

Tourism, Infrastructure & Energy Subcommittee

Tuesday, February 15, 2022
8:00 am – 10:00 am
Reed Hall (102 HOB)

Meeting Packet

Chris Sprowls
Speaker

Brad Drake
Chair

The Florida House of Representatives

Commerce Committee

Tourism, Infrastructure & Energy Subcommittee

Chris Sprowls
Speaker

Brad Drake
Chair

Meeting Agenda

Tuesday, February 15, 2022
8:00 AM – 10:00 AM
Reed Hall (102 HOB)

I. Call to Order

II. Roll Call

III. Welcome and Opening Remarks

IV. Consideration of the following bill(s):

HB 247 Florida Main Street Program and Historic Preservation Tax Credits by Salzman

CS/HB 399 Motor Vehicle and Vessel Law Enforcement by Criminal Justice & Public Safety Subcommittee, Rodriguez

HB 1031 Transportation Research by Andrade

HB 1419 Financial Assistance for Municipal Solid Waste-to-Energy Facilities by Mariano

CS/HB 1461 Reinstatement of Suspended Driver Licenses by Criminal Justice & Public Safety Subcommittee, Driskell

Consideration of the following proposed committee substitute(s):

PCS for HB 737 -- Electric Vehicle Transportation Electrification Plan

V. Closing Remarks

VI. Adjournment

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 247 Florida Main Street Program and Historic Preservation Tax Credits
SPONSOR(S): Salzman and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1310

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

SUMMARY ANALYSIS

The National Register of Historic Places, under the National Park Service, is "part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources." Properties listed in the National Register are eligible for federal preservation tax credits.

The Main Street America program offers community-based revitalization initiatives to assist in transforming downtowns. In order to be designated as either an affiliate or accredited member of Main Street America, a community must first become a member of the National Main Street Center and meet certain requirements.

Florida levies a 5.5 percent tax on certain income of corporations and financial institutions doing business in Florida. Florida also imposes a 1.75 percent tax on most Florida insurance premiums.

The bill creates the Main Street Historic Tourism and Revitalization Act (Act) which provides a tax credit against corporate income tax and insurance premium tax for qualified expenses incurred in the rehabilitation of a certified historic structure. The bill provides eligibility and filing requirements. Under the bill, a tax credit as authorized by the Act may be sold or transferred. The bill gives DOR the authority to audit tax credit applicants to verify the legitimacy of qualified expenditures. Under the bill, DOR is granted rulemaking authority to administer the Act.

The bill does not appear to impact local government revenues or expenditures. By implementing a new tax credit, the bill will likely decrease state revenues. The bill may increase state expenditures.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

National Register of Historic Places

The National Register of Historic Places (National Register),[1] under the National Park Service, is "part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect America's historic and archeological resources."[2] The program:

- Reviews property nominations and lists eligible properties in the National Register;
- Offers guidance on evaluating, documenting, and listing historic places; and
- Helps qualified historic properties receive preservation benefits and incentives.[3]

Properties listed in the National Register are eligible for federal preservation tax credits. A twenty percent federal income tax credit is available for the rehabilitation of historic, income-producing buildings that are determined by the Secretary of the Interior, through the National Park Service, to be certified historic structures.[4]

Main Street America

Main Street America, a program under the National Main Street Center,[5] is a network of grassroots organizations that "revitalizes older and historic commercial districts to build vibrant neighborhoods and thriving economies."[6] The program offers community-based revitalization initiatives to assist in transforming downtowns. In order to be designated as either an affiliate or accredited member of Main Street America, a community must first become a member of the National Main Street Center and meet certain requirements.[7] Main Street America has coordinating programs that are organized at the state, county, and city level that partner with the National Main Street Center to provide support and training to Main Street America communities.

Florida has two coordinating programs: Florida Main Street America located in Tallahassee and Orlando Main Street located in Orlando.[8] Florida Main Street is administered by the Division of Historical Resources (division) under the Florida Department of State.[9] Forty-five Florida Main Streets and ten Orlando Main Streets have received technical assistance toward the goal of revitalizing historic downtowns and encouraging economic development.[10]

---

[1] 54 U.S.C., § 3201.
[2] U.S. Department of the Interior, *National Park Service, National Register of Historic Places, What is the National Register of Historic Places?*, https://www.nps.gov/subjects/nationalregister/what-is-the-national-register.htm (last visited Feb. 11, 2022).
[3] *Id.*
[4] U.S. Department of the Interior, *National Park Service, Technical Preservation Services*, https://www.nps.gov/tps/tax-incentives.htm (last visited Feb. 11, 2022).
[5] The National Main Street Center was established in 1980 as a program of the National Trust for Historic Preservation to address issues facing aging and historic downtowns. The Center launched the Main Street America program in 2015. *See* Main Street America, *About Us*, https://www.mainstreet.org/about-us (last visited Feb. 11, 2022).
[6] *Id.*
[7] Main Street America, *Designation*, https://higherlogicdownload.s3.amazonaws.com/NMSC/390e0055-2395-4d3b-af60-81b53974430d/UploadedImages/Main_Street_America_Tier_System_Overview_-_2021_July_Update.pdf (last visited Feb. 11, 2022).
[8] Main Street America, *Coordinating Programs*, https://higherlogicdownload.s3.amazonaws.com/NMSC/390e0055-2395-4d3b-af60-81b53974430d/UploadedImages/The_Programs/2020_Coordinating_Program_List.pdf (last visited Feb. 11, 2022).
[9] S. 267.031(5), F.S.
[10] Visit Florida, *Florida Main Street Programs Have Stories to Tell*, https://www.visitflorida.com/travel-ideas/articles/florida-main-street/ (last visited Feb. 11, 2022).

Corporate Income Tax

Florida levies a 5.5 percent tax on certain income of corporations and financial institutions doing business in Florida.[11] Florida utilizes the taxable income determined for federal income tax purposes as a starting point to determine the total amount of Florida corporate income tax due.[12] This means that a corporation paying taxes in Florida generally receives the same benefits from deductions allowed when determining taxable income for federal tax purposes as it does when determining taxable income for state taxation purposes.

Insurance Premium Tax

Florida imposes a 1.75 percent tax on most Florida insurance premiums.[13] Insurance premium taxes are paid by insurance companies under ch. 624, F.S., and are remitted to the Department of Revenue (DOR). These revenues are distributed to General Revenue.

Effect of the Bill

The bill creates the Main Street Historic Tourism and Revitalization Act (Act) which provides a tax credit against corporate income tax and insurance premium tax for qualified expenses[14] incurred in the rehabilitation of a certified historic structure.

To be eligible for the tax credits, a taxpayer must apply to DOR for a tax credit before taking a credit on their return and must document that:

- The rehabilitation is a certified rehabilitation;[15]
- The structure is a certified historic structure,[16] is income-producing, is located within the state, and was rehabilitated and placed into service on or after July 1, 2022;
- The taxpayer had an ownership interest in the certified historic structure in the year during which the certified historic structure was placed into service after the certified rehabilitation was completed; and
- The total amount of qualified expenses incurred in rehabilitating the certified historic structure exceeded $5,000.

Under the bill, before a taxpayer can claim or transfer a tax credit, the taxpayer must provide the following information to DOR:

- An official certificate of eligibility from the Division of Historical Resources of the Department of State signed by the State Historic Preservation Officer or the Deputy State Historic Preservation Officer attesting that the project has been approved by the National Park Service and confirming whether the project is or is not located within a Main Street local program area;
- National Park Service Form 10-168c, signed by the National Park Service attesting that the completed rehabilitation meets the U.S. Secretary of the Interior's Standards for Rehabilitation and is consistent with the historic character of the property and, if applicable, the district in which the completed rehabilitation is located;

[11] S. 220.11(2), F.S.
[12] S. 220.12, F.S.
[13] S. 624.509, F.S.
[14] The bill defines "qualified expenses" as qualified rehabilitation expenditures (defined in 26 U.S.C., §47(c)(2)) and structural components (defined in 26 C.F.R., § 1.48-1(e)(2)) at the time of project certification by the U.S. Secretary of the Interior and the U.S. Internal Revenue Service (IRS).
[15] The bill defines "certified rehabilitation" as the rehabilitation of a certified historic structure that the United States Secretary of the Interior has certified to the United States Secretary of the Treasury as being consistent with the historic character of the certified historic structure and, if applicable, consistent with the registered historic district in which the certified historic structure is located as set forth in 36 C.F.R. s. 67.2.
[16] The bill defines "certified historic structure" as a building and its structural components which are of a character subject to the allowance for depreciation provided in s. 167 of the Internal Revenue Code and which is listed on the National Register of Historic Places or located within a registered historic district and certified by the U.S. Secretary of the Interior as being of historic significance to the registered historic district.

- Identification of the dates during which the structure was rehabilitated, the date the structure was first placed into service after certified rehabilitation was completed, and evidence that the structure was placed into service after the certified rehabilitation was completed;
- A list of total qualified expenses incurred by the taxpayer in rehabilitating the certified historic structure;[17]
- An attestation of the total qualified expenses incurred by the taxpayer in rehabilitating the certified historic structure;
- A completed "Florida Corporate Income/Franchise Tax Return" form issued by DOR for insurance premium tax reporting; and
- The information required to be reported by DOR to enable the agency to compile its annual report based on the tax credit applications submitted and approved.

Under the bill, the tax credit may be used to offset the corporate income tax and the insurance premium tax. The total tax credit claimed annually may not exceed the amount of tax due after any other applicable tax credits and may not exceed:

- Twenty percent of the total qualified expenses incurred in rehabilitating a certified historic structure that has been approved by the National Park Service to receive the federal historic rehabilitation tax credit; or
- Thirty percent of the total qualified expenses incurred in rehabilitating a certified historic structure that has been approved by the National Park Service to receive the federal historic rehabilitation tax credit and that is located within a local program area of an Accredited Main Street Program.

If a taxpayer is eligible for a tax credit that exceeds taxes owed, the taxpayer may carry the unused tax credit forward for a period of up to 10 years.

The bill provides that there is no limit on the total number of transactions for the sale or transfer of all or part of a tax credit. However, qualified expenses may only be counted once in determining the amount of an available tax credit, and more than one taxpayer may not claim a tax credit for the same qualified expenses.

Under the bill, a taxpayer that sells or transfers a tax credit and the purchaser or transferee must jointly submit written notice of the sale or transfer to DOR no later than the 30th day after the date of the sale or transfer. The notice must include the following information:

- The date of the sale or transfer;
- The amount of the tax credit sold or transferred;
- The name and federal tax identification number of the taxpayer that sold or transferred the tax credit and the purchaser or transferee; and
- The amount of the tax credit owned by the taxpayer before the sale or transfer and the amount the selling or transferring taxpayer retained, if any, after the sale or transfer.

The sale or transfer of a tax credit does not extend the period for which a tax credit may be carried forward and does not increase the total amount of the tax credit that may be claimed.

The bill provides that a tax credit earned, purchased, or transferred to a partnership, limited liability company, S corporation, or other pass-through taxpayer may be allocated to the partners, members, or shareholders of that taxpayer and without regard to the ownership interest of the partners, members, or shareholders in the rehabilitated certified historic structure.

The bill provides that if the tax credit is reduced due to a determination, examination, or audit by DOR, the tax deficiency must be recovered from the taxpayer that sold or transferred the tax credit or the purchaser or transferee that claimed the tax credit up to the amount of the tax credit taken. Any

[17] For certified rehabilitations with qualified expenses that exceeded $750,000, the taxpayer must submit an audited cost report that itemizes the qualified expenses incurred in rehabilitating the structure as provided in the Florida Single Audit Act.

subsequent deficiencies must be assessed against the purchaser or transferee that claimed the tax credit, or in the case of multiple succeeding entities, in the order of tax credit succession.

Under the bill, DOR is authorized to perform additional financial and technical audits and examinations, including examining the accounts, books, or records of the tax credit applicant, to verify the legitimacy of the qualified expenses included in a tax credit return and to ensure compliance. It is grounds for forfeiture of previously claimed and received tax credits if DOR determines that a taxpayer received a tax credit to which the taxpayer was not entitled. The taxpayer must return the forfeited tax credits to DOR, which will then be paid into the General Revenue Fund.

The bill provides that the taxpayer must file an amended tax return and pay any required tax within 60 days after the taxpayer receives notification from the IRS that a previously approved tax credit has been revoked or modified, if uncontested, or within 60 days after a final order is issued following proceedings involving a contested revocation or modification order. DOR may issue a notice of deficiency at any time within five years after the date on which the taxpayer receives notification from the IRS that a previously approved tax credit has been revoked or modified.

The bill permits DOR to issue a notice of deficiency at any time if the taxpayer fails to notify DOR of any change in its tax credit claimed. The amount of any proposed assessment in the notice of deficiency is limited to the amount of any deficiency from the precomputation of the taxpayer's tax for the taxable year. Furthermore, a taxpayer is subject to applicable penalties and interest for failing to report and timely paying any tax due as a result of the forfeiture of its tax credit.

The bill provides that DOR must provide an annual report that identifies, in the aggregate:

- The number of employees hired during construction phases;
- The use of each newly rehabilitated building and the expected number of employees hired;
- The number of affordable housing units created or preserved; and
- The property values before and after the certified rehabilitations.

Under the bill, DOR must also establish any necessary forms required to claim a tax credit; provide administrative guidelines and procedures required to administer the Act, including rules establishing an entitlement to and sale or transfer of a tax credit; and provide examination and audit procedures required to administer the Act.

The bill grants DOR rulemaking authority to administer the Act.

B. SECTION DIRECTORY:

Section 1: Creates 220.197, F.S., which creates and provides terms for the Main Street Historic Tourism and Revitalization Act.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   By implementing a new tax credit, the bill will likely decrease state revenues.

2. Expenditures:

   According to DOR, the bill will have a non-recurring negative fiscal impact in the amount of $250,772 for fiscal year 2021-2022 in order to make modifications to the DOR's software systems, databases and applications.[18] Additionally, new rules and forms must be promulgated in order to administer the tax credit.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers who have an ownership interest in a certified historic structure in the year during which the structure was placed into service after the certified rehabilitation was complete may be eligible to receive a tax credit to offset corporate income taxes and insurance premium taxes for qualified expenses incurred in the rehabilitation of the certified historic structure. This may lead to greater private investment in the rehabilitation of certified historic structures, which may have a positive impact on jobs and property values.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to impact county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes DOR to adopt rules to administer the Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

To administer this section, DOR suggests that the bill include language which gives them emergency rulemaking authority and changes the effective date to July 1, 2023.[19]

[18] Department of Revenue, Agency Analysis of 2022 House Bill 247, p.11 (Oct. 25, 2021).
[19] *Id.* at 8.

The bill makes multiple references to when the certified historic structure is "placed into service," but does not define this term. According to DOR, the bill is also unclear when it refers to a certified historic structure that has been "rehabilitated and placed into service on or after July 1, 2022." This language is unclear as to whether the rehabilitation may begin before July 1, 2022.[20]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[20] *Id.*

A bill to be entitled

An act relating to Florida Main Street Program and historic preservation tax credits; creating s. 220.197, F.S.; providing a short title; defining terms; specifying eligibility requirements for receiving specified tax credits for taxpayers that rehabilitate certified historic structures; specifying the amount of tax credits; authorizing the carryforward, sale, and transfer of tax credits; providing the Department of Revenue audit and examination powers for specified purposes related to certified rehabilitation expenses; requiring the return of forfeited tax credits under certain circumstances; requiring the department to provide specified annual reports to the Legislature; providing duties of the department; authorizing the department to adopt rules; providing an effective date.

WHEREAS, historic revitalization creates highly paid local construction jobs, and

WHEREAS, historic rehabilitation increases the value of buildings and results in a growing state and local tax base, and

WHEREAS, historic revitalization boosts heritage tourism and creates thriving downtowns that are attractive to main street businesses, and

WHEREAS, reusing historic buildings creates affordable spaces for small business incubation, and

WHEREAS, repurposing historic buildings saves resources and activates vacant spaces, and

WHEREAS, historic rehabilitation projects leverage significant private investment, and

WHEREAS, leveraging state tax incentives increases the effectiveness of federal Historic Preservation Tax Incentives and the Opportunity Zones Program to encourage the historic preservation of existing buildings, and

WHEREAS, an increase in rehabilitation activity occurs when a state incentive is combined with federal Historic Preservation Tax Incentives, and

WHEREAS, many historic buildings in the state need safety upgrades and other improvements that require both public and private investment to return these buildings as assets of their local communities, NOW, THEREFORE,

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

Section 1. Section 220.197, Florida Statutes, is created to read:

220.197 The Main Street Historic Tourism and Revitalization Act; tax credits; reports.—

(1) SHORT TITLE.-This act may be cited as the "Main Street

Historic Tourism and Revitalization Act."

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

(a) "Accredited Main Street Program" means an active Florida Main Street Program that meets Main Street America accreditation standards. An Accredited Main Street Program must:

1. Have broad-based community support for the commercial district revitalization process with strong support from the public and private sectors.

2. Have a developed vision and mission statement relevant to community conditions and to Main Street America's organizational stage.

3. Have a comprehensive Main Street America work plan.

4. Possess an historic preservation ethic.

5. Have an active board of directors and committees.

6. Have an adequate operating budget.

7. Have a paid professional program manager.

8. Conduct a program of ongoing training for staff and volunteers.

9. Report key statistics.

10. Be a current member of Main Street America.

(b) "Certified historic structure" means a building and its structural components as defined in 36 C.F.R s. 67.2 that is of a character subject to the allowance for depreciation provided in s. 167 of the Internal Revenue Code of 1986, as amended, and that is:

1. Individually listed in the National Register of Historic Places; or

2. Located within a registered historic district and certified by the United States Secretary of the Interior as being of historic significance to the registered historic district as set forth in 36 C.F.R. s. 67.2.

(c) "Certified rehabilitation" means the rehabilitation of a certified historic structure that the United States Secretary of the Interior has certified to the United States Secretary of the Treasury as being consistent with the historic character of the certified historic structure and, if applicable, consistent with the registered historic district in which the certified historic structure is located as set forth in 36 C.F.R. s. 67.2.

(d) "Division" means the Division of Historical Resources of the Department of State.

(e) "Florida Main Street Program" means a statewide historic preservation-based downtown revitalization assistance program created, maintained, and administered by the division under s. 267.031(5).

(f) "Local program area" means the specific geographic area in which an Accredited Main Street Program is conducted as approved and maintained by the division.

(g) "Main Street America" means a national network of grassroots organizations revitalizing historic downtown areas under the leadership of the National Main Street Center, Inc., a

subsidiary of the National Trust for Historic Preservation.

(h) "National Register of Historic Places" means the list of historic properties significant in American history, architecture, archeology, engineering, and culture maintained by the United States Secretary of the Interior as authorized in 54 U.S.C s. 3021.

(i) "Qualified expenses" means qualified rehabilitation expenditures as defined in 26 U.S.C. s. 47(c)(2) and structural components as defined in 26 C.F.R. s. 1.48-1(e)(2) at the time of project certification by the United States Secretary of the Interior and the United States Internal Revenue Service.

(j) "Registered historic district" means a district listed in the National Register of Historic Places or a district:

1. Designated under general law or local ordinance and certified by the United States Secretary of the Interior as containing criteria that will substantially achieve the purposes of preserving and rehabilitating buildings of historic significance to the district; and

2. Certified by the United States Secretary of the Interior as meeting substantially all of the requirements for listing a district in the National Register of Historic Places.

(3) ELIGIBILITY FOR TAX CREDIT.—To claim and receive a tax credit under this section, a taxpayer must first apply to the department for a tax credit for qualified expenses in the amount and under the conditions and limitations provided in this

section against the tax due for a taxable year under this chapter and must document that:

(a) The rehabilitation is a certified rehabilitation.

(b) The structure is a certified historic structure, is income-producing, is located within the state, and was rehabilitated and placed into service on or after July 1, 2022.

(c) The taxpayer had an ownership interest in the certified historic structure in the year during which the certified historic structure was placed into service after the certified rehabilitation was completed.

(d) The total amount of qualified expenses incurred in rehabilitating the certified historic structure exceeded $5,000.

(4) TAX CREDIT FILING REQUIREMENTS.—Before claiming or transferring a tax credit under this section, the taxpayer must provide the department with the following information:

(a) An official certificate of eligibility from the division signed by the State Historic Preservation Officer or the Deputy State Historic Preservation Officer attesting that the project has been approved by the National Park Service and confirming whether the project is or is not located within a Main Street local program area.

(b) National Park Service Form 10-168e (Rev. 2019), titled "Historic Preservation Certification Application-Request for Certification of Completed Work-Part 3," signed by the National Park Service attesting that the completed rehabilitation meets

the United States Secretary of the Interior's Standards for Rehabilitation and is consistent with the historic character of the property and, if applicable, the district in which the completed rehabilitation is located. The form may be obtained through the National Park Service.

(c) An identification of the dates during which the certified historic structure was rehabilitated, the date the certified historic structure was first placed into service after the certified rehabilitation was completed, and evidence that the certified historic structure was placed into service after the certified rehabilitation was completed.

