Tourism, Infrastructure & Energy Subcommittee

Tuesday, March 09, 2021
1:00 PM – 3:00 PM
Sumner Hall (404 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

AGENDA

Tuesday, March 9, 2021
Sumner Hall (404 HOB)
1:00 PM – 3:00 PM

I. Call to Order & Roll Call

II. Welcoming Remarks

III. Consideration of the following bills(s):

HB 139 by *Rep. Fernandez-Barquin*
Electronic Transactions for Title Certificates and Registrations

HB 451 by *Rep. Hage*
Specialty License Plates

HB 539 by *Rep. Byrd*
Renewable Energy

HB 613 by *Rep. Aloupis*
Tax Collector and License Plate Agency Operations

HB 621 by *Rep. Williamson*
Tax Collectors and Their Approved Agents

HB 1051 by *Rep. Fernandez-Barquin*
Environmental Compliance Costs

IV. Consideration of the following proposed committee substitute(s):

PCS for HB 839 -- Preemption of Energy Infrastructure Regulation

V. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4873 Fax: (850) 413-0419

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Tourism, Infrastructure & Energy Subcommittee

Start Date and Time:	Tuesday, March 09, 2021 01:00 pm
End Date and Time:	Tuesday, March 09, 2021 03:00 pm
Location:	Sumner Hall (404 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 139 Electronic Transactions for Title Certificates and Registrations by Fernandez-Barquin
HB 451 Specialty License Plates by Hage
HB 539 Renewable Energy by Byrd
HB 613 Tax Collector and License Plate Agency Operations by Aloupis
HB 621 Tax Collectors and Their Approved Agents by Williamson
HB 1051 Environmental Compliance Costs by Fernandez-Barquin

Consideration of the following proposed committee substitute(s):

PCS for HB 839 -- Preemption of Energy Infrastructure Regulation

This meeting will be live-streamed on https://thefloridachannel.org/. Persons who wish to attend must register at www.myfloridahouse.gov, and pick up a pass at the Legislative Welcome Center on the 4th Floor of the Capitol beginning one hour before the start of the meeting. Audience seating will be socially distanced and will be available on a first-come, first-served basis. Registration closes three hours before the meeting starts.

NOTICE FINALIZED on 03/05/2021 4:00PM by Rigas.Amanda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 139 Electronic Transactions for Title Certificates and Registrations
SPONSOR(S): Fernandez-Barquin
TIED BILLS: **IDEN./SIM. BILLS:** SB 754

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

SUMMARY ANALYSIS

County tax collectors, as authorized agents of the Department of Highway Safety and Motor Vehicles (DHSMV), issue motor vehicle and vessel registration certificates, motor vehicle registration license plates and validation stickers, and vessel numbers and decals to applicants.

The bill authorizes tax collectors to accept vehicle and vessel title applications and vessel registrations by electronic means, and authorizes tax collectors to use electronic mail addresses in the same manner as DHSMV for motor vehicle titling and vessel titling and registration. The bill also authorizes tax collectors to contract with vendors for technology services in order to provide vehicle titling and vessel-related transactions by electronic and telephonic means.

The bill also provides that for motor vehicle and vessel titling an electronic signature is acceptable if it satisfies statutory requirements for an electronic signature. However, for motor vehicle titling, the electronic signature must meet specified National Institute of Standards and Technology standards.

The bill provides that tax collection systems other than DHSMV's Florida Real Time Vehicle Information System (FRVIS) provided by a tax collector's approved vendor for registration renewal transactions must be performed on behalf of an applicant either at a county tax collector's office or via a county tax collector's website. Upon a tax collector's request, DHSMV must provide the tax collector and his or her approved vendors with certain data access and interface functionality. This data and functionality must be used to process renewal transactions. The data and functionality must include bulk data for vehicle registrations which includes each applicant's current residential address and electronic mail address and the ability to record registration renewals in real time. This data and functionality may be used only for fulfilling the tax collector's statutory duties and may not be resold or used for any other purpose.

The bill also requires DSHMV to ensure that tax collectors' approved vendors protect customer privacy and data collection.

The bill may have a negative fiscal impact to state government expenditures. *See* Fiscal Analysis for details.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Tax Collectors

County tax collectors are authorized agents of the Department of Highway Safety and Motor Vehicles (DHSMV) that issue motor vehicle and vessel registration certificates, motor vehicle registration license plates and validation stickers, mobile home stickers, and vessel numbers and decals to applicants.[1] The law specifies the service fees tax collectors are authorized to collect in exchange for providing these registration and titling services.[2] Each tax collector must keep a full and complete record and account of all validation stickers, mobile home stickers, vessel decals, or other properties received by him or her from DHSMV.[3]

Currently, 65 counties have elected tax collectors who are constitutional officers. Currently, Broward and Miami-Dade Counties have appointed tax collectors under each county's charter government.[4] Sixteen counties have, or have until recently had, contracts with privately operated license plate agents (LPAs) to perform title and registration services for motor vehicles, mobile homes, trailers, and vessels.[5]

Many tax collectors hire vendors to assist with mailing, cashiering, deploying kiosks, providing online services, and performing other duties. When requested by a tax collector, DSHMV routinely provides access to data, both in real-time and through batch processes, to the tax collector's vendors for the purpose of providing support to the requesting tax collector. Some of the data provided contains personal information[6] which is confidential pursuant to the federal Driver's Privacy Protection Act ("DPPA") of 1994.[7] Such information may be released only as authorized by that act.

To ensure compliance with DPPA, DSHMV practices data minimization, so that personal information from driver license records is provided to agents and vendors only when it is directly related to a specified task deemed necessary by DSHMV or Legislature. Once the specified purpose has been completed, this practice requires that shared data be securely destroyed or otherwise rendered unreadable. Data minimization also decreases risks of data loss and breaches.[8]

DHSMV Information Systems

DHSMV's Florida Real Time Vehicle Information System (FRVIS) is the database application used to title and register all motor vehicles, mobile homes, trailers, and vessels in Florida. It provides real-time access to extensive transactional information[9] on every motor vehicle, mobile home, trailer, and vessel and titled or registered in the state to include owner residential and electronic mail addresses.[10]

Florida law[11] requires that FRVIS be installed in every tax collector's and LPA's office according to a schedule established by DHSMV in consultation with the tax collectors and contingent upon funds

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[1] Ss. 320.03(1) and 328.73(1), F.S.
[2] *See* ss. 320.04 and 319.32, F.S.
[3] Ss. 320.03(3) and 328.73(2), F.S.
[4] Pursuant to s. 1(d), Art. VIII of the State Constitution, Broward and Miami Dade counties will have elected tax collectors effective January 7, 2025.
[5] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 139, p.3.
[6] See 18 U.S.C. s. 2725
[7] See 18 U.S.C. ss. 2721 et seq.
[8] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 139, p.3.
[9] "Transactional information" refers to information used, accessed, or collected for purpose of a customer transaction.
[10] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 139, p.3.
[11] S. 320.03(4)(b), F.S.

being made available for the system. DSHMV administers FRVIS in consultation with the Florida Tax Collectors, Inc., to ensure that each county tax collector's office is technologically equipped and functional for the operation of FRVIS. Only DHSMV, tax collectors, and LPAs have access to FRVIS. This access is governed by individual memoranda of understanding (MOUs) between DSHMV and each tax collector and, if a tax collector has an LPA, by an additional MOU between DHSMV, each such tax collector, and the LPA contracted with the tax collector. Sections 320.03(5) and 328.73(3), F.S., impose a 50 cent fee on each motor vehicle, mobile home, and vessel registration to cover the operation of FRVIS. That fee is deposited into the Highway Safety Operating Trust Fund.[12]

Access to DSHMV systems and data is governed by various MOUs between DHSMV, tax collectors, and other third-party entities. The MOUs document how the data will be used and protected, ensuring compliance with various state and federal laws, including the Driver Privacy Protection Act (DPPA).[13]

Currently, the amount and type of data provided to a third-party entity is based on the business use of the data by that entity. For example, a tax collector's vendor providing motor vehicle kiosk services for vehicle registration renewals is provided a different data set than a tax collector's vendor that prints and mails motor vehicle renewal notices.[14]

Any tax collector or LPA opening a new office or expanding existing offices initially purchases the equipment needed for title and registration services. DHSMV periodically refreshes outdated equipment and pays the cost of the new equipment[15] for both tax collector's and LPA's offices. LPAs reimburse DSHMV for recurring costs, such as internet access, for each location, unless the LPA office is collocated with a tax collector's office and the costs are shared.

Motorist Modernization

Phase II of DHSMV's Motorist Modernization program will redevelop all systems and processes supporting motor vehicle, mobile home, trailer, and vessel titling and registration. Phase II will be implemented in two separate releases. The program will first focus on replacing the legacy FRVIS system with the new ORION system for field-office issuances, including the integration of an off the shelf solution for certain commercial motor vehicle transactions. The program will next focus on replacing FRVIS functions performed by administrative staff in Tallahassee headquarters and adding additional motor vehicle functionality to MyDMVPortal. Phase II will be completed in late 2023 or early 2024.[16]

Collection of E-Mail Addresses

Sections 319.40(1), 320.95(2), and 328.30(3), F.S., authorize DHSMV to collect electronic mail addresses and use electronic mail, in lieu of the U.S. Postal Service, for purposes of renewal notices associated, respectively, with motor vehicle, mobile home, and trailer titling; motor vehicle, mobile home, and trailer registrations; and vessel registrations.

Section 119.0712 (2)(c), F.S., exempts e-mail addresses collected by DHSMV pursuant to ss. 319.40(3), F.S., (relating to motor vehicle, mobile home, and trailer titling) and 320.95(2), F.S., (relating to motor vehicle, mobile home and trailer registrations) from disclosure under the state's public records laws.[17]

Electronic Signatures

Florida has adopted the Uniform Electronic Transactions Act, which provides that electronic signatures have the same legal effect as traditional handwritten signatures.[18] On June 30, 2000, the federal

[12] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 139, p.3.
[13] *Id.* at 4.
[14] *Id.*
[15] This is contingent on appropriated funds.
[16] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 139, p.4.
[17] *Id.* at 6-7.
[18] See s. 668.50, F.S

Electronic Signatures in Global and National Commerce Act (E-Sign Act) became law, providing electronic signatures the same legal effect as handwritten signatures and establishing a general rule that electronic records and signatures are valid for transactions in or affecting interstate or foreign commerce. The E-Sign Act allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing, if the consumer has affirmatively consented to such use and has not withdrawn such consent.[19]

In September 2019, the National Highway Traffic Safety Administration (NHTSA) announced the publication of a final rule establishing standards by which states may allow for odometer disclosures in an electronic format. Odometer fraud is a federal crime, and NHTSA rules have required sellers to disclose vehicle odometer readings at the time of sale for decades. However, most vehicle transfers have been subject to a requirement that odometer disclosures be made in a paper format with handwritten names and wet ink signatures. This rule removes the paper requirement by allowing for electronic disclosure systems that have robust security and authentication.[20]

Based on the NHTSA regulation noted above, s. 319.30(3)(d), F.S., was enacted so an electronic signature consistent with ch. 668, F.S.,[21] satisfies any signature required under circumstances involving motor vehicles, mobile homes, and trailers, that are a total loss. However, an electronic signature relating to an odometer disclosure submitted through an insurance company must be executed using an electronic signature, as defined in s. 668.003(4), F.S., which uses a system assurance levels, as described in the National Institute of Standards and Technology Special Publication 800-63-3, as of December 1, 2017, which are equivalent to or greater than Level 2, for each level, for a certificate of destruction or Level 3, for each level, for a salvage certificate of title.

Effect of the Bill

Acceptance of Transactions by Electronic or Telephonic Means and E-mail
The bill authorizes tax collectors to accept title applications and vehicle and vessel title applications and registrations by electronic means and authorizes tax collectors to collect and use e-mail addresses in the same manner as DHSMV for the purposes of motor vehicle titling and vessel titling and registration.

Tax Collector and Vendor Contracts for Technology Services
The bill authorizes tax collectors to contract with vendors for technology services in order to provide vehicle titling and vessel-related transactions by electronic and telephonic means.

This may authorize tax collectors, through their vendors, to create or develop alternative motor vehicle, mobile home, trailer, and vessel titling systems, independent of FRVIS as well as the systems being developed as part of DSHMV's Motorist Modernization, Phase II.[22]

Use of Electronic Signatures
The bill also provides that for motor vehicle and vessel titling, an electronic signature that is consistent with Ch. 668, F.S., relating to electronic commerce, satisfies any signature requirement for motor vehicle and vessel registrations. However, there is an exception for motor vehicle titling where the electronic signature must be executed using an electronic signature as defined in s. 668.003(4), F.S.,[23] which uses a system providing specified assurance levels as described in the National Institute of

[19] 15 U.S.C. ss. 7001, et. seq.
[20] See, 49 C.F.R. s. 580.5.
[21] Chapter 668, F.S., relates to electronic commerce.
[22] Department of Highway Safety and Motor Vehicle, Agency Analysis of 2021 House Bill 139, p. 8.
[23] Section 668.003(4), F.S., defines the term "electronic signature" as any letters, characters, or symbols, manifested by electronic or similar means, executed or adopted by a party with an intent to authenticate a writing. A writing is electronically signed if an electronic signature is logically associated with such writing.

Standards and Technology Special Publication 800-63-3,[24] as of December 1, 2017, which are equivalent to or greater than Level 2 (for odometer statements).

Additionally, the bill permits the use of electronic signatures of as defined in s. 668.003(4), F.S., for any signature required for an application required under ch. 328, F.S. (relating to vessel registrations).

Authority for Tax Collectors' "Other Tax Collection Systems"
The bill amends s. 320.03(5), F.S., relating to motor vehicle, motor home, and trailer registrations, to provide that:

- Upon a tax collector's request, DHSMV must provide the tax collector and his or her approved vendors with data access and interface functionality, including, but not limited to, data access and interface functionalities, other third parties receive from DHSMV.
- The data and functionality be used only for the purpose of processing renewal transactions.
- Such data functionality must include bulk data for vehicle renewal transactions, including customers' residential address and e-mail address and "the ability to record registration renewal in the state system in real time."
- An "approved vendor" is defined as a third-party entity that has a contract with tax collectors and a MOU with DOT to assist tax collectors in carrying out their duties with respect to motor vehicle, motor home, and trailer registrations, in accordance with federal or state law.
- The data and functionality provided to tax collectors' third-party vendors may not be resold or used for any other purpose.

The bill amends s. 328.73(1), F.S., to provide similar authority as to "tax collections systems" used for vessel registrations. However, the changes to s. 328.73(1), F.S., do not define the term "approved vendor" which is included in the proposed amendments to s. 320.03(5), F.S., and described above.

These provisions may authorize tax collectors, through their vendors, to deploy alternative motor vehicle, mobile home, trailer, and vessel titling systems, independent of the FRVIS as well as the systems being developed as a part of Motorist Modernization, Phase II, and/or require DOT to provide individualized interfaces for the tax collectors' other tax systems.

The bill has an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1 Amends s. 319.40, F.S., relating to transactions by electronic or telephonic means.

Section 2 Amends s. 320.03, F.S., relating to the registration duties of tax collectors.

Section 3 Amends s. 328.30, F.S., relating to transactions by electronic or telephonic means.

Section 4 Amends s. 328.73, F.S., relating to the registration duties of tax collectors.

Section 5 Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

[24] A copy of this publication is available at: https://www.nist.gov/publications/search?k=800-63-3&d%5Bmin%5D=&d%5Bmax%5D=&t=&a=&s=All&n= (last visited January 7, 2021).

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may create additional contracts between the county tax collectors and vendors providing technology services to tax collectors.

D. FISCAL COMMENTS:

The bill requires DHSMV, upon the request of any tax collector, to create and maintain interfaces to support the integration of their vendors' technology systems and provide their vendors with the ability to record motor vehicle, mobile home, and vessel registration renewals in the FRVIS in real-time. The FRVIS is operated and maintained using a 50 cent fee on each motor vehicle, mobile home, and vessel registration, which is deposited into the Highway Safety Operating Trust Fund. To the extent that the bill causes DSHMV to create more interfaces to the FRVIS (and/or the replacement functions in Motorist Modernization, Phase II) for tax collectors' vendor-provided systems, the funding required to develop those interfaces likely will increase and potentially impair the ability of the Trust Fund to pay all of the costs currently associated with FRVIS, its interfaces, and the Motorist Modernization Project, as well as equipment refreshes for tax collectors and LPAs.[25]

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 of counties or municipalities to raise revenues in the aggregate; or reduce the percentage sales tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill amend ss. 319.40(3) and 328.30(3), F.S., authorizing tax collectors, in addition to DSHMV, to collect e-mail addresses. This may create a public records issue, especially if the e-mail addresses that tax collectors collect are maintained in an "other tax collection system" or if the electronic mail addresses are to be used for a purpose unrelated to the tax collector's duties pursuant to chs. 319 and

[25] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 139, p. 10. (March 5, 2021)

320, F.S. Section 119.0712(2)(c), F.S., only exempts e-mail addresses collected by DSHMV pursuant to ss. 319.40(3) (relating to motor vehicle, mobile home, and trailer titling) and 320.95(2) (relating to motor vehicle, mobile homes and trailer registrations) from disclosure pursuant to s. 119.07(1), F.S., and s. 24(1) of Article I of the State Constitution.

Additionally, these e-mail addresses may be considered personal information under the federal Driver Privacy Protection Act which prohibits a state department of motor vehicles, and any officer, employee, or contractor thereof from knowingly disclosing the information unless it is for one the permissible uses set forth in the law. [26]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[26] *Id.* at 14.

A bill to be entitled

An act relating to electronic transactions for title certificates and registrations; amending s. 319.40, F.S.; authorizing tax collectors to accept applications for motor vehicle certificates of title by electronic or telephonic means and to collect electronic mail addresses for use as a method of notification; authorizing tax collectors to contract with vendors to provide electronic and telephonic transactions; providing that an electronic signature that meets certain requirements satisfies any signature required for an application for a certificate of title; providing an exception; amending s. 320.03, F.S.; specifying tax collection systems for which certain fees may be used for integration with the Florida Real Time Vehicle Information System; requiring the Department of Highway Safety and Motor Vehicles to provide tax collectors and their approved vendors with certain data access and interface functionality; specifying authorized uses for such data and functionality; defining the term "approved vendor"; requiring the department to ensure that approved vendors protect customer privacy and data collection; amending s. 328.30, F.S.; authorizing tax collectors to accept applications for vessel

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

certificates of title by electronic or telephonic means and to collect electronic mail addresses for use as a method of providing renewal notices; authorizing tax collectors to contract with vendors to provide electronic and telephonic transactions; providing that an electronic signature that meets certain requirements satisfies any signature required for an application for a certificate of title; amending s. 328.73, F.S.; authorizing certain tax collection systems for in-person and online transactions; requiring the department to provide tax collectors and their approved vendors with certain data access and interface functionality; specifying authorized uses for such data and functionality; providing an effective date.

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

Section 1. Section 319.40, Florida Statutes, is amended to read:

319.40 Transactions by electronic or telephonic means.—

(1) The department and tax collectors may accept any application provided for under this chapter by electronic or telephonic means.

(2) The department may issue an electronic certificate of

title in lieu of printing a paper title.

(3) The department and tax collectors may collect electronic mail addresses and use electronic mail in lieu of the United States Postal Service as a method of notification. However, any notice regarding the potential forfeiture or foreclosure of an interest in property must be sent via the United States Postal Service.

(4) Tax collectors may contract with vendors for technology services in order to provide transactions by electronic and telephonic means provided for under this chapter.

(5) An electronic signature that is consistent with chapter 668 satisfies any signature required for an application under this chapter, except when the electronic signature must be executed using an electronic signature as defined in s. 668.003(4), which uses a system providing an Identity Assurance Level, Authenticator Assurance Level, and Federation Assurance Level, as described in the National Institute of Standards and Technology Special Publication 800-63-3, as of December 1, 2017, which are equivalent to or greater than Level 2.

Section 2. Subsection (5) of section 320.03, Florida Statutes, is amended to read:

320.03 Registration; duties of tax collectors; International Registration Plan.—

(5) In addition to the fees required under s. 320.08, a fee of 50 cents shall be charged on every license registration

sold to cover the costs of the Florida Real Time Vehicle Information System. The fees collected shall be deposited into the Highway Safety Operating Trust Fund to be used exclusively to fund the system. The fee may only be used to fund the system equipment, software, personnel associated with the maintenance and programming of the system, and networks used in the offices of the county tax collectors as agents of the department and the ancillary technology necessary to integrate the system with other tax collection systems. Other tax collection systems include technology systems provided by a tax collector's approved vendors for registration renewal transactions, including, but not limited to, renewal of motor vehicle and mobile home registration certificates, registration license plates, and validation stickers. Such registration renewal transactions shall be performed on behalf of an applicant either in person at a county tax collector's office or online via a county tax collector's website. Upon a tax collector's request, the department shall provide the tax collector and his or her approved vendors with data access and interface functionality, including, but not limited to, data access and interface functionality that other third parties receive from the department. Such data and functionality shall be used for the purpose of processing renewal transactions and shall include, but not be limited to, bulk data for vehicle registrations which includes each applicant's current residential address and

electronic mail address collected under s. 320.95 and the ability to record registration renewals in the state system in real time. Such data and functionality may be used only for purposes of fulfilling the tax collector's statutory duties and may not be resold or used for any other purpose. For purposes of this subsection, the term "approved vendor" means a third-party entity that has a contract with tax collectors, and a memorandum of understanding with the department, to assist tax collectors in carrying out their duties under this chapter and in accordance with federal and state law. The department shall administer this subsection ~~program~~ upon consultation with the Florida Tax Collectors, Inc., to ensure that each county tax collector's office is technologically equipped and functional for the operation of the Florida Real Time Vehicle Information System and that tax collectors' approved vendors protect customer privacy and data collection. Any designated revenue collected to support functions of the county tax collectors and not used in a given year must remain exclusively in the trust fund as a carryover to the following year.

Section 3. Section 328.30, Florida Statutes, is amended to read:

328.30 Transactions by electronic or telephonic means.—

(1) The department and tax collectors may accept any application provided for under this chapter by electronic or telephonic means.

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

(2) The department may issue an electronic certificate of title in lieu of printing a paper title.

(3) The department and tax collectors may collect electronic mail addresses and use electronic mail in lieu of the United States Postal Service for the purpose of providing renewal notices.

(4) Tax collectors may contract with vendors for technology services in order to provide transactions by electronic and telephonic means provided for under this chapter.

(5) An electronic signature that is consistent with chapter 668 satisfies any signature required for an application under this chapter.

Section 4. Subsection (1) of section 328.73, Florida Statutes, is amended to read:

328.73 Registration; duties of tax collectors.—

(1) The tax collectors in the counties of the state, as authorized agents of the department, shall issue registration certificates and vessel numbers and decals to applicants, subject to the requirements of law and in accordance with rules of the department. Tax collection systems may include technology systems provided by vendors contracted with tax collectors for in-person and online vessel registration certificates and vessel numbers and decals. Upon a tax collector's request, the department shall provide the tax collector and his or her approved vendors with data access and interface functionality,

including, but not limited to, data access and interface functionality that other third parties receive from the department. Such data and functionality shall be used for the purpose of processing renewal transactions and shall include, but not be limited to, bulk data for vessel registrations which includes each applicant's current residential address and electronic mail address collected under s. 320.95 and the ability to record registration renewals in the state system in real time. Such data and functionality may be used only for purposes of fulfilling the tax collector's statutory duties and may not be resold or used for any other purpose.

Section 5. This act shall take effect July 1, 2021.

TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

HB 139 by Rep. Fernandez-Barquin
ELECTRONIC TRANSACTIONS for TITLE CERTIFICATES and REGISTRATIONS

AMENDMENT SUMMARY
MARCH 9, 2021

Amendment 1 (Strike-All Amendment) by Rep. Fernandez-Barquin (# 150159)

- Removes provisions regarding motor vehicle titling.
- Removes provisions regarding electronic signatures.
- Authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) and tax collectors to use e-mail addresses to perform their statutory duties.
- Provides that email addresses must be maintained in a manner to ensure that the addresses are exempt from public records requirements.
- Requires tax collectors and third-party contractors with access to DHSMV systems to enter into a memorandum of understanding with DHSMV regarding the use of DSHMV's computer systems.
- Authorizes the existing fee charged on certain motor vehicle registrations to be used to ensure ancillary technology and other tax collection systems protect customer privacy data.
- Requires DHSMV, upon a tax collector's request, to provide certain ancillary technology to integrate other tax collection systems with data access and uniform interface functionalities.
- Provides specific purposes that DHSMV data may be used for.
- Requires certain data access and uniform interface functionalities to be developed by July 1, 2023.
- Defines the term "registration renewal transactions."

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

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

Representative Fernandez-Barquin offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (a) of subsection (4) and subsection (5) of section 320.03, Florida Statutes, are amended to read:

320.03 Registration; duties of tax collectors; International Registration Plan.—

(4)(a) Each tax collector, ~~or~~ third party contracted with a tax collector, or license tag agent, who has online computer access to the department's systems or ~~department~~ data ~~center or other reasonable access thereto~~ shall enter into a memorandum of understanding with the department and shall, except when the department has issued a registration renewal notice, upon

receipt of an application for the registration of any motor vehicle, determine from the driver file of the applicant whether the applicant's driver license has been canceled, suspended, or revoked and, if so, whether the applicant has surrendered his or her license to the department as required by s. 322.251. If the applicant has not surrendered his or her license in accordance with ~~the provisions of~~ that section, the tax collector shall refuse to register the vehicle until such time as the applicant surrenders his or her driver license to the department.

(5)(a) In addition to the fees required under s. 320.08, a fee of 50 cents shall be charged on every license registration sold to cover the costs of the Florida Real Time Vehicle Information System. The fees collected shall be deposited into the Highway Safety Operating Trust Fund to be used exclusively to fund the system. The fee may only be used to fund the system equipment, software, personnel associated with the maintenance and programming of the system, and networks used in the offices of the county tax collectors as agents of the department and the ancillary technology necessary to integrate the system with other tax collection systems. The department shall administer this program upon consultation with the Florida Tax Collectors, Inc., to ensure that each county tax collector's office is technologically equipped and functional for the operation of the Florida Real Time Vehicle Information System and to ensure that all ancillary technology and other tax collection systems used

by tax collectors protect customer privacy and data. Any designated revenue collected to support functions of the county tax collectors and not used in a given year must remain exclusively in the trust fund as a carryover to the following year.

(b) Upon a tax collector's request, the department shall provide ancillary technology to integrate other tax collection systems used by tax collectors in order to provide tax collectors with data access and uniform interface functionalities for registration renewal transactions performed at a tax collector's office or online via a tax collector's website. The data access and uniform interface functionalities include, but are not limited to, data access and interface functionalities that other third parties receive from the department. The department shall prescribe the best manner of delivering the data access and uniform interface functionalities to tax collectors for the purpose of processing registration renewal transactions and shall provide the ability to record and process registration renewal transactions in the state system in real time and bulk data reporting for vehicle registrations, including each applicant's electronic mail address collected pursuant to s. 320.95. Such data and functionality may be used only for purposes of fulfilling the tax collector's statutory duties pursuant to this chapter, chapter 319, chapter 322, or chapter 328 and may not be resold or used for any other purpose.

Such data access and uniform interface functionalities shall be developed no later than July 1, 2023. For the purposes of this paragraph, the term "registration renewal transactions" means issuance of motor vehicle, mobile home, and trailer registration certificates, registration license plates, and validation stickers.

Section 2. Subsection (2) of section 320.95, Florida Statutes, is amended to read:

320.95 Transactions by electronic or telephonic means.—

(2) The department and tax collectors may collect electronic mail addresses and use electronic mail in lieu of the United States Postal Service for the purpose of providing renewal notices. The department and tax collectors may also use electronic mail addresses to perform their statutory duties pursuant to this chapter, chapter 319, chapter 322, or chapter 328. Electronic mail addresses collected for purposes of this chapter shall be maintained in a manner to ensure the addresses are exempt from public records requirements pursuant to s. 119.0712.

Section 3. Subsection (3) of section 328.30, Florida Statutes, is amended to read:

328.30 Transactions by electronic or telephonic means.—

(3) The department and tax collectors may collect electronic mail addresses and use electronic mail in lieu of the United States Postal Service for the purpose of providing

renewal notices. The department and tax collectors may also use electronic mail addresses to perform their statutory duties pursuant to this chapter, chapter 319, chapter 320, or chapter 322. Electronic mail addresses collected for purposes of this chapter shall be maintained in a manner to ensure the addresses are exempt from public records requirements pursuant to s. 119.0712.

Section 4. Subsection (1) of section 328.73, Florida Statutes, is amended to read:

328.73 Registration; duties of tax collectors.—

(1)(a) The tax collectors in the counties of the state, as authorized agents of the department, shall issue registration certificates and vessel numbers and decals to applicants, subject to the requirements of law and in accordance with rules of the department.

(b) Upon a tax collector's request, the department shall provide ancillary technology to integrate other tax collection systems used by tax collectors in order to provide tax collectors with data access and uniform interface functionalities for registration renewal transactions performed at a tax collector's office or online via a tax collector's website. The data access and uniform interface functionalities include, but are not limited to, data access and interface functionalities that other third parties receive from the department. The department shall prescribe the best manner of

delivering the data access and uniform interface functionalities to tax collectors for the purpose of processing registration renewal transactions and shall provide the ability to record and process registration renewal transactions in the state system in real time and bulk data reporting for vessel registrations, including each applicant's electronic mail address collected pursuant to s. 320.95. Such data and functionality may be used only for purposes of fulfilling the tax collector's statutory duties pursuant to this chapter, chapter 319, chapter 320, or chapter 322 and may not be resold or used for any other purpose. Such data access and uniform interface functionalities shall be developed no later than July 1, 2023. For the purposes of this paragraph, the term "registration renewal transactions" means vessel registration certificates, vessel numbers, and decals.

Section 5. This act shall take effect July 1, 2021.

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 motor vehicle and vessel registration data; amending s. 320.03, F.S.; requiring tax collectors or third parties contracted with tax collectors to enter into a memorandum of understanding with the Department of Highway Safety and Motor Vehicles and make certain determinations

regarding registration applicants; requiring the department to ensure that certain technology used by tax collectors protects customer privacy and data; requiring the department to provide certain technology to tax collectors upon request in order to provide data access and uniform interface functionalities for registration renewal transactions; providing requirements; authorizing use of such data and functionality for certain purposes; requiring development of data access and uniform interface functionalities by a certain date; defining the term "registration renewal transactions"; amending s. 320.95, F.S.; authorizing tax collectors to collect electronic mail addresses for the purpose of providing renewal notices; authorizing the department and tax collectors to use electronic mail addresses in the performance of certain duties; requiring electronic mail addresses to be maintained in a certain manner; amending s. 328.30, F.S.; authorizing tax collectors to collect electronic mail addresses for the purpose of providing renewal notices; authorizing the department and tax collectors to use electronic mail addresses in the performance of certain duties; requiring electronic mail addresses to be maintained in a certain manner; amending s. 328.73, F.S.; requiring the department to provide certain technology to tax collectors upon request in order to provide data access and uniform interface functionalities for registration renewal transactions; providing requirements; authorizing use of such data and functionality for certain

purposes; requiring development of data access and uniform interface functionalities by a certain date; defining the term "registration renewal transactions"; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 451 Specialty License Plates
SPONSOR(S): Hage and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 958

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

SUMMARY ANALYSIS

Approximately 120 specialty license plates are available to any owner or lessee of a motor vehicle who is willing to pay the additional annual use fee for such plate. The collected fees are distributed by the Department of Highway Safety and Motor Vehicles (DHSMV) to statutorily designated organizations in support of a particular cause or charity.

The bill creates the Honor Flight specialty license plate with an annual use fee of $25. The plate must bear DHSMV-approved colors and designs with "Florida" appearing at the top of the plate and "Honor Flight" appearing at the bottom of the plate. The annual use fees are distributed equally among Florida's Honor Flight Network hubs.

The bill will have a negative, but insignificant, fiscal impact to state expenditures associated with DHSMV's programming costs associated with the creation of the specialty license plate.

The bill has an effective date of October 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The first Florida specialty license plates were enacted in 1986 and included the creation of the Challenger plate and ten Florida collegiate plates. Today, there are approximately 120 specialty license plates available to any owner or lessee of a motor vehicle who is willing to pay the additional use fee for the privilege, typically $25 annually.[1] Current law provides that if the Legislature[2] has approved 150 or more specialty license plates, the Department of Highway Safety and Motor Vehicles (DHMSV) may not make any new specialty license plate available for design or issuance until a sufficient number of plates are discontinued[3] so that the number of plates being issued does not exceed 150.[4]

Establishment of Specialty License Plates

Section 320.08053, F.S., provides the statutory requirements to establish a specialty license plate. If a specialty license plate requested by an organization is approved by law, the organization submits its proposed art design to DHSMV as soon as practicable, but no later than 60 days after the act approving the plate becomes a law.[5]

Within 120 days after the act approving the specialty license plate becomes law, DHSMV must establish a method to issue a voucher allowing for the presale of the plate. A $5 processing fee,[6] a service charge and branch fee,[7] and an annual use fee for the specialty license plate are charged for the voucher. All other applicable fees are charged at the time the license plate is issued.[8]

Within 24 months after establishing a presale specialty license plate voucher, the approved specialty license plate must record with DHSMV a minimum of 3,000 voucher sales[9] before the license plate may be manufactured. If, at the conclusion of the 24-month presale period, the minimum sales requirement is not met, the specialty license plate is deauthorized and DHSMV discontinues the plate's development and the issuance of the presale vouchers. Upon deauthorization of the specialty license plate, a purchaser of the specialty license plate voucher may use the annual use fee collected as a credit towards any other specialty license plate or apply to DHSMV for a refund.[10]

New specialty license plates that have been approved by law, but are awaiting issuance, will be issued in the order they appear in s. 320.08058, F.S.,[11] if all statutory requirements, including the presale requirement, have been met. If the next awaiting specialty license plate has not met its presale requirement, DHSMV proceeds in the order provided in s. 320.08058, F.S., to identify the next qualified specialty license plate that has met the presale requirement. DHSMV must cycle through the list in statutory order.[12]

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[1] Section 320.08056(3)(d), F.S., provides that except if specifically provided in s. 320.08056(4), the annual use fee for a specialty license plate is $25.
[2] Creation of a specialty license plate requires an act of the Legislature.
[3] Specialty license plates are discontinued pursuant to s. 320.08056(8), F.S.
[4] S. 320.08053(3)(b), F.S.
[5] S. 320.08053(1), F.S.
[6] The processing fee is prescribed in s. 320.08056, F.S.
[7] Service charges and branch fees are prescribed in s. 320.04, F.S.
[8] S. 320.08053(2)(a), F.S.
[9] In the case of an out-of-state college or university license plate, the license plate must register 4,000 voucher sales.
[10] S. 320.08053(2)(b), F.S.
[11] S. 320.08058, F.S., creates each specialty license plate.
[12] S. 320.08053(3)(a), F.S.

If the Legislature has approved 150 or more specialty license plates, DHSMV may not make any new specialty license plates available for design or issuance until a sufficient number of plates are discontinued[13] so that the number of plates being issued is fewer than 150. The 150 plate limit applies to all specialty license plates, including those above the minimum sales threshold and those exempt from the minimum-sales threshold.[14]

Specialty License Plates, Generally

DHSMV is responsible for developing authorized specialty license plates.[15] DHSMV must issue a specialty license plate to the owner or lessee of any motor vehicle, except a vehicle registered under the International Registration Plan, a commercial truck required to display two license plates, or a truck tractor, upon request and payment of the appropriate license tax and fees.[16] Specific specialty license plates are authorized for dealer and fleet vehicles.[17] A specialty license plate for motorcycles is addressed separately in s. 320.08068, F.S.

Each request for a specialty license plate must be made annually to DHSMV or its authorized agent[18] accompanied by the following tax and fees: the vehicle's required license tax,[19] a processing fee of $5,[20] a license plate fee,[21] and a license plate annual use fee as required for the specialty license plate.[22]

Florida State Parks Foundation, Inc.

Honor Flight's mission is to transport America's veterans to Washington, D.C., to visit the memorials dedicated to honoring those who have served and sacrificed for our country. It is a national network of independent hubs working together to further Honor Flight's mission. The network currently serves veterans from World War II, the Korean War, and the Vietnam War, as well as terminally ill veterans who served during any era.[23] Florida's Honor Flight Network hubs are non-profit corporations under s. 501(c)(3) of the Internal Revenue Code. Honor Flight Hubs in Florida include Collier-Lee, First Coast, Central Florida, West Central Florida, South Florida, Tallahassee, Southeast Florida, Southwest Florida, Space Coast, and Villages.[24]

Effect of the Bill

The bill creates the Honor Flight license plate, with an annual use fee of $25.[25] The plate must bear DHSMV-approved colors and designs, with "Florida" appearing at the top of the plate and "Honor Flight" appearing at the bottom of the plate.

The annual use fees from the sale of the plate are distributed equally among Florida's Honor Flight Network Hubs. Up to 10 percent of the fees from the sale of the plate may be used for marketing the plate and costs directly associated promoting and marketing the license plate. The remaining fees must be used to further Honor Flight's mission.

The bill has an effective date of October 1, 2021.

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[13] Specialty license plates will be discontinued pursuant to s. 320.08056(8), F.S.
[14] S. 320.08053(3)(b), F.S.
[15] S. 320.08056(1), F.S.
[16] S. 320.08056(2), F.S.
[17] *See* ss. 320.06(3)(a), 320.0657(2)(a), 320.08(12) and 320.08056(2)(b) and (c), F.S.
[18] DHSMV's authorized agents are the county tax collectors.
[19] Motor vehicle license taxes are set forth in s. 320.08, F.S.
[20] The $5 processing fee is deposited into the Highway Safety Operating Trust Fund.
[21] Section 320.06(1)(b), F.S., provides for a $2.80 annual license plate replacement fee.
[22] S. 320.08056(3), F.S.
[23] Honor Flight, https://www.honorflight.org/about-us.html (last visited February 2, 2021).
[24] Honor Flight, https://www.honorflight.org/regional-honor-flight-hubs.html#florida (last visited March 5, 2021).
[25] The $25 annual use fee is provided for in existing s. 320.08056(3)(d), F.S.

B. SECTION DIRECTORY:

Section 1 Amends s. 320.08058, F.S., relating to specialty license plates.

Section 2 Provides an effective date of October 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   DHSMV will incur programming costs associated with the creation of this specialty license plate. One specialty license plate with a single distribution recipient will require between 200 and 250 hours of programming.[26] This programing can be done using existing DHSMV resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Once the license plate goes into production, Florida's Honor Flight Network hubs may see an increase in revenues associated with the sale of this license plate.

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 does not require rulemaking, nor does it provide a grant of rulemaking.

[26] Email from Kevin Jacobs, Legislative Affairs Director, Florida Department of Highway Safety and Motor Vehicles, RE: Specialty License Plates, January 26, 2021.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires the fees from the sale of the Honor Flight license plate to be used to transport military veterans to Washington, D.C., to visit memorials dedicated to honoring military sacrifices to the United States of America. However, s. 320.08056(10)(a), F.S., provides that annual use fees for specialty license plates may be expended only in this state, but provides exceptions for specified United States Armed Forces license plates. The sponsor may wish to add the Honor Flight license plate to the plates which are exceptions from the requirement that the proceeds be expended only within this state.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to specialty license plates; amending s. 320.08058, F.S.; directing the Department of Highway Safety and Motor Vehicles to develop an Honor Flight license plate; providing for distribution and use of fees collected from the sale of the plates; providing an effective date.

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

Section 1. Subsection (112) is added to section 320.08058, Florida Statutes, to read:

320.08058 Specialty license plates.—

(112) HONOR FLIGHT LICENSE PLATES.—

(a) The department shall develop an Honor Flight license plate as provided in this section and s. 320.08053. The plate must bear the colors and design approved by the department. The word "Florida" must appear at the top of the plate, and the words "Honor Flight" must appear at the bottom of the plate.

(b) The annual use fees from the sale of the plate shall be distributed equally among the Honor Flight Network hubs in this state, each of which is a nonprofit corporation under s. 501(c)(3) of the Internal Revenue Code, to be used as follows:

1. Up to 10 percent of the fees may be used for promotion and marketing of the license plate.

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

2. The remaining fees shall be used to further the Honor Flight Network's mission of transporting military veterans to Washington, D.C., in order to visit the memorials dedicated to honoring those who have served and sacrificed for the United States.

Section 2. This act shall take effect October 1, 2021.

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

TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

HB 451 by Rep. Hage
SPECIALTY LICENSE PLATES

AMENDMENT SUMMARY
MARCH 9, 2021

Amendment 1 by Rep. Hage (# 631941)

- Authorizes proceeds from the sale of the Honor Flight license plate to be spent outside of the State of Florida.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

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

Representative Hage offered the following:

Amendment (with title amendment)

Between lines 10 and 11, insert:

Section 1. Paragraph (a) of subsection (10) of section 320.08056, Florida Statutes, is amended to read:

320.08056 Specialty license plates.—

(10)(a) A specialty license plate annual use fee collected and distributed under this chapter, or any interest earned from those fees, may not be used for commercial or for-profit activities nor for general or administrative expenses, except as authorized by s. 320.08058 or to pay the cost of the audit or report required by s. 320.08062(1). The fees and any interest earned from the fees may be expended only for use in this state

unless the annual use fee is derived from the sale of United States Armed Forces and veterans-related specialty license plates pursuant to paragraph (3)(d) for the Support Our Troops, ~~and~~ American Legion, and Honor Flight license plates; paragraphs (4)(b), (q), and (v) for the Florida Salutes Veterans, United States Marine Corps, and Military Services license plates, respectively; and s. 320.0891 for the U.S. Paratrooper license plate.

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

Remove line 3 and insert:

s. 320.08056, F.S.; providing an exception to the requirement that specialty license plate annual use fees and interest earned from those fees be expended only in this state; amending s. 320.08058, F.S.; directing the Department of

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 539 Renewable Energy
SPONSOR(S): Byrd
TIED BILLS: **IDEN./SIM. BILLS:** SB 896

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Tourism, Infrastructure & Energy Subcommittee		Willson MW	Keating CK
2) Environment, Agriculture & Flooding Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

Section 366.91, F.S., defines "renewable energy" as electrical energy produced from a method that uses one or more of the following fuels or energy sources:

- hydrogen produced from sources other than fossil fuels;
- biomass;
- solar energy;
- geothermal energy;
- wind energy;
- ocean energy; and
- hydroelectric power.

Certain renewable energy projects are eligible for a variety of financing and permitting benefits. Additionally, public utilities and municipal utilities are required to continuously make available standard offer contracts for the purchase of renewable energy, subject to certain price limitations, with the costs of any purchases recoverable from the utility's ratepayers.

The bill expands the definition of "renewable energy" to include "renewable natural gas" and to specify that renewable energy means electrical energy produced "or energy created to displace traditional fuel sources" from a method that uses certain specified fuels.

The bill defines "renewable natural gas" as "anaerobically-generated biogas, landfill gas, or waste-water treatment gas refined to a methane content of 90 percent or greater which is capable of being used as transportation fuel, for electric power generation, or is of a quality capable of being injected into a natural gas pipeline."

The bill amends ss. 366.92, 373.236, and 403.973, F.S. to make conforming cross-references. The bill reenacts s. 288.9606(7), F.S., relating to the issuance of revenue bonds, to incorporate the amendments made by the bill.

The bill does not have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Renewable Energy

Florida Renewable Energy Policy

Section 366.92, F.S. declares that it is the intent of the Legislature to:

- promote the development of renewable energy;
- protect the economic viability of Florida's existing renewable energy facilities;
- diversify the types of fuel used to generate electricity in Florida;
- lessen Florida's dependence on natural gas and fuel oil for the production of electricity;
- minimize the volatility of fuel costs;
- encourage investment within the state;
- improve environmental conditions; and
- minimize the costs of power supply to electric utilities and their customers.

Section 366.91, F.S., defines "renewable energy" as electrical energy produced from a method that uses one or more of the following fuels or energy sources:

- hydrogen produced from sources other than fossil fuels;
- biomass;[1]
- solar energy;
- geothermal energy;
- wind energy;
- ocean energy; and
- hydroelectric power.

Renewable energy also includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.

Contracts for the Purchase of Renewable Energy

Since 2005, public utilities[2] have been required to continuously make available standard offer contracts for the purchase of renewable energy, with the costs of any purchases recoverable from the utility's ratepayers.[3] The law limits the price paid by a utility for renewable energy to the utility's full avoided costs, which are defined in s. 366.051, F.S., as the costs the utility would have incurred to produce the energy or capacity itself or purchase it from another source if not for the purchase of the renewable

[1] Section 366.91(2)(a), F.S. defines "Biomass" as "a power source that is comprised of, but not limited to, combustible residues or gases from forest products manufacturing, waste, byproducts, or products from agricultural and orchard crops, waste or coproducts from livestock and poultry operations, waste or byproducts from food processing, urban wood waste, municipal solid waste, municipal liquid waste treatment operations, and landfill gas."

[2] Section 366.02(1), F.S., defines a "Public utility" as "every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state." The term "public utility" does not include rural electric cooperatives, municipal electric utilities, special natural gas districts, natural gas transmission pipeline companies, natural gas marketers, or propane suppliers.

[3] S. 366.91(3), F.S. Each contract must provide a contract term of at least ten years.

energy.[4] Capacity payments are not required if, due to the operational characteristics of the renewable energy generator or the anticipated peak and off-peak availability and capacity factor of the utility's avoided unit, the renewable energy producer is unlikely to provide any capacity value to the utility or the electric grid during the contract term.[5] Prudent and reasonable costs associated with the contract must be recovered from the ratepayers of the contracting utility, without differentiation among customer classes, through the appropriate cost-recovery mechanism administered by the Florida Public Service Commission (PSC).[6]

Similarly, each municipal electric utility[7] and rural electric cooperative[8] whose annual sales, as of July 1, 1993, to retail customers were greater than 2,000 gigawatt hours must continuously offer a purchase contract with a minimum term of 10 years to producers of renewable energy. These contracts must include payment provisions for energy and capacity which are based upon the utility's or cooperative's full avoided costs, as determined by the governing body of the municipal utility or cooperative.[9]

A contracting producer of renewable energy must pay the actual costs of its interconnection with the transmission grid or distribution system.[10]

Florida Development Finance Corporation Revenue Bonds

Section 288.9606(7), F.S. authorizes the Florida Development Finance Corporation (FDFC) to issue revenue bonds to finance the undertaking of any project within the state that promotes renewable energy.

Expedited Permitting

Section 403.973, F.S., provides for expedited permitting and a process for amendments to comprehensive plans for certain projects that are identified to encourage and facilitate the location and expansion of those types of economic development projects that offer job creation and high wages, strengthen and diversify the state's economy, and have been thoughtfully planned to take into consideration the protection of the state's environment.

Under s. 403.973, F.S., the Department of Environmental Protection must direct the creation of regional permit action teams for the purpose of expediting the review of permit applications and local comprehensive plan amendments submitted by certain entities, including projects resulting in the production of biofuels cultivated on lands that are 1,000 acres or more or in the construction of a biofuel or biodiesel processing facility or a facility generating renewable energy, as defined in s. 366.91(2)(d), F.S. are eligible.

Section 403.973(19), F.S., provides that the following projects are ineligible for expedited review:

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[4] This pricing scheme reflects limits established by federal law which have been in place since adoption of the Public Utilities Regulatory Policy Act in 1978.
[5] S. 366.91(3), F.S.
[6] *Id.*
[7] There are 33 municipal electric (public power) utilities in the state, which serve approximately 3 million people or 14 percent of Florida's population. Municipal utilities are not-for-profit and governed by an elected city commission, or an appointed or elected utility board. They raise capital through operating revenues or the sale of tax-exempt bonds. *See* Florida Municipal Electric Association, *Florida Municipal Utility Map*, https://www.publicpower.com/florida-municipal-utility-map (last visited Mar. 5, 2021).
[88] Rural electric cooperatives are cooperative, nonprofit, membership corporations organized under ch. 425, F.S., for the purpose of supplying electric energy and promoting and extending the use thereof in rural areas. Florida has 16 distribution cooperatives and 2 generation and transmission cooperatives who supply electricity to more than 2.7 million Floridians in 57 of Florida's 67 counties. Cooperatives are owned by the members they serve, and provide at-cost electric service to their consumer-members. *See* Florida Electric Cooperatives Association, *About*, https://feca.com/about/ (last visited Mar. 5, 2021).
[9] S. 366.91(4), F.S.
[10] S. 366.91(8), F.S.

- A project funded and operated by a local government, as defined in s. 377.709, F.S. and located within that government's jurisdiction.
- A project, the primary purpose of which is to:
    - Effect the final disposal of solid waste, biomedical waste, or hazardous waste in this state.
    - Produce electrical power, unless the production of electricity is incidental and not the primary function of the project or the electrical power is derived from a fuel source for renewable energy as defined in s. 366.91(2)(d)., F.S.
    - Extract natural resources.
    - Produce oil.
    - Construct, maintain, or operate an oil, petroleum, or sewage pipeline.

Permits for the Consumptive Use of Water

Section 373.236(7), F.S., specifies that a consumptive use permit for a renewable energy generating facility, or for lands where 1,000 or more acres are used to cultivate agricultural products used in the production of renewable energy, must be granted for a term of at least 25 years, subject to certain conditions.

Effect of the Bill

The bill expands the definition of "renewable energy" to include "renewable natural gas" and to specify that renewable energy means electrical energy produced "or energy created to displace traditional fuel sources" from a method that uses certain specified fuels.

The bill defines "renewable natural gas" as "anaerobically-generated biogas, landfill gas, or waste-water treatment gas refined to a methane content of 90 percent or greater which is capable of being used as transportation fuel, for electric power generation, or is of a quality capable of being injected into a natural gas pipeline."

The bill defines "biogas" as "a mixture of carbon dioxide and hydrocarbons, primarily methane gas, which is released from the biological decomposition of organic materials."

The bill allows some renewable natural gas projects to be eligible for consumptive use permits with a minimum 25-year term, expedited review of permits and comprehensive plan amendments, and revenue bonds issued by the FDFC. The bill appears to allow renewable natural gas to be eligible for purchase under standard offer contracts that utilities must make available.

The bill amends ss. 366.92, 373.236, and 403.973, F.S. to make conforming cross-references.

The bill reenacts s. 288.9606(7), F.S., relating to the issuance of revenue bonds, to incorporate the amendments made by the bill.

B. SECTION DIRECTORY:

Section 1 Amends s. 366.91, F.S.; defining the terms "biogas" and "renewable natural gas"; revising the definition of the term "renewable energy" to include certain energy created to displace traditional fuel sources.

Section 2 Amends s. 366.92, F.S.; conforming a cross-reference.

Section 3 Amends s. 373.236, F.S.; conforming a cross-reference.

Section 4 Amends s. 403.973, F.S.; conforming a cross-references.

Section 5 Reenacts s. 288.9606(7), F.S., relating to the issuance of revenue bonds, to incorporate the amendments made by this act.

Section 6 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on the producers of renewable natural gas.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill adds the phrase "or energy created to displace traditional fuel sources" to the definition of renewable energy. However, the bill does not define what is meant by "traditional fuel sources." The interpretation of this phrase could change over time.

By adding the phrase "or energy created to displace traditional fuel sources" the scope of renewable energy would be expanded beyond electricity to include an energy source created to displace a traditional fuel, such as natural gas or any other fuel commodity. Consequently, the bill introduces a non-electrical source of energy into the definition of renewable energy that, pursuant to sections (3) and (4), an electric utility may be required to purchase under the requirements of the statute.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to renewable energy; amending s. 366.91, F.S.; defining the terms "biogas" and "renewable natural gas"; revising the definition of the term "renewable energy" to include certain energy created to displace traditional fuel sources; amending ss. 366.92, 373.236, and 403.973, F.S.; conforming cross-references; reenacting s. 288.9606(7), F.S., relating to the issuance of revenue bonds, to incorporate the amendments made by this act; providing an effective date.

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

Section 1. Present paragraphs (a) through (d) of subsection (2) of section 366.91, Florida Statutes, are redesignated as paragraphs (b) through (e), respectively, a new paragraph (a) and paragraph (f) are added to that subsection, and present paragraph (d) of that subsection is amended, to read:

366.91 Renewable energy.—

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

(a) "Biogas" means a mixture of carbon dioxide and hydrocarbons, primarily methane gas, which is released from the biological decomposition of organic materials.

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(e) ~~(d)~~ "Renewable energy" means electrical energy produced or energy created to displace traditional fuel sources from a method that uses one or more of the following fuels or energy sources: hydrogen produced or resulting from sources other than fossil fuels, biomass, solar energy, geothermal energy, wind energy, ocean energy, renewable natural gas, and hydroelectric power. The term includes the alternative energy resource, waste heat, from sulfuric acid manufacturing operations and electrical energy produced using pipeline-quality synthetic gas produced from waste petroleum coke with carbon capture and sequestration.

(f) "Renewable natural gas" means anaerobically-generated biogas, landfill gas, or waste-water treatment gas refined to a methane content of 90 percent or greater which is capable of being used as transportation fuel, for electric power generation, or is of a quality capable of being injected into a natural gas pipeline.

Section 2. Paragraph (b) of subsection (2) of section 366.92, Florida Statutes, is amended to read:

366.92 Florida renewable energy policy.—

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

(b) "Renewable energy" means renewable energy as defined in s. 366.91(2) ~~s. 366.91(2)(d)~~.

Section 3. Subsection (7) of section 373.236, Florida Statutes, is amended to read:

373.236 Duration of permits; compliance reports.—

(7) A permit approved for a renewable energy generating facility or the cultivation of agricultural products on lands consisting of 1,000 acres or more for use in the production of renewable energy, as defined in s. 366.91(2) ~~s. 366.91(2)(d)~~, shall be granted for a term of at least 25 years at the applicant's request based on the anticipated life of the facility if there is sufficient data to provide reasonable assurance that the conditions for permit issuance will be met for the duration of the permit; otherwise, a permit may be issued for a shorter duration that reflects the longest period for which such reasonable assurances are provided. Such a permit is subject to compliance reports under subsection (4).

Section 4. Paragraph (f) of subsection (3) and paragraph (b) of subsection (19) of section 403.973, Florida Statutes, are amended to read:

403.973 Expedited permitting; amendments to comprehensive plans.—

(3)

(f) Projects resulting in the production of biofuels cultivated on lands that are 1,000 acres or more or in the construction of a biofuel or biodiesel processing facility or a facility generating renewable energy, as defined in s. 366.91(2) ~~s. 366.91(2)(d)~~, are eligible for the expedited permitting process.

(19) The following projects are ineligible for review

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under this part:

(b) A project, the primary purpose of which is to:

1. Effect the final disposal of solid waste, biomedical waste, or hazardous waste in this state.

2. Produce electrical power, unless the production of electricity is incidental and not the primary function of the project or the electrical power is derived from a fuel source for renewable energy as defined in s. 366.91(2) ~~s. 366.91(2)(d)~~.

3. Extract natural resources.

4. Produce oil.

5. Construct, maintain, or operate an oil, petroleum, or sewage pipeline.

Section 5. For the purpose of incorporating the amendment made by this act to section 366.91, Florida Statutes, in a reference thereto, subsection (7) of section 288.9606, Florida Statutes, is reenacted to read:

288.9606 Issue of revenue bonds.—

(7) Notwithstanding any provision of this section, the corporation in its corporate capacity may, without authorization from a public agency under s. 163.01(7), issue revenue bonds or other evidence of indebtedness under this section to:

(a) Finance the undertaking of any project within the state that promotes renewable energy as defined in s. 366.91 or s. 377.803;

(b) Finance the undertaking of any project within the

state that is a project contemplated or allowed under s. 406 of the American Recovery and Reinvestment Act of 2009; or

(c) If permitted by federal law, finance qualifying improvement projects within the state under s. 163.08.

Section 6. This act shall take effect July 1, 2021.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 613 Tax Collector and License Plate Agency Operations
SPONSOR(S): Aloupis
TIED BILLS: **IDEN./SIM. BILLS:** SB 884

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

SUMMARY ANALYSIS

County tax collectors are the Department of Highway Safety and Motor Vehicles' (DHSMV) authorized agents to title and register motor vehicles, motor homes, and vessels, and to provide driver license services. However, appointed tax collectors in some charter counties are not authorized to provider driver license services. Some county tax collectors have contracted with privately-owned license plate agents (LPAs) to provide title and registration services. LPAs currently do not provides driver license services in Florida. Additionally, terms describing LPAs are not consistent across statute, nor are any of these terms defined.

The bill defines the term "license plate agency" and conforms various statutory provisions to use that term.

The bill provides that operational requirements established by DHSMV policies and procedures must be the same for both governmentally and privately managed license plate agencies.

The bill requires that appointed tax collectors in charter counties, along with their approved license plate agents, must begin providing driver license services on a limited basis, by October 31, 2021, as directed by DHSMV. Such services must include:

- Renewal of a driver license using a convenience service.
- Replacement of a driver license or identification card.
- Update of address on a driver license or identification card.
- Reinstatement of a suspended driver license when the only condition of such reinstatement is payment of fees.

The bill will have a negative fiscal impact on state government expenditures. *See* Fiscal Analysis section for details.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Under chs. 320 and 328, F.S. county tax collectors are the Department of Highway Safety and Motor Vehicles' (DHSMVs) authorized agents to title and register motor vehicles, motor homes, and vessels.[1] When processing these transactions, tax collectors charge and collect fees specified in state law,[2] which are remitted to the state. However, chs. 319, 320, and 328, F.S., also require tax collectors to retain certain statutorily prescribed service fees and charges.[3]

Currently, 65 counties have elected tax collectors who are constitutional officers, while Broward and Miami-Dade Counties have appointed tax collectors under each county's charter government. However, pursuant to s. 1(d), Art. VIII of the State Constitution, these counties will have elected tax collectors effective January 7, 2025.[4]

Sixteen counties have, or until recently had, contracts with privately owned license plate agents (LPAs) to operate 57 offices to perform title and registration services for motor vehicles, mobile homes, and vessels. In counties with elected tax collectors, LPAs only charge the fees for those services as expressly authorized in statute. In these counties, the LPAs may retain all or a portion of the statutorily authorized service fee that tax collectors are allowed to collect for motor vehicle, mobile home, and vessel title and registration services, as provided in the contracts between the LPA and the tax collector.[5] The LPAs in Broward and Miami-Dade Counties charge fees[6] for motor vehicle, mobile home, and vessel title and registration fees *in addition* to the statutory fees authorized in chs. 319, 320, and 328, F.S. The additional fees levied in Broward and Miami-Dade Counties are levied pursuant to county ordinance and are retained by the LPAs.[7]

Terms such as "license tag agent" and "tag agency" appear through Florida Statutes, relating to private tag agencies authorized to perform certain motor vehicle-related transactions. However, these terms are not defined, nor are they used consistently across the statutes.

DHSMV has transitioned its driver license services from DSHMV-owned facilities to elected county tax collectors. Florida law required DHSMV to completely transition all driver license issuance services to tax collectors who are constitutional officers under s. 1(d), Art. VIII of the State Constitution with this transition to be completed by June 30, 2015. The transition of services to appointed charter county tax collectors may occur on a limited basis as directed by DSHMV.[8]

Currently, LPAs do not provide driver license services anywhere in Florida.

Federal Driver License Requirements

Under federal rules implementing the federal REAL ID Act, specific requirements must be met for entities issuing driver licenses, including new photographs at least once every 16 years, the

[1] County tax collectors are expressly made agents of the state with respect to motor vehicle registration in s. 320.03(1), F.S., and with respect to vessel registration in s. 328.73(1), F.S.

[2] *See* s. 319.32, F.S., for motor vehicle title fees, s. 320.03, for motor vehicle registration fees, s. 320.04, F.S., as to motor vehicle service charges, and s. 328.72, F.S., as to vessel registration fees.

[3] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 SB 342, p 2. (January 14, 2021).

[4] *Id.*

[5] *Id.*

[6] Formerly the LPAs in Volusia County charged fees. An elected county tax collector took office on January 5, 2021, and the LPA offices closed by February 4, 2021. *Id.*

[7] *Id.*

[8] Section 322.02(1), F.S.

reverification of certain information at the time of renewal, the retention of certain source documents, and certain security requirements, including employee background checks and access badges. Certain physical security measures must be taken.[9]

Additionally, the Federal Voter Registration Act of 1993, also known as the motor voter law, requires a voter registration form to be included with each driver license application, including renewal applications, and there are federal requirements regarding the transmission of this data to the state election's office.[10]

Effect of the Bill

The bill defines the term "license plate agency" as an office appointed by the tax collector which is equipped with DHSMV's Florida Real Time Vehicle Information System (FRVIS) and managed by a governmental or private entity to process transactions related to motorist services on behalf of DHSMV. The bill amends various sections of statute referring to license tag agencies and tag agencies to change these references to the newly defined term "license plate agency."

The bill provides that operational requirements for license plate agencies, as established by DHSMV policies and procedures, including, but not limited to, purchases of equipment, license plates, and validation stickers and other costs incurred by DHSMV, must be the same for both governmentally and privately managed license plate agencies.

The bill requires that appointed tax collectors in charter counties, along with their approved license plate agents, must begin providing driver license services on a limited basis, by October 31, 2021, as directed by DHSMV. Such services must include:

- Renewal of a driver license using a convenience service.
- Replacement of a driver license or identification card.
- Update of address on a driver license or identification card.
- Reinstatement of a suspended driver license when the only condition of such reinstatement is payment of fees.

The bill has an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1 Amends s. 320.01, F.S., defining the term "license plate agency."

Section 2 Amends s. 320.03, F.S., relating to the registration duties of tax collectors.

Sections 3-5 Amends ss. 320.04, 320.06, and 320.0894, F.S., to conform.

Section 6 Amends s. 322.02, F.S., relating to legislative intent, driver license administration.

Sections 7-9 Amends ss. 212.1832, 681.117, and 1002.40, F.S., to conform.

Section 10 Provides an effective date of July 1, 2021.

[9] 6 C.F.R. part 37.

[10] United States Department of Justice, *The National Voter Registration Act of 1993*, https://www.justice.gov/crt/national-voter-registration-act-1993-nvra (last visited March 4, 2021).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill has a negative fiscal impact on state government expenditