioned in generations

past. Moreover, ever-increasing use of information technology for the preparation, submission, and management of crash reports has led agencies to hold vast repositories of computerized crash report data, which includes such personal information. Motorist personal information, when held by the Department of Highway Safety and Motor Vehicles in motor vehicle records, is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), Florida Statutes. These restrictions on disclosure of motorist personal information, however, have not applied to personal information contained in crash reports. When crash reports and computerized crash report data are made available to the public, because they comprise much of the same personal information contained in motor vehicle records, the protections afforded by the federal Driver's Privacy Protection Act of 1994 are significantly undermined, eroding the privacy and safety of motorists. Therefore, the Legislature finds that it is a public necessity to make confidential and exempt from public records requirements crash reports that reveal personal information and computerized crash report data.

(2) The Legislature finds that it is a public necessity that driver information contained in a uniform traffic citation held by an agency be exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Uniform traffic citations reveal significant personal information about

drivers issued a citation. Pervasive use of the Internet and related technologies abet those with malicious purposes in exploiting the use of personal information, such as a motorist's date of birth, driver license number, and address, creating ever-expanding threats to motorist privacy and security never envisioned in generations past. Motorist personal information, when held by the Department of Highway Safety and Motor Vehicles in motor vehicle records, is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), Florida Statutes. These restrictions on disclosure of motorist personal information, however, have not applied to driver information contained in uniform traffic citations. When driver information contained in uniform traffic citations is made available to the public, because it comprises much of the same personal information contained in motor vehicle records, the protections afforded by the federal Driver's Privacy Protection Act of 1994 are significantly undermined, eroding the privacy and safety of motorists. Therefore, the Legislature finds that it is a public necessity to make exempt from public records requirements driver information contained in uniform traffic citations.

Section 4. This act shall take effect July 1, 2022.

TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

HB 1121 by Rep. Brannan
Public Records/Crash Reports and Traffic Citations

AMENDMENT SUMMARY
January 25, 2022

Amendment 1 by Rep. Brannan (Strike-All):

- Defines the term personal information as it relates to motor vehicle crash reports.
- Restores the current 60-day public record exemption for the entirety of crash reports.
- Adds passengers and witnesses as persons whose personal information is protected from disclosure in a crash report.
- Provides that personal information revealed in crash reports remains confidential and exempt from disclosure after the 60-day exemption period for the entire crash report.
- Clarifies current practice with respect to third parties acting on behalf of entities authorized to access crash report data.
- Clarifies that crash reports may not be disclosed for commercial solicitation.
- Requires agencies, upon request, to provide a crash report summary to news media, subject to any other public records exemption.
- Corrects an incorrect open government sunset review date
- Revises statements of public necessity to conform to the amendment.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	___ (Y/N)
ADOPTED AS AMENDED	___ (Y/N)
ADOPTED W/O OBJECTION	___ (Y/N)
FAILED TO ADOPT	___ (Y/N)
WITHDRAWN	___ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Tourism, Infrastructure & Energy Subcommittee

Representative Brannan offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsections (2) and (3) of section 316.066, Florida Statutes, are amended to read:

316.066 Written reports of crashes.—

(2)(a) As used in this subsection, the term:

1. "Agency" has the same meaning as provided in s. 119.011.

2. "Personal information" means information that identifies an individual, including an individual's photograph, social security number, driver license or identification card number, name, home or employment address excluding the five-

digit zip code, home or employment telephone number, and medical or disability information.

(b)1. ~~(a)~~ Crash reports that reveal ~~the identity, home or employment telephone number or home or employment address of, or other~~ personal information concerning the parties, passengers, or witnesses involved in the crash, and that are held by an ~~any~~ agency, ~~that regularly receives or prepares information from or concerning the parties to motor vehicle crashes~~ are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution for a period of 60 days after the date the report is filed.

2. Following the 60-day period in subparagraph 1., personal information revealed in a crash report concerning the parties, passengers, or witnesses involved in the crash, and that is held by an agency, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. If crash reports are created by or submitted to an agency electronically as data elements within a computerized database, or if personal information concerning the parties, passengers, or witnesses involved in the crash are entered into a computerized database, such crash report data held by an agency, when not rendered as individual crash reports subject to subparagraph 1. or subparagraph 2., is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph does not prevent an agency from

disclosing extracts of crash report data if personal information concerning the parties, passengers, and witnesses is omitted from the extracts.

4. These exemptions apply to crash reports, personal information revealed in crash reports, and crash report data held by an agency before, on, or after the effective date of the exemptions.

(c)1.~~(b)~~ Crash reports held by an agency under subparagraph (b)1. or subparagraph (b)2., which reveal personal information concerning the parties, passengers, and witnesses involved in the crash, ~~paragraph (a)~~ may be made immediately available to the parties involved in the crash, their legal representatives, their licensed insurance agents, their insurers or insurers to which they have applied for coverage, persons under contract with such insurers to provide claims or underwriting information, prosecutorial authorities, law enforcement agencies, the Department of Transportation, the Department of Health, county and municipal traffic operations, victim services programs, and any federal, state, or local governmental agency in carrying out its functions.

2. A crash report may also be made available to any third party acting on behalf of a person or entity authorized under subparagraph 1. to access the crash report, except that the third party may disclose the crash report only to the person or entity authorized to access the crash report under subparagraph

1. on whose behalf the third party has sought the report ~~radio and television stations licensed by the Federal Communications Commission, newspapers qualified to publish legal notices under ss. 50.011 and 50.031, and, in accordance with paragraph (f), free newspapers of general circulation, published once a week or more often, of which at least 7,500 copies are distributed by mail or by carrier as verified by a postal statement or by a notarized printer's statement of press run, which are intended to be generally distributed and circulated, and which contain news of general interest with at least 10 pages per publication, available and of interest to the public generally for the dissemination of news. For the purposes of this section, the following products or publications are not newspapers as referred to in this section: those intended primarily for members of a particular profession or occupational group; those with the primary purpose of distributing advertising; and those with the primary purpose of publishing names and other personal identifying information concerning parties to motor vehicle crashes~~.

(d)~~(c)~~ A federal, state, or ~~Any~~ local governmental~~, state, or federal~~ agency, or any private person or entity acting on behalf of a federal, state, or local governmental agency in carrying out its functions, ~~that is authorized to have access to crash reports by any provision of law~~ shall be granted such access in the furtherance of the agency's statutory duties

pursuant to a memorandum of understanding approved by the agency holding the crash reports which requires that personal information revealed in the crash reports remain confidential and exempt.

(e) ~~(d)~~ As a condition precedent to accessing a crash report that reveals personal information concerning the parties, passengers, or witnesses involved in the crash ~~within 60 days after the date the report is filed~~, a person must submit to the agency that holds the crash report, in a format prescribed by the agency, ~~present a valid driver license or other photographic identification, proof of status, or identification that demonstrates his or her qualifications to access that information and file~~ a ~~written~~ sworn statement attesting to the person's identity, authority to access the crash report under paragraph (c), and agreement to refrain from using the ~~with the state or local agency in possession of the information stating that information from a~~ crash report ~~made confidential and exempt by this section will not be used~~ for ~~any~~ commercial solicitation ~~of accident victims,~~ or knowingly disclosing the crash report ~~disclosed~~ to any third party for the purpose of such solicitation~~, during the period of time that the information remains confidential and exempt~~. Such ~~written~~ sworn statement must be completed and sworn to by the requesting party for each individual crash report that is being requested with personal information concerning the parties, passengers, or

witnesses involved in the crash ~~within 60 days after the report is filed~~. In lieu of requiring the ~~written~~ sworn statement, an agency may provide crash reports by electronic means pursuant to a memorandum of understanding that requires ~~third-party vendors under contract with one or more insurers, but only when such contract states~~ that personal information revealed in ~~from~~ a crash report remain ~~made~~ confidential and exempt and prohibits such personal information from being ~~by this section will not be~~ used for ~~any~~ commercial solicitation ~~of accident victims by the vendors,~~ or knowingly disclosed ~~disclosed by the vendors~~ to any third party for the purpose of such solicitation~~, during the period of time that the information remains confidential and exempt, and only when a copy of such contract is furnished to the agency as proof of the vendor's claimed status~~.

(f) Upon request, an agency shall provide a summary of a crash report to radio or television stations, newspapers, and other news media, comprising descriptive information about the crash to the extent included in the report, including, but not limited to, the time, date, and location of a crash; the name, age, gender, race, and ethnicity of any driver involved in the crash; a description of any vehicle involved in the crash, including the vehicle's color, make, model, body style, and year; the names of the law enforcement agencies and officers responding to the scene or investigating the crash; the circumstances of the crash; and whether any arrests were made or

traffic citations were issued. This paragraph does not require an agency to provide in a summary any information made confidential or exempt by any provision of law outside of this section.

~~(e) This subsection does not prevent the dissemination or publication of news to the general public by any legitimate media entitled to access confidential and exempt information pursuant to this section.~~

(g)~~(f) Free newspapers of general circulation published once a week or more often, of which at least 7,500 copies are distributed by mail or by carrier as verified by a postal statement or by a notarized printer's statement of press run, which are intended to be generally distributed and circulated, which contain news of general interest with at least 10 pages per publication, available and of interest to the public generally for the dissemination of news, and which request 10 or more crash reports within a 24-hour period before 60 days have elapsed after the report is filed may not have access to the home, cellular, employment, or other telephone number or the home or employment address of any of the parties involved in the crash.~~ This subsection ~~paragraph~~ is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027 ~~2019~~, unless reviewed and saved from repeal through reenactment by the Legislature.

(3)(a) A ~~Any~~ driver failing to file the written report required under subsection (1) commits a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

(b) An ~~Any~~ employee of an ~~a state or local~~ agency, as defined in s. 119.011, in possession of information made confidential and exempt by this section who knowingly discloses such confidential and exempt information to a person not entitled to access such information under this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A ~~Any~~ person who, knowing that he or she is not entitled to obtain information made confidential and exempt by this section, ~~who~~ obtains or attempts to obtain such information commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) A ~~Any~~ person who knowingly uses confidential and exempt information in violation of a filed ~~written~~ sworn statement, memorandum of understanding, or contractual agreement required by this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Subsection (11) of section 316.650, Florida Statutes, is amended to read:

316.650 Traffic citations.—

(11)(a) As used in this subsection, the term "driver information" means a driver's date of birth, driver license number, address excluding the five-digit zip code, telephone number, motor vehicle license plate number, and trailer tag number. The term does not include the driver's name.

(b)1. Driver information contained in a uniform traffic citation held by an agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph applies to driver information held by an agency before, on, or after the effective date of the exemption.

2. An agency may release driver information in accordance with any of the permissible uses listed in 18 U.S.C. s. 2721(b) in the same manner applicable to the release of personal information contained in a motor vehicle record pursuant to s. 119.0712(2)(b).

3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

(c) Driver information contained in a uniform traffic citation may~~, which includes but is not limited to, the accused person's name and address, shall~~ not be used for commercial solicitation purposes. ~~However, the use of such driver information contained in a uniform traffic citation shall not be considered a commercial purpose when used for publication in a~~

~~newspaper or other news periodical, when used for broadcast by radio or television, or when used to inform a person of the availability of driver safety training.~~

Section 3. (1) The Legislature finds that it is a public necessity that crash reports that reveal personal information concerning parties, passengers, and witnesses to a crash for a period of 60 days after the date the crash report is filed with an agency; such personal information revealed in crash reports held by an agency following the 60-day period; and computerized crash report data held by an agency, be confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Crash reports reveal significant personal information, not only about parties involved in a crash but also about passengers and other witnesses to the crash. Pervasive use of the Internet and related technologies abet those with malicious purposes in exploiting the use of personal information revealed in crash reports, such as a party's, passenger's, or witness' date of birth, driver license number, and address, creating ever-expanding threats to privacy and security never envisioned in generations past. Moreover, ever-increasing use of information technology for the preparation, submission, and management of crash reports has led agencies to hold vast repositories of computerized crash report data, which includes such personal information. Personal information, when held by the Department of Highway Safety and Motor Vehicles in

driver license and motor vehicle records, is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), Florida Statutes. These restrictions on disclosure of personal information, however, have not applied to personal information revealed in crash reports. When personal information revealed in crash reports or computerized crash report data are made available to the public, because they comprise much of the same personal information contained in driver license and motor vehicle records, the protections afforded by the federal Driver's Privacy Protection Act of 1994 are significantly undermined, eroding the privacy and safety of drivers. Therefore, the Legislature finds that it is a public necessity to make confidential and exempt from public records requirements crash reports that reveal personal information concerning parties, passengers, and witnesses to a crash for a period of 60 days after the date the crash report is filed with an agency; such personal information revealed in crash reports held by an agency following the 60-day period; and computerized crash report data held by an agency.

(2) The Legislature finds that it is a public necessity that driver information contained in a uniform traffic citation held by an agency be exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Uniform traffic citations reveal significant personal information about

drivers issued a citation. Pervasive use of the Internet and related technologies abet those with malicious purposes in exploiting the use of personal information contained in traffic citations, such as a driver's date of birth, driver license number, and address, creating ever-expanding threats to privacy and security never envisioned in generations past. Driver information, when held by the Department of Highway Safety and Motor Vehicles in driver license and motor vehicle records, is confidential pursuant to the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq., and s. 119.0712(2), Florida Statutes. These restrictions on disclosure of personal information, however, have not applied to driver information contained in uniform traffic citations. When driver information contained in uniform traffic citations is made available to the public, because it comprises much of the same personal information contained in driver license and motor vehicle records, the protections afforded by the federal Driver's Privacy Protection Act of 1994 are significantly undermined, eroding the privacy and safety of drivers. Therefore, the Legislature finds that it is a public necessity to make exempt from public records requirements driver information contained in uniform traffic citations.

Section 4. This act shall take effect July 1, 2022.

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291 **T I T L E A M E N D M E N T**
292 Remove everything before the enacting clause and insert:
293 An act relating to public records; amending s. 316.066, F.S.;
294 revising an exemption from public records requirements for
295 certain written reports of crashes; providing definitions;
296 revising the exemption applicable to specified crash reports for
297 a specified period of time; revising the agencies that hold
298 records to which the exemption applies; providing exemptions
299 from public records requirements for certain personal
300 information revealed in crash reports and certain computerized
301 crash report data; providing retroactive applicability; revising
302 entities to which records may be made available; requiring
303 certain entities to enter into a memorandum of understanding;
304 revising conditions precedent to accessing a crash report within
305 a specified period after a crash report is filed; requiring an
306 agency to provide summaries of crash reports to certain news
307 media; providing construction; providing for future review and
308 repeal; providing penalties; amending s. 316.650, F.S.; defining
309 the term "driver information"; providing an exemption from
310 public records requirements for driver information contained in
311 a uniform traffic citation; providing applicability; authorizing
312 release of driver information under certain circumstances;
313 providing for future review and repeal; providing statements of
314 public necessity; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1411 Floating Solar Facilities
SPONSOR(S): Avila
TIED BILLS: **IDEN./SIM. BILLS:** SB 1338

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee		Walsh	Keating
2) Local Administration & Veterans Affairs Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Florida law declares that it is the intent of the Legislature to promote the development of renewable energy. Current law states that solar energy is one of the fuel or energy sources, from which energy can be produced, that qualifies as "renewable energy."

The Community Planning Act (act) directs the manner in which local governments create and adopt their local comprehensive plans. Current law requires solar facilities to be a permitted use in all agricultural land use categories in a local government's comprehensive plan and all agricultural zoning districts within an unincorporated area.

Floating solar, also known as floatovoltaics, is a relatively new concept that refers to any type of solar array that floats atop a body of water. Floating solar panels are affixed to a buoyant structure that keeps them above the surface of the water. In recent years, different entities around Florida have deployed floating solar facilities.

The bill promotes the use of floating solar facilities by requiring each local government to allow these facilities as a permitted use under certain conditions and amend its land development regulations to promote the use of floating solar. Under the bill, counties may adopt an ordinance specifying buffer and landscaping requirements for floating solar facilities, however, such requirements may not exceed the requirements for similar uses involving the construction of other solar facilities that are permitted uses in agricultural land use categories and zoning districts

The bill states that a floating solar facility may not be constructed in the Lake Belt Area or an Everglades Agricultural Area reservoir project if the local governments involved with the area or project determine that the facility will have a negative impact on that area or project.

Under the bill, the Office of Energy within the Department of Agriculture and Consumer Services is tasked with submitting recommendations to the Legislature to provide a regulatory framework to private and public sector entities that implement floating solar facilities.

The bill does not effect state or local government revenues or state government expenditures. The bill may have an insignificant fiscal impact on local government expenditures.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Renewable Energy

Florida law declares that it is the intent of the Legislature to:

- Promote the development of renewable energy;
- Protect the economic viability of Florida's existing renewable energy facilities;
- Diversify the types of fuel used to generate electricity in Florida;
- Lessen Florida's dependence on natural gas and fuel oil for the production of electricity;
- Minimize the volatility of fuel costs;
- Encourage investment within the state;
- Improve environmental conditions; and
- Minimize the costs of power supply to electric utilities and their customers.[1]

Current law defines "renewable energy" as electrical energy produced from a method that uses one or more of the following fuels or energy sources:

- Hydrogen produced from sources other than fossil fuels;
- Biomass;
- Solar energy;
- Geothermal energy;
- Wind Energy;
- Ocean energy; and
- Hydroelectric power.[2]

Solar Facilities

Florida law defines the term "solar facility" as a production facility for electric power which:

- Uses photovoltaic modules to convert solar energy to electricity that may be stored on site, delivered to a transmission system, and consumed primarily offsite;
- Consists principally of photovoltaic modules, a mounting or racking system, power inverters, transformers, collection systems, battery systems, fire suppression equipment, and associated components; and
- May include accessory administration or maintenance buildings, electric transmission lines, substations, energy storage equipment, and related accessory uses and structures.[3]

A utility-scale solar generation system requires larger quantities of land per unit of power produced than traditional power plants.[4] Solar generation facilities require "at least [ten] times as much land per unit of power produced than coal or natural gas-fired power plants."[5] As a result of the large scale nature of such projects, siting solar facilities can be challenging and viewed as unpopular by those who do not want these large projects near their homes.[6]

Local Land Development and Comprehensive Plans

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[1] S. 366.92, F.S. *See also* S. 377.601(2)(i), F.S.
[2] S. 366.91, F.S.
[3] S. 163.3205(2), F.S.
[4] Samantha Gross, *Renewables, land use, and local opposition in the United States*, https://www.brookings.edu/research/renewables-land-use-and-local-opposition-in-the-united-states/ (last visited Jan. 21, 2022).
[5] *Id.*
[6] *Id.*

The Community Planning Act (act) directs the manner in which local governments create and adopt their local comprehensive plans.[7] The act prescribes certain principles, guidelines, standards, and strategies to allow for orderly and balanced future land development.[8] Current law outlines the required and optional elements of a comprehensive plan and includes provisions which govern agricultural lands and practices.[9]

Current law requires solar facilities to be a permitted use in all agricultural land use categories in a local government's comprehensive plan and all agricultural zoning districts within an unincorporated area.[10] Solar facilities must comply with setback and landscaped buffer area criteria for similar uses in the agricultural district and allows a county to adopt ordinances specifying buffer and landscaping requirements for facilities.[11] Such requirements may not exceed those for similar uses involving construction of other facilities permitted in agricultural land use categories and zoning districts.[12]

Floating Solar Facilities

Floating solar, also known as floatovoltaics, is a relatively new concept that refers to any type of solar array that floats atop a body of water. Floating solar panels are affixed to a buoyant structure that keeps them above the surface of the water. Lakes, basins, and manmade bodies of water, such as reservoirs, are ideal for floating solar, because the waters are generally calm compared to the ocean. Since the technology was first patented in 2008, floating solar has predominately been installed in countries such as Japan, China, and the U.K.[13]

In recent years, floating solar panels have made a splash in Florida waters. For example, the Altamonte Electric Authority, which serves Altamonte Springs, Florida, unveiled a floating solar array that generates one megawatt of electricity, making it the largest in Florida and the third largest in the United States.[14] Florida Power and Light Company partnered with Miami-Dade County to launch a 402-panel floating solar installation near Miami International Airport.[15] Orlando International Airport recently unveiled its first floating solar array, which is a collection of 360 solar panels that can power about 14 homes.[16]

The Lake Belt and Everglades Agricultural Areas

The Lake Belt Area, located at the edge of the Miami-Dade County urban area, consists of 77.5 square miles of environmentally sensitive wetlands and lakes. This area offers the potential to act as a buffer to the Everglades from the negative impacts of nearby urban development.[17] The Florida Legislature acknowledged the importance of this area and established the Lake Belt Mitigation Committee, which is tasked with developing a plan for the area.[18]

The South Florida Water Management District and the U.S. Army Corps of Engineers are working on

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[7] S. 163.3167(2), F.S.
[8] *Id.*
[9] Ss. 163.3162 and 163.3177, F.S.
[10] S. 163.3205(3), F.S.
[11] S. 163.3205(3) and (4), F.S.
[12] S. 163.3205(4), F.S.
[13] *Floating solar: what you need to know*, EnergySage, https://news.energysage.com/floating-solar-what-you-need-to-know/ (last visited Jan. 21, 2022).
[14] Altamonte Electric Utility, *The City of Altamonte Springs Invests In Renewable Energy to Power the Future*, p. 1, available at http://www.altamonte.org/DocumentCenter/View/8800/AEU-Solar-Array-Info-Sheet (last visited Jan. 21, 2022).
[15] Victoria Lewis, *FPL launches nation's first floating solar array at Miami International Airport*, WPTV (Jan. 29, 2020), https://www.wptv.com/news/state/fpl-launches-nations-first-floating-solar-array-at-miami-international-airport (last visited Jan. 21, 2022).
[16] Jessica Albert, *Orlando International Airport unveils its 1st floating solar array*, Fox 35 Orlando (Dec. 10, 2020), https://www.fox35orlando.com/news/mco-debuts-floating-solar-array (last visited Jan. 21, 2022).
[17] *Lake Belt Mitigation Committee*, South Florida Water Management District, https://www.sfwmd.gov/our-work/lake-belt-committee (last visited Jan. 22, 2022).
[18] S. 373.41492, F.S.

the Everglades Agricultural Area Reservoir Project. The project aims to construct a treatment wetland that will clean water and a reservoir that will store excess water from Lake Okeechobee.[19]

The Office of Energy

The Legislature created the Office of Energy within the Department of Agriculture and Consumer Services to act as the energy policy and program development office for the State of Florida. The Office of Energy evaluates energy-related studies, analyses and stakeholder input to recommend energy policies and programs that will move Florida toward a more diverse, stable, and reliable energy portfolio.[20]

Effect of Proposed Changes

The bill promotes the use of floating solar facilities by requiring each local government to allow these facilities as a permitted use under certain conditions and amend its land development regulations to promote the use of floating solar.

The bill provides legislative findings that:

- Floating solar facilities can be effective tools in harnessing energy in manmade bodies of water;
- Siting floating solar facilities on wastewater treatment ponds, abandoned limerock mine areas, and other water storage reservoirs is a beneficial use of those areas for many reasons; and
- Siting floating solar facilities should be encouraged by local governments as appropriate uses of water and land areas.

The bill defines "floating solar facility" as a solar facility, as defined by current law in s. 163.3205(2), F.S., which is located on wastewater treatment ponds, abandoned limerock mine areas, or other manmade water storage reservoirs.

Under the bill, each local government must allow floating solar facilities as a permitted use in the appropriate land use categories in its comprehensive plan. Each local government must amend its land development regulations to promote the expanded use of floating solar facilities.

The bill allows counties to adopt an ordinance specifying buffer and landscaping requirements for floating solar facilities, however, such requirements may not exceed the requirements for similar uses involving the construction of other solar facilities that are permitted uses in agricultural land use categories and zoning districts.

Under the bill, a floating solar facility may not be constructed in the Lake Belt Area or an Everglades Agricultural Area reservoir project if the local governments involved with the area or project determine that the facility will have a negative impact on that area or project.

The bill tasks the Office of Energy within the Department of Agriculture and Consumer Services with submitting recommendations to the Legislature by December 31, 2022, to provide a regulatory framework to private and public sector entities that implement floating solar facilities.

[19] *Progress Continues on the Everglades Agricultural Area Reservoir Project*, South Florida Water Management District, https://www.sfwmd.gov/our-work/cerp-project-planning/eaa-reservoir (last visited Jan. 22, 2022).
[20] *Office of Energy*, Florida Department of Agriculture and Consumer Services, https://www.fdacs.gov/Divisions-Offices/Energy (last visited Jan. 22, 2022).

B. SECTION DIRECTORY:

Section 1: Creates 163.32051, F.S., relating to floating solar facilities.

Section 2: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an insignificant impact on local government expenditures due to the requirement for local governments to amend their land development regulations.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to floating solar facilities; creating s. 163.32051, F.S.; providing legislative findings regarding floating solar facilities; defining the term "floating solar facility"; requiring a floating solar facility to be a permitted use in certain land use categories; requiring local governments to promote expanded uses of floating solar facilities by taking specified actions; authorizing a county to specify buffer and landscaping requirements; providing exceptions to the construction of floating solar facilities; requiring the Office of Energy within the Department of Agriculture and Consumer Services to submit specified recommendations to the Legislature regarding floating solar facilities for certain entities; providing an effective date.

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

Section 1. Section 163.32051, Florida Statutes, is created to read:

163.32051 Floating solar facilities.—

(1)(a) The Legislature finds that floating solar facilities, also known as "floatavoltaics," can be effective tools in harnessing energy in manmade bodies of water.

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

(b) The Legislature finds that siting floating solar facilities on wastewater treatment ponds, abandoned limerock mine areas, and other water storage reservoirs are beneficial uses of those areas for many reasons, including the fact that the water has a cooling effect on the solar panels which can boost power production and the panels help decrease the amount of water lost to evaporation and the formation of harmful algal blooms.

(c) Therefore, the Legislature finds that the siting of floating solar facilities should be encouraged by local governments as appropriate uses of water and land areas.

(2) For purposes of this section, the term "floating solar facility" means a solar facility as defined in s. 163.3205(2) which is located on wastewater treatment ponds, abandoned limerock mine areas, or other manmade water storage reservoirs.

(3) A floating solar facility shall be a permitted use in the appropriate land use categories in each local government comprehensive plan and each local government must amend its land development regulations to promote the expanded use of floating solar facilities.

(4) A county may adopt an ordinance specifying buffer and landscaping requirements for floating solar facilities. The requirements may not exceed the requirements for similar uses involving the construction of other solar facilities that are permitted uses in agricultural land use categories and zoning

districts.

(5) Notwithstanding subsections (3) and (4), a floating solar facility may not be constructed in the Lake Belt Area or an Everglades Agricultural Area reservoir project if the local governments involved with the area or project determine that the floating solar facility will have a negative impact on that area or project.

(6) The Office of Energy within the Department of Agriculture and Consumer Services shall develop and submit recommendations to the Legislature by December 31, 2022, to provide a regulatory framework to private and public sector entities that implement floating solar facilities.

Section 2. This act shall take effect July 1, 2022.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1469 Transportation Facility Designations
SPONSOR(S): Grieco
TIED BILLS: **IDEN./SIM. BILLS:** SB 1682

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee		Walsh	Keating
2) Infrastructure & Tourism Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Under current law, the Legislature may designate a transportation facility, such as a bridge, interchange, or portion of a road, for honorary or memorial purposes or to distinguish a particular facility. Legislative designations do not change the official names of the facilities. The Department of Transportation (DOT) erects markers for each designation, but may not do so until the appropriate city or county commission passes a resolution in support of the designation.

The bill honors the 98 people who died in the Champlain Towers South collapse in Surfside, Florida, by designating “98 Points of Light Road” in Miami-Dade County.

The bill will have an insignificant negative fiscal impact to the State Transportation Trust Fund associated with erecting suitable markers for the designation. The cost can be absorbed within DOT’s existing resources.

The bill provides an effective date of July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Transportation Facility Designations

Under current law, the Legislature may designate a transportation facility, such as a bridge, interchange, or portion of a road, for honorary or memorial purposes or to distinguish a particular facility. Legislative designations do not change the official names of the designated facilities, and do not require local governments or private entities to change street signs, mailing addresses, or 911 emergency telephone-number system listings to account for the designations.[1]

Current law sets standards for the naming of state buildings and other facilities. The law provides that except as specifically provided by law, state buildings, roads, bridges, parks, recreational complexes, and other similar facilities may not be named for a living person.[2]

Road Markers

The Department of Transportation (DOT) must place a marker at each terminus or intersection of a designated road, bridge, or other transportation facility and erect other markers it deems appropriate for the facility.[3] Road markers may not be erected until the appropriate city or county commission passes a resolution in support of a particular designation. Additionally, if a designated facility extends through multiple cities or counties, a resolution must be passed by each affected local government before the road markers can be erected by DOT.[4]

Champlain Towers South

In the early morning hours of June 24, 2021, a portion of Champlain Towers South collapsed. The condominium building located in Surfside, Florida, had 136 units, of which 55 were destroyed during the collapse. At the time, many of the building's units were occupied by residents who were asleep in their beds.[5] After the collapse, rescue crews spent 29 days searching for victims in the rubble.[6] The final victim was identified on July 26, 2021, which brought the death toll to 98.[7, 8]

Effect of the Bill

Under the bill, that portion of S.R. A1A/Collins Avenue between 87th Terrace and 88th Street in Miami-Dade County is designated as "98 Points of Light Road." The bill requires DOT to erect suitable markers.

B. SECTION DIRECTORY:

Section 1: Designates "98 Points of Light Road."

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[1] S. 334.071(1), F.S.
[2] S. 267.062(1), F.S.
[3] S. 334.071(2), F.S.
[4] S. 334.071(3), F.S.
[5] Gina Harkins, *What you need to know about the Florida condo collapse as the search for survivors continues and probe begins*, The Washington Post (July 10, 2021), https://www.washingtonpost.com/nation/2021/06/25/florida-condo-collapse-what-you-should-know/ (last visited Jan. 21, 2022).
[6] Xander Landen, *Surfside Rescue Crews Saluted as Mission Ends 29 Days After Condo Collapse*, Newsweek (Jul. 23, 2021), https://www.newsweek.com/surfside-rescue-crews-saluted-mission-ends-29-days-after-condo-collapse-1612697 (last visited Jan. 21, 2022).
[7] *Remembering those who died in the Champlain Towers condo collapse in Surfside, Florida*, The Palm Beach Post (Aug. 11, 2021), https://www.palmbeachpost.com/in-depth/news/2021/06/28/surfside-miami-florida-building-collapse-victims-who-died-obituaries/5365626001/ (last visited Jan. 21, 2022).
[8] *See also* Connie Ogle, *Remembering the victims of the Surfside tower collapse*, Miami Herald (Dec. 20, 2021), https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article253088463.html (last visited Jan. 21, 2022) (provides information about the people who died in the Champlain Towers South collapse).

Section 2: Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DOT estimates a cost of $1,040 for the appropriate markers, which provides for two signs per designation at $520 per sign.[9] Therefore, the bill has an estimated negative fiscal impact of $1,040 to the State Transportation Trust Fund. This cost can be absorbed within existing DOT resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[9] Email from Amanda Marsh, Legislative Analyst, Florida Department of Transportation, FDOT Memorial Roadway Designation Sign Estimate, (Sep. 15, 2021).

A bill to be entitled

An act relating to transportation facility designations; providing an honorary designation of a certain transportation facility in a specified county; directing the Department of Transportation to erect suitable markers; providing an effective date.

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

Section 1. 98 Points of Light Road designated; Department of Transportation to erect suitable markers.—

(1) That portion of S.R. A1A/Collins Avenue between 87th Terrace and 88th Street in Miami-Dade County is designated as "98 Points of Light Road."

(2) The Department of Transportation is directed to erect suitable markers designating 98 Points of Light Road as described in subsection (1).

Section 2. This act shall take effect July 1, 2022.

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

PCS for HB 101

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 101 Improvements to Real Property
SPONSOR(S): Tourism, Infrastructure & Energy Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Tourism, Infrastructure & Energy Subcommittee		Johnson	Keating

SUMMARY ANALYSIS

In 2010, the Legislature provided specific authority for local governments to create Property Assessed Clean Energy (PACE) programs to provide up-front financing for certain qualifying improvements. Under these programs, property owners may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government. "Qualifying improvements" include energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements to existing facilities. Property owners finance qualifying improvements through a non-ad valorem assessment on their property. Local governments determine whether to offer a residential or commercial PACE program, whether to administer the program directly or through a for-profit or not-for-profit administrator, or any combination thereof.

The bill adds several consumer protections relating to the current PACE program, including:

- Specifying that a financing agreement may not be used to fund ancillary work not meeting specified conditions.
- Capping the total of all non-ad valorem assessments, plus any mortgage-related debt on the property, at 97 percent of a residential property's fair market value.
- Requiring a determination that a residential property owner is able to pay the assessment and meets certain minimum creditworthiness requirements.
- Allowing property owners to cancel a financing agreement within three days of execution.
- Ensuring that financing agreements do not exceed the estimated useful life of the qualifying improvement.
- Requiring acknowledgement of a number of key terms and disclosures, both orally and in writing, before execution of the financing agreement by the property owner.
- Requiring the appropriate licensure and background screening for contractors who install qualifying improvements under a PACE program.
- Requiring verification that the work was completed to code before funds are disbursed.
- Imposing certain marketing and communication guidelines, including limitations and prohibitions on solicitation, advertising, and other inducements.
- Specifying terms relating to enforceability of contracts for qualifying improvements and associated remedies.

The bill also requires the local government to post an online annual report documenting certain PACE activities.

The bill does not have a fiscal impact on state government. The bill does not appear to impact local government revenues, but may have an insignificant negative impact on local government expenditures.

The bill takes effect on July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Property Assessed Clean Energy (PACE) Programs

Generally, Property Assessed Clean Energy (PACE) programs enable local governments to establish programs to provide financing for certain qualifying improvements on real property which reduce energy consumption and increase energy efficiency. PACE allows individual property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects. The local government issues revenue bonds and uses the proceeds to provide initial project funding, which bonds are repaid by non-ad valorem assessments on participating property owners' tax bills.[1] The first residential PACE program was launched in 2008 in Berkeley and Palm Desert, California.[2] PACE programs are active in 24 states plus Washington D.C., but only California, Florida, and Missouri offer residential PACE programs.[3]

PACE in Florida

In 2010, the Legislature provided specific authority for local governments to create PACE programs.[4] The statute[5] provides supplemental authority to local governments[6] concerning qualified improvements to residential and non-residential real property. The law provides that if a local government authorizes a PACE program, property owners may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government.[7] "Qualifying improvements" include energy conservation and efficiency improvements, renewable energy improvements, and wind resistance improvements to existing facilities.[8]

At least 30 days before entering into the financing agreement, the property owner must provide notice to any mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment required to repay the amount.[9] The law provides that an acceleration clause for "payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement … is not enforceable."[10] However, the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to pay annually the qualifying improvement assessment.

The law authorizes a local government to partner with one or more other local governments to provide and finance qualifying improvements, levy a non-ad valorem assessment to fund a qualifying improvement, incur debt to provide financing for qualifying improvements, and collect costs incurred from financing qualifying improvements through a non-ad valorem assessment. These non-ad valorem assessments are senior to existing mortgage debt,[11] so if the homeowner defaults on their mortgage or

[1] For more information, *see* http://www.pacenation.org and http://floridapace.gov/ (last visited Jan. 19, 2022).
[2] NCSL, *PACE Financing* https://www.ncsl.org/research/energy/pace-financing.aspx (last visited Jan. 19, 2022).
[3] California offers residential PACE financing for improvements related to electric vehicle charging, infrastructure, energy efficiency, renewable energy, seismic strengthening and water efficiency. Missouri offers PACE financing for improvements related to energy efficiency and renewable energy. Additionally, Maine offers residential programs without holding a lien against properties. N CSL, *A Clean-Energy Financing Program for Homeowners Now Has Tougher Consumer Protections* (Nov. 17, 2017), https://www.ncsl.org/bookstore/state-legislatures-magazine/clean-energy-financing-consumer-protection.aspx. *See also* PACE Nation, *PACE Programs* https://www.pacenation.org/pace-programs/ (last visited Jan. 19, 2022).
[4] Ch. 2010-139, Laws of Fla.
[5] S. 163.08, F.S.
[6] Section 163.08(2)(a), F.S., defines the term "local government" to mean a county, a municipality, a dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7) (the Florida Interlocal Cooperation Act)."
[7] S. 163.08(4), F.S.
[8] S. 163.08(2)(b), F.S.
[9] S. 163.08(13), F.S.
[10] S. 163.08(15), F.S.
[11] *See* ss. 125.01(1)(r), 170.01 and 170.09, F.S.

goes into foreclosure, the delinquent PACE assessment payments may be recovered before the mortgage. Current law also specifies that a PACE program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.

In 2012, the Legislature expanded the definition of "local government" to allow a partnership of local governments formed pursuant to the Florida Interlocal Cooperation Act[12] to enter into a financing agreement wherein the partnership, as a separate legal entity, imposes the PACE assessment.[13]

To participate in a PACE program, a property owner must have paid property taxes and not been delinquent for the previous three years.[14] The total assessment cannot be for an amount greater than 20 percent of the just value of the property as determined by the county property appraiser, unless consent is obtained from the mortgage holders.[15]

In Florida, local governments typically have multiple non-exclusive agreements with a number of PACE providers.[16] Generally, PACE providers are private companies that administer the local government's PACE program on behalf of the local government and provide funding from private sources. PACE providers generally act as the program administrator for special districts created pursuant to an interlocal agreement between two or more Florida local governments. Once the PACE district is created, additional counties or municipalities may join the special district as members, authorizing the PACE provider for the special district to administer PACE programs on behalf of the newly joined members.[17] PACE providers generally maintain a list of approved contractors authorized to provide qualifying improvements.[18]

For example, Broward County authorizes the following PACE providers:[19]

- Counterpointe Energy Solutions provides financing under the "AllianceNRG" Program (residential) and the "CounterpointeSRE" Program (commercial). Administers PACE program for the Florida PACE Funding District.
- Berkadia administers a commercial PACE program. Administers PACE program for the Florida Renewable Energy District.
- CleanFund administers a commercial PACE program. Administers PACE program for the Florida Renewable Energy District.
- Dividend Finance administers the "Dividend" Program. Administers PACE program for the Florida Renewable Energy District.
- FortiFi Financial administers a residential PACE program. Administers PACE program through the Florida PACE Funding District.
- Greenworks Lending administers a commercial PACE program. Administers PACE program for the Florida Resiliency and Energy District.
- Lever Energy Capital administers a commercial PACE program. Administers PACE program for the Florida Resiliency and Energy District.
- Home Run Financing administers a residential PACE Program. Administers PACE program for the Florida Resiliency and Energy District.
- Rahill administers a commercial PACE program. Administers PACE program for the Florida PACE Funding District.
- Renew Financial administers PACE programs under the "RenewPACE" Program (residential and commercial). Administers PACE program for the Florida Green Finance Authority.

[12] S. 163.01(7), F.S.
[13] Ch. 2012-117, Laws of Fla.
[14] S. 163.08(9), F.S.
[15] S. 163.08(12)(a), F.S.
[16] *See* Florida Pace Funding Agency, *Service Areas*, https://floridapace.gov/serviceareas/ (last visited Jan. 19, 2022).
[17] *See* Green Corridor Property Assessed Clean Energy (PACE) District Town of Cutler Bay, Florida Financial Report for the Fiscal Year Ended Sept. 30, 2020, at 13, https://flauditor.gov/pages/specialdistricts_efile%20rpts/2020%20green%20corridor%20property%20assessment%20clean%20energy%20(pace)%20district.pdf (last visited Jan. 19, 2022).
[18] *See* Sarasota County, *PACE*, https://www.scgov.net/government/uf-ifas-extension-and-sustainability/pace (last visited Jan. 19, 2022).
[19] Broward County, *Property Assessed Clean Energy (PACE)* https://www.broward.org/NaturalResources/Sustainability/Pages/PACE.aspx (last visited Jan. 19, 2021).

- Structured Finance Associates administers a commercial PACE program. Administers PACE program for the Florida Renewable Energy District.
- Twain Financial Partners administers a commercial PACE program. Administers PACE program for the Florida Resiliency and Energy District.
- Ygrene administers the "Clean Energy Program" (residential and commercial). Administers PACE program for the Clean Energy Green Corridor Pace District.

Local governments may choose whether to offer a residential or commercial PACE program, whether to administer the program directly or through a third-party PACE provider, or any combination thereof.

Currently, PACE financing typically offers an average interest rate of 5 to 8 percent, not including additional associated fees, which is repaid over a term of 15 to 20 years. Interest rates and fees for a project are set by the PACE provider when the agreement is finalized with the property owner. [20]

Federal Housing Finance Agency and Super-Priority Liens

In 2010, and again in 2014,[21] the Federal Housing Finance Agency (FHFA) directed mortgage underwriters Fannie Mae and Freddie Mac not to purchase mortgages of homes encumbered by a first-lien PACE loan due to its senior status above a mortgage. Under normal circumstances, real estate lien priority is established by the order in which the liens are filed.[22]

According to the FHFA, such super-priority liens increase the risk of losses to taxpayers. Fannie Mae and Freddie Mac support the housing finance market by purchasing, guaranteeing, and securitizing single-family mortgages. Therefore, mortgages supported by Fannie Mae and Freddie Mac must remain in first-lien position, meaning they have first priority in receiving the proceeds from the sale of a property in foreclosure. Although FHFA generally supports energy retrofit financing programs, FHFA acknowledges that such programs should be structured to ensure protection of the core financing for the home.[23]

This restriction has two potential implications for borrowers. First, a homeowner with a first-lien PACE loan may not refinance their existing mortgage with a Fannie Mae or Freddie Mac mortgage. Second, anyone wanting to buy a home that already has a first-lien PACE loan cannot use a Fannie Mae or Freddie Mac loan for the purchase. These restrictions may reduce the marketability of the house or require the homeowner to pay off the PACE loan before selling the house.[24]

Additionally, in December 2017, the United States Department of Housing and Urban Development announced that the Federal Housing Administration will no longer insure new mortgages on properties

[20] *See* PACE Broward, *Frequently Asked Questions*, https://www.broward.org/Climate/EnergyAndSustainabilityProgram/Documents/PACE%20Broward%20FAQ%20Sheet_Update4_09212018.pdf (last visited Mar. 9, 2021).
[21] Federal Housing Finance Agency, *FHFA Statement on Certain Energy Retrofit Loan Programs* (July, 6, 2010), http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Statement-on-Certain-Energy-Retrofit-Loan-Programs.aspx (last visited Jan. 19, 2022). *See also* Federal Housing Financial Agency, *Statement of the Federal Housing Finance Agency on Certain Super Priority Liens* (December 22, 2014)("FHFA wants to make clear to homeowners, lenders, other financial institutions, state officials, and the public that Fannie Mae and Freddie Mac's policies prohibit the purchase of a mortgage where the property has a first-lien PACE loan attached to it") http://www.fhfa.gov/Media/PublicAffairs/Pages/Statement-of-the-Federal-Housing-Finance-Agency-on-Certain-Super-Priority-Liens.aspx (last visited Jan. 19, 2022).
[22] "Real estate liens generally are ordered so that prior liens are paid in foreclosure before liens filed later in time. For example, a mortgage loan used to buy the property takes priority over a later mortgage loan used to remodel the home. The earliest and thus highest priority mortgage loan is known as a first lien, while the subsequent mortgage loan is deemed a second lien. If the homeowner defaults on the second lien loan, the first lien mortgage holder retains the lien even if the second lien mortgage holder forecloses; however, the converse is not true. Tax assessments are an exception to this lien priority rule. Generally, unpaid property tax assessments have priority over other liens, regardless of the date the prior liens were recorded or when the tax assessments became delinquent. This makes the lien priority for PACE financing senior to liens for mortgage loans closed prior to the homeowner's acceptance of the PACE financing. In the case of default by the homeowner on the PACE assessment, local governments and investors in PACE bonds can expect to collect the balance owed on a PACE assessment before any recovery by a mortgage lender." Prentiss Cox, *Keeping PACE?: The Case Against Property Assessed Clean Energy Financing Programs*, 83 U. Colo. L. Rev. 83, 94 (2011), https://scholarship.law.umn.edu/faculty_articles/549 (last visited Jan. 19, 2022).
[23] *FHFA Statement on Certain Energy Retrofit Loan Programs, supra*, note 21.
[24] *FHFA Statement on Certain Energy Retrofit Loan Programs*, *supra*, note 21.

that include PACE assessments, citing concerns about the potential for increased losses to the Mutual Mortgage Insurance Fund resulting from the priority lien status given to such assessments.[25]

Some residential PACE programs are now operating with loan loss reserve funds, appropriate disclosures, or other protections meant to address FHFA's concerns.[26] For example, in 2013 California created a reserve fund to compensate first mortgage lenders in case of a foreclosure or a forced sale attributable to a PACE loan. Additionally, Oklahoma and Vermont have passed legislation to downgrade PACE from senior lien to junior lien, and there have been attempts by Congress to revise residential PACE programs at the federal level, including the 2014 PACE Assessment Protection Act.[27]

Consumer Protection

Consumer issues have surrounded the PACE programs from their inception.[28] These include the cost of funding, contractor sales techniques (notably, responding to a limited homeowner problem and marketing a full house retrofit), rolling the administrative fees for the local government into the PACE loan amount, product sales at above market interest rates, workmanship issues, inadequate disclosures, and indiscriminate lending regardless of ability to repay.[29]

In response to these consumer issues, Congress amended the Truth in Lending Act in 2018 to direct the Consumer Financial Protection Bureau to implement federal regulations which provide more effective consumer protections relating to PACE loans, especially those related to the ability of a homeowner to repay the loan.[30]

The United States Department of Energy maintains "best practice guidelines" for residential PACE financing programs, which includes measures relating to:

- Establishing financial eligibility and verifying property ownership;
- Confirming property-based debt, tax assessments, and property valuation;
- Reviewing property owner income and debt obligations;
- Establishing consumer and lender protections;
- Establishing property owner education and disclosures;
- Providing a right to cancel the purchase;
- Determining appropriate minimum equity requirements and appropriate maximum assessments;
- Providing equipment specifications and energy assessments;
- Defining the relationship between PACE assessments and mortgage financing;
- Providing for non-acceleration upon property owner default;
- Notifying mortgage holders of record; and
- Addressing the needs and potential vulnerabilities of low-income and elderly households.[31]

[25] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020).
[26] Commercial PACE programs were not directly affected by FHFA's actions because Fannie Mae and Freddie Mac do not underwrite commercial mortgages.
[27] NCSL, *PACE Financing* https://www.ncsl.org/research/energy/pace-financing.aspx (last visited Mar. 7, 2021).
[28] "PACE loans, offered through home improvement contractors, often in door-to-door sales, and secured by a property tax lien, are collected through a property tax assessment that takes priority over any existing mortgage. PACE programs must be authorized by state and local governments, but are privately run with little or no government oversight. Over the last two years, there has been a sharp increase in homeowners seeking assistance from legal services and other organizations in relation to PACE loans. The goal of improving home energy efficiency is being overshadowed by the lack of adequate consumer protection for these loans. Weak PACE loan regulation enables contractors to saddle homeowners with debt they cannot afford and puts their homes at risk for foreclosure." National Consumer Law Center, *Advocates Applaud CFPB's Intention to Deal with PACE Loan Program Abuses* (Mar. 4, 2019), https://www.nclc.org/media-center/advocates-applaud-cfpbs-intention-to-deal-with-pace-loan-program-abuses.html (last visited Jan. 19, 2022).
[29] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020).
[30] FHFA, Property Assessed Clean Energy (PACE) Program, 85 Fed. Reg. 11,2738 (Jan. 16, 2020). *See also* Public Law 115–174 (2018), section 307; codified at 15 U.S.C. 1639c(b)(3)(C). and Bureau of Consumer Financial Protection, Advance Notice of Proposed Rulemaking on Residential Property Assessed Clean Energy Financing, 84 FR 8479 (Mar. 8, 2019).
[31] Department of Energy, *Best Practice Guidelines for Residential PACE Financing Programs* (Nov. 18, 2016), https://www.energy.gov/sites/prod/files/2016/11/f34/best-practice-guidelines-RPACE.pdf (last visited Jan. 19, 2022).

Some local governments in Florida have implemented more stringent consumer protections than those required by Florida law.[32]

Effect of the Bill

The bill amends s. 163.08, F.S., providing a number of changes to the PACE program.

Eligibility for PACE Loans

The bill provides that the total amount of any non-ad valorem assessment for a property under s. 163.08, F.S., may not exceed 20 percent of the fair market value of the property. Additionally, the total of any non-ad valorem assessments plus any mortgage-related debt on the property may not exceed 97 percent of the fair market value of the property. The fair market value of the property must be derived using any methodology commonly used in the real estate finance industry.

The bill requires a PACE program administrator to use certain information to reasonably determine whether the property owner has the ability to pay the annual assessment for the qualifying improvement, including the property owner's household income, housing expenses, assets, and other debt obligations.

The bill specifies that a financing agreement may not be used to fund ancillary work unless the scope of the ancillary work is directly related to and necessary for the installation and safe operation of a qualifying improvement and the cost of the ancillary work does not exceed the cost of the individual qualifying improvement to which it is directly related.

The bill creates definitions for the following terms:

- "Facility," means any portion of a building, structure, or site improvement located on a site as defined in Section 202 of the 2020 Florida Building Code.
- "PACE contractor" means an independent contractor who is authorized under s. 163.08, F.S. to contract with a property owner to install qualifying improvements on real property and who is not the owner of the property.
- "Program administrator" means a for-profit or not-for-profit entity which administers a qualifying improvement program on behalf and at the discretion of a local government.
- "Qualifying improvement program" means a program that includes financing and administration activities undertaken by a program administrator or other authorized entity for property owners to purchase and install qualifying improvements on a building or facility.
- "Residential property" means real estate on which any of the following is located:
    - One single-family residential unit or one multifamily structure containing one to four residential units;
    - Single-family residential units such as condominiums, townhouses, timeshares, mobile homes, or houses in a subdivision that may be legally sold, leased, or otherwise conveyed on a unit-by-unit basis, regardless of whether the units are a part of a larger building or parcel containing more than four residential units.

Written Disclosures

The bill specifies that, before entering into a financing agreement for a qualifying improvement, the local government or program administrator must determine if:

- The property owner is current on all mortgage debt on the property and has had no more than one late payment exceeding 30 days during the 12 months immediately preceding the application date.
- The holders or loan servicers of any mortgage encumbering or otherwise secured by the property have received notice of the assessment at least 30 days in advance.

[32] *See, e.g.,* Palm Beach County, Ord. No. 2017-012, Section 6. Disclosure Requirements https://discover.pbcgov.org/resilience/PDF/PACE_ORDINANCE_2017-012%20-%20ADA%20Compliant.pdf (last visited Jan. 19, 2022).

- Property owners whose taxes are paid through an escrow account have notified the holder of the escrow account that a non-ad valorem assessment will be imposed upon the property.
- The term of the financing agreement does not exceed the estimated useful life of the qualifying improvement.
- The property owner has acknowledged certain written disclosures, as described below.
- A residential property owner has not been subject to a bankruptcy proceeding within the last seven years unless it was discharged or dismissed more than two years prior.
- A residential property owner is current on nonmortgage debt excluding medical debt, and has had no more than one late payment exceeding 30 days during the 12 months.
- The property is within the geographic boundaries of the applicable qualifying improvement program.
- The property owner has obtained or sought to obtain additional qualifying improvements on the same property that have not yet been recorded.

The bill requires that the local government or program administrator, before execution of the financing agreement, provide a written disclosure form to the property owner, which contains the key terms of the agreement, including:

- A description of the qualifying improvement;
- The total financed amount, including the cost of the qualifying improvement, ancillary work, installation, program fees, and prepaid interest, if any;
- The annual assessment process and yearly payment schedule;
- The amount of the annual assessment;
- The term of the total financed amount;
- The interest rate for the financed amount;
- The annual percentage rate;
- The total estimated annual costs that the residential real property owner will have to pay under the assessment contract, including applicable fees;
- The total estimated average monthly equivalent amount of funds the residential real property owner would have to save in order to pay the annual costs of the assessment, including applicable fees;
- The estimated date when the residential real property owner's first property tax payment, which includes the assessment, will be due.

The disclosure form must contain the following statements, which must be individually acknowledged in writing:

- "I UNDERSTAND THAT IF I SELL OR REFINANCE THE PROPERTY, I MAY BE REQUIRED TO PAY OFF THE OUTSTANDING FINANCED AMOUNT AS A CONDITION OF THE SALE OR THE REFINANCE OF THE PROPERTY." (This disclosure must be made in 24-point, bold font.)
- "I understand that the annual assessment will be paid when property taxes are paid and will result in a lien being placed on my property."
- "I understand that the annual assessment will be added to my property tax bill and if I pay my property taxes through my mortgage payment using an escrow account, I must notify my mortgage lender."
- "I understand that if I fail to pay the annual assessment, I may incur penalties and fees and the local government could issue a tax certificate which might result in the loss of my property."
- “I understand that any potential utility or insurance savings are not guaranteed and will not reduce the assessment or total assessment amount.”
- "I understand that I have 3 days to cancel the financing agreement. The 3-day right expires on midnight of the third business day after I sign the agreement."
- “I understand that the local government, program administrator, or PACE contractor do not provide tax advice and that I should seek professional tax advice if I have questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the assessment contract.
- "I understand that I cannot be assessed a penalty if I prepay the outstanding financed amount."

A printed cancellation form must be provided to the property owner no later than the time the property owner signs the financing agreement that allows the property owner to cancel the contract.

Oral Disclosures

The bill requires the local government or program administrator to conduct an oral, recorded, telephone call in the owner's preferred language, and which uses plain language, confirming the disclosures described above. The owner or his or her authorized representative must provide written acknowledgement that the oral confirmation was given. The bill also requires that the local government or program administrator develop additional procedures to address the needs and concerns of elderly persons.

Other Encumbrances on Property

The bill prohibits a PACE loan on any residential real property where an existing loan encumbering the property is subject to:

- A negative amortization schedule;
- A balloon payment; or
- Pre-payment fees, other than nominal administrative costs.

Contractor Screening

The bill states that a local government or program administrator may not enroll a PACE contractor who offers financing on residential real property unless:

- The PACE contractor maintains in good standing an appropriate license from the state, if applicable, as well as any other permits, licenses, or registrations required for engaging in its business in the jurisdiction where it operates and maintains all state required bond and insurance coverage.
- The PACE contractor agrees, in writing, to comply with all applicable laws, including applicable advertising and marketing laws and regulations and other requirements in the bill.
- A process exists to enroll new PACE contractors, including a reasonable review of the contractor's:
    - Relevant work or project history,
    - Financial and reputational background checks, and
    - Status on the Better Business Bureau or other online platforms that track contractor reviews.

Contractor Payment

The bill requires that, before disbursing funds to a PACE contractor for a qualifying improvement on residential real property, the local government or program administrator must first confirm that the applicable work or service has been completed and that the local government has determined the work complies with applicable codes and standards, including but not limited to the Florida Building Code and the Florida Fire Prevention Code.

The bill also prohibits disclosure of the maximum financing amount for which a residential real property owner is eligible to the PACE contractor or to a third party engaged in soliciting assessment contracts under the PACE program.

Marketing and Communications Guidelines

The bill requires that a local government, program administrator, or PACE contractor, or a third party engaged in marketing on the behalf of these entities, must comply with the following marketing and communications guidelines and may not:

- Suggest or imply that:
    - An assessment is a government assistance program;

    - Qualifying improvements are free or provided at no cost, or that the financing related to an assessment is a free or no cost program; or
    - The financing of a qualifying improvement using the PACE program does not require the property owner to repay the financial obligation.
- Make any representation as to the tax deductibility of an assessment on residential real property, but they may encourage a property owner to seek the advice of a tax professional regarding tax matters related to assessments.

Unenforceable Contracts and Associated Remedies

The bill specifies that a contract to sell or install a qualifying improvement that is related to an application for financing under a PACE program for a residential property is unenforceable, and a PACE contractor may not begin work under such a contract, if:

- The property owner would not have entered into the contract but for the belief that the qualifying improvement or its installation would be paid under the financing agreement;
- The property owner applied for, accepted, and canceled a qualifying improvement financing agreement within the 3-day right-to-cancel period.

If a PACE contractor has initiated work on a residential property under an unenforceable contract as determined above, the PACE contractor:

- May not receive compensation for that work under the financing agreement.
- Must restore the property to its original condition at no cost to the property owner.
- Must immediately return any money, property, and other consideration given by the property owner. If the property owner provided any property and the PACE contractor does not or cannot return it, the PACE contractor must immediately return the fair market value of the property or its value as designated in the contract, whichever is greater.

If the PACE contractor has delivered chattel[33] or fixtures to the residential property pursuant to an unenforceable contract, the PACE contractor has 90 days from the date the contract was executed to retrieve the chattel or fixtures provided that:

- The PACE contractor has fulfilled certain requirements under the bill.
- The chattel and fixtures can be removed at the PACE contractor's expense without damaging the property owner's property and practically returned.
- The residential property owner may retain any chattel or fixtures provided pursuant to an unenforceable contract if a PACE contractor fails to comply with these provisions.

A contract which is otherwise unenforceable remains enforceable if the residential property owner waives his or her right to cancel the contract, allows the PACE contractor to proceed with the installation of the qualifying improvement, and cancels the financing agreement.

Limitations and Prohibitions on Solicitation, Advertising, and Other Inducements

The bill specifies that a program administrator may not authorize a PACE contractor or third party to advertise the availability of financing agreements or solicit property owners on behalf of the program administrator, unless:

- The PACE contractor or third party maintains the appropriate registration or certification from the Construction Industry Licensing Board or any other permit, license, or registration required to conduct business in the jurisdiction where it operates, and provides proof of having the required bond and insurance coverage amounts.

[33] "Chattel" means "A catch-all category of property mostly associated with movable goods. At common law, chattel included all property that was not real estate and not attached to real estate. Examples included everything from leases, to cows, to clothes. In modern usage, chattel often merely refers to tangible movable personal property." Cornell Law School, *Legal Information Institute,* https://www.law.cornell.edu/wex/chattel#:~:text=A%20catch%2Dall%20category%20of,to%20tangible%20movable%20personal%20property (last visited Jan. 19, 2022).

- The program administrator obtains the PACE contractor's or third party's written agreement that the PACE contractor or third party will meet applicable laws and rules and qualifying improvement program policies and procedures, including those on advertising and marketing.

A local government or program administrator may not:

- Provide any direct or indirect cash payment or thing of material value to a PACE contractor in excess of the actual price charged by that PACE contractor for the sale and installation of the qualifying improvements that are financed by a financing agreement. However, a local government or program administrator may provide information or services to a PACE contractor to facilitate the installation of a qualifying improvement for a property owner.
- Reimburse a PACE contractor for its expenses for advertising and marketing campaigns and materials. A program administrator and a PACE contractor may share expenses in connection with joint advertising and marketing campaigns and materials, if the expenses are shared on a commercially reasonable basis.
- Provide any direct cash payment or other thing of material value to a property owner explicitly conditioned upon the property owner entering into a financing agreement. However, a program administrator may offer programs or promotions that provide reduced fees or interest rates if the reduced fees or interest rates are reflected in the financing agreements and are not provided to the property owners as cash consideration.
- Provide to a PACE contractor engaged in soliciting financing agreements on its behalf any information that discloses the amount of funds for which a property owner is eligible for qualifying improvements or the amount of equity in a property.

For residential properties, a PACE contractor may not provide a different price for a qualifying improvement financed under this section than the PACE contractor would provide if the property owner paid for the improvement in cash.

Annual Report

The bill requires each local government that has authorized a PACE program post an annual report on its website by April 1 containing the following information:

- The number of qualifying improvements funded.
- The aggregate, average, and median dollar amounts of annual and total qualifying improvements assessments funded.
- The percentage, the number, and the dollar value of qualifying improvements assessments represented by the category types consisting of energy efficiency, renewable energy, and wind resistance.
- The number of defaulted assessments including the total number and defaulted amount, the number and dates of missed payments, the total number of parcels defaulted and years in default, and the percentage of defaults by total assessments.
- A summary of all reported violations of this section, including the resolution of each.
- The estimated number of jobs created.
- The number and percentage of homeowners 60 years of age or older participating in a qualifying improvement program.

B. SECTION DIRECTORY:

Section 1 Amends s. 163.08, F.S., providing for certain requirements related the property assessed clean energy program.

Section 2 Provides an effective date of July 1, 2022.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may have an insignificant negative impact on local government expenditures as a result of the annual report requirement.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that a local government or program administrator does not already impose similar consumer protection measures, the bill will benefit property owners who choose to finance qualifying improvements through a PACE program by ensuring that property owners are fully informed as to the key terms and potential consequences of a PACE loan and by requiring a determination that they are capable of repaying the loan. The bill may result in fewer defaults and potential foreclosures.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to improvements to real property; amending s. 163.08, F.S.; providing and revising definitions; prohibiting financing agreements for qualifying improvements to fund ancillary work unless specified criteria are met; prohibiting financing agreements for qualifying improvements from being approved unless specified criteria are met; requiring the program administrator or other entity to use specified information provided by the property owner to determine the owner's ability to pay the annual non-ad valorem assessment; providing criteria to be used in making the determination; requiring the local government or program administrator to develop a written disclosure form to be given to property owners that meets specified criteria; requiring the local government or program administrator to provide a printed cancellation form to and conduct an oral, recorded telephone call with the property owner at a specified time and containing specified information; requiring the local government or program administrator to develop procedures to address the needs of elderly persons; specifying the total amount of any non-ad valorem assessment that may be assessed on properties as a result of qualifying improvements;

prohibiting local governments or program administrators from offering financing for certain qualifying improvements if those financing agreements meet certain criteria; providing criteria that must be met before a local government or program administrator may enroll a PACE contractor to offer financing for residential properties; specifying criteria that must be met before a PACE contractor may receive funds for qualifying improvements on residential properties; providing market and communications guidelines that must be met when communicating with residential real property owners; specifying the types of contracts that are unenforceable and for which PACE contractors may not begin work; providing procedures for the return of chattel and fixtures that were installed in an unenforceable contract; prohibiting PACE contractors from engaging in specified activities concerning PACE contractors; requiring local governments that have authorized qualifying improvement programs to post specified information on their websites on an annual basis; providing an effective date.

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

Section 1. Section 163.08, Florida Statutes, is amended to read:

163.08 Supplemental authority for improvements to real property.—

(1)(a) In chapter 2008-227, Laws of Florida, the Legislature amended the energy goal of the state comprehensive plan to provide, in part, that the state shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. That act also declared it the public policy of the state to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security, and the reduction of greenhouse gases. In addition to establishing policies to promote the use of renewable energy, the Legislature provided for a schedule of increases in energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction. In chapter 2008-191, Laws of Florida, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments. In the 2008 general election, the voters of this state approved a constitutional amendment authorizing the Legislature, by general law, to prohibit consideration of any change or improvement made for the purpose of improving a property's resistance to wind damage or

the installation of a renewable energy source device in the determination of the assessed value of residential real property.

(b) The Legislature finds that all energy-consuming-improved properties that are not using energy conservation strategies contribute to the burden affecting all improved property resulting from fossil fuel energy production. Improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption. All improved properties not protected from wind damage by wind resistance qualifying improvements contribute to the burden affecting all improved property resulting from potential wind damage. Improved property that has been retrofitted with wind resistance qualifying improvements receives the special benefit of reducing the property's burden from potential wind damage. Further, the installation and operation of qualifying improvements not only benefit the affected properties for which the improvements are made, but also assist in fulfilling the goals of the state's energy and hurricane mitigation policies. In order to make qualifying improvements more affordable and assist property owners who wish to undertake such improvements, the Legislature finds that there is a compelling state interest in enabling property owners to voluntarily finance such improvements with local government assistance.

(c) The Legislature determines that the actions authorized under this section, including, but not limited to, the financing of qualifying improvements through the execution of financing agreements and the related imposition of voluntary assessments are reasonable and necessary to serve and achieve a compelling state interest and are necessary for the prosperity and welfare of the state and its property owners and inhabitants.

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

(a) "Facility" means any portion of a building, structure, or site improvement located on a site as defined in s. 202 of the 2020 Florida Building Code.

(b) "Local government" means a county, a municipality, a dependent special district as defined in s. 189.012, or a separate legal entity created pursuant to s. 163.01(7).

(c) "PACE contractor" means an independent contractor who is authorized under this section to contract with a property owner to install qualifying improvements on real property and who is not the owner of such property.

(d) "Program administrator" means a for-profit or not-for-profit entity which administers a qualifying improvement program on behalf and at the discretion of a local government.

(e) ~~(b)~~ "Qualifying improvement" includes any:

1. Energy conservation and efficiency improvement, which is a measure to reduce consumption through conservation or a more efficient use of electricity, natural gas, propane, or

other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; building modifications to increase the use of daylight; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; and installation of efficient lighting equipment.

2. Renewable energy improvement, which is the installation of any system in which the electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bioenergy, and wind energy.

3. Wind resistance improvement, which includes the products and installation for~~, but is not limited to~~:

a. Improving the strength of the roof deck attachment;

b. Creating a secondary water barrier to prevent water intrusion;

c. Installing wind-resistant shingles;

d. Installing gable-end bracing;

e. Reinforcing roof-to-wall connections;

f. Installing storm shutters; or

g. Installing opening protections.

(f) "Qualifying improvement program" means a program that includes the financing and administration activities undertaken

by a local government or program administrator for property owners to purchase and install qualifying improvements on a building or facility.

(g) "Residential property" means real property upon which any of the following is located:

1. One single-family residential unit or one multifamily structure containing one to four residential units; or

2. Single-family residential units such as condominiums, townhouses, timeshares, mobile homes, or houses in a subdivision that may be legally sold, leased, or otherwise conveyed on a unit-by-unit basis, regardless of whether the units are a part of a larger building or parcel containing more than four residential units.

(3) A local government may levy non-ad valorem assessments to fund qualifying improvements.

(4) Subject to local government ordinance or resolution, a property owner may apply to the local government for funding to finance a qualifying improvement and enter into a financing agreement with the local government. Costs incurred by the local government for such purpose may be collected as a non-ad valorem assessment. A non-ad valorem assessment shall be collected pursuant to s. 197.3632 and, notwithstanding s. 197.3632(8)(a), shall not be subject to discount for early payment. However, the notice and adoption requirements of s. 197.3632(4) do not apply if this section is used and complied with, and the intent

resolution, publication of notice, and mailed notices to the property appraiser, tax collector, and Department of Revenue required by s. 197.3632(3)(a) may be provided on or before August 15 in conjunction with any non-ad valorem assessment authorized by this section, if the property appraiser, tax collector, and local government agree.

(5) Pursuant to this section or as otherwise provided by law or pursuant to a local government's home rule power, a local government may enter into a partnership with one or more local governments for the purpose of providing and financing qualifying improvements.

(6) A qualifying improvement program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.

(7) A local government may incur debt for the purpose of providing such improvements, payable from revenues received from the improved property, or any other available revenue source authorized by law.

(8) A local government may enter into a financing agreement only with the record owner of the affected property. Any financing agreement entered into pursuant to this section or a summary memorandum of such agreement shall be recorded in the public records of the county within which the property is located by the sponsoring unit of local government within 5 days after execution of the agreement. The recorded agreement shall

provide constructive notice that the non-ad valorem assessment to be levied on the property constitutes a lien of equal dignity to county taxes and assessments from the date of recordation.

(9) A financing agreement may not be used to fund ancillary work unless the scope of the ancillary work is directly related to and necessary for the installation and safe operation of a qualifying improvement and the cost of the ancillary work does not exceed the cost of the individual qualifying improvement to which it is directly related.

(10) ~~(9)~~ A ~~Before entering into a~~ financing agreement for a qualifying improvement may not be approved unless~~,~~ the local government or program administrator, as applicable, has ~~shall~~ reasonably determined ~~determine~~ that:

(a) All property taxes and any other assessments levied on the same bill as property taxes are paid and have not been delinquent for the preceding 3 years or the property owner's period of ownership, whichever is less; ~~that~~

(b) There are no involuntary liens, including, but not limited to, construction liens on the property; ~~that~~

(c) No notices of default or other evidence of property-based debt delinquency have been recorded during the preceding 3 years or the property owner's period of ownership, whichever is less; ~~and that~~

(d) The property owner is current on all mortgage debt on the property and has had no more than one late payment exceeding

30 days during the 12 months immediately preceding the application date; ~~The property owner is current on all mortgage debt on the property.~~

(e) The holders or loan servicers of any mortgage encumbering or otherwise secured by the property have received the written notice required by subsection (16);

(f) Any property owner whose real property taxes are paid through an escrow account has notified the holder of the escrow account that a non-ad valorem assessment will be imposed upon the property pursuant to this section;

(g) The term of the financing agreement does not exceed the estimated useful life of the qualifying improvement. The local government or program administrator, as applicable, shall determine the useful life using established third-party standards, including certification criteria from government agencies or nationally recognized standards and testing organizations;

(h) The property owner has acknowledged in writing the disclosure statements required by paragraph (12)(b);

(i) For residential properties, the property owner has not been subject to a bankruptcy proceeding within the last 7 years unless it was discharged or dismissed more than 2 years before the date that the property owner applied for funding as set forth in subsection (4);

(j) For residential properties, the property owner is

current on nonmortgage debt excluding medical debt, and has had no more than one late payment exceeding 30 days during the 12 months immediately preceding the date that the property owner applied for funding as set forth in subsection (4);

(k) The property is within the geographic boundaries of the applicable qualifying improvement program; and

(l) The local government or program administrator, as applicable, has asked if the property owner has obtained or sought to obtain additional qualifying improvements on the same property that have not yet been recorded. The failure of a property owner to disclose information set forth in this subsection does not invalidate a financing agreement or any obligation thereunder, even if the total financed amount of the qualifying improvement exceeds the amount that would otherwise be authorized under subsection (15).

The existence of a prior qualifying improvement non-ad valorem assessment or a prior financing agreement is not evidence that the financing agreement under consideration is affordable or meets other program requirements.

(11) In addition to obtaining the information in subsection (10), and before a local government or program administrator, as applicable, approves a qualifying improvement on residential property, he or she must use information contained in the property owner's application, reasonably

reliable third-party records, or an automated verification system to reasonably determine whether the property owner has the ability to pay the annual non-ad valorem assessment for the qualifying improvement. The local government or program administrator, as applicable, must review the property owner's household income, housing expenses, assets, and other debt obligations. If the local government or program administrator, as applicable, uses an automated verification system, it must be a system that can verify the property owner's income, is not based on predictive or estimation methodologies, and has been determined sufficient for such verification purposes by a federal mortgage lending authority or regulator. In reviewing the property owner's ability to pay, the local government or program administrator, as applicable:

(a) When determining the household income, may include the income of any property owner aged 18 years old or older whose name is on the property title. If a person's income is considered, that person's debt obligations must also be considered.

(b) May not consider the equity in the property that will secure the non-ad valorem assessment.

(c) Shall determine the property owner's debt obligations using reasonably reliable third-party records, including at least, one consumer credit report from an agency that meets the requirements of 15 U.S.C. s. 1681a(p). Debt obligations to be

reviewed include:

1. Secured and unsecured debt.

2. Housing expenses. The local government or program administrator, as applicable, shall make a reasonable estimate of the basic housing expenses based on the number of persons in the household.

3. Stated alimony or child support obligations.

(d) Shall determine whether the property owner has sufficient income to pay the annual non-ad valorem assessment and that he or she has sufficient residual income to meet his or her household living expenses.

(12) Each local government or program administrator that offers a qualifying improvement program must:

(a) Develop a written disclosure form that must be provided to the property owner before he or she executes the financing agreement and which contains the key terms of the agreement, including:

1. A description of the qualifying improvement;

2. The total financed amount, including the cost of the qualifying improvement, ancillary work, installation, program fees, and prepaid interest, if any;

3. The annual non-ad valorem assessment process and yearly payment schedule;

4. The amount of the annual non-ad valorem assessment;

5. The term of the total financed amount;

6. The interest rate for the financed amount;

7. The annual percentage rate;

8. The total estimated annual costs that the residential real property owner will have to pay under the assessment contract, including applicable fees;

9. The total estimated average monthly equivalent amount of funds the residential real property owner would have to save in order to pay the annual costs of the non-ad valorem assessment, including applicable fees; and

10. The estimated due date of the residential real property owner's first property tax payment that includes the non-ad valorem assessment.

(b) Include the following statements in the written disclosure form, using the same order as listed in this paragraph, each of which must be individually acknowledged in writing by the property owner:

1. "I UNDERSTAND THAT IF I SELL OR REFINANCE THE PROPERTY, I MAY BE REQUIRED TO PAY OFF THE OUTSTANDING FINANCED AMOUNT AS A CONDITION OF THE SALE OR THE REFINANCE OF THE PROPERTY."

The previous statement must be made in at least 24-point boldfaced type.

2. "I understand that the annual non-ad valorem assessment will be paid when property taxes are paid and will result in a

lien being placed on my property."

3. "I understand that the annual non-ad valorem assessment will be added to my property tax bill and if I pay my property taxes through my mortgage payment using an escrow account, I must notify my mortgage lender."

4. "I understand that if I fail to pay the annual non-ad valorem assessment, I may incur penalties and fees and the local government could issue a tax certificate which might result in the loss of my property."

5. "I understand that any potential utility or insurance savings are not guaranteed and will not reduce the annual non-ad valorem assessment or total assessment amount."

6. "I understand that I have 3 days to cancel the financing agreement. The 3-day right expires at midnight of the third business day after I sign the agreement."

7. "I understand that the local government, program administrator, or PACE contractor do not provide tax advice and that I should seek professional tax advice if I have questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the assessment contract.

8. "I understand that I cannot be assessed a penalty if I prepay the outstanding financed amount."

(c) Provide a printed cancellation form to the property owner no later than the time the property owner signs the financing agreement which allows the property owner to cancel

the contract, within the 3-day period specified in subparagraph (b)6.

(d) Conduct, with at least one residential real property owner or an authorized representative, an oral, recorded telephone call during which time the local government or program administrator, as applicable, must use plain language. The local government or program administrator, as applicable, must ask the residential real property owner if he or she would like to communicate primarily in a language other than English and, if so, must conduct the call in the owner's preferred language. A local government or program administrator, as applicable may not leave a voicemail to the residential real property owner to satisfy this requirement. The owner or their representative must provide written acknowledgement that the oral confirmation was given. A local government or program administrator, as applicable, as part of this telephone call, must confirm with the residential real property owner:

1. That at least one residential real property owner has access to a copy of the assessment contract and financing estimates and disclosures.

2. The qualifying improvement that is being financed.

3. The total estimated annual costs that the residential real property owner will have to pay under the assessment contract, including applicable fees.

4. The total estimated average monthly equivalent amount

of funds the residential real property owner would have to save in order to pay the annual costs of the non-ad valorem assessment, including applicable fees.

5. The estimated due date of the residential real property owner's first property tax payment that includes the non-ad valorem assessment.

6. The term of the assessment contract.

7. That payments for the assessment contract will cause the residential real property owner's annual tax bill to increase, that payments will be made through an additional annual non-ad valorem assessment on the property, and will be paid either directly to the county tax collector's office as part of the total annual secured property tax bill or may be paid through the residential real property owner's mortgage escrow account.

8. That the qualifying residential property owner has disclosed whether the property has received or is seeking additional non-ad valorem assessments and has disclosed all other assessments or special taxes that are or are about to be placed on the property.

9. That the property will be subject to a lien during the term of the assessment contract and that the obligations under the contract may be required to be paid in full before the residential real property owner sells or refinances the property.

10. That any potential utility or insurance savings are not guaranteed and will not reduce the annual non-ad valorem assessment or total assessment amount.

11. That the local government, program administrator, or PACE contractor do not provide tax advice and that the residential real property owner should seek professional tax advice if he or she has questions regarding tax credits, tax deductibility, or other tax impacts of the qualifying improvement or the assessment contract.

(e) The local government or program administrator shall develop additional procedures under this subsection to address the needs and concerns of elderly persons.

(13) ~~(10)~~ A qualifying improvement shall be affixed or connected to a building or facility that is part of the property and shall constitute an improvement to the building or facility or a fixture attached to the building or facility. An agreement between a local government and a qualifying property owner may not cover wind-resistance improvements in buildings or facilities under new construction or construction for which a certificate of occupancy or similar evidence of substantial completion of new construction or improvement has not been issued.

(14) ~~(11)~~ Any work requiring a license under any applicable law to make or install a qualifying improvement shall be performed by a contractor properly certified or registered

pursuant ~~to part I or part II of~~ chapter 489.

(15) ~~(12)(a) Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by the property,~~ The total amount of any non-ad valorem assessment for a property under this section may not exceed 20 percent of the fair market value of the property ~~just value of the property as determined by the county property appraiser~~. In addition, the total of any non-ad valorem assessments plus any mortgage-related debt on the property may not exceed 97 percent of the fair market value of the property. The fair market value of the property shall be derived using any methodology commonly used in the real estate finance industry.

~~(b) Notwithstanding paragraph (a), a non-ad valorem assessment for a qualifying improvement defined in subparagraph (2)(b)1. or subparagraph (2)(b)2. that is supported by an energy audit is not subject to the limits in this subsection if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the non-ad valorem assessment.~~

(16) ~~(13)~~ At least 30 days before entering into a financing agreement, the property owner shall provide to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a notice of the owner's intent to enter into a financing agreement together with the maximum principal amount to be financed and the maximum annual

assessment necessary to repay that amount. A verified copy or other proof of such notice shall be provided to the local government or program administrator, as applicable. A provision in any agreement between the ~~a~~ mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable. This subsection does not limit the authority of the holder or loan servicer to increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

(17) ~~(14)~~ At or before the time a purchaser executes a contract for the sale and purchase of any property for which a non-ad valorem assessment has been levied under this section and has an unpaid balance due, the seller shall give the prospective purchaser a written disclosure statement in the following form, which shall be set forth in the contract or in a separate writing:

QUALIFYING IMPROVEMENTS FOR ENERGY EFFICIENCY, RENEWABLE ENERGY, OR WIND RESISTANCE.—The property being purchased is located within the jurisdiction of a local government that has placed an non-ad valorem assessment on the property pursuant to s. 163.08, Florida Statutes. The non-ad valorem assessment is for a

qualifying improvement to the property relating to energy efficiency, renewable energy, or wind resistance, and is not based on the value of property. You are encouraged to contact the county property appraiser's office to learn more about this and other assessments that may be provided by law.

(18) ~~(15)~~ A provision in any agreement between a local government and a public or private power or energy provider or other utility provider is not enforceable to limit or prohibit any local government from exercising its authority under this section.

(19) ~~(16)~~ This section is additional and supplemental to county and municipal home rule authority and not in derogation of such authority or a limitation upon such authority.

(20) A local government or program administrator, as applicable, may not offer financing for a qualifying improvement authorized pursuant to this section on any residential real property that includes any of the following:

(a) A negative amortization schedule;

(b) A balloon payment; or

(c) Pre-payment fees, other than nominal administrative costs.

(21) For residential real property, a local government or program administrator, as applicable:

(a) May not enroll a PACE contractor who offers financing on residential real property unless:

1. The local government or program administrator, as applicable, determines that the PACE contractor maintains in good standing an appropriate license from the state, if applicable, as well as any other permits, licenses, or registrations required for engaging in its business in the jurisdiction where it operates and maintains all state required bond and insurance coverage.

2. A local government or program administrator, as applicable, obtains the PACE contractor's written agreement that the PACE contractor will comply with all applicable laws, including applicable advertising and marketing laws and regulations and the requirements of subsection (23).

(b) Must maintain a process to enroll new PACE contractors that includes reasonable review of the following for each contractor:

1. Relevant work or project history.

2. Financial and reputational background checks.

3. The contractor's status on the Better Business Bureau platform or other online platforms that track contractor reviews.

(22)(a) Before disbursing funds to a PACE contractor for a qualifying improvement on residential real property, the local government or program administrator, as applicable, must first confirm that the applicable work or service has been completed and the local government has determined the work complies with

applicable codes and standards, including, but not limited to, the Florida Building Code and the Florida Fire Prevention Code.

(b) A local government or program administrator, as applicable, may not disclose the maximum financing amount for which a residential real property owner is eligible to a PACE contractor or to a third party engaged in soliciting assessment contracts financed pursuant to this section.

(23) When communicating with residential real property owners, a local government, program administrator, PACE contractor, or a third party engaged in marketing on behalf of these entities, must comply with the following marketing and communications guidelines and may not:

(a) Suggest or imply:

1. That a non-ad valorem assessment authorized under this section is a government assistance program;

2. That qualifying improvements are free or provided at no cost, or that the financing related to a non-ad valorem assessment authorized under this section is free or provided at no cost; or

3. That the financing of a qualifying improvement using the program authorized pursuant to this section does not require the property owner to repay the financial obligation.

(b) Make any representation as to the tax deductibility of a non-ad valorem assessment on residential real property. A local government, program administrator, or PACE contractor, or

a third party engaged in marketing on behalf of these entities, may encourage a property owner to seek the advice of a tax professional regarding tax matters related to assessments.

(24)(a) A contract to sell or install a qualifying improvement that is related to an application for financing in a qualifying improvement program for a residential property is unenforceable and a PACE contractor may not begin work under such a contract if:

1. The property owner would not have entered into the contract but for the belief that the qualifying improvement or its installation would be paid under the financing agreement; or

2. The property owner applied for, accepted, and canceled a qualifying improvement financing agreement within the 3-day right-to-cancel period set forth in subparagraph (12)(b)6.

(b) If a PACE contractor has initiated work on a residential property under an unenforceable contract as determined under paragraph (a), the PACE contractor:

1. May not receive compensation for that work under the financing agreement.

2. Shall restore the property to its original condition at no cost to the property owner.

3. Shall immediately return any money, property, and other consideration given by the property owner. If the property owner provided any property and the PACE contractor does not or cannot return it, the PACE contractor shall immediately return the fair

market value of the property or its value as designated in the contract, whichever is greater.

(c) If the PACE contractor has delivered chattel or fixtures to the residential property pursuant to an unenforceable contract, the PACE contractor shall have 90 days from the date the contract was executed to retrieve the chattel or fixtures provided that:

1. The PACE contractor has fulfilled the requirements of subparagraphs (b)2. and 3.

2. The chattel and fixtures can be removed at the PACE contractor's expense without damaging the property owner's property and practically returned.

(d) The residential property owner may retain any chattel or fixtures provided pursuant to an unenforceable contract if a PACE contractor fails to comply with the provisions of this subsection.

(e) A contract which is otherwise unenforceable under this subsection remains enforceable if the residential property owner waives his or her right to cancel the contract, allows the PACE contractor to proceed with the installation of the qualifying improvement, and cancels the financing agreement.

(25)(a) A PACE contractor or third party may not advertise the availability of financing agreements or solicit property owners on behalf of the local government or program administrator unless:

1. The PACE contractor or third party maintains the appropriate registration or certification from the Construction Industry Licensing Board or any other permit, license, or registration required to conduct business in the jurisdiction where it operates, and provides proof of having the required bond and insurance coverage amounts.

2. The local government or program administrator, as applicable, obtains the PACE contractor's or third party's written agreement that the PACE contractor or third party will meet applicable laws and rules and qualifying improvement program policies and procedures, including those on advertising and marketing.

(b) A local government or program administrator may not provide any direct or indirect cash payment or thing of material value to a PACE contractor or third party in excess of the actual price charged by that PACE contractor for the sale and installation of the qualifying improvements that are financed by a financing agreement. However, a program administrator may provide information or services to a PACE contractor to facilitate the installation of a qualifying improvement for a property owner.

(c) A local government or program administrator may not reimburse a PACE contractor or third party for its expenses in advertising and marketing campaigns and materials. A local government or program administrator, as applicable, and a PACE

contractor may share expenses in connection with joint advertising and marketing campaigns and materials, if the expenses are shared on a commercially reasonable basis.

(d) A local government or program administrator may not provide to a PACE contractor engaged in soliciting financing agreements on its behalf any information that discloses the amount of funds for which a property owner is eligible for qualifying improvements or the amount of equity in a property.

(e) For residential properties, a PACE contractor may not provide a different price for a qualifying improvement financed under this section than the PACE contractor would provide if the property owner paid for the improvement in cash.

(f) A program administrator may not provide any direct cash payment or other thing of material value to a property owner explicitly conditioned upon the property owner entering into a financing agreement. However, a program administrator may offer programs or promotions that provide reduced fees or interest rates if the reduced fees or interest rates are reflected in the financing agreements and are not provided to the property owners as cash consideration.

(26) Each local government that has authorized a qualifying improvement program shall post on its website an annual report for the period ending December 31 each year containing the following information:

(a) The number of qualifying improvements funded.

(b) The aggregate, average, and median dollar amounts of annual and total number of assessments that funded qualifying improvements.

(c) The percentage, the number, and the dollar value of assessments that funded qualifying improvements, represented by the category types consisting of energy efficiency, renewable energy, and wind resistance.

(d) The number of defaulted assessments including the total number and defaulted amount, the number and dates of missed payments, the total number of parcels defaulted and years in default, and the percentage of defaults by total assessments.

(e) A summary of all reported violations of this section, including the resolution of each.

(f) Estimated number of jobs created.

(g) The number and percentage of homeowners 60 years of age or older participating in a qualifying improvement program.

This report shall be posted no later than April 1 of the year following the calendar year covered by the report.

Section 2. This act shall take effect July 1, 2022.