(d) A list of total qualified expenses incurred by the taxpayer in rehabilitating the certified historic structure. For certified rehabilitations with qualified expenses that exceeded $750,000, the taxpayer must submit an audited cost report issued by a certified public accountant that itemizes the qualified expenses incurred in rehabilitating the certified historic structure as provided in s. 215.97.

(e) An attestation of the total qualified expenses incurred by the taxpayer in rehabilitating the certified historic structure.

(f) A completed Form F-1120, titled "Florida Corporate Income/Franchise Tax Return," or other appropriate tax form issued by the department for insurance premium tax reporting.

(g) The information required to be reported by the

department in subsection (9) to enable the department to compile its annual report.

(5) AMOUNT OF TAX CREDIT.—The total tax credit claimed annually may not exceed the amount of tax due after any other applicable tax credits and may not exceed the following:

(a) Twenty percent of the total qualified expenses incurred in rehabilitating a certified historic structure that has been approved by the National Park Service to receive the federal historic rehabilitation tax credit; or

(b) Thirty percent of the total qualified expenses incurred in rehabilitating a certified historic structure that has been approved by the National Park Service to receive the federal historic rehabilitation tax credit and that is located within a local program area of an Accredited Main Street Program.

The tax credit may be used to offset the corporate income tax imposed in s. 220.11 and the insurance premium tax imposed in s. 624.509.

(6) CARRYFORWARD OF TAX CREDIT.—

(a) If a taxpayer is eligible for a tax credit that exceeds taxes owed, the taxpayer may carry the unused tax credit forward for a period of up to 10 years.

(b) A carryforward is considered the remaining portion of a tax credit that cannot be claimed in the current tax year.

(7) SALE OR TRANSFER OF TAX CREDIT.—

(a) A taxpayer that incurs qualified expenses may sell or transfer all or part of the tax credit that may otherwise be claimed to another taxpayer.

(b) A taxpayer to which all or part of the tax credit is sold or transferred may sell or transfer all or part of the tax credit that may otherwise be claimed to another taxpayer.

(c) A taxpayer that sells or transfers a tax credit to another taxpayer must provide a copy of the certificate of eligibility together with the audited cost report to the purchaser or transferee.

(d) Qualified expenses may only be counted once in determining the amount of an available tax credit, and more than one taxpayer may not claim a tax credit for the same qualified expenses.

(e) There is no limit on the total number of transactions for the sale or transfer of all or part of a tax credit.

(f)1. A taxpayer that sells or transfers a tax credit under this subsection and the purchaser or transferee shall jointly submit written notice of the sale or transfer to the department on a form adopted by the department no later than the 30th day after the date of the sale or transfer. The notice must include all of the following:

a. The date of the sale or transfer.

b. The amount of the tax credit sold or transferred.

c. The name and federal tax identification number of the taxpayer that sold or transferred the tax credit and the purchaser or transferee.

d. The amount of the tax credit owed by the taxpayer before the sale or transfer and the amount the selling or transferring taxpayer retained, if any, after the sale or transfer.

2. The sale or transfer of a tax credit under this subsection does not extend the period for which a tax credit may be carried forward and does not increase the total amount of the tax credit that may be claimed.

3. If a taxpayer claims a tax credit for qualified expenses, another taxpayer may not use the same expenses as the basis for claiming a tax credit.

4. Notwithstanding the requirements of this subsection, a tax credit earned, purchased by, or transferred to a partnership, limited liability company, S corporation, or other pass-through taxpayer may be allocated to the partners, members, or shareholders of that taxpayer and claimed under this section in accordance with any agreement among the partners, members, or shareholders and without regard to the ownership interest of the partners, members, or shareholders in the rehabilitated certified historic structure.

(g) If the tax credit is reduced due to a determination, examination, or audit by the department, the tax deficiency shall

be recovered from the taxpayer that sold or transferred the tax credit or the purchaser or transferee that claimed the tax credit up to the amount of the tax credit taken.

(h) Any subsequent deficiencies shall be assessed against the purchaser or transferee that claimed the tax credit or, in the case of multiple succeeding entities, in the order of tax credit succession.

(8) AUDIT AUTHORITY; REVOCATION AND FORFEITURE OF TAX CREDITS; FRAUDULENT CLAIMS.—

(a) The department may perform any additional financial and technical audits and examinations, including examining the accounts, books, or records of the tax credit applicant, to verify the legitimacy of the qualified expenses included in a tax credit return and to ensure compliance with this section.

(b) It is grounds for forfeiture of previously claimed and received tax credits if the department determines, as a result of an audit or information received from the division or the United States Department of the Interior, that a taxpayer received a tax credit pursuant to this section to which the taxpayer was not entitled. In the case of fraud, the taxpayer may not claim any future tax credits under this section.

(c) The taxpayer must return forfeited tax credits to the department and such funds shall be paid into the General Revenue Fund.

(d) The taxpayer shall file with the department an amended

tax return or such other report as the department prescribes and shall pay any required tax within 60 days after the taxpayer receives notification from the United States Internal Revenue Service that a previously approved tax credit has been revoked or modified, if uncontested, or within 60 days after a final order is issued following proceedings involving a contested revocation or modification order.

(e) A notice of deficiency may be issued by the department at any time within 5 years after the date on which the taxpayer receives notification from the United States Internal Revenue Service that a previously approved tax credit has been revoked or modified.

(f) If a taxpayer fails to notify the department of any change in its tax credit claimed, a notice of deficiency may be issued at any time. In either case, the amount of any proposed assessment set forth in such notice of deficiency is limited to the amount of any deficiency resulting under this section from the precomputation of the taxpayer's tax for the taxable year.

(g) A taxpayer that fails to report and timely pay any tax due as a result of the forfeiture of its tax credit violates this section and is subject to applicable penalties and interest.

(9) ANNUAL REPORTS.—Each year, based on the applications submitted and approved, the department must issue a report to the President of the Senate and the Speaker of the House of

Representatives that identifies, in the aggregate, all of the following:

(a) The number of employees hired during construction phases.

(b) The use of each newly rehabilitated building and the expected number of employees hired.

(c) The number of affordable housing units created or preserved.

(d) The property values before and after the certified rehabilitations.

(10) DEPARTMENT DUTIES.-The department shall:

(a) Establish any necessary forms required to claim a tax credit under this section.

(b) Provide administrative guidelines and procedures required to administer this section, including rules establishing an entitlement to and sale or transfer of a tax credit under this section.

(c) Provide examination and audit procedures required to administer this section.

(11) RULES.—The department may adopt rules to administer this section.

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

TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

HB 247 by Rep. Salzman
Florida Main Street Program and Historic Preservation Tax Credits

AMENDMENT SUMMARY
February 15, 2022

Amendment 1 by Rep. Salzman (strike-all):

- Adds a definition for “long-term leasehold” and revises definitions.
- Provides that the tax credit may be taken for taxable years beginning on or after January 1, 2023.
- Requires the Division of Historical Resources of the Department of State (division), rather than the Department of Revenue (DOR), to evaluate and certify applications for the tax credit.
- Authorizes a taxpayer to submit to the division an audited cost report which was created when applying for a federal historic rehabilitation tax credit.
- Expands the evaluation process and provides duties for the division.
- Provides the division with audit and examination powers.
- Provides a date by which DOR must annually submit a report to the Legislature.
- Authorizes DOR to make certain information available relating to the tax credit.
- Authorizes DOR to adopt emergency rules.

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 Salzman offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 220.197, Florida Statutes, is created to read:

220.197 Main Street Historic Tourism and Revitalization Act; tax credits; reports.—

(1) SHORT TITLE.—This act may be cited as the "Main Street Historic Tourism and Revitalization Act."

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

(a) "Accredited Main Street Program" means an active Florida Main Street Program or the Orlando Main Streets program, provided that such program meets the Main Street America

accreditation standards. An Accredited Main Street Program must:

1. Have broad-based community support for the commercial district revitalization process with strong support from the public and private sectors.

2. Have a developed vision and mission statement relevant to community conditions and to Main Street America's organizational stage.

3. Have a comprehensive Main Street America work plan.

4. Possess a historic preservation ethic.

5. Have an active board of directors and committees.

6. Have an adequate operating budget.

7. Have a paid professional program manager.

8. Conduct a program of ongoing training for staff and volunteers.

9. Report key statistics.

10. Be a current member of Main Street America.

(b) "Certified historic structure" means a building and its structural components as defined in 36 C.F.R. s. 67.2 which is of a character subject to the allowance for depreciation provided in s. 167 of the Internal Revenue Code of 1986, as amended, and which is:

1. Individually listed in the National Register of Historic Places; or

2. Located within a registered historic district and certified by the United States Secretary of the Interior as

being of historic significance to the registered historic district as set forth in 36 C.F.R. s. 67.2.

(c) "Certified rehabilitation" means the rehabilitation of a certified historic structure that the United States Secretary of the Interior has certified to the United States Secretary of the Treasury as being consistent with the historic character of the certified historic structure and, if applicable, consistent with the registered historic district in which the certified historic structure is located as set forth in 36 C.F.R. s. 67.2.

(d) "Division" means the Division of Historical Resources of the Department of State.

(e) "Florida Main Street Program" means a statewide historic preservation-based downtown revitalization assistance program created, maintained, and administered by the division under s. 267.031(5).

(f) "Local program area" means the specific geographic area in which an Accredited Main Street Program is conducted as approved and maintained by the division or in which the Orlando Main Streets program is conducted.

(g) "Long-term leasehold" means a leasehold in a nonresidential real property for a term of 39 years or more or a leasehold in a residential real property for a term of 27.5 years or more.

(h) "Main Street America" means a national network of grassroots organizations revitalizing historic downtown areas

under the leadership of the National Main Street Center, Inc., a subsidiary of the National Trust for Historic Preservation.

(i) "National Register of Historic Places" means the list of historic properties significant in American history, architecture, archeology, engineering, and culture maintained by the United States Secretary of the Interior as authorized in 54 U.S.C. s. 3021.

(j) "Orlando Main Streets" means a historic preservation-based district revitalization program administered by the City of Orlando.

(k) "Qualified expenses" means rehabilitation expenditures qualifying for the credit under 26 U.S.C. s. 47 incurred in this state.

(l) "Registered historic district" means a district listed in the National Register of Historic Places or a district:

1. Designated under general law or local ordinance and certified by the United States Secretary of the Interior as meeting criteria that will substantially achieve the purposes of preserving and rehabilitating buildings of historic significance to the district; and

2. Certified by the United States Secretary of the Interior as meeting substantially all of the requirements for listing a district in the National Register of Historic Places.

(3) ELIGIBILITY FOR TAX CREDIT.—For taxable years beginning on or after January 1, 2023, there is allowed a credit

against any tax due for a taxable year under this chapter after the application of any other allowable credits by the taxpayer.

(a) To claim and receive a tax credit under this section, a taxpayer must apply to the division for a tax credit for qualified expenses in the amount and under the conditions and limitations provided in this section against the tax due for a taxable year under this chapter and must provide the division with all of the following:

1. Documentation showing that:

a. The rehabilitation is a certified rehabilitation;

b. The structure is a certified historic structure, is income-producing, is located within this state, and is rehabilitated and placed in service on or after January 1, 2023;

c. The taxpayer had an ownership or a long-term leasehold interest in the certified historic structure in the year during which the certified historic structure was placed into service after the certified rehabilitation was completed;

d. The total amount of qualified expenses incurred in rehabilitating the certified historic structure exceeded $5,000;

e. The qualified expenses were incurred in this state; and

f. The taxpayer received a tax credit for the qualified expenses under 26 U.S.C. s. 47.

2. An official certificate of eligibility from the division, signed by the State Historic Preservation Officer or the Deputy State Historic Preservation Officer, attesting that

the project has been approved by the National Park Service and confirming that the project is located within a local program area.

3. National Park Service Form 10-168c (Rev. 2019), titled "Historic Preservation Certification Application–Part 3-Request for Certification of Completed Work," or a similar form, signed by an officer of the National Park Service, attesting that the completed rehabilitation meets the United States Secretary of the Interior's Standards for Rehabilitation and is consistent with the historic character of the property and, if applicable, the district in which the completed rehabilitation is located. The form may be obtained through the National Park Service.

4. An identification of the dates during which the certified historic structure was rehabilitated, the date the certified historic structure was placed in service after the certified rehabilitation was completed, and evidence that the certified historic structure was placed in service after the certified rehabilitation was completed.

5. A list of total qualified expenses incurred by the taxpayer in rehabilitating the certified historic structure. For certified rehabilitations with qualified expenses that exceed $750,000, the taxpayer must submit an audited cost report issued by a certified public accountant which itemizes the qualified expenses incurred in rehabilitating the certified historic structure. A taxpayer may submit an audited cost report issued

by a certified public accountant which was created for purposes of applying for a federal historic rehabilitation tax credit and which includes all of the qualified expenses incurred in rehabilitating the certified historic structure.

6. An attestation of the total qualified expenses incurred by the taxpayer in rehabilitating the certified historic structure.

7. The information required to be reported by the department in subsection (8) to enable the department to compile its annual report.

(b) Within 60 days after receipt of the information required under paragraph (a), the division shall evaluate the application and recommend the applicant for certification or denial. The division must approve or deny the application within 30 days after receiving the recommendation. If approved, the division must provide a letter of certification to the applicant consistent with any restrictions imposed. If the division denies any part of the requested credit, the division must inform the applicant of the grounds for the denial. The division must submit a copy of the certification and the information provided by the taxpayer to the department within 10 days after the division's approval.

(4) AMOUNT OF TAX CREDIT.—The total tax credit claimed annually may not exceed the amount of tax due after any other applicable tax credits and may not exceed the following:

(a) Twenty percent of the total qualified expenses incurred in this state in rehabilitating a certified historic structure that has been approved by the National Park Service to receive the federal historic rehabilitation tax credit; or

(b) Thirty percent of the total qualified expenses incurred in this state in rehabilitating a certified historic structure that has been approved by the National Park Service to receive the federal historic rehabilitation tax credit and that is located within a local program area.

The tax credit may be used to offset the corporate income tax imposed in s. 220.11 and the insurance premium tax imposed in s. 624.509. An insurer claiming a credit against insurance premium tax liability under this section may not be required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming such credit. Section 624.5091 does not limit such credit in any manner.

(5) CARRYFORWARD OF TAX CREDIT.—

(a) If a taxpayer is eligible for a tax credit that exceeds taxes owed, the taxpayer may carry the unused tax credit forward for a period of up to 5 taxable years.

(b) A carryforward is considered the remaining portion of a tax credit that cannot be claimed in the current tax year.

(6) SALE OR TRANSFER OF TAX CREDIT.—

(a) A taxpayer that incurs qualified expenses may sell or

transfer all or part of the tax credit that may otherwise be claimed to another taxpayer.

(b) A taxpayer to which all or part of the tax credit is sold or transferred may sell or transfer all or part of the tax credit that may otherwise be claimed to another taxpayer.

(c) A taxpayer that sells or transfers a tax credit to another taxpayer must provide a copy of the certificate of eligibility together with the audited cost report to the purchaser or transferee.

(d) Qualified expenses may be counted only once in determining the amount of an available tax credit, and more than one taxpayer may not claim a tax credit for the same qualified expenses.

(e) There is no limit on the total number of transactions for the sale or transfer of all or part of a tax credit.

(f)1. A taxpayer that sells or transfers a tax credit under this subsection and the purchaser or transferee shall jointly submit written notice of the sale or transfer to the department on a form adopted by the department no later than the 30th day after the date of the sale or transfer. The notice must include all of the following:

a. The date of the sale or transfer.

b. The amount of the tax credit sold or transferred.

c. The name and federal tax identification number of the taxpayer that sold or transferred the tax credit and the

purchaser or transferee.

d. The amount of the tax credit owned by the taxpayer before the sale or transfer and the amount the selling or transferring taxpayer retained, if any, after the sale or transfer.

2. The sale or transfer of a tax credit under this subsection does not extend the period for which a tax credit may be carried forward and does not increase the total amount of the tax credit that may be claimed.

3. If a taxpayer claims a tax credit for qualified expenses, another taxpayer may not use the same expenses as the basis for claiming a tax credit.

4. Notwithstanding the requirements of this subsection, a tax credit earned by, purchased by, or transferred to a partnership, limited liability company, S corporation, or other pass-through taxpayer may be allocated to the partners, members, or shareholders of that taxpayer and claimed under this section in accordance with any agreement among the partners, members, or shareholders and without regard to the ownership interest of the partners, members, or shareholders in the rehabilitated certified historic structure.

(g) If the tax credit is reduced due to a determination, examination, or audit by the department, the tax deficiency shall be recovered from the taxpayer that sold or transferred the tax credit or the purchaser or transferee that claimed the

tax credit up to the amount of the tax credit taken.

(h) Any subsequent deficiencies shall be assessed against the purchaser or transferee that claimed the tax credit or, in the case of multiple succeeding entities, in the order of tax credit succession.

(7) AUDIT AUTHORITY; REVOCATION AND FORFEITURE OF TAX CREDITS; FRAUDULENT CLAIMS.—

(a) The department, with assistance from the division, may perform any additional financial and technical audits and examinations, including examining the accounts, books, or records of the tax credit applicant, to verify the legitimacy of the qualified expenses included in a tax credit return and to ensure compliance with this section. If requested by the department, the division must provide technical assistance for any technical audits or examinations performed under this subsection.

(b) It is grounds for forfeiture of previously claimed and received tax credits if the department determines, as a result of an audit or information received from the division or the United States Department of the Interior, that a taxpayer received a tax credit pursuant to this section to which the taxpayer was not entitled. In the case of fraud, the taxpayer may not claim any future tax credits under this section.

(c) The taxpayer must return forfeited tax credits to the department, and such funds shall be paid into the General

Revenue Fund.

(d) The taxpayer shall file with the department an amended tax return or such other report as the department prescribes and shall pay any required tax within 60 days after the taxpayer receives notification from the United States Internal Revenue Service that a previously approved tax credit has been revoked or modified, if uncontested, or within 60 days after a final order is issued following proceedings involving a contested revocation or modification order.

(e) A notice of deficiency may be issued by the department at any time within 5 years after the date on which the taxpayer receives notification from the United States Internal Revenue Service that a previously approved tax credit has been revoked or modified.

(f) If a taxpayer fails to notify the department of any change in its tax credit claimed, a notice of deficiency may be issued at any time. In either case, the amount of any proposed assessment set forth in such notice of deficiency is limited to the amount of any deficiency resulting under this section from the precomputation of the taxpayer's tax for the taxable year.

(g) A taxpayer that fails to report and timely pay any tax due as a result of the forfeiture of its tax credit violates this section and is subject to applicable penalties and interest.

(8) ANNUAL REPORTS.—Based on the applications submitted

and approved, the department must submit a report by December 1 of each year to the President of the Senate and the Speaker of the House of Representatives that identifies, in the aggregate, all of the following:

(a) The number of employees hired during construction phases.

(b) The use of each newly rehabilitated building and the expected number of employees hired.

(c) The number of affordable housing units created or preserved.

(d) The property values before and after the certified rehabilitations.

(9) DEPARTMENT DUTIES.—The department shall:

(a) Establish a cooperative agreement with the division.

(b) Establish any necessary forms required to claim a tax credit under this section.

(c) Provide administrative guidelines and procedures required to administer this section, including rules establishing an entitlement to and sale or transfer of a tax credit under this section.

(d) Provide examination and audit procedures required to administer this section.

(10) RULES.—The department and the division may adopt rules to administer this section.

Section 2. Subsection (23) is added to section 213.053, Florida Statutes, to read:

213.053 Confidentiality and information sharing.—

(23) The department may make available to the Division of Historical Resources of the Department of State and the Secretary of the Department of the Interior of the United States or his or her delegate, exclusively for official purposes, information for the purposes of administering the Main Street Historic Tourism and Revitalization Act pursuant to s. 220.197.

Section 3. Subsection (8) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.—

(8) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be applied in the following order: those enumerated in s. 631.828, those enumerated in s. 220.191, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182, those enumerated in s. 220.1895, those enumerated in s. 220.195, those enumerated in s. 220.184, those enumerated in s. 220.186, those enumerated in s. 220.1845, those enumerated in s. 220.19, those enumerated in s. 220.185, those enumerated in s. 220.1875, those enumerated in s. 220.1876, those enumerated in s. 220.1877, those enumerated in s. 220.193, those enumerated in s. 288.9916, those enumerated in s. 220.1899, those enumerated in

s. 220.194, those enumerated in s. 220.196, ~~and~~ those enumerated in s. 220.198, and those enumerated in s. 220.197.

Section 4. Paragraph (a) of subsection (1) of section 220.13, Florida Statutes, is amended to read:

220.13 "Adjusted federal income" defined.—

(1) The term "adjusted federal income" means an amount equal to the taxpayer's taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(a) *Additions.*—There shall be added to such taxable income:

1.a. The amount of any tax upon or measured by income, excluding taxes based on gross receipts or revenues, paid or accrued as a liability to the District of Columbia or any state of the United States which is deductible from gross income in the computation of taxable income for the taxable year.

b. Notwithstanding sub-subparagraph a., if a credit taken under s. 220.1875, s. 220.1876, or s. 220.1877 is added to taxable income in a previous taxable year under subparagraph 11. and is taken as a deduction for federal tax purposes in the current taxable year, the amount of the deduction allowed shall not be added to taxable income in the current year. The exception in this sub-subparagraph is intended to ensure that the credit under s. 220.1875, s. 220.1876, or s. 220.1877 is

added in the applicable taxable year and does not result in a duplicate addition in a subsequent year.

2. The amount of interest which is excluded from taxable income under s. 103(a) of the Internal Revenue Code or any other federal law, less the associated expenses disallowed in the computation of taxable income under s. 265 of the Internal Revenue Code or any other law, excluding 60 percent of any amounts included in alternative minimum taxable income, as defined in s. 55(b)(2) of the Internal Revenue Code, if the taxpayer pays tax under s. 220.11(3).

3. In the case of a regulated investment company or real estate investment trust, an amount equal to the excess of the net long-term capital gain for the taxable year over the amount of the capital gain dividends attributable to the taxable year.

4. That portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.181. This subparagraph shall expire on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

5. That portion of the ad valorem school taxes paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.182. This subparagraph shall expire on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

6. The amount taken as a credit under s. 220.195 which is deductible from gross income in the computation of taxable income for the taxable year.

7. That portion of assessments to fund a guaranty association incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year.

8. In the case of a nonprofit corporation which holds a pari-mutuel permit and which is exempt from federal income tax as a farmers' cooperative, an amount equal to the excess of the gross income attributable to the pari-mutuel operations over the attributable expenses for the taxable year.

9. The amount taken as a credit for the taxable year under s. 220.1895.

10. Up to nine percent of the eligible basis of any designated project which is equal to the credit allowable for the taxable year under s. 220.185.

11. Any amount taken as a credit for the taxable year under s. 220.1875, s. 220.1876, or s. 220.1877. The addition in this subparagraph is intended to ensure that the same amount is not allowed for the tax purposes of this state as both a deduction from income and a credit against the tax. This addition is not intended to result in adding the same expense back to income more than once.

12. The amount taken as a credit for the taxable year under s. 220.193.

13. Any portion of a qualified investment, as defined in s. 288.9913, which is claimed as a deduction by the taxpayer and taken as a credit against income tax pursuant to s. 288.9916.

14. The costs to acquire a tax credit pursuant to s. 288.1254(5) that are deducted from or otherwise reduce federal taxable income for the taxable year.

15. The amount taken as a credit for the taxable year pursuant to s. 220.194.

16. The amount taken as a credit for the taxable year under s. 220.196. The addition in this subparagraph is intended to ensure that the same amount is not allowed for the tax purposes of this state as both a deduction from income and a credit against the tax. The addition is not intended to result in adding the same expense back to income more than once.

17. The amount taken as a credit for the taxable year pursuant to s. 220.198.

18. The amount taken as a credit for the taxable year pursuant to s. 220.197.

Section 5. Subsection (7) of section 624.509, Florida Statutes, is amended to read:

624.509 Premium tax; rate and computation.—

(7) Credits and deductions against the tax imposed by this section shall be taken in the following order: deductions for assessments made pursuant to s. 440.51; credits for taxes paid under ss. 175.101 and 185.08; credits for income taxes paid

under chapter 220 and the credit allowed under subsection (5), as these credits are limited by subsection (6); the credit allowed under s. 624.51057; the credit allowed under s. 220.197; and all other available credits and deductions.

Section 6. (1) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules under s. 120.54(4), Florida Statutes, for the purpose of implementing provisions related to the Main Street Historic Tourism and Revitalization Act.

(2) Notwithstanding any other law, emergency rules adopted under this section are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

(3) This section shall take effect upon this act becoming a law and expires July 1, 2023.

Section 7. This act applies to taxable years beginning and for qualified expenses incurred on or after January 1, 2023.

Section 8. This act shall take effect January 1, 2023.

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

Remove everything before the enacting clause and insert:

An act relating to the Florida Main Street Program and historic preservation tax credits; creating s. 220.197, F.S.; providing a short title; defining terms; specifying

eligibility requirements for receiving specified tax credits for taxpayers that rehabilitate certified historic structures; specifying requirements for taxpayers claiming or transferring specified tax credits; specifying requirements for the Division of Historical Resources of the Department of State for evaluating and certifying applications for specified tax credits; specifying the amount of tax credits; providing construction; authorizing the carryforward, sale, and transfer of tax credits; providing the Department of Revenue and the division audit and examination powers for specified purposes related to certified rehabilitation expenses; requiring the return of forfeited tax credits under certain circumstances; providing penalties; requiring the Department of Revenue to provide specified annual reports to the Legislature; providing duties of the Department of Revenue; authorizing the Department of Revenue and the division to adopt rules; amending s. 213.053, F.S.; authorizing the Department of Revenue and the Secretary of the Department of the Interior of the United States to make certain information available for specified purposes; amending s. 220.02, F.S.; revising the order in which tax credits against the corporate income tax credit or the franchise tax are applied; amending s. 220.13, F.S.; revising the definition of the term "adjusted federal income"; amending s. 624.509, F.S.; revising the

order in which credits and deductions against the insurance premium tax are applied; authorizing the Department of Revenue to adopt emergency rules to implement certain provisions; providing for expiration of that authority; providing applicability; providing an effective date.

WHEREAS, historic revitalization creates highly paid local construction jobs, and

WHEREAS, historic rehabilitation increases the value of buildings and results in a growing state and local tax base, and

WHEREAS, historic revitalization boosts heritage tourism and creates thriving downtowns that are attractive to main street businesses, and

WHEREAS, reusing historic buildings creates affordable spaces for small business incubation, and

WHEREAS, repurposing historic buildings saves resources and activates vacant spaces, and

WHEREAS, historic rehabilitation projects leverage significant private investment, and

WHEREAS, leveraging state tax incentives increases the effectiveness of federal Historic Preservation Tax Incentives and the Opportunity Zones Program to encourage the historic preservation of existing buildings, and

WHEREAS, an increase in rehabilitation activity occurs when a state incentive is combined with federal Historic Preservation Tax Incentives, and

WHEREAS, many historic buildings in this state need safety upgrades and other improvements that require both public and private investment to return these buildings as assets of their local communities, NOW, THEREFORE,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 399 Motor Vehicle and Vessel Law Enforcement
SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Rodriguez
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 876

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	17 Y, 0 N, As CS	Frost	Hall
2) Tourism, Infrastructure & Energy Subcommittee		Neuffer	Keating
3) Judiciary Committee			

SUMMARY ANALYSIS

Recently, dangerous events known as "street takeovers" have grown in popularity across the country. These events involve large numbers of vehicles and persons gathering at a predetermined site, typically blocking a large intersection, for vehicles to perform donuts, drifting, burn-outs and other dangerous vehicular maneuvers. Due to the large size of these gatherings, it may be difficult for law enforcement to respond to and control such events, as participants typically flee the location as soon as law enforcement presence is detected.

Florida law prohibits the following racing activities on highways, roadways, or parking lots, unless sanctioned by the proper authorities:

- Driving a motor vehicle, including a motorcycle, in any: race; speed competition or contest; drag race; test of physical endurance; or exhibition of speed or acceleration or for making a speed record;
- Participating in, coordinating, facilitating, or collecting money at any such race, competition, test, or exhibition location;
- Knowingly riding as a passenger in any such race, competition, test, or exhibition; or
- Purposefully stopping or slowing traffic movement for any such race, competition, test, or exhibition.

A racing violation is a first degree misdemeanor, punishable by up to one year in county jail and specified fines. A person may be arrested without a warrant if there is probable cause to believe he or she has committed a racing violation. Additionally, being a spectator at a drag race is punishable as a noncriminal traffic infraction.

CS/HB 399 amends the crimes under s. 316.191(2), F.S., to add additional types of vehicles and additional prohibited conduct including a street takeover, stunt driving, and operating a vehicle to film or record prohibited activities or to carry fuel for other vehicles involved in prohibited activities. The bill defines the terms "burnout," "doughnut," "drifting," "motor vehicle," "street takeover," "stunt driving," and "wheelie." The bill also amends the current definition of "spectator" to include a person who is knowingly present at and views a street takeover and provides that evidence of filming or recording such an event or posting the event on social media are factors to be considered in determining whether a person qualifies as a spectator. Under the bill, a person commits a noncriminal traffic infraction if he or she is found to be a spectator at a race or street takeover.

The bill amends the first degree misdemeanor crimes under s. 316.191(2), F.S., to add drag race, street takeover, and stunt driving to each type of prohibited conduct. The bill also adds street takeovers and stunt driving to the list of violations which require an offender to pay a $65 penalty.

Under the bill, if an officer has probable cause to believe that a person has committed a violation relating to a street takeover or stunt driving, the officer may arrest the person without a warrant.

The bill also increases the penalty for using certain lights on vehicles and vessels from a noncriminal traffic infraction to a first degree misdemeanor or a third degree felony.

The bill may have a positive indeterminate fiscal impact on state and local government entities receiving funds from violations related to street takeovers and stunt driving. The bill may have a positive indeterminate impact on prison and jail beds by prohibiting additional conduct punishable as a misdemeanor or felony offense.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Street-racing involves cars, motorcycles, and other motor vehicles engaging in prearranged or spontaneous competitions on roadways. The practice endangers participants, bystanders, and property. In addition to street-racing, another dangerous activity, which has recently grown in popularity across the country, is known as a "street takeover."[1] Street takeovers occur when large numbers, sometimes hundreds, of cars and occupants gather at a predetermined site, typically a large intersection. Vehicles are then parked in a manner which blocks the intersection to make a space for other cars to perform donuts, drifting, burn-outs and other dangerous vehicular maneuvers.[2] Due to the large size of these gatherings, law enforcement may experience difficultly responding to and controlling these events because of the time it takes to assemble appropriate law enforcement resources to address the crowd. Typically, by the time law enforcement presence is detected, the vehicles participating in the street takeover flee the location, along with the many bystanders that came to watch the cars.[3]

Recently, the Dallas Police Department's speeding and racing task force (task force) made a concerted local effort to crack down on street takeovers and other illegal events. As of September 2021, the task force has arrested 944 people associated with street takeovers.[4] Because street takeovers are a relatively new phenomenon, specific data related to accidents, injuries, and deaths resulting from these events in Florida is not readily available. However, there are accounts of these events happening throughout the state. In Jacksonville, street takeover participants have acknowledged that their meet-ups have anywhere from 300 to thousands of people in attendance,[5] and residents nearby indicate that these events are dangerous and often continue until well past midnight.[6]

Racing Offenses

Under Florida law, a "race" may be prearranged or occur spontaneously, consists of a challenge and acceptance or competitive response to the challenge,[7] and involves one or more motor vehicles in competition to demonstrate the superiority of a vehicle or driver by:

- Attempting to outgain or outdistance another motor vehicle;
- Preventing another motor vehicle from passing;
- Arriving at a given destination before another motor vehicle; or
- Testing the physical stamina or endurance of drivers over a long-distance.[8]

A "drag race" is a specific type of race involving:

---

[1] Erin Myers, *Car that crashed into Van Nuys building, killing 1, was being followed by police after doing donuts in street takeover*, October 25, 2021, ktla.com, https://ktla.com/news/local-news/car-that-crashed-into-van-nuys-building-killing-1-was-being-followed-by-police-after-doing-donuts-in-street-takeover/ (last visited Feb. 3, 2022).
[2] Elizabeth Fuller, *What's a Street "Takeover" and Why Should You Be Concerned?*, Larchmont Buzz (Sept. 21, 2020), https://www.larchmontbuzz.com/featured-stories-larchmont-village/whats-a-street-takeover-and-why-you-should-be-concerned/ (last visited Feb. 3, 2022).
[3] Thom Taylor, *Street Takeovers Are Turning More Deadly*, MotorBiscuit (Nov. 15, 2021), https://www.motorbiscuit.com/street-takeovers-turning-more-deadly/ (last visited Feb. 3, 2022).
[4] Michael Lozano, *Illegal Dallas 'street takeovers' feeling pinch from Dallas PD*, October 2, 2021, spectrumlocalnews.com, https://spectrumlocalnews.com/tx/dallas-fort-worth/news/2021/09/30/dallas-illegal--street-takeovers--feeling-pinch-from-dallas-pd- (last visited Feb. 3, 2022).
[5] Corley Peel, *I-TEAM: Local car group speaks following street takeover complaints*, News4Jax (Jan. 17, 2022), https://www.news4jax.com/news/local/2022/01/16/local-car-group-speaks-following-street-takeover-complaints/ (last visited Feb. 3, 2022).
[6] Scott Johnson, *I-TEAM: Complaints continue over car groups driving erratically in vacant parking lots*, News4Jax (Jan. 13, 2022), https://www.news4jax.com/news/local/2022/01/13/i-team-complaints-continue-over-dangerous-driving-in-vacant-parking-lots/ (last visited Feb. 3, 2021).
[7] *Id.*
[8] S. 316.191(1)(c), F.S.

- Two[9] or more motor vehicles driven side-by-side at accelerating speeds in a competitive attempt to outdistance each other; or
- One or more motor vehicles driven over a common selected course, from the same starting point to the same ending point, for the purpose of comparing the relative speed or power of acceleration of such motor vehicle or vehicles within a certain distance or time limit.[10]

Florida law prohibits the following racing activities on any highway, roadway, or parking lot, unless sanctioned by the proper authorities:[11]

- Driving a motor vehicle, including a motorcycle, in a:
  - Race;
  - Speed competition or contest;
  - Drag race;
  - Test of physical endurance;
  - Exhibition of speed or acceleration; or
  - Exhibition for making a speed record;[12]
- Participating in, coordinating, facilitating, or collecting money at a race, competition, test, or exhibition location;
- Knowingly riding as a passenger in a race, competition, test, or exhibition; or
- Purposefully stopping or slowing traffic movement for a race, competition, test, or exhibition.[13]

A racing violation is a first degree misdemeanor,[14] punishable by up to one year in county jail.[15] Additionally, a court must impose the following penalties for a:

- Violation with no prior convictions in the preceding five years, a fine of $500 up to $1,000 and a one year driver license suspension.
- Second violation within five years of a prior violation resulting in a conviction, a fine of $1,000 up to $3,000 and a two year driver license suspension.
- Third or subsequent violation within five years of a prior violation resulting in a conviction, a fine of $2,000 up to $5,000 and a four year driver license suspension.[16]

In addition to the criminal penalties provided, a person who commits a racing violation must pay a $65 penalty. Monies collected pursuant to this additional penalty are remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health to be used to ensure the availability and accessibility of trauma services throughout the state as provided in s. 316.192, F.S.

Section 316.191, F.S., also prohibits a person from being a spectator at a drag race. To be considered a spectator, a person must be knowingly present at and view a drag race, when his or her presence is the result of an affirmative choice to attend or participate in the race. In determining whether or not an individual is a spectator, the following factors must be considered: the relationship between the racer and the individual; evidence of gambling or betting on the outcome of the race; and any other factor that tends to show knowing attendance or participation. Being a spectator at a drag race is a noncriminal traffic infraction, punishable as a moving violation as provided in ch. 318, F.S.[17] However, current law does not similarly punish being a spectator at a regular race.

Warrantless Arrest

A judge may issue a warrant authorizing a person's arrest for a felony or misdemeanor crime upon finding probable cause that the person committed a crime in the judge's jurisdiction.[18] However, the

[9] Drag racing most commonly involves two motor vehicles operating side-by-side. National Hot Rod Association, *Basics of Drag Racing*, http://www.nhra.com/nhra101/basics.aspx (last visited Feb. 1 2022).
[10] S. 316.191(1)(b), F.S.
[11] S. 316.191(7), F.S.
[12] S. 316.191(2), F.S.
[13] *Id.*
[14] *Id.*
[15] S. 775.082, F.S.
[16] S. 316.191(3), F.S.
[17] S. 316.191(4), F.S.
[18] S. 901.02, F.S.

United States Supreme Court has held that the Fourth Amendment to the United States Constitution does not forbid warrantless arrest, even for a misdemeanor offense.[19]

In Florida, a law enforcement officer may arrest a person without a warrant under certain statutorily enumerated circumstances,[20] such as when:

- An officer reasonably believes a person committed a felony;
- There is probable cause to believe a person has committed certain enumerated misdemeanor offenses,[21] including a racing violation under s. 316.191(2), F.S.; or
- A person commits a misdemeanor in an officer's presence.
    - In this circumstance, the officer must arrest the person immediately or in fresh pursuit after observing the offense.

Prohibited Use of Certain Lights

Flashing Lights on Vehicles

Section 316.2397, F.S., prohibits flashing lights on vehicles except under specified circumstances, including:

- As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway;
- When a motorist intermittently flashes his or her vehicle's headlamps at an oncoming vehicle notwithstanding the motorist's intent for doing so;
- During periods of extreme low visibility on roadways with a posted speed limit of 55 miles per hour or more; and
- For certain lamps authorized in statute, which may flash, including various types of emergency vehicles.[22]

A violation of s. 316.2397, F.S., is currently a noncriminal traffic infraction, punishable as a nonmoving violation.[23]

Prohibited Use of Blue Lights on Vehicles and Vessels

Section 843.081, F.S., provides legislative intent indicating that Florida citizens are vulnerable to becoming the victims of criminal acts through the illegal use of blue lights by the criminal elements, and that the Legislature intends to reduce this vulnerability to injury and loss of life and property by prohibiting the use of certain blue lights by any person other than an authorized law enforcement officer.

Under s. 843.081, F.S., a person commits a first degree misdemeanor if he or she uses any flashing or rotating blue lights[24] in or on any non-governmentally owned vehicle or vessel, unless he or she is a law enforcement officer employed by a federal, state, county, or city law enforcement agency, or is appointed as a special officer by the Governor under ch. 354, F.S.[25]

False Personation

Section 843.08, F.S., prohibits the false personation of any of the following law enforcement officers or other specified persons:

- A firefighter;

[19] *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001).
[20] S. 901.15, F.S.
[21] S. 901.15, F.S., includes other misdemeanor offenses such as battery, criminal mischief or graffiti, an act of domestic violence, an injunction violation, or sexual cyberharassment in the list of offenses where a warrantless arrest is authorized.
[22] S. 316.2397(7), F.S.
[23] S. 316.2397(10), F.S.
[24] "Flashing or rotating blue light" includes all forms of lights which display a blue light source or which were designed with the intent of displaying a blue light source whether or not such light is actually in use. S. 843.081(4), F.S.
[25] A salesperson, service representative, or other employee of a businesses licensed to sell or repair law enforcement equipment is exempt from criminal liability. S. 843.081(3), F.S.

- Sheriff;
- Officer of the Florida Highway Patrol;
- Officer of the Fish and Wildlife Conservation Commission;
- Fire or arson investigator of the Department of Financial Services;
- Officer of the Department of Financial Services;
- Officer of the Department of Corrections;
- Correctional probation officer;
- Deputy sheriff;
- State attorney or assistant state attorney;
- Statewide prosecutor or assistant statewide prosecutor;
- State attorney investigator;
- Coroner;
- Police officer;
- Lottery special agent or lottery investigator;
- Beverage enforcement agent;
- Watchman (a security officer licensed under ch. 493, F.S.);
- Any member of the Florida Commission on Offender Review and any administrative aide or supervisor employed by the commission;
- Any personnel or representative of the FDLE; or
- A federal law enforcement officer as defined in s. 901.1505, F.S.

A person commits the offense of false personation if he or she falsely assumes or pretends to be any person specified in s. 843.08, F.S., and takes it upon himself or herself to act as such person, or requires any other person to aid or assist him or her in a matter pertaining to the duty of any such specified person.

False personation is generally a third degree felony.[26] However, false personation becomes a second degree felony[27] if committed during the course of committing another felony offense, unless the offense results in the death or personal injury of another human being, in which case the offense of false personation is a first degree felony.[28, 29]

Effect of Proposed Changes

CS/HB 399 amends s. 316.191, F.S., to provide the following definitions:
- "Burnout" means a maneuver performed while operating a motor vehicle whereby the motor vehicle is kept stationary, or is in motion, while the wheels are spun, resulting in friction which causes the motor vehicle's tires to heat up and emit smoke.
- "Doughnut" means a maneuver performed while operating a motor vehicle whereby the front or rear of the motor vehicle is rotated around the opposite set of wheels in a continuous motion, resulting in friction which may cause a circular skid-mark pattern of rubber on the driving surface, may cause the motor vehicle's tires to heat up and emit smoke, or both.
- "Drifting" means a maneuver performed while operating a motor vehicle whereby the motor vehicle is steered so that it makes a controlled skid sideways through a turn with the front wheels pointed in a direction opposite to that of the turn.
- "Street takeover" means the use of one or more motor vehicles to block or impede the regular flow of traffic on any portion of a highway, roadway, or parking lot for the purpose of performing any burnout, doughnut, drifting, wheelie, or other stunt driving.
- "Stunt driving" means the use of a motor vehicle to perform or engage in any burnout, doughnut, drifting, wheelie, or other dangerous driving maneuver on a highway, roadway, or parking lot which is likely to delay, distract, startle, or interfere with other users of the highway, roadway, or parking lot.

[26] A third degree felony is punishable by up to five years in prison and a fine of up to $5,000. Ss. 775.082 and 775.083, F.S.
[27] A second degree felony is punishable by up to 15 years in prison and a fine of up to $10,000. Ss. 775.082 and 775.083, F.S.
[28] A first degree felony is punishable by up to 30 years in prison and a fine of up to $10,000. Ss. 775.082 and 775.083, F.S.
[29] False personation under s. 843.08, F.S., is ranked as a level 2 offense on the Criminal Punishment Code offense severity ranking chart. S. 921.0022(3)(b), F.S.

- "Wheelie" means a maneuver performed while operating a motor vehicle whereby a motor vehicle is ridden for a distance with the front wheel or wheels raised off the driving surface.

The bill amends the first degree misdemeanor crimes under s. 316.191(2), F.S., to add drag race, street takeover, and stunt driving to each type of prohibited conduct. Additionally, under the bill a person commits a first degree misdemeanor offense if he or she:

- Purposely interrupts the movement of pedestrian traffic for any such prohibited event; or
- Operates a motor vehicle for the purpose of:
  - Filming or recording the activities of participants in any race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition; or
  - Carrying any amount of fuel intended to be used for fueling a motor vehicle involved in any race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition.

The bill amends the current definition of "spectator" to include a person who is knowingly present at and views a street takeover and provides that evidence of filming or recording such an event or posting the event on social media are factors to be considered in determining whether a person qualifies as a spectator. The bill also amends the noncriminal traffic infraction for being a spectator at a drag race to include a prohibition on being a spectator at a race or street takeover.

The bill adds street takeovers and stunt driving to the list of violations requiring an offender to pay a $65 penalty in addition to any other penalty, which is remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health.

Under the bill, if an officer has probable cause to believe that a person has committed a violation relating to a street takeover or stunt driving, the officer may arrest the person without a warrant. An officer may already arrest a person without a warrant for current racing offenses.

The bill increases the penalty for using flashing lights or other lights on a vehicle in violation of s. 316.2397, F.S., from a noncriminal traffic infraction to a first degree misdemeanor. The bill also amends the crime of false personation to provide that a person who takes upon himself or herself to act as an officer or person listed in s. 843.08, F.S., including by using prohibited flashing lights in violation of s. 316.2397, F.S., or prohibited blue lights in violation of s. 843.081, F.S., commits an offense, which is punishable as a third degree felony.[30]

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

B. SECTION DIRECTORY:

Section 1: Amends s. 316.191, F.S., relating to racing on highways.

Section 2: Amends s. 316.2397, F.S., relating to certain lights prohibited; exceptions.

Section 3: Amends s. 318.18, F.S., relating to amount of penalties.

Section 4: Reenacts s. 316.027, F.S., relating to crash involving death or personal injuries.

Section 5: Reenacts s. 322.0261, F.S., relating to driver improvement course; requirement to maintain driving privileges; failure to complete; department approval of course.

Section 6: Reenacts s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 7: Amends s. 843.08, F.S., relating to false personation.

Section 8: Provides an effective date of July 1, 2022.

[30] Or may be punishable as a: second degree felony if committed during the course of committing another felony offense; or as a first degree felony if the offense results in the death or personal injury of another human being. S. 843.08, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have a positive indeterminate impact on state entities which receive fines and fees collected from the new conduct which, under the bill, is considered a misdemeanor crime related to street takeovers and stunt driving.

2. Expenditures:

The bill may have a positive indeterminate impact on prison beds by prohibiting additional conduct punishable as a felony offense.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may have a positive indeterminate impact on local government entities which may receive monies collected from the new conduct considered a noncriminal traffic infraction for being a spectator at a race or street takeover.

The bill may have a positive indeterminate impact on The Emergency Medical Services Trust Fund of the Department of Health by adding street takeovers and stunt driving to the list of violations which require a $65 penalty, in addition to any other penalty, under s. 318.18(20), F.S.

2. Expenditures:

The bill may have a positive indeterminate impact on the number of jail beds by creating new conduct punishable as a misdemeanor crime relating to racing, street takeovers, and stunt driving.

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. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 3, 2022, the Criminal Justice & Public Safety Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Provided definitions for the terms "burnout," "doughnut," "drifting," "motor vehicle," "stunt driving," and "wheelie."
- Replaced the term "takeover ride" with the term "street takeover" and amended the definition of the term.
- Made other technical, clarifying, and conforming changes.

This analysis is drafted to the committee substitute as passed by the Criminal Justice & Public Safety Subcommittee.

A bill to be entitled

An act relating to motor vehicle and vessel law enforcement; reenacting and amending s. 316.191, F.S.; revising and providing definitions; prohibiting a person from driving any motor vehicle in any street takeover, stunt driving, race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration on any highway, roadway, or parking lot; prohibiting a person from participating in or coordinating via social media any such race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition; prohibiting a person from knowingly riding as a passenger in any such race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition; prohibiting a person from purposefully causing the movement of traffic, including pedestrian traffic, to slow, stop, or be impeded in any way for such race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition; prohibiting a person from operating a motor vehicle for the purpose of filming or recording activities of participants in any such race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition; providing

an exception; prohibiting a person from operating a motor vehicle carrying any amount of fuel for the purposes of fueling a motor vehicle involved in any such race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition; providing penalties; prohibiting a person from being a spectator at any such race, drag race, or street takeover; providing penalties; amending s. 316.2397, F.S.; providing criminal penalties for unlawful use of certain lights; amending s. 318.18, F.S.; conforming provisions to changes made by the act; reenacting ss. 316.027(2)(c) and 322.0261(4)(a) and (b), F.S., relating to a crash involving death or personal injuries and driver improvement courses, respectively, to incorporate the amendment made to s. 316.191, F.S., in references thereto; amending s. 901.15, F.S.; conforming provisions to changes made by the act; amending s. 843.08, F.S.; including the unlawful use of certain lights in the commission of the offense of false personation; providing penalties; providing an effective date.

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

Section 1. Section 316.191, Florida Statutes, is reenacted

and amended to read:

316.191 Racing on highways, street takeovers, and stunt driving.—

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

(a) "Burnout" means a maneuver performed while operating a motor vehicle whereby the motor vehicle is kept stationary, or is in motion, while the wheels are spun, resulting in friction which causes the motor vehicle's tires to heat up and emit smoke.

(b) ~~(a)~~ "Conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(c) "Doughnut" means a maneuver performed while operating a motor vehicle whereby the front or rear of the motor vehicle is rotated around the opposite set of wheels in a continuous motion which may cause a circular skid-mark pattern of rubber on the driving surface or the tires to heat up and emit smoke from friction, or both.

(d) ~~(b)~~ "Drag race" means the operation of two or more motor vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more motor vehicles over a common selected course, from the same point to the same point, for the purpose of comparing the relative speeds or power of acceleration of such motor vehicle or motor vehicles within a certain distance

or time limit.

(e) "Drifting" means a maneuver performed while operating a motor vehicle whereby the motor vehicle is steered so that it makes a controlled skid sideways through a turn with the front wheels pointed in a direction opposite to that of the turn.

(f) "Motor vehicle" has the same meaning as in s. 316.003. The term "motor vehicle" also includes any motorcycle, autocycle, moped, all-terrain vehicle, off-road vehicle, or vehicle not licensed to operate on a highway or roadway.

(g) ~~(c)~~ "Race" means the use of one or more motor vehicles in competition, arising from a challenge to demonstrate superiority of a motor vehicle or driver and the acceptance or competitive response to that challenge, either through a prior arrangement or in immediate response, in which the competitor attempts to outgain or outdistance another motor vehicle, to prevent another motor vehicle from passing, to arrive at a given destination ahead of another motor vehicle or motor vehicles, or to test the physical stamina or endurance of drivers over long-distance driving routes. A race may be prearranged or may occur through a competitive response to conduct on the part of one or more drivers which, under the totality of the circumstances, can reasonably be interpreted as a challenge to race.

(h) ~~(d)~~ "Spectator" means any person who is knowingly present at and views a drag race or street takeover, when such presence is the result of an affirmative choice to attend or

participate in the event ~~race~~. For purposes of determining whether or not an individual is a spectator, finders of fact shall consider the relationship between the motor vehicle operator ~~racer~~ and the individual, evidence of gambling or betting on the outcome of the event ~~race~~, filming or recording the event, or posting the event on social media, and any other factor that would tend to show knowing attendance or participation.

(i) "Street takeover" means the taking over of a portion of a highway, roadway, or parking lot by blocking or impeding the regular flow of traffic to perform a race, drag race, burnout, doughnut, drifting, wheelie, or other stunt driving.

(j) "Stunt driving" means to perform or engage in any burnouts, doughnuts, drifting, wheelies, or other dangerous motor vehicle activity on a highway, roadway, or parking lot which is likely to delay, distract, startle, or interfere with other users of the highway, roadway, or parking lot.

(k) "Wheelie" means a maneuver performed while operating a motor vehicle whereby a motor vehicle is ridden for a distance with the front wheel or wheels raised off the ground.

(2) A person may not:

(a) Drive any motor vehicle~~, including any motorcycle,~~ in any street takeover, stunt driving, race, speed competition or contest, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration or for the

purpose of making a speed record on any highway, roadway, or parking lot;

(b) In any manner participate in, coordinate through social media or otherwise, facilitate, or collect moneys at any location for any such race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition;

(c) Knowingly ride as a passenger in any such race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition; ~~or~~

(d) Purposefully cause the movement of traffic, including pedestrian traffic, to slow, ~~or~~ stop, or be impeded in any way for any such race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition;

(e) Operate a motor vehicle for the purpose of filming or recording the activities of participants in any such race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition. This paragraph does not apply to bona fide members of the news media; or

(f) Operate a motor vehicle carrying any amount of fuel for the purposes of fueling a motor vehicle involved in any such race, drag race, street takeover, stunt driving, competition, contest, test, or exhibition.

(3)(a) Any person who violates subsection (2) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Any person who violates subsection (2)

shall pay a fine of not less than $500 and not more than $1,000, and the department shall revoke the driver license of a person so convicted for 1 year. A hearing may be requested pursuant to s. 322.271.

(b) Any person who commits a second violation of subsection (2) within 5 years after the date of a prior violation that resulted in a conviction for a violation of subsection (2) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and shall pay a fine of not less than $1,000 and not more than $3,000. The department shall also revoke the driver license of that person for 2 years. A hearing may be requested pursuant to s. 322.271.

(c) Any person who commits a third or subsequent violation of subsection (2) within 5 years after the date of a prior violation that resulted in a conviction for a violation of subsection (2) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and shall pay a fine of not less than $2,000 and not more than $5,000. The department shall also revoke the driver license of that person for 4 years. A hearing may be requested pursuant to s. 322.271.

(d) In any case charging a violation of subsection (2), the court shall be provided a copy of the driving record of the person charged and may obtain any records from any other source to determine if one or more prior convictions of the person for a violation of subsection (2) have occurred within 5 years

before ~~prior to~~ the charged offense.

(4)(a) A person may not be a spectator at any race, drag race, or street takeover prohibited under subsection (2).

(b) A person who violates paragraph (a) commits a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.

(5) Whenever a law enforcement officer has probable cause to believe that a person violated subsection (2), the officer may arrest and take such person into custody without a warrant. The court may enter an order of impoundment or immobilization as a condition of incarceration or probation. Within 7 business days after the date the court issues the order of impoundment or immobilization, the clerk of the court must send notice by certified mail, return receipt requested, to the registered owner of the motor vehicle, if the registered owner is a person other than the defendant, and to each person of record claiming a lien against the motor vehicle.

(a) Notwithstanding any provision of law to the contrary, the impounding agency shall release a motor vehicle under the conditions provided in s. 316.193(6)(e), (f), (g), and (h), if the owner or agent presents a valid driver license at the time of pickup of the motor vehicle.

(b) All costs and fees for the impoundment or immobilization, including the cost of notification, must be paid by the owner of the motor vehicle or, if the motor vehicle is

leased or rented, by the person leasing or renting the motor vehicle, unless the impoundment or immobilization order is dismissed. All provisions of s. 713.78 shall apply.

(c) Any motor vehicle used in violation of subsection (2) may be impounded for a period of 30 business days if a law enforcement officer has arrested and taken a person into custody pursuant to this subsection and the person being arrested is the registered owner or co-owner of the motor vehicle. If the arresting officer finds that the criteria of this paragraph are met, the officer may immediately impound the motor vehicle. The law enforcement officer shall notify the Department of Highway Safety and Motor Vehicles of any impoundment for violation of this subsection in accordance with procedures established by the department. Paragraphs (a) and (b) shall be applicable to such impoundment.

(6) Any motor vehicle used in violation of subsection (2) by any person within 5 years after the date of a prior conviction of that person for a violation under subsection (2) may be seized and forfeited as provided by the Florida Contraband Forfeiture Act. This subsection shall only be applicable if the owner of the motor vehicle is the person charged with violating subsection (2).

(7) This section does not apply to licensed or duly authorized racetracks, drag strips, or other designated areas set aside by proper authorities for such purposes.

Section 2. Subsection (10) of section 316.2397, Florida Statutes, is amended to read:

316.2397 Certain lights prohibited; exceptions.—

(10) A person who violates ~~violation of~~ this section commits a misdemeanor of the first degree ~~is a noncriminal traffic infraction~~, punishable ~~as a nonmoving violation~~ as provided in s. 775.082 or s. 775.083 ~~chapter 318~~.

Section 3. Subsection (20) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of penalties.—The penalties required for a noncriminal disposition pursuant to s. 318.14 or a criminal offense listed in s. 318.17 are as follows:

(20) In addition to any other penalty, $65 for a violation of s. 316.191, prohibiting racing on highways, street takeovers, and stunt driving, or s. 316.192, prohibiting reckless driving. The additional $65 collected under this subsection shall be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health to be used as provided in s. 395.4036.

Section 4. For the purpose of incorporating the amendment made by this act to section 316.191, Florida Statutes, in a reference thereto, paragraph (c) of subsection (2) of section 316.027, Florida Statutes, is reenacted to read:

316.027 Crash involving death or personal injuries.—

(2)

(c) The driver of a vehicle involved in a crash occurring on public or private property which results in the death of a person shall immediately stop the vehicle at the scene of the crash, or as close thereto as possible, and shall remain at the scene of the crash until he or she has fulfilled the requirements of s. 316.062. A person who is arrested for a violation of this paragraph and who has previously been convicted of a violation of this section, s. 316.061, s. 316.191, or s. 316.193, or a felony violation of s. 322.34, shall be held in custody until brought before the court for admittance to bail in accordance with chapter 903. A person who willfully violates this paragraph commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and shall be sentenced to a mandatory minimum term of imprisonment of 4 years. A person who willfully commits such a violation while driving under the influence as set forth in s. 316.193(1) shall be sentenced to a mandatory minimum term of imprisonment of 4 years.

Section 5. For the purpose of incorporating the amendment made by this act to section 316.191, Florida Statutes, in references thereto, paragraphs (a) and (b) of subsection (4) of section 322.0261, Florida Statutes, are reenacted to read:

322.0261 Driver improvement course; requirement to maintain driving privileges; failure to complete; department approval of course.—

(4)(a) The department shall identify any operator convicted of, or who pleaded nolo contendere to, a violation of s. 316.074(1), s. 316.075(1)(c)1., s. 316.172, s. 316.191, or s. 316.192 and shall require that operator, in addition to other applicable penalties, to attend a department-approved driver improvement course in order to maintain driving privileges. The department shall, within 10 days after receiving a notice of judicial disposition, send notice to the operator of the requirement to attend a driver improvement course. If the operator fails to complete the course within 90 days after receiving notice from the department, the operator's driver license shall be canceled by the department until the course is successfully completed.

(b) Any operator who receives a traffic citation for a violation of s. 316.074(1), s. 316.075(1)(c)1., s. 316.191, or s. 316.192, for which the court withholds adjudication, is not required to attend a driver improvement course, unless the court finds that the nature or severity of the violation is such that attendance to a driver improvement course is necessary. The department shall, within 10 days after receiving a notice of judicial disposition, send notice to the operator of the requirement to attend a driver improvement course. If the operator fails to complete the course within 90 days after receiving notice from the department, the operator's driver license shall be canceled by the department until the course is

successfully completed.

Section 6. Paragraph (d) of subsection (9) of section 901.15, Florida Statutes, is amended to read:

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:

(9) There is probable cause to believe that the person has committed:

(d) A racing, street takeover, or stunt driving violation as described in s. 316.191(2).

Section 7. Section 843.08, Florida Statutes, is amended to read:

843.08 False personation.—A person who falsely assumes or pretends to be a firefighter, a sheriff, an officer of the Florida Highway Patrol, an officer of the Fish and Wildlife Conservation Commission, an officer of the Department of Environmental Protection, an officer of the Department of Financial Services, any personnel or representative of the Division of Investigative and Forensic Services, an officer of the Department of Corrections, a correctional probation officer, a deputy sheriff, a state attorney or an assistant state attorney, a statewide prosecutor or an assistant statewide prosecutor, a state attorney investigator, a coroner, a police officer, a lottery special agent or lottery investigator, a beverage enforcement agent, a school guardian as described in s.

30.15(1)(k), a security officer licensed under chapter 493, any member of the Florida Commission on Offender Review or any administrative aide or supervisor employed by the commission, any personnel or representative of the Department of Law Enforcement, or a federal law enforcement officer as defined in s. 901.1505, and takes upon himself or herself to act as such, <u>including by using lights in violation of s. 316.2397 or s. 843.081,</u> or to require any other person to aid or assist him or her in a matter pertaining to the duty of any such officer, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. However, a person who falsely personates any such officer during the course of the commission of a felony commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. If the commission of the felony results in the death or personal injury of another human being, the person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 8. This act shall take effect July 1, 2022.

TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

CS/HB 399 by Rep. Rodriguez
Motor Vehicle and Vessel Law Enforcement

AMENDMENT SUMMARY
February 15, 2022

Amendment 1 by Rep. Drake (Line 116):

- Prohibits stunt driving if it takes place as part of a street takeover.

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 Drake offered the following:

Amendment (with title amendment)

Remove lines 116-117 and insert:

as part of a street takeover.

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

Remove line 6 and insert:

takeover, stunt driving performed as part of a street takeover, racing, speed competition or

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1031 Transportation Research
SPONSOR(S): Andrade
TIED BILLS: **IDEN./SIM. BILLS:** SB 1160

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

SUMMARY ANALYSIS

The University of Florida (UF), the Florida Department of Transportation (DOT), and the City of Gainesville have partnered to create the Implementing Solutions from Transportation Research and Evaluation of Emerging Technologies (I-STREET) Living Lab. I-STREET's principal objective is to make significant improvements to transportation safety and mobility, utilizing a real-world testbed environment that has been created on and surrounding the UF campus and the expanding set of diverse technology installed on Florida segments of the Interstate Highway System.

The bill codifies the I-STREET Living Lab within UF and provides for its duties relating to transportation research, education, workforce development, and related issues. The bill requires I-STREET, by July 1, 2023, and annually thereafter, to provide to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report outlining its goals, as well as its efforts and progress on reaching those goals.

The bill also creates a nine-member advisory board to periodically review and advise I-STREET concerning its research program.

The bill does not provide funding for any costs associated with participation in I-STREET. Such costs are indeterminate and are expected to be absorbed within the existing resources of UF, DOT, and other participants.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Various centers, institutes, and special programs within the State University System are codified in Florida Statutes, including the Florida Industrial and Phosphate Research Institute at Florida Polytechnic University,[1] the H. Lee Moffitt Cancer Center and Research Institute at the University of South Florida,[2] the Louis de la Parte Florida Mental Health Institute at the University of South Florida,[3] the Florida Institute for Child Welfare at Florida State University,[4] and the Center for Urban Transportation Research at the University of South Florida.[5]

The University of Florida (UF) College of Engineering's Transportation Institute aims to advance transportation, disseminate research results, and provide educational opportunities related to transportation. The institute is an umbrella organization housing several transportation-related centers.[6]

UF's Transportation Institute, the Department of Transportation (DOT), and the City of Gainesville have partnered to create the Implementing Solutions from Transportation Research and Evaluation of Emerging Technologies (I-STREET) Living Lab. I-STREET's principal objective is to make significant improvements to transportation safety and mobility, utilizing a real-world testbed environment that has been created on and surrounding the UF campus and the expanding set of diverse technology installed on Florida segments of the Interstate Highway System.[7] I-STREET has received funding from the National Science Foundation and through research conducted as part of the United States Department of Transportation's University Transportation Centers Program.[8]

I-STREET's mission and main goals are to:

- Facilitate the development and implementation of advanced and emerging technologies to improve safety and mobility that are suitable for implementation statewide and beyond;
- Foster collaboration with industry wishing to develop, test, and implement their own technologies to improve safety, and mobility; and
- Become a recognized national and global leader in the development and implementation of advanced technologies to improve transportation safety and mobility.[9]

I-STREET projects include:

- I-75 Florida Regional Advanced Mobility Elements;
- Pedestrian and Bicycle Safety Demonstration;
- Gainesville Autonomous Shuttle Evaluation; and
- Transportation Mobility Assessment and Recommendations for Smart City Planning.[10]

DOT has issued an invitation to transportation industry leaders for participation in the "UF I-STREET program." According to DOT:

> I-STREET is designed to assist in implementing emerging technologies aimed at safety and mobility improvements. DOT will develop requests for proposals utilizing the emerging

[1] S. 1004.346, F.S.
[2] S. 1004.43, F.S.
[3] S. 1004.44, F.S.
[4] S. 1004.615, F.S.
[5] S. 334.065(1), F.S.
[6] University of Florida (UF) Transportation Institute, *Overview,* https://www.transportation.institute.ufl.edu/overview/ (last visited Jan 13, 2022).
[7] UF, *I-Street Living Lab* , https://www.transportation.institute.ufl.edu/i-street-living-lab/ (last visited Feb, 11, 2022).
[8] House of Representatives, Appropriations Project Request – Fiscal Year 2022-2023 HB 4285 (2022) p. 5.
[9] UF, *supra* note 7.
[10] UF Transportation Institute, *Projects,* https://www.transportation.institute.ufl.edu/i-street-living-lab/projects/ (last visited Jan. 13, 2022).

technologies and will select vendors through a competitive bidding process. The selected vendor for each project will deploy technology solutions. UF will conduct before-and-after evaluations of implemented projects. After evaluation, DOT will consider whether to expand the successful I-STREET projects elsewhere in the state.

DOT has allocated funding for these innovative projects per fiscal year (FY) from FY 2020-2021 until FY 2024-2025. Each FY, DOT will fund multiple projects based on the projects' merits and safety and mobility improvement potential. The number of awards will vary depending on the project type and scope.[11]

Effect of the Bill

The bill codifies the I-STREET Living Lab within UF. The bill requires I-STREET to, at a minimum:

- Conduct and facilitate research on issues related to innovative transportation mobility and safety technology development and deployment in Florida and serve as an information exchange and depository for the most current information pertaining to transportation research, education, workforce development, and related issues.
- Be a continuous resource for the Legislature, DOT, local governments, the nation's metropolitan regions, and the private sector in the area of transportation and related research.
- Promote intercampus transportation and related research activities among Florida universities to enhance the ability of these universities to attract federal and private sector funding for transportation and related research.
- Provide by July 1, 2023, and each July 1 thereafter, to the Governor, the President of the Senate, and the Speaker of the House of Representatives a comprehensive report that outlines I-STREET's clearly defined goals and its efforts and progress on reaching those goals.

The bill creates an advisory board to periodically review and advise I-STREET concerning its research program. The board must consist of nine members with expertise in transportation-related areas, including:

- A member appointed by the President of the Senate.
- A member appointed by the Speaker of the House of Representatives.
- The Secretary of Transportation or his or her designee.
- The Secretary of Economic Opportunity or his or her designee.
- A member of the Florida Transportation Commission.[12]
- Four members nominated by UF's College of Engineering and approved by UF's president. These nominees may include representatives of UF, other academic and research institutions, or private entities.

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

B. SECTION DIRECTORY:

Section 1 Creates s. 334.066, F.S., creating the Implementing Solutions from Transportation Research and Evaluating Emerging Technologies (I-STREET) Living Lab.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[11] Department of Transportation (DOT), *UF I-Street*, https://www.fdot.gov/traffic/its/projects-deploy/cv/maplocations/uf-testbed.shtm (last visited Jan. 14, 2022).
[12] The Florida Transportation Commission is a citizen's advisory board for the Department of Transportation.

2. Expenditures:

   Indeterminate. The costs associated with I-STREET are unknown but are expected to be absorbed within the existing resources of the UF, DOT, and other potential government sector participants. The bill does not provide funding for any costs associated with participation.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   Indeterminate. The costs associated with I-STREET are unknown but are expected to be absorbed within the existing resources of the UF, DOT, and other potential government sector participants. The bill does not provide funding for any costs associated with participation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

While the bill does not have a direct fiscal impact on state or local government revenues, appropriations bill HB 4285 (2022) provides a $3,373,000 appropriation request for I-STREET.[13]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

This bill does not require or authorize rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[13] House of Representatives, Appropriations Project Request – Fiscal Year 2022-2023 for HB 4285 (2022) p. 1.

A bill to be entitled

An act relating to transportation research; creating s. 334.066, F.S.; establishing the Implementing Solutions from Transportation Research and Evaluating Emerging Technologies Living Lab (I-STREET) within the University of Florida; specifying the duties of I-STREET; requiring I-STREET to annually provide the Governor and the Legislature with a certain report; requiring the creation of a certain advisory board; specifying the composition of the board; providing an effective date.

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

Section 1. Section 334.066, Florida Statutes, is created to read:

334.066 Implementing Solutions from Transportation Research and Evaluating Emerging Technologies Living Lab.—

(1) The Implementing Solutions from Transportation Research and Evaluating Emerging Technologies Living Lab (I-STREET) is established within the University of Florida.

(2) At a minimum, I-STREET shall:

(a) Conduct and facilitate research on issues related to innovative transportation mobility and safety technology development and deployment in this state and serve as an

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

information exchange and depository for the most current information pertaining to transportation research, education, workforce development, and related issues.

(b) Be a continuing resource for the Legislature, the department, local governments, the nation's metropolitan regions, and the private sector in the area of transportation and related research.

(c) Promote intercampus transportation and related research activities among Florida universities to enhance the ability of these universities to attract federal and private sector funding for transportation and related research.

(d) Provide by July 1, 2023, and each July 1 thereafter, to the Governor, the President of the Senate, and the Speaker of the House of Representatives a comprehensive report that outlines its clearly defined goals and its efforts and progress on reaching those goals.

(3) An advisory board shall be created to periodically review and advise I-STREET concerning its research program. The board shall consist of nine members with expertise in transportation-related areas, as follows:

(a) A member appointed by the President of the Senate.

(b) A member appointed by the Speaker of the House of Representatives.

(c) The Secretary of Transportation or his or her designee.

(d) The Secretary of Economic Opportunity or his or her designee.

(e) A member of the Florida Transportation Commission.

(f) Four members nominated by the University of Florida's College of Engineering and approved by the university's president. The College of Engineering's nominees may include representatives of the University of Florida, other academic and research institutions, or private entities.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1419 Financial Assistance for Municipal Solid Waste-to-Energy Facilities
SPONSOR(S): Mariano
TIED BILLS: **IDEN./SIM. BILLS:** SB 1764

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

SUMMARY ANALYSIS

Energy recovery from waste is the conversion of non-recyclable waste materials into useable heat, electricity, or fuel. Municipal solid waste (MSW), otherwise known as trash or garbage, can be used to produce energy at WTE plants and landfills. For over 30 years, WTE has been a part of Florida's solid waste management program. Florida has the largest MSW burn capacity in the country.

Utilities are required to purchase power, at the utility's full avoided cost, from "qualifying facilities" (QF) which fall into two categories: qualifying small power production facilities and qualifying cogeneration facilities. In Florida, investor-owned utilities (IOUs) must annually establish and file with the Public Service Commission (PSC) a standard offer contract with terms, conditions, and payments based on projected costs for each fossil-fueled generating unit type identified in the IOU's ten-year site plan. Payment terms and conditions for QFs are based on the projected cost to construct and operate the IOU's next planned generation unit. The standard offer contract provides a basis for developing negotiated contracts. "As-available" energy contracts are also an option for QFs, including municipal solid waste-to-energy (MSWE) facilities.

The bill creates the Municipal Solid Waste-to-Energy Program (program) within the Department of Agriculture and Consumer Services (DACS). The purpose of the program is to provide financial assistance grants and incentive grants to MSWE facilities. To enable DACS to administer the program, the bill provides a $100 million appropriation from the General Revenue Fund in recurring funds.

Under the bill, the financial assistance grants will provide MSWE facilities funding at a rate of 2 cents per kilowatt-hour of electricity purchased by an electric utility during the preceding state fiscal year, not to exceed the difference between the electric utility's avoided cost and the commercial retail rate. The bill also provides for incentive grants, which will provide facilities with matching funds on a dollar-for-dollar basis to assist with planning and design for constructing, upgrading, or expanding MSWE facilities, including necessary legal or administrative expenses. The bill authorizes DACS to adopt rules to implement the program.

The bill will not impact state government revenues or local government expenditures. The bill provides a $100 million appropriation in recurring funds from the General Revenue Fund to DACS for the 2022-2023 fiscal year. The bill may result in a positive impact to local revenues if publicly-owned MSWE facilities qualify for the program.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Municipal Solid Waste-to-Energy

Energy recovery from waste is the conversion of non-recyclable waste materials into useable heat, electricity, or fuel. This process is often called waste-to-energy (WTE), and the conversion may use a few different methods, including combustion, gasification, pyrolization, anaerobic digestion, and landfill gas recovery.[1]

Municipal solid waste (MSW), otherwise known as trash or garbage, can be used to produce energy at WTE plants and landfills.[2] At this type of facility MSW is typically unloaded from collection trucks and placed in storage, then an overhead crane sorts the waste and lifts it into a combustion chamber to be burned. The heat released from burning converts water to steam in a boiler that is used to generate electricity.[3,4] MSW may contain:

- Biomass or biogenic (plant or animal products) materials such as paper, cardboard, food waste, grass clippings, leaves, wood, and leather products;
- Nonbiomass combustible materials such as plastics and other synthetic materials made from petroleum; and
- Noncombustible materials such as glass and metals.[5]

In 2018, about 12 percent of the 292 million tons of MSW produced in the U.S. was burned in WTE plants.[6] The remaining MSW was managed as follows:

- 50 percent was landfilled;
- 23.6 percent was recycled;
- 8.5 percent was composted; and
- 6.1 percent is listed as "other."[7]

In 2020, 65 U.S. power plants generated around 13.5 billion kilowatt-hours of electricity from 25 million tons of MSW. In addition to producing electricity, WTE is a waste management option. Utilizing WTE methods reduces the amount of material otherwise buried in landfills by about 87 percent. A WTE plant can reduce 2,000 pounds of MSW down to around 300 to 600 pounds of ash.[8]

Energy recovery from waste is encouraged by the U.S. Environmental Protection Agency and is recognized as a renewable energy source. WTE facilities produce relatively clean, renewable energy through the combustion of municipal solid waste in specially designed power plants equipped with pollution control equipment to clean emissions.[9]

Municipal Solid Waste-to-Energy in Florida

---

[1] U.S. Environmental Protection Agency, *Energy Recovery from the Combustion of Municipal Solid Waste (MSW)*, https://www.epa.gov/smm/energy-recovery-combustion-municipal-solid-waste-msw (last visited Feb. 9, 2022).
[2] U.S. Energy Information Admin., *Biomass explained, Waste-to-energy (Municipal Solid Waste), Basics*, https://www.eia.gov/energyexplained/biomass/waste-to-energy.php (last visited Feb. 9, 2022).
[3] U.S. Energy Information Admin., *Biomass explained, Waste-to-energy (Municipal Solid Waste), In Depth, How waste-to-energy plants work*, https://www.eia.gov/energyexplained/biomass/waste-to-energy-in-depth.php (last visited Feb. 9, 2022).
[4] U.S. Environmental Protection Agency, *supra* note 1.
[5] U.S. Energy Information Admin., *supra* note 2.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] U.S. Environmental Protection Agency, *supra* note 1.

For over 30 years, WTE has been a part of Florida's solid waste management program.[10] In the 1993 revisions to the 1988 Solid Waste Management Act, the Legislature recognized the need to use an integrated approach to municipal solid waste management by using waste reduction, recycling, WTE facilities, and landfills.[11]

Current law defines the term "waste-to-energy facility" as a facility that uses an enclosed device using controlled combustion to thermally break down solid, liquid, or gaseous combustible solid waste to an ash residue that contains little or no combustible material and that produces electricity, steam, or other energy as a result. Under current law, the term does not include facilities that primarily burn fuels other than solid waste even if such facilities also burn some solid waste as a fuel supplement.[12,13]

Florida has the largest MSW burn capacity of any state in the country. The state went from having one small WTE plant in 1982 to operating twelve facilities.[14] The following counties have at least one facility:

- Bay
- Broward
- Miami-Dade
- Hillsborough
- Lake
- Palm Beach
- Pasco
- Pinellas.[15]

Florida Public Service Commission and Regulation of Investor-Owned Electric Utilities

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.[16] The role of the PSC is to ensure that Florida's consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner. In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.[17]

The PSC regulates the rates and services of investor-owned electric utilities (IOUs). There are four IOUs in Florida: Florida Power & Light Company (FPL),[18] Duke Energy Florida (Duke), Tampa Electric Company (TECO), and Florida Public Utilities Corporation.[19] Together, these four IOUs serve over 8.1 million customers in Florida.[20] IOU rates and revenues are regulated by the PSC.[21] The IOUs must file periodic earnings reports, which allow the PSC to monitor earnings levels on an ongoing basis and

[10] *See* s. 403.7061(1), F.S.
[11] *Id*.
[12] S. 403.1061, F.S.
[13] The term also does not include facilities that burn vegetative, agricultural, or silvicultural wastes, bagasse, clean dry wood, methane or other landfill gas, wood fuel derived from construction or demolition debris, or waste tires, alone or in combination with fossil fuels. *Id*.
[14] Florida Department of Environmental Protection, *Waste-to-Energy*, https://floridadep.gov/waste/permitting-compliance-assistance/content/waste-energy (last visited Feb. 9, 2022).
[15] Florida Department of Environmental Protection, *Florida Waste-to-Energy Facilities*, https://floridadep.gov/sites/default/files/WTE_Contacts-2016.pdf (last visited Feb. 9, 2022).
[16] S. 350.001, F.S.
[17] Florida Public Service Commission, http://www.psc.state.fl.us/ (last visited Feb. 10, 2022).
[18] FPL acquired Gulf Power Company in 2019 and merged as of January 3, 2022, for ratemaking purposes.
[19] Florida Department of Agriculture and Consumer Services, *Electric Utilities*, https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities (last visited Feb. 10, 2022).
[20] Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry* (2021), p, 4, available at http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/April%202021.pdf (last visited Feb. 10, 2022).
[21] Florida Department of Agriculture and Consumer Services, *Electric Utilities*, *supra* at n. 20.

adjust customer rates if a company appears to be overearning.[22] IOUs must provide sufficient and adequate service to customers.[23] To fulfill that obligation, utilities monitor customer usage patterns in order to plan for future energy needs.

Required IOU Purchases from Qualifying Facilities

In 1978, the federal government enacted the Public Utility Regulatory Policies Act (PURPA),[24] which required promotion of energy efficiency and use of renewables. PURPA requires utilities to purchase power, at the utility's full avoided cost, from "qualifying facilities" (QF)[25] which fall into two categories: qualifying small power production facilities and qualifying cogeneration facilities.[26] These facilities can include WTE facilities. PURPA directed the Federal Energy Regulatory Commission to implement this requirement, which in turn directed the states to do the same. In response, the Florida Legislature directed utilities to purchase power from cogenerators and small power producers.[27]

An IOU's full avoided cost is the incremental cost of electric energy or capacity,[28] which, but for a purchase from a non-utility generator, like a QF, the IOU would have to generate itself or purchase from another source.[29] Full avoided cost is based upon either the utility's cost to construct and operate its next planned generating unit or the cost of purchasing capacity and energy from generating units owned by other utilities in the wholesale market.[30]

Power Purchase Agreements

IOUs must annually establish and file with the PSC a standard offer contract with terms, conditions, and payments based on projected costs for each fossil-fueled generating unit type identified in the IOU's ten-year site plan. Payment terms and conditions for QFs are based on the projected cost to construct and operate the IOU's next planned generation unit. Essentially, the next planned unit becomes an avoided unit and the basis for the avoided costs.[31]

The standard offer contract provides a basis for developing negotiated contracts.[32] Rule 25-17.240, F.A.C., encourages IOUs and generating facilities to negotiate contracts for firm capacity and energy to provide fuel diversity, fuel price stability, and energy security. The PSC addresses petitions by IOUs for approval of cost recovery of negotiated contracts between the IOU and the QFs. The PSC's review considers various matters including whether the contract is at or below the IOU's avoided cost.[33]

Payments to Qualified Facilities

"As-available" energy contracts are an option for QFs, including municipal solid waste-to-energy (MSWE) facilities. These contracts are not subject to the PSC's approval but must be filed with the PSC within ten working days of being signed.[34] As-available energy is energy produced and sold on an hour-by-hour basis for which contractual commitments regarding the quantity and time of delivery are not

---

[22] Florida Public Service Commission, *Florida PSC 2020 Annual Report*, p. 6, available at http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf (last visited Feb. 10, 2022).
[23] S. 366.03, F.S.
[24] 16 U.S.C. s.2601 et seq.
[25] *See* Federal Energy Regulatory Commission, *PURPA Qualifying Facilities*, https://www.ferc.gov/qf (last visited Feb. 10, 2022).
[26] *Id.*
[27] S. 366.051, F.S.
[28] Capacity is the maximum electric output, in megawatts, that an electricity generator can produce under ideal conditions. *See* U.S. Energy Information Administration, *What is the difference between electricity generation capacity and electricity generation?*, https://www.eia.gov/tools/faqs/faq.php?id=101&t=3 (last visited Feb. 10, 2022).
[29] S. 366.051, F.S.
[30] Florida Public Service Commission, *States' Electric Restructuring Activities Update: Wholesale Sales*, http://www.psc.state.fl.us/Publications/ElectricRestructuringDetails#4 (last visited Feb. 10, 2022).
[31] Florida Public Service Commission, Agency Analysis of 2022 House Bill 1419, p. 1 (Jan. 20, 2022).
[32] *Id.*
[33] *Id.*
[34] R. 25-17.0825(1)(b), F.A.C.; Florida Public Service Commission, *supra* note 33, p. 2.

required.[35] As-available energy is purchased at a rate equal to the utility's hourly incremental system fuel cost, which reflects the highest fuel cost of generation each hour.[36]

According to the PSC, the following MSWE facilities receive as-available energy payments from FPL:

- Broward County Resource Recovery – South AA QF
- Brevard County
- Miami Dade Resource Recovery
- Lee County Solid Waste.[37]

A QF is eligible for capacity and energy payments under a firm contract if the QF can meet certain contractual provisions as to the quantity, time, and reliability of the delivery of electricity.[38] Capacity is the maximum electric output, in megawatts, that an electricity generator can produce under ideal conditions.[39]

To promote alternative and renewable energy generation, the PSC requires IOUs to offer multiple capacity payment options, including early payments or levelized payments. The different payment options allow QFs flexibility to best meet their financial needs. If an early capacity payment option is selected, then the QF will begin receiving capacity payments earlier than the in-service date of the avoided unit and payments will generally be lower in the later years of the contract.[40]

According to the PSC, the following six MSWE facilities are operating under active firm contracts with their host IOU:

- Pinellas County Resource Recovery, with Duke, ending December 2024
- Pasco County Resource Recovery, with Duke, ending December 2024
- Broward County Resource Recovery - South QF, with FPL, ending December 2026
- Palm Beach County Solid Waste Authority 1, with FPL, ending March 2034
- Palm Beach County Solid Waste Authority 2, with FPL, ending March 2034
- Bay County/Engen LLC, with FPL/Gulf, ending July 2023.[41]

Commercial Retail Rates

Commercial retail rates vary across utilities. Each IOU has various commercial rate levels pursuant to tariffs approved by the PSC. The retail rate depends on the kilowatt demand that a commercial customer places on an IOU's system. Demand provides an indication of the customer's load size. Demand is based on the highest usage over a specified time interval. Demand is intended to allow a utility to recover the fixed cost of maintaining its facilities, including generation, transmission, and distribution, which must be able to meet a customer's highest electricity needs.[42]

Effect of the Bill

The bill provides findings that:

- It is in the public interest to promote the development of renewable energy resources in Florida;
- MSWE facilities[43] using biomass as fuel or an energy source are deemed to be producing renewable energy;

[35] R. 25-17.0825, F.A.C.
[36] Florida Public Service Commission, *supra* note 33, p. 2.
[37] *Id.*
[38] *Id*. at 1.
[39] *See* U.S. Energy Information Administration, *What is the difference between electricity generation capacity and electricity generation?*, https://www.eia.gov/tools/faqs/faq.php?id=101&t=3 (last visited Feb. 11, 2022).
[40] Florida Public Service Commission, *supra* note 33, p. 1.
[41] *Id*. at 2.
[42] *Id*.
[43] The bill defines "municipal solid waste-to-energy facility" as a publicly owned or government affiliate-owned facility that uses an enclosed device using controlled combustion to thermally break down solid waste to an ash residue that contains little or no combustible material and that produces electricity, steam, or other energy as a result. The term does not include facilities that primarily burn fuels other than solid waste even if such facilities also burn some solid waste as a fuel

- MSWE facilities provide a practical and sustainable solution to reducing landfill waste, reducing volume by about 87 percent;
- Recognize the benefits that MSWE facilities contribute to Florida and its local communities; and
- The Legislature intends to incentivize the production and sale of energy from MSWE facilities through grant programs.

The bill creates the Municipal Solid Waste-to-Energy Program (program) within the Department of Agriculture and Consumer Services (DACS). The purpose of the program is to provide financial assistance grants and incentive grants to MSWE facilities. To enable DACS to administer the program, the bill provides a $100 million appropriation in recurring funds allocated to the department.

Under the bill, the financial assistance grants will provide MSWE facilities funding at a rate of 2 cents per kilowatt-hour of electricity purchased by an electric utility during the preceding state fiscal year, not to exceed the difference between the electric utility's avoided cost and the commercial retail rate. If funds are insufficient to cover every qualifying kilowatt-hour from all qualifying applicants, DACS must prorate the available funds on an equitable basis, taking into consideration the commercial retail rate within the applicable service territory.

The bill provides that in order to qualify for the program, an MSWE must have previously entered into a power purchase agreement with an electric utility that included capacity payments which the MSWE facility will no longer receive under the agreement. The facility owner must submit an application to DACS, including the MSWE facility's name and the amount of energy purchased from the facility by an electric utility during the preceding state fiscal year.

The bill requires DACS to establish a process in coordination with the PSC to verify eligibility and the amount of energy purchased from the facility by an electric utility.

Under the bill, the incentive grants will provide facilities with matching funds on a dollar-for-dollar basis to assist with planning and design for constructing, upgrading, or expanding MSWE facilities, including necessary legal or administrative expenses.

The bill provides that to qualify for the incentive grants, a facility owner must apply to DACS and demonstrate that the project is cost-effective, permittable, and implementable and complies with s. 403.7061, F.S., which establishes the requirements for review of new WTE facility capacity by the Department of Environmental Protection (DEP).

The bill requires DEP to assist DACS with determining eligibility and with establishing requirements to ensure long-term and efficient operation and maintenance of such facilities.

The bill requires DACS to perform adequate overview of applications and awards, including technical review, regular inspections, disbursement approvals, and auditing. The bill further provides that DACS must terminate or require repayment of incentive grant funds if it determines that the program requirements are not being met.

The bill states that any funds appropriated to the program must first be used for the financial assistance grants and any remaining funds in a fiscal year may be used for the incentive grants.

The bill requires DACS to adopt rules to implement and administer the program. The rules must:
- Establish an application process for both grant types;
- Include application deadlines; and
- Establish supporting documentation to be provided to DACS.

The bill requires DACS to consult with the PSC in developing rules for the financial assistance grants.

---

supplement. The term also does not include facilities that primarily burn vegetative, agricultural, or silvicultural wastes, bagasse, clean dry wood, methane or other landfill gas, wood fuel derived from construction or demolition debris, or waste tires, alone or in combination with fossil fuels.

B. SECTION DIRECTORY:

Section 1: Creates s. 377.814, F.S., which establishes the Municipal Solid Waste-to-Energy Program.

Section 2: Appropriates funds from the General Revenue Fund.

Section 3: 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:

   The bill provides a $100 million appropriation in recurring funds from the General Revenue Fund to DACS for the 2022-2023 fiscal year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may result in a positive impact to publicly-owned MSWE facilities that qualify for the program by providing grants to offset capacity payments and to assist with certain planning and design expenses.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in a positive impact to government affiliate-owned MSWE facilities that qualify for the program by providing grants to offset capacity payments and to assist with certain planning and design expenses.

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 authorizes DACS, in consultation with the PSC and DEP, to adopt rules to implement and administer the program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to the PSC, the bill is unclear as to the status of capacity payments pursuant to a purchase power agreement. The PSC also states that the bill is unclear regarding the applicable commercial retail rate, since there is more than one commercial retail rate approved for each IOU.[44]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[44] *Id.* at 5.

A bill to be entitled

An act relating to financial assistance for municipal solid waste-to-energy facilities; creating s. 377.814, F.S.; creating the Municipal Solid Waste-to-Energy Program within the Department of Agriculture and Consumer Services for a specified purpose; defining terms; requiring the department, subject to appropriation, to provide financial assistance grants to municipal solid waste-to-energy facilities that meet certain requirements; requiring the department to distribute funds to qualifying applicants based on certain criteria; requiring the department to establish a process to verify the amount of certain electric power purchases; directing the Public Service Commission to provide assistance in verifying grant eligibility; requiring the department, subject to appropriation, to provide incentive grants to municipal solid waste-to-energy facilities to assist with certain costs; specifying requirements for applying for the funding; requiring the Department of Environmental Protection to provide assistance in determining grant eligibility and establishing requirements; requiring the department to perform grant overview; establishing priority for funding for the grants; requiring the Department of Agriculture

and Consumer Services to adopt rules; providing an appropriation; providing an effective date.

WHEREAS, as provided in s. 366.91(1), Florida Statutes, the Legislature has determined that it is in the public interest to promote the development of renewable energy resources in this state, and

WHEREAS, under s. 366.91, Florida Statutes, municipal solid waste-to-energy facilities that use biomass as a fuel or energy source are deemed to be producing renewable energy, and

WHEREAS, municipal solid waste-to-energy facilities provide a practical and sustainable solution to reducing landfill waste, reducing volume by about 87 percent, and

WHEREAS, the Legislature recognizes the benefits that municipal solid waste-to-energy facilities contribute to the state and its local communities, and

WHEREAS, the Legislature intends to incentivize the production and sale of energy from municipal solid waste-to-energy facilities through grant programs, NOW, THEREFORE,

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

Section 1. Section 377.814, Florida Statutes, is created to read:

<u>377.814 Municipal Solid Waste-to-Energy Program.—</u>

CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

(1) CREATION AND PURPOSE OF THE PROGRAM.—The Municipal Solid Waste-to-Energy Program is created within the department. The purpose of the program is to provide financial assistance grants and incentive grants to municipal solid waste-to-energy facilities to incentivize the production and sale of energy from municipal solid waste-to-energy facilities while also reducing the amount of waste that would otherwise be disposed of in a landfill.

(2) DEFINITIONS.—For purposes of this section, the term:

(a) "Department" means the Department of Agriculture and Consumer Services.

(b) "Municipal solid waste-to-energy facility" means a publicly owned or government affiliate-owned facility that uses an enclosed device using controlled combustion to thermally break down solid waste to an ash residue that contains little or no combustible material and that produces electricity, steam, or other energy as a result. The term does not include facilities that primarily burn fuels other than solid waste even if such facilities also burn some solid waste as a fuel supplement. The term does not include facilities that primarily burn vegetative, agricultural, or silvicultural wastes, bagasse, clean dry wood, methane or other landfill gas, wood fuel derived from construction or demolition debris, or waste tires, alone or in combination with fossil fuels.

(3) FINANCIAL ASSISTANCE GRANT PROGRAM.—The department,

subject to appropriation, shall provide financial assistance grants to municipal solid waste-to-energy facilities that have entered into a power purchase agreement with an electric utility which includes capacity payments and the municipal solid waste-to-energy facility will no longer receive capacity payments under the agreement.

(a) To receive a financial assistance grant, the owner of a municipal solid waste-to-energy facility must submit an application to the department. The application must include the name of the applicant's municipal solid waste-to-energy facility and how much energy has been purchased from the facility by an electric utility during the preceding state fiscal year.

(b) The department shall distribute funds, subject to appropriation, to each qualifying applicant at a rate of 2 cents per kilowatt-hour of electric power purchased by an electric utility during the preceding state fiscal year, not to exceed the difference between the electric utility's avoided cost and the commercial retail rate. To the extent that funds are not available to provide financial assistance to each qualifying applicant for every qualifying kilowatt-hour purchased, the department shall prorate the funds on an equitable basis, taking into consideration the commercial retail rate within the applicable service territory.

(c) The department shall establish a process to verify the amount of electric power purchased from a municipal solid waste-

to-energy facility by an electric utility during each preceding state fiscal year. The Public Service Commission shall provide assistance to the department to help verify grant eligibility and award amounts and to ensure that the sum, per kilowatt-hour, of the award plus the electric utility's purchase at the avoided cost, do not exceed the applicable commercial retail rate within the service territory.

(4) INCENTIVE GRANT PROGRAM.—The department, subject to appropriation, shall provide incentive grants to municipal solid waste-to-energy facilities to assist with the planning and designing for constructing, upgrading, or expanding a municipal solid waste-to-energy facility, including necessary legal or administrative expenses.

(a) To qualify for an incentive grant, the owner of a municipal solid waste-to-energy facility must apply to the department for funding; provide matching funds on a dollar-for-dollar basis; and demonstrate that the project is cost-effective, permittable, and implementable and complies with s. 403.7061.

(b) The Department of Environmental Protection shall provide assistance to the department in determining the eligibility of grant applications and establishing requirements to ensure the long-term and efficient operation and maintenance of facilities constructed or expanded under an incentive grant.

(c) The department shall perform adequate overview of each

grant application and grant award, including technical review, regular inspections, disbursement approvals, and auditing, to implement this section.

(d) The department shall require the termination or repayment of incentive grant funds if the department determines that program requirements are not being met.

(5) FUNDING.—Funds appropriated for the Municipal Solid Waste-to-Energy Program must first be used for financial assistance grants. Any funds remaining in a state fiscal year after disbursement to all qualifying applicants may be used to fund the incentive grant program.

(6) RULES.—The department shall adopt rules to implement and administer this section, including establishing grant application processes for financial assistance grants and incentive grants. The rules shall include application deadlines and establish the supporting documentation necessary to be provided to the department. In adopting rules relating to the financial assistance grant program, the department shall consult the Public Service Commission. In adopting rules for the incentive grant program, the department shall consult the Department of Environmental Protection.

Section 2. For the 2022-2023 fiscal year, the sum of $100 million in recurring funds is appropriated from the General Revenue Fund to the Department of Agriculture and Consumer Services for the Municipal Solid Waste-to-Energy Program, as

provided in s. 377.814, Florida Statutes.

Section 3. This act shall take effect July 1, 2022.

TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

HB 1419 by Rep. Mariano
Financial Assistance for Municipal Solid Waste-to-Energy Facilities

AMENDMENT SUMMARY
February 15, 2022

Amendment 1 by Rep. Mariano (strike-all):

- Clarifies eligibility, application requirements, and fund distribution guidelines for the financial assistance grant program.
- Appropriates recurring funds from the General Revenue Fund to the Department of Agriculture and Consumer Services (DACS) for the 2022-2023 fiscal year as follows:
    - $100 million to fund the grant program.
    - $149,832 to provide for the staff necessary to administer the program.
- Appropriates non-recurring funds from the General Revenue Fund to DACS for administration expenses in the amount of $9,984.
- Provides that allocated funds which are not disbursed by the end of the fiscal year may be carried forward for up to 5 years.

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 Mariano offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 377.814, Florida Statutes, is created to read:

377.814 Municipal Solid Waste-to-Energy Program.—

(1) CREATION AND PURPOSE OF THE PROGRAM.—The Municipal Solid Waste-to-Energy Program is created within the department. The purpose of the program is to provide financial assistance grants and incentive grants to municipal solid waste-to-energy facilities to incentivize the production and sale of energy from municipal solid waste-to-energy facilities while also reducing the amount of waste that would otherwise be disposed of in a

landfill.

(2) DEFINITIONS.—For purposes of this section, the term:

(a) "Department" means the Department of Agriculture and Consumer Services.

(b) "Municipal solid waste-to-energy facility" means a publicly owned or government affiliate-owned facility that uses an enclosed device using controlled combustion to thermally break down solid waste to an ash residue that contains little or no combustible material and that produces electricity, steam, or other energy as a result. The term does not include facilities that primarily burn fuels other than solid waste even if such facilities also burn some solid waste as a fuel supplement. The term does not include facilities that primarily burn vegetative, agricultural, or silvicultural wastes, bagasse, clean dry wood, methane or other landfill gas, wood fuel derived from construction or demolition debris, or waste tires, alone or in combination with fossil fuels.

(3) FINANCIAL ASSISTANCE GRANT PROGRAM.—The department, subject to appropriation, shall provide annual financial assistance grants to municipal solid waste-to-energy facilities that entered into a power purchase agreement with an electric utility before January 1, 2022, which included capacity and energy payments, and the owner of the municipal solid waste-to-energy facility has entered into a new or amended power purchase agreement that either no longer includes capacity payments or includes capacity and energy payments in an amount less than the

total of the capacity and energy payments the municipal solid waste-to-energy facility received under the power purchase agreement entered into before January 1, 2022.

(a) To apply for an annual financial assistance grant, the owner of a municipal solid waste-to-energy facility must submit an application to the department. The application must include the name of the applicant's municipal solid waste-to-energy facility, the name of the utility purchasing the electric power from the municipal solid waste-to-energy facility, the total capacity and energy payment the municipal solid waste-to-energy facility received during the last year of the power purchase agreement entered into before January 1, 2022, and the amount of energy delivered to and the total amount paid for such power by an electric utility pursuant to a new or amended power purchase agreement during the preceding state fiscal year.

(b) The department shall distribute funds, subject to appropriation, to each qualifying applicant at a rate of 2 cents per kilowatt-hour of electric power purchased by an electric utility during the preceding state fiscal year, not to exceed the difference between the total capacity and energy payment the municipal solid waste-to-energy facility received during the last year of the power purchase agreement entered into before January 1, 2022, and the total of the capacity and energy payment the municipal solid waste-to-energy facility received under a new or amended power purchase agreement during the preceding state fiscal year. To the extent that funds are not

available to provide financial assistance to each qualifying applicant for every qualifying kilowatt-hour purchased, the department shall prorate the funds on an equitable basis.

(c) The department shall establish a process to verify the amount of electric power purchased from a municipal solid waste-to-energy facility by an electric utility during each preceding state fiscal year. The Public Service Commission shall provide assistance to the department to help verify the information provided pursuant to paragraph (a).

(4) INCENTIVE GRANT PROGRAM.—The department, subject to appropriation, shall provide incentive grants to municipal solid waste-to-energy facilities to assist with the planning and designing for constructing, upgrading, or expanding a municipal solid waste-to-energy facility, including necessary legal or administrative expenses.

(a) To qualify for an incentive grant, the owner of a municipal solid waste-to-energy facility must apply to the department for funding; provide matching funds on a dollar-for-dollar basis; and demonstrate that the project is cost-effective, permittable, and implementable and complies with s. 403.7061.

(b) The Department of Environmental Protection shall provide assistance to the department in determining the eligibility of grant applications and establishing requirements to ensure the long-term and efficient operation and maintenance of facilities constructed or expanded under an incentive grant.

(c) The department shall perform adequate overview of each grant application and grant award, including technical review, regular inspections, disbursement approvals, and auditing, to implement this section.

(d) The department shall require the termination or repayment of incentive grant funds if the department determines that program requirements are not being met.

(5) FUNDING.—Funds appropriated for the Municipal Solid Waste-to-Energy Program must first be used for financial assistance grants. Any funds remaining in a state fiscal year after disbursement to all qualifying applicants may be used to fund the incentive grant program.

(6) RULES.—The department shall adopt rules to implement and administer this section, including establishing grant application processes for financial assistance grants and incentive grants. The rules shall include application deadlines and establish the supporting documentation necessary to be provided to the department. In adopting rules relating to the financial assistance grant program, the department shall consult the Public Service Commission. In adopting rules for the incentive grant program, the department shall consult the Department of Environmental Protection.

Section 2. (1) For the 2022-2023 fiscal year, the sum of $100 million in recurring funds is appropriated from the General Revenue Fund to the Department of Agriculture and Consumer Services for the Municipal Solid Waste-to-Energy Program, as

provided in s. 377.814, Florida Statutes.

(2) Notwithstanding s. 216.301, Florida Statutes, and pursuant to s. 216.351, Florida Statutes, funds allocated for the purpose of this section which are not disbursed by June 30 of the fiscal year in which the funds are allocated may be carried forward for up to 5 years after the effective date of the original appropriation.

Section 3. For the 2022-2023 fiscal year, the sums of $149,832 in recurring funds and $9,984 in nonrecurring funds are appropriated from the General Revenue Fund to the Department of Agriculture and Consumer Services, and two full-time equivalent positions with associated salary rate of 80,540 are authorized, for the purpose of implementing this act.

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

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

Remove everything before the enacting clause and insert:

An act relating to financial assistance for municipal solid waste-to-energy facilities; creating s. 377.814, F.S.; creating the Municipal Solid Waste-to-Energy Program within the Department of Agriculture and Consumer Services for a specified purpose; defining terms; requiring the department, subject to appropriation, to provide annual financial assistance grants to municipal solid waste-to-energy facilities

that meet certain requirements; requiring the department to distribute funds to qualifying applicants based on certain criteria; requiring the department to establish a process to verify the amount of certain electric power purchases; directing the Public Service Commission to provide assistance in verifying grant eligibility; requiring the department, subject to appropriation, to provide incentive grants to municipal solid waste-to-energy facilities to assist with certain costs; specifying requirements for applying for the funding; requiring the Department of Environmental Protection to provide assistance in determining grant eligibility and establishing requirements; requiring the department to perform grant overview; establishing priority for funding for the grants; authorizing the balance of certain unexpended funds to be carried forward for a specified number of years; requiring the Department of Agriculture and Consumer Services to adopt rules; providing appropriations; authorizing positions; providing an effective date.

WHEREAS, as provided in s. 366.91(1), Florida Statutes, the Legislature has determined that it is in the public interest to promote the development of renewable energy resources in this state, and

WHEREAS, under s. 366.91, Florida Statutes, municipal solid waste-to-energy facilities that use biomass as a fuel or energy source are deemed to be producing renewable energy, and

WHEREAS, municipal solid waste-to-energy facilities provide a practical and sustainable solution to reducing landfill waste, reducing volume by about 87 percent, and

WHEREAS, the Legislature recognizes the benefits that municipal solid waste-to-energy facilities contribute to the state and its local communities, and

WHEREAS, the Legislature intends to incentivize the production and sale of energy from municipal solid waste-to-energy facilities through grant programs,

NOW, THEREFORE,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1461 Reinstatement of Suspended Driver Licenses
SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Driskell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1638

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	18 Y, 0 N, As CS	Frost	Hall
2) Tourism, Infrastructure & Energy Subcommittee		Johnson	Keating
3) Appropriations Committee			
4) Judiciary Committee			

SUMMARY ANALYSIS

The Department of Highway Safety and Motor Vehicles (DHSMV) may, at the request of a clerk of court, suspend or revoke the driver license of a person for certain financial reasons, such as failure to pay court costs associated with a criminal case or civil penalties for a traffic violation. Upon referral to collections, an outstanding obligation may also accumulate a collections surcharge of up to 40 percent. A person with a suspended or revoked driver license cannot drive or obtain motor vehicle insurance, which can inhibit his or her ability to work and further compound the problem of outstanding financial obligations. While many counties participate in periodic Operation Green Light events and all counties are required to host Driver License Reinstatement days for at least one day a year, current law does not require any ongoing program to assist individuals with reinstating driver licenses which are suspended for outstanding financial obligations.

CS/HB 1461 creates the Drive for Success Pilot Program (Pilot Program) within the Florida Clerks of Court Operations Corporation (FCCOC) to be administered in at least six counties, selected by the FCCOC. Unlike current Operation Green Light and Driver License Reinstatement Days events, the Pilot Program is not limited to a single yearly event but rather is available year-round to those who qualify. The bill requires the participating clerks of court to:

- Make an effort to contact persons whose driver licenses are suspended for failing to pay court-ordered financial obligations, including unpaid traffic citations or unpaid court costs, fines, or fees and encourage such persons to establish with the clerk a partial payment agreement to fulfill the person's outstanding financial obligations;
- Test the efficacy of communicating with Pilot Program participants via telephone, text message, email, or other electronic means to provide notification of payment due dates and missed payments; and
- Establish consequences for failing to make timely payments, including, but not limited to, specifying the period of time after which a participant's license may be re-suspended for failing to make payments.

Under the bill, a person is not eligible for the Pilot Program if his or her driver license is suspended or revoked for enumerated reasons, including failure to pay child support and serious traffic offenses such as driving under the influence and traffic felonies. The bill does not require a participant to pay a driver license reinstatement fee to have his or her driver license reinstated and authorizes a participant's driver license to be reinstated upon the first payment made under his or her partial payment plan. The bill also requires the participating clerks of court to provide specified data to the FCCOC who must subsequently provide such information along with recommendations related to the Pilot Program to the Governor and specified members of the Legislature. The bill provides that the Pilot Program expires on June 30, 2026, unless otherwise provided by law, but any partial payment plan established prior to June 30, 2026 remains valid.

The bill may have an indeterminate positive fiscal impact to state and local government revenues; an indeterminate, though likely insignificant negative fiscal impact to clerks of court chosen for the Pilot Program; and a negative indeterminate fiscal impact on DHSMV.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Driving Privileges and Driver Licenses

Florida requires a person to hold a driver license[1] or be exempted from licensure to operate a motor vehicle on the state's roadways.[2] Exemptions to the licensure requirement include nonresidents who possess a valid driver license issued by their home states, federal government employees operating a government vehicle for official business, and people operating a road machine,[3] tractor, or golf cart.[4] Both licensed drivers and exempted individuals have a driving privilege in Florida.[5]

The Department of Highway Safety and Motor Vehicles (DHSMV) can revoke or suspend a driver license or driving privilege for several driving-related and non-driving-related reasons. Revocation means a termination of the privilege to drive,[6] while suspension means the temporary withdrawal of the privilege to drive.[7] Both revocations and suspensions can be indefinite or for a defined period of time, but only revocations in certain circumstances can be permanent.[8] As both revocations and suspensions functionally prohibit a person from driving, the terms are often used interchangeably in statute.

Examples of driving-related bases for suspension or revocation include:

- A conviction for fleeing or attempting to elude a law enforcement officer;[9]
- Certain noncriminal traffic infractions, such as those causing death or serious bodily injury;[10]
- Driving under the influence (DUI);[11]
- Habitual traffic offender (HTO) classification;[12]
- Refusal to submit to a lawful breath, blood, or urine test in a DUI investigation;[13]
- Accumulation of points[14] on a driving record; and
- Incompetency to drive a motor vehicle.[15]

Examples of non-driving-related bases for suspension or revocation include:

- Failure to comply with certain court-imposed obligations;
- Child support delinquency;
- Truancy;
- Adjudication of guilt for certain theft offenses committed by a minor, in lieu of probation;
- Graffiti by a minor; and
- Certain drug convictions.[16]

---

[1] Driver license means a certificate that, subject to all other requirements of law, authorizes an individual to drive a motor vehicle. S. 322.01(17), F.S.
[2] S. 322.03(1), F.S.
[3] Road machines are road construction equipment. *Marrero v. State*, 921 So.2d 748, 750 (Fla. 5th DCA 2006).
[4] S. 322.04, F.S.
[5] *State v. Miller*, 227 So.3d 562, 564 (Fla. 2017) ("the Legislature's use of 'driving privilege' refers to all individuals who may *lawfully* operate vehicles on Florida's roads, even if they do not possess a Florida driver license").
[6] S. 322.01(37), F.S.
[7] S. 322.01(41), F.S.
[8] Ss. 322.26(1)(a) and 322.26(2), F.S.
[9] S. 316.1935(5), F.S.
[10] Ss. 318.14, 318.15, and 322.26, F.S.
[11] Ss. 322.26, 322.271, and 322.28, F.S.
[12] A person is designated HTO after accumulating three or more enumerated traffic convictions or 15 or more other moving violation convictions within a five-year period. S. 322.264, F.S.
[13] S. 322.2615(1)(b), F.S.
[14] S. 322.27(3), F.S. There is an established point system for evaluating traffic violations to determine a person's continuing qualification to operate a motor vehicle. S. 322.27(3), F.S.
[15] S. 322.27(1)(c), F.S.
[16] Ss. 318.15, 832.09, 322.245, 322.058, 322.091, 812.0155, 806.13, and 322.055, F.S.

Suspension for Failure to Meet Court-Imposed Obligations

The clerk of court can notify DHSMV to suspend a license for failing to comply with a court-imposed obligation, such as a person's failure to:

- Timely comply with certain civil penalties;
- Enter into or comply with the terms of a penalty payment plan[17] with the clerk of court;
- Attend driver improvement school;
- Appear for a court appearance;[18]
- Pay criminal financial obligations; or
- Pay child support.[19]

Upon notification from the clerk, the DHSMV provides notice to the individual that his or her license will be suspended by a specified date if he or she fails to comply with whatever action is necessary to prevent the suspension. If the person does not timely comply, his or her license is suspended. The suspension remains in place until he or she is compliant with the court's requirements for reinstatement[20] or, in the case of criminal financial obligations, the court grants relief from the suspension,[21] and the individual pays all administrative fees and reinstatement fees to the DHSMV.[22] The base fee[23] for driver license reinstatement after:[24]

- General suspension is $45;
- D-6[25] suspension is $60;
- Court ordered child support suspension is $60;[26]
- Department of Revenue (DOR) child support suspension is $45;[27] and
- Revocation is $75.

Suspension for Failure to Pay Child Support

When an obligor fails to pay child support, ch. 61, F.S., outlines the procedure for suspending his or her driver license based on a request by the obligee or DOR, including, but not limited to, notice requirements and specific deadlines for response. A driver who receives notice of a driver license suspension for outstanding child support may avoid the suspension by complying with the requirements of s. 61.13016(1)(c), F.S. For example, the obligor may pay the applicable delinquency fee[28] and: pay the delinquent amount in full,[29] enter into a written agreement for payment with the obligee or DOR,[30] demonstrate that he or she receives Social Security Disability payments,[31] or demonstrate the he or she is making payments in accordance with a confirmed bankruptcy plan.[32, 33]

[17] Pursuant to ss. 318.14 or 28.246, F.S.
[18] S. 318.15, F.S.
[19] S. 322.245, F.S.
[20] Such as completing driver improvement school or paying a traffic fine. Ss. 318.15(2) and 322.245(5), F.S.
[21] S. 322.245(5)(b), F.S.
[22] S. 322.245(5), F.S.
[23] Some violations also require paying for and completing certain driver improvement or substance abuse courses and paying additional fees. For example, the administrative fee for a drug or alcohol offense is $130.
[24] Department of Highway Safety and Motor Vehicles, *Fees*, https://www.flhsmv.gov/fees/ (last visited Feb. 8, 2022).
[25] A D-6 suspension is a court-ordered suspension for reasons such as failing to: pay a traffic ticket; appear for a traffic summons; or complete traffic school after electing to do so.
[26] Under s. 61.13016, F.S., the driver license and motor vehicle registration of a person owing child support ("obligor") may be suspended.
[27] In Title IV-D cases, DOR provides child support services within the scope of Title IV-D of the Social Security Act, 42 U.S.C. 651, et seq. There are two main categories of child support cases in Florida: "Title IV-D case" and non-IV-D cases. A Title IV-D case is a case or proceeding dealing with only child support matters involving the Florida Department of Revenue (DOR) as the agency responsible for collecting and enforcing child support.
[28] S. 61.13016(1)(c)2., F.S.
[29] S. 61.13016(1)(c)1.a., F.S.
[30] S. 61.13016(1)(c)1.b., F.S.
[31] S. 61.13016(1)(c)1.e., F.S.
[32] S. 61.13016(1)(c)1.g., F.S.
[33] An obligor may also petition the court for a hardship license, and the court may, in its discretion, direct DHSMV to issue a driver license for driving privilege restricted to business purposes only. However, the obligor must to enter into a specified payment plan or schedule before the court can consider granting a hardship license. S. 61.13016(2)(a), F.S.

Payment Plans, Community Service Options, and Collections Process

Court costs, fees, and other fines related to a court disposition are enforced by court order and collected by the clerks of court. A person may apply to the clerk of court to enter into a payment plan if the person is indigent.[34] The clerk of court must establish all terms of a payment plan, and is required to accept partial payment of court-related fees, service charges, costs, or fines in accordance with the terms of an established payment plan. The court may review the reasonableness of the payment plan. An individual who is released from incarceration and has outstanding court obligations is responsible for contacting the clerk within 30 days after his or her release to pay any fees, service charges, court costs, and fines in full, or to apply for enrollment in a payment plan.[35]

A monthly payment amount, calculated based upon all fees and all anticipated fees, service charges, court costs, and fines, must correspond to a person's ability to pay.[36] The court may convert a statutory financial obligation in a criminal case or a noncriminal traffic infraction into a requirement to perform community service.[37]

The clerk of court must pursue the collection of any financial obligations that remain unpaid after 90 days by referring the account to a private attorney or collection agent. The clerk must have attempted to collect the unpaid obligation through a collection court, collections docket, or any other collections process prior to referring the account for collection, find the referral to be cost-effective, and follow any applicable procurement processes. A collection fee of up to 40 percent of the amount owed at the time the account is referred may be added to the outstanding balance.[38]

Hardship License

Upon the request of a person whose driver license is suspended, cancelled, or revoked under ch. 322, F.S., DHSMV must provide a hearing within 30 days[39] wherein the person may show that such suspension, cancellation, or revocation causes a serious hardship and precludes him or her from carrying out his or her normal business occupation, trade, or employment, that the person's driver license is used in the normal course of his or her business, and a driver license is necessary to provide proper support of the person or his or her family. In addition to requesting a hearing, the driver must also complete the applicable driver training course and evaluation or DUI program substance abuse education course and evaluation, if applicable.[40] Following such a hearing, DHSMV must either affirm, suspend, or modify the suspension, cancellation, or revocation and may do so by granting what is commonly referred to as a "hardship license," meaning the person's driving privilege is restored on a limited basis for business or employment[41] use only.[42]

The costs associated with obtaining a hardship license include:

- A $12 hardship hearing filing fee;[43]
- Any cost associated with the required driver improvement school (currently $63) or DUI education course (currently $280 for a first time DUI);

[34] A person is considered indigent if he or she has an income equal to or below 200 percent of the federal poverty guidelines, or is receiving: Temporary Assistance for Needy Families-Cash Assistance; Poverty-related veterans' benefits; or Supplemental Security Income. S. 27.52, F.S.
[35] S. 28.246, F.S.
[36] A monthly payment amount is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, divided by 12. S. 28.246(4), F.S.
[37] Ss. 938.30(2) and 318.18(8)(b)1.a., F.S. The hourly conversion rate for community service is equal to the federal minimum wage, unless the person has a trade or profession for which there is a community service need, in which case the rate is the prevailing wage rate for that trade or profession. S. 318.18(8)(b), F.S.
[38] S. 28.246(6), F.S.
[39] Except a person whose driver license is revoked as an HTO under s. 322.27(5), F.S., or a person who is ineligible to be granted the privilege of driving on a limited or restricted basis under s. 322.271(2), F.S., must wait 12 months from the date of the revocation.
[40] S. 322.271(2), F.S.
[41] "A driving privilege restricted to business purposes only" means a driving privilege that is limited to any driving necessary to maintain livelihood, including driving to and from work, necessary on-the-job driving, driving for educational purposes, and driving for church and for medical purposes. "A driving privilege restricted to employment purposes only" means a driving privilege that is limited to driving to and from work and any necessary on-the-job driving required by an employer or occupation.
[42] S. 322.271(3), F.S.
[43] Or $25 formal/informal review hearing fee, pursuant to s. 322.2615, F.S.

- Any associated administrative fees (such as the $130 administrative fee for drug or alcohol offenses); and
- Any reinstatement fees associated with the person's particular type of suspension, cancellation, or revocation. These fees are paid prior to a person receiving his or her hardship license and are not required to be paid again for the same sanctions when his or her revocation or suspension period has ended and he or she is ready to apply for reinstatement of his or her unrestricted driver license.[44]

Driver License Reinstatement Clinics

A person with a suspended or revoked driver license cannot drive or obtain motor vehicle insurance, which can inhibit his or her ability to work and further compound the problem of outstanding financial obligations. Several counties have held events to assist individuals whose driver licenses are suspended for financial reasons related to civil penalties or criminal financial obligations.

Operation Green Light

Clerks of Court throughout the state may participate in a short-term event known as Operation Green Light to help residents pay outstanding court fees, tickets and other fines, and have their driver licenses reinstated. For example, in October 2019, 64 counties throughout the state participated in Operation Green Light events, resulting in: $2.7 million collected for the state, local governments, and clerks of court; 22,502 cases placed on a payment plan; 10,264 cases paid in full; 9,849 driver licenses made eligible for reinstatement; and 1,782 driver licenses reinstated.[45]

Driver License Reinstatement Days

In 2019, the Legislature required the Clerk of Court in each judicial circuit to work collaboratively with DHSMV, the state attorney's office, the public defender's office, the circuit and county courts, the clerk of court, and any interested community organization, to hold a yearly event to assist drivers with the reinstatement of suspended driver licenses.[46] The program must occur at least once a year, and clerks are encouraged to offer the event outside of regular business hours or on a weekend. Participants must pay the full license reinstatement fee; however, the clerk may compromise or waive other fees and costs to facilitate reinstatement.

A person is eligible for the Driver License Reinstatement Days program if his or her driver license or driving privilege was suspended for:
- Driving without a valid license;
- Driving with a suspended license;
- Failing to make a payment on penalties in collection;
- Failing to appear in court for a traffic violation; or
- Failing to comply with directives for a traffic infraction or driver license offense.

A person is not eligible for reinstatement under the program if his or her driver license or driving privilege is suspended or revoked:
- Because the person failed to fulfill a court-ordered child support obligation;
- For DUI;
- Because the person has not completed a required driver training program, driver improvement course, or alcohol or substance abuse education or evaluation program;
- For a traffic-related felony; or
- Because the person is a habitual traffic offender.

[44] Email from Rachel Jarriel, Legislative Liaison, FLHSMV Office of Legislative Affairs, Re: SL Suspension Data Collection (Sept. 13, 2021).
[45] Facts About Your Clerk of Court's Operation Green Light, https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/2019operationgreenlight/ogl_posteventhandout-1206201.pdf (last visited Feb. 8, 2022).
[46] Ch. 2019-167, Laws of Fla.; S. 322.75, F.S.

While both Operation Green Light and Driver License Reinstatement Days provide short term opportunities for a person to have his or her driver license reinstated with lowered fees and the opportunity to establish a payment plan, current law does not provide for any such program year-round.

Effect of Proposed Changes

CS/HB 1461 creates the Drive for Success Pilot Program (Pilot Program) within the Florida Clerks of Court Operations Corporation (FCCOC) to be administered in at least six counties, selected by the FCCOC. Unlike current Operation Green Light and Driver License Reinstatement Days events, the Pilot Program is not limited to a single yearly event but rather is available year-round to those who qualify. The bill requires the participating clerks of court to:

- Make an effort to contact persons whose driver licenses are suspended for failing to pay court-ordered financial obligations, including unpaid traffic citations or unpaid court costs, fines, or fees and encourage such persons to establish with the clerk a partial payment agreement to fulfill the person's outstanding financial obligations;
- Test, at a minimum, the efficacy of communicating with Pilot Program participants via telephone, text message, email, or other electronic means to provide notification of payment due dates and missed payments; and
- Establish consequences for failing to make timely payments, including, but not limited to, specifying the period of time after which a participant's license may be re-suspended for failing to make payments.

The bill authorizes each clerk of court participating in the Pilot Program to collaborate with the Florida Association of Court Clerks and Comptrollers to promote and develop communications regarding the pilot program.

Under the bill, a person is not eligible for the Pilot Program if his or her driver license is suspended or revoked for:

- Failing to fulfill a court-ordered child support obligation;
- A DUI offense;
- Failing to complete a required driver training program, driver improvement course, or alcohol or substance abuse education or evaluation program;
- A traffic-related felony; or
- Being designated as a habitual traffic offender.

The bill does not require a participant to pay a driver license reinstatement fee to have his or her license reinstated and authorizes a participant's driver license to be reinstated upon the first payment made under his or her partial payment plan.

The bill requires each clerk of court participating in the Pilot Program to submit, by December 31, 2024, a report to the FCCOC including the following information:

- The number of cases paid in full.
- The number of cases for which a partial payment agreement is established.
- The number of driver license reinstatements.
- The number of driver licenses made eligible for reinstatement.
- The amount of fees and costs collected during the three years preceding the administration of the Pilot Program and throughout the duration of the Pilot Program.
- The personnel, operating, security, and other expenditures incurred by the clerk of court.
- The number of cases that fail to comply with a partial payment plan and subsequently result in driver license suspension.

By February 28, 2025, the FCCOC must compile the reports provided from each clerk of court participating in the Pilot Program and submit the reported information, along with a list of the FCCOC's findings and recommendations regarding the Pilot Program, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives.

The bill provides that the Pilot Program expires on June 30, 2026, unless otherwise provided by law, but provides that any partial payment plan established prior to June 30, 2026, remains valid even if the Pilot Program expires by operation of law.

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

B. SECTION DIRECTORY:

Section 1: Creates s. 322.755, F.S., relating to Drive for Success Pilot 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:

The bill may have an indeterminate, positive impact to state revenues. For driver license suspensions, individuals must pay a $45 fee, of which $15 is deposited into the General Revenue Fund and $30 into the Highway Safety Operating Trust Fund when the reinstatement is performed by DHSMV. For driver license revocations, individuals must pay a $75 fee, of which $35 is deposited into the General Revenue Fund and $40 into the Highway Safety Operating Trust Fund when the reinstatement is performed by DHSMV. It is unknown how many individuals will take advantage of the Pilot Program who would not otherwise pay to have their licenses reinstated during the same fiscal year; therefore, the positive fiscal impact to state revenues is indeterminate. Additionally, to the extent that additional court fees are collected for reinstatements, there may be an indeterminate, positive fiscal impact to the State Attorney Trust Fund, Indigent Criminal Defense Trust Fund, and the State Courts Revenue Trust Fund.

2. Expenditures:

The bill may have a negative indeterminate fiscal impact on DHSMV by authorizing a Pilot Program participant's license to be reinstated without paying a reinstatement fee.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may assist the clerks in recouping outstanding court costs and fees not otherwise recoverable.

2. Expenditures:

The bill will require additional work for clerks of court in the six counties implementing the Pilot Program, however, any additional expenditures required to complete the extra work will likely be insignificant, particularly in light of the potential for recouping outstanding obligations from persons with suspended driver licenses.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may allow individuals with financially-based driver license revocations or suspensions to reinstate their licenses, purchase motor vehicle insurance, and travel to work, which may have an overall positive financial impact for such individuals.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The county/municipal mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires six counties to participate in the Pilot Program. However, an exception may apply because funding the Pilot Program will likely have an insignificant impact, particularly in light of the potential for recouping outstanding obligations from persons with suspended driver licenses.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 8, 2022, the Criminal Justice & Public Safety Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment made the following changes to the bill:

- Renamed the Pilot Program the "Drive for Success Pilot Program."
- Created the program within the FCCOC to be administered in at least six counties, selected by the FCCOC.
- Required the participating clerks of court to:
  - Contact persons whose driver licenses are suspended rather than requiring such persons to contact the clerk;
  - Test, at a minimum, the efficacy of communicating with Pilot Program participants via telephone, text message, e-mail, or other electronic means to notify participants of payment due dates and missed payments; and
  - Establish consequences for participants who fail to make timely payments, including, but not limited to, specifying the period of time after which a participant's license may be re-suspended for failing to make payments.
- Did not require a participant to pay a driver license reinstatement fee to have his or her license reinstated.
- Required the participating clerks of court to report specified data to the FCCOC and required the FCCOC to subsequently provide such information, along with recommendations regarding the Pilot Program, to the Governor and specified members of the Legislature.
- Provided that the Pilot Program expires on June 30, 2026.

This analysis is drafted to the committee substitute as approved by the Criminal Justice & Public Safety Subcommittee.

A bill to be entitled

An act relating to reinstatement of suspended driver licenses; creating s. 322.755, F.S.; creating the Drive for Success Pilot Program within the Florida Clerks of Court Operations Corporation to assist certain persons in reinstating suspended driver licenses; requiring administration of the program by clerks of court in certain counties; authorizing collaboration with the Florida Association of Court Clerks and Comptrollers for certain purposes; providing duties of the clerks of court; prohibiting eligibility under certain circumstances; requiring reinstatement of a participant's driving privilege under certain circumstances; requiring the clerks of court to submit reports to the Florida Clerks of Court Operations Corporation; requiring the Florida Clerks of Court Operations Corporation to submit a report to the Governor and Legislature; providing for expiration of the pilot program on a certain date; providing an effective date.

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

Section 1. Section 322.755, Florida Statutes, is created to read:

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

322.755 Drive for Success Pilot Program.—

(1) There is created within the Florida Clerks of Court Operations Corporation the Drive for Success Pilot Program. The purpose of the pilot program is to assist persons whose driver licenses have been suspended, and who have unpaid traffic citations or unpaid court costs, fines, or fees, in reinstating their driver licenses.

(2) The Drive for Success Pilot Program shall be administered by the clerks of court in at least six counties selected by the Florida Clerks of Court Operations Corporation. Each clerk of court may collaborate with the Florida Association of Court Clerks and Comptrollers to promote and develop communications regarding the pilot program.

(3) Each clerk of court participating in the pilot program must make an effort to contact persons whose driver licenses are suspended for failure to pay court-ordered financial obligations, including unpaid traffic citations or unpaid court costs, fines, or fees, and encourage such persons to establish a partial payment agreement for the fulfillment of such obligations under the pilot program.

(4) A person is not eligible for driver license reinstatement under the pilot program if his or her driver license is suspended or revoked due to:

(a) Failure to fulfill a court-ordered child support obligation;

(b) A violation of s. 316.193;

(c) Failure to complete a driver training program, driver improvement course, or alcohol or substance abuse education or evaluation program required under s. 316.192, s. 316.193, s. 322.2616, or s. 322.271;

(d) A traffic-related felony; or

(e) Designation as a habitual traffic offender under s. 322.264.

(5) For each person who consents to participate in the pilot program and establishes a partial payment agreement, the clerk of court must:

(a) Test, at a minimum, the efficacy of communicating with the person via telephone, text message, e-mail, or other electronic means to notify the person of a payment's due date in advance and, if necessary thereafter, to notify the person of a missed payment; and

(b) Establish consequences for failing to make timely payments under the partial payment agreement, including, but not limited to, specifying the period of time after which his or her license may be suspended for failing to make a payment.

(6) Upon submission of the first payment in a partial payment agreement to the clerk of court, the clerk shall release the suspension of the person's driver license in the department database, or shall issue a written release for the person to present to the department or an authorized agent of the

department, after which the person's driving privilege shall be reinstated.

(7)(a) By December 31, 2024, each clerk of court participating in the pilot program shall submit a report to the Florida Clerks of Court Operations Corporation that includes:

1. The number of cases paid in full.

2. The number of cases for which a partial payment agreement is established.

3. The number of driver license reinstatements.

4. The number of driver licenses made eligible for reinstatement.

5. The amount of fees and costs collected during the 3 years preceding administration of the pilot program and throughout the duration of the pilot program.

6. The personnel, operating, security, and other expenditures incurred by the clerk of court.

7. The number of cases that fail to comply with a partial payment agreement and subsequently result in driver license suspension.

(b) By February 28, 2025, the Florida Clerks of Court Operations Corporation shall compile the reports received under paragraph (a) and submit such reports, along with a list of its findings and recommendations regarding the pilot program, to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and

the House of Representatives.

(8) The Drive for Success Pilot Program shall expire on June 30, 2026, unless otherwise provided by law. The expiration of the pilot program shall not affect the validity of a partial payment agreement established before June 30, 2026.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 737 Electric Vehicle Transportation Electrification Plan
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 Florida, the Public Service Commission (PSC) regulates the rates, terms, and conditions of retail electric service provided by investor-owned electric utilities (IOUs), including electric vehicle (EV) charging incorporated into an IOU's rate base. A non-utility providing EV charging to the public is not considered the retail sale of electricity and is not subject to PSC regulation. These non-utility EV charging providers pay the commercial electricity rate of the local electric utility.

The bill requires the PSC to adopt rules for an EV transportation electrification plan to facilitate the deployment of EV charging infrastructure in a competitively neutral manner. These rules must be proposed by January 1, 2023, and adopted by January 1, 2024. The PSC's rules must:

- Promote investment in publicly available EV charging stations in a competitively neutral manner prioritizing and encouraging private investment in and private ownership and operation of EV charging infrastructure.
- Establish policies that stimulate innovation, competition, private investment, and customer choice in EV charging infrastructure.
- Establish mechanisms which support the efficient and cost-effective use of the electric grid in a manner that supports EV charging infrastructure.
- Establish incentives that support private investment in EV charging equipment.
- Establish policies on a prospective basis, prohibiting IOUs from using rate base investment in the ownership and operation of EV charging stations and limit cost recovery to distribution level infrastructure on the utility side of the meter.
- Stimulate fair and reasonable electricity pricing through IOUs' tariffs which promote the widespread offering of EV charging.

The bill authorizes an entity that provides EV charging stations to the public to intervene and participate in any PSC proceeding involving rates, terms, or conditions of service for EV charging to be offered to the public.

The bill does not prohibit an IOU from providing EV charging stations directly to the public through a separate, unregulated entity on the same terms and conditions as any other provider of EV charging stations.

The bill does not appear to impact state or local government 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

Electric Vehicles

Electric vehicles (EVs)[1] offer higher fuel efficiency and improved air quality compared to vehicles with internal combustion engines.[2] Increased interest in EVs is driven by higher gas prices and greenhouse gas emission concerns.[3] However, limited EV range, limited charging infrastructure, and range anxiety[4] have deterred many drivers from considering EVs.[5] As advancements in EV technology continue, EV manufacturing increases, and EV prices become more accessible, representatives in both government and the private sector suggest that successful adoption of EV use is heavily dependent on the accessibility of charging stations.[6]

The U.S. Department of Energy's Alternative Fuels Data Center uses the term "electric-drive vehicles" to collectively refer to the following:

- Hybrid electric vehicles powered by an internal combustion engine that runs on conventional or alternative fuel and an electric motor using energy stored in a battery. The battery is charged through regenerative braking and the internal combustion engine, not by plugging in to charge.
- Plug-in hybrid electric vehicles powered by an internal combustion engine and an electric motor using energy stored in a battery. These vehicles can operate in all-electric mode through a larger battery, which can be plugged in to an electric power source to charge.
- All-electric vehicles use a battery to store the electric energy that is charged by plugging the vehicle into charging equipment. EVs always operate in all-electric mode and have typical driving ranges from 150 to 300 miles.[7]

EV Charging Equipment

EVs are becoming increasingly popular in the United States, prompting a focus on the installation of electric vehicle charging infrastructure. Electric vehicle charging stations have EV supply equipment (EVSE) capable of charging an EV's battery.[8] Charging station site hosts may provide such stations free of charge or collect revenue for electric vehicle charging through subscription, pay-per-charge, or pay-for-parking systems.[9]

EV charging equipment is classified based on the rate of charge.[10] Charging times vary, depending on the depletion level of the battery, how much energy the battery holds, the type of battery, and the type of supply equipment.[11] Charging times can range from less than 20 minutes to more than 20 hours.[12] Potential driving distance ranges from:

---

[1] Section 320.01(36), F.S., defines the term "electric vehicle" to mean a motor vehicle that is powered by an electric motor that draws current from rechargeable storage batteries, fuel cells, or other sources of electrical current.
[2] Federal Highway Administration (FHWA), *FHWA NHTS Brief, Electric Vehicle Feasibility*, July 2016, p. 1, available at http://nhts.ornl.gov/briefs/EVFeasibility20160701.pdf (last visited Feb. 4, 2022).
[3] *Id*.
[4] Range anxiety is the feeling an EV driver has when the battery charge is low and the usual sources of electricity are unavailable, striking a fear of being stranded. J.D. Power, *What is Range Anxiety with Electric Vehicles?* https://www.jdpower.com/cars/shopping-guides/what-is-range-anxiety-with-electric-vehicles (last visited Feb. 4, 2022).
[5] FHWA, *supra* note 2, at 1-2.
[6] *Id*.
[7] U.S. Dept. Energy, Alternative Fuels Data Center, *Hybrid and Plug-In Electric Vehicles*, https://afdc.energy.gov/vehicles/electric.html (last visited Feb. 8, 2022).
[8] *See* U.S. Dept. Energy, *Plug-In Electric Vehicle Handbook for Public Charging Station Hosts* (April 2012), *available at* https://www.afdc.energy.gov/pdfs/51227.pdf (last visited Feb.11, 2022).
[9] *Id*.at p. 9.
[10] U.S. Dept. Energy, AFDC, *Developing Infrastructure to Charge Plug-In Electric Vehicles*, https://afdc.energy.gov/fuels/electricity_infrastructure.html (last visited Feb. 11, 2022).
[11] *Id*.

- Two to five miles of range per one hour of charging for Level 1 supply equipment;
- Ten to twenty miles per one hour of charging for Level 2 supply equipment; and
- Sixty to eighty miles per twenty minutes of charging for direct-charge fast-charge (DCFC) supply equipment.[13]

For most drivers, charging occurs overnight at home, using Level 1 or AC Level 2 charging equipment.[14]

Level 1 Charging

Level 1, typically at-home charging, through a power cord which comes as standard equipment on new EVs, only requires a standard 120-volt outlet, so no additional equipment is required.[15] This can add about 40 miles of range in an eight hour overnight charge for a mid-size EV.[16] Typically, Level 1 charging is used when only a 120 volt-outlet is available, but can easily be enough to supply a typical driver's needs.[17] As of 2020, fewer than 5 percent of public EV charging ports in the United States were Level 1.[18]

Level 2 Charging

Level 2, typically home and public charging, commonly requires a charging unit on a 240-volt circuit, such as one used for home appliances like a clothes dryer.[19]The charging rate depends on the rate at which a vehicle can accept a charge and the maximum current available.[20] This method may require purchasing an at-home charging unit and modifications to a home electric system, but charges from two to eight times faster than a Level 1.[21] These chargers are most common at public charging places like offices, grocery stores, and parking garages.[22] As of January 2022, nearly 80 percent of all public EV charging ports in the United States were Level 2.[23]

Direct Charge Fast Chargers (DCFC)

DCFC, typically public charging, allows for rapid charging along heavy traffic corridors.[24] DCFCs are best used for longer travel distances, vehicles heavily used throughout the day like taxis, and for drivers with limited access to at-home charging, such as multi-unit renters.[25] As of January 2020, over 18 percent of all public EV charging ports in the United States were DCFC.[26] There are three types of DCFC systems, depending on the type of charge port on the vehicle:

- SAE Combined Charging System, allowing a driver to use the same charge port when charging with Level 1, Level 2, or DCFC.
- The CHAdeMO connector, which is the most common.

---

[12] *Id*.
[13] *Id.*
[14] U.S. Dept. Energy, AFDC, *Charging Plug-In Electric Vehicles at Home*, https://afdc.energy.gov/fuels/electricity_charging_home.html (last visited Jan 13, 2022).
[15] AFDC, *Developing Infrastructure to Charge Plug-In Electric Vehicles*, *supra* note. 10.
[16] *Id*.
[17] *Id*.
[18] *Id.*
[19] *Id.*
[20] Union of Concerned Scientists, *Electric Vehicle Charging, Types, Time, Cost and Savings* (March 2018) available at https://www.ucsusa.org/resources/electric-vehicle-charging-types-time-cost-and-savings (last visited Feb. 11, 2022).
[21] *Id*.
[22] *Id.*
[23] *See* U.S. Dept. of Energy, *Alternative Fueling Station Counts by State*, https://www.afdc.energy.gov/fuels/stations_counts.html (last visited Feb.11, 2022).
[24] AFDC, *Developing Infrastructure to Charge Plug-In Electric Vehicles*, *supra* n. 10.
[25] Union of Concerned Scientists, *Electric Vehicle Charging, Types, Time, Cost and Savings*, https://www.ucsusa.org/resources/electric-vehicle-charging-types-time-cost-and-savings (last visited Feb. 11, 2022).
[26] *See* U.S. Dept, Energy, *Alternative Fueling Station Counts by State*, *supra* n. 24.

- Tesla, which is a unique, proprietary connector that works for all Tesla charging levels, including their fast charging option, called Supercharge. Tesla does not have a CHAdeMO port, but Tesla sells an adapter.[27]

EV Charging in Florida

In Florida, investor-owned electric utilities (IOUs) serve exclusive territories and the Public Service Commission (PSC) has broad regulatory authority over rate setting, bulk power grid planning, safety inspection, and service reliability. IOU rates are set based upon the cost of service. However, the PSC does not regulate the rates or service quality for municipal electric utilities or rural electric cooperatives.[28]

Under Florida law, the third-party sale of electricity to a retail customer is not permitted.[29] In 2012, the Legislature created an exemption for EV charging by declaring that the provision of EV charging to the public by a non-utility is not considered a retail sale of electricity. Therefore, the rates, terms, and conditions of EV charging by a non-utility are not subject to PSC regulation.[30]

In 2020,[31] the Legislature required the Department of Transportation (DOT) to coordinate, develop and recommend a Master Plan for the development of EV charging infrastructure along the State Highway System. DOT, in consultation with the Florida Department of Environmental Protection, the PSC, and other state agencies, developed the EV Master Plan (EVMP) with extensive public engagement.[32] The stated goals of the EVMP were to:

- Support both short-range and long-range electric vehicle travel;
- Encourage the expansion of electric vehicle use in the state; and
- Adequately serve evacuation routes in the state.

In July 2021, the EVMP was delivered, providing a comprehensive course of action to efficiently and effectively provide for EV charging infrastructure.[33] The EVMP discusses:

- Benefits of electrified mobility;
- Barriers to adoption and industry trends;
- Installation considerations;
- Fleet considerations and future advancements;
- Utility regulatory considerations;[34]
- Strategies to develop charging supply;
- EV market adoption;
- Impacts to transportation funding;
- Resiliency and emergency evacuations;
- Identification of potential new EVSE locations;
- EV infrastructure on the state highway system; and
- Recommendations.

EV Charging Infrastructure Provided by IOUs

The PSC has approved EV charging programs for three of the four IOUs under its jurisdiction.[35]

Tampa Electric Company

[27] AFDC, *Developing Infrastructure to Charge Plug-In Electric Vehicles*, *supra* n. 12.
[28] *Id* at 15.
[29] *Id* at 16.
[30] Ch. 2012-119, Laws of Fla.; S. 366.94(1), F.S.
[31] Ch. 2020-21, Laws of Fla.
[32] *Id.*
[33] *Id.*
[34] Pages 15-22 of the EVMP discuss utility regulatory considerations.
[35] Public Service Commission (PSC) Agency Analysis of 2022 House Bill 737, p.1. (Dec.15, 2021).

On April 1, 2021, the PSC approved Tampa Electric Company's (TECO) EV charging pilot program. Under its pilot program, TECO will spend up to $2 million to purchase, install, own, and maintain 200 EV charging stations. TECO will pay up to $5,000 per Level 2 charger towards the cost of installation at workplaces, public/retail establishments, and multi-unit dwellings, and the full cost of installation for income-qualified sites and government locations. TECO also plans to install four DCFCs. TECO anticipated it would take approximately 12 months to complete deployment of the EV charging stations, after which the pilot program will run for four years. The PSC authorized TECO to begin recovery of the cost of its pilot program in its rate base.[36]

Florida Power & Light

In 2019, Florida Power & Light Company (FPL)[37] began a three-year pilot program, known as EVolution, which targeted the installation of 1,000 EV charging ports. The program's primary objective was to gather information prior to mass EV adoption to better plan for and design FPL's EV charging investments. In 2020, the PSC approved a new FPL tariff with specific EV charging rates for both utility-owned and non-utility owned charging stations. The PSC required FPL to submit annual reports.[38]

During its 2021 rate case, FPL reached a settlement agreement with other parties to the rate case. The settlement expanded FPL's current EV charging pilot program to include the following: a public fast charging program, a residential EV charging services pilot, a commercial EV charging services pilot, new technologies and software, and education and awareness. On October 26, 2021, the PSC approved FPL's expanded EV pilot programs as a component of the rate case settlement agreement. The total investment is forecast to be $175 million over the four-year period of 2022-2025. Under the terms of the settlement agreement, FPL may include the costs associated with the EV programs in rate base and recover the costs through base rates.[39]

Duke Energy Florida

In 2017, as part of a settlement agreement in Duke Energy Florida's (DEF) rate case, the PSC approved a five-year EV charging pilot program authorizing DEF to invest $8 million to install and own a minimum of 530 charging ports.[40]

In 2021, as part of a subsequent DEF rate case, the PSC approved a new settlement agreement that created a permanent EV charging station program. DEF forecasted a cost of $62.9 million over the four-year period of 2022-2025. Under the permanent EV charging program, DEF plans to implement a residential EV time-of use credit program for off-peak charging, a rebate program for commercial and industrial customer charging stations, and a DEF-owned DCFC program. The DCFC program will allow DEF to install an additional 100 utility-owned DCFC stations and includes a new tariff for a Fast Charge Fee that will be collected from EV drivers using DEF-owned DCFC stations. Reasonable costs of the programs will be included in DEF's rate base and recovered through its base rates.[41]

Public EV Charging Provided by Non-Utilities

As previously stated, the provision of EV charging to the public by a non-utility is not considered a retail sale of electricity and is not regulated by the PSC. However, entities offering EV charging to the public must pay the electric utility for the electricity. EV charging providers typically pay rates as commercial customers.

Intervention in PSC Proceedings

[36] *Id.*
[37] FPL acquired Gulf Power in 2019. These IOUs merged for ratemaking purposes as of January 3, 2022.
[38] PSC *supra* note 36 at 1-2.
[39] *Id.* at 1-2.
[40] *Id.* at 2.
[41] *Id.* at 2.

Pursuant to Rule 28-106.205, F.A.C.,[42] persons, other than the original parties to a pending proceeding, who have a substantial interest in the proceeding and who desire to become parties may move for leave to intervene in a PSC proceeding. Motions for leave to intervene must include allegations sufficient to demonstrate that the intervenor is entitled to participate in the proceeding as a matter of constitutional or statutory right or pursuant to PSC rule, or that the intervenor's substantial interests are subject to determination or will be affected through the proceeding. [43]

To have standing in a PSC proceeding, an intervenor must meet a two-prong standing test. The intervenor must show that it will suffer injury in fact which is of sufficient immediacy to entitle it to a formal administrative hearing, and that the substantial injury is of a type or nature which the proceeding is designed to protect.[44,45]

Effect of the Bill

The bill requires the PSC to adopt rules for an EV transportation electrification plan that facilitates the deployment of EV charging infrastructure in a competitively neutral manner. The PSC must propose its rules by January 1, 2023, with final adoption by January 1, 2024. The PSC's rules must:

- Promote investment in publicly available Level 2 and DCFC stations in a competitively neutral manner prioritizing and encouraging private investment in and private ownership and operation of EV charging infrastructure.
- Establish policies stimulating innovation, competition, private investment, and customer choice in EV charging infrastructure, including equipment and networks.
- Establish mechanisms, including incentives, supporting the efficient and cost-effective use of the electric grid in a manner that supports EV charging infrastructure.
- Establish incentives supporting private investment in charging equipment.
- Establish policies, to be applied on a prospective basis, prohibiting IOUs from using rate base investment in owning and operating of EV new charging stations and limiting public utility cost recovery to distribution level infrastructure on the utility side of the meter.
- Stimulate fair and reasonable electricity pricing through IOUs' tariffs promoting the widespread offering of EV charging.

The bill provides that, an entity that provides EV charging stations to the public may intervene and participate in any IOU's ratemaking proceeding or any other PSC proceeding involving rates, terms, or conditions of service, including the rate structure paid by or proposed to be paid by customers for EV charging to be offered to the public.

The bill does not prohibit an IOU from providing new EV charging stations directly to the public through a separate, unregulated entity on the same terms and conditions as any other provider of EV charging stations.

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

B. SECTION DIRECTORY:

Section 1 Creates s. 366.945, F.S., relating to an electric vehicle transportation electrification plan.

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

[42] Rule 28-106, F.A.C., relates to decisions determining substantial interests.
[43] PSC Order No. PSC-2021-0189-PCO-EI, in Docket No. 20210015, May 26, 2021. available at https://www.floridapsc.com/library/filings/2021/04266-2021/04266-2021.pdf (last visited Feb. 9, 2022).
[44] *Agrico Chemical Company v. Department of Environmental Regulation*. 406 So. 2d 478, 482 (Fla. 2d DCA 1981).
[45] PSC *supra* note 36

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:

The bill may reduce costs to some EV charging station owners.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires the PSC to adopt rules for an EV transportation electrification plan meeting specified requirements. These rules must be proposed by January 1, 2023, and adopted by January 1, 2024.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The PSC asserts that neither current law, nor the bill, give it jurisdiction over non-utilities that provide EV charging. It is not clear as to whether the PSC, through rulemaking, could prioritize and encourage private investment, or stimulate competition and customer choice in the EV charging market since such functions are outside of its statutory jurisdiction.[46]

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[46] PSC *supra* note 36 at 2.

A bill to be entitled

An act relating to an electric vehicle transportation electrification plan; creating s. 366.945, F.S.; requiring the Public Service Commission to adopt rules for an electric vehicle transportation electrification plan that meet certain requirements; providing timeframes for the commission to propose the plan's rules and for final rule adoption; authorizing entities that provide electric vehicle charging stations to the public to intervene and participate in certain commission proceedings involving rates, terms, or conditions of service for offering electric vehicle charging to the public; providing construction; providing an effective date.

WHEREAS, the Legislature finds that the promotion and development of electric vehicle infrastructure in this state through competitively neutral policies for investor-owned electric utility rates, terms, and conditions for electric vehicle charging stations is in the public interest, and

WHEREAS, widespread deployment of electric vehicle charging stations is consistent with the public policy of this state, and

WHEREAS, the expanded use of electric vehicles provides this state with increased energy security and health and environmental benefits by reducing the consumption of fossil

fuels and street-level air pollutants, carbon dioxide, and nitrogen oxides, and

WHEREAS, electric vehicle charging station infrastructure has the potential to lessen climate impacts, expand infrastructure investment, improve environmental and economic conditions, and help make this state a leader in new and innovative technologies, NOW, THEREFORE,

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

Section 1. Section 366.945, Florida Statutes, is created to read:

366.945 Electric vehicle transportation electrification plan.—

(1) The commission shall adopt rules for an electric vehicle transportation electrification plan that facilitates the deployment of electric vehicle charging infrastructure in a competitively neutral manner.

(a) The rules must:

1. Promote investment in publicly available Level 2 and direct-current, fast-charging stations in a competitively neutral manner that prioritizes and encourages private investment in and private ownership and operation of electric vehicle charging infrastructure.

2. Establish policies that stimulate innovation, competition, private investment, and customer choice in electric

vehicle charging infrastructure, including equipment and networks.

3. Establish mechanisms, including incentives, which support the efficient and cost-effective use of the electric grid in a manner that supports electric vehicle charging infrastructure.

4. Establish incentives that support private investment in charging equipment.

5. Establish policies that, on a prospective basis, prohibit investor-owned electric utilities from using rate base investment in the ownership and operation of new electric vehicle charging stations and limit public utility cost recovery to distribution level infrastructure on the utility side of the meter.

6. Stimulate fair and reasonable electricity pricing through investor-owned electric utilities' tariff provisions which will promote the widespread offering of electric vehicle charging.

(b) The commission shall propose such rules by January 1, 2023, with final rule adoption by January 1, 2024.

(2) An entity that provides electric vehicle charging stations to the public may intervene and participate in any investor-owned electric utility's ratemaking or other commission proceeding involving rates, terms, or conditions of service, including the rate structure paid by or proposed to be paid by

customers for electric vehicle charging offered to the public.

(3) This subsection does not prohibit an investor-owned electric utility from providing electric vehicle charging stations directly to the public through a separate, unregulated entity on the same terms and conditions as any other provider of electric vehicle charging stations.

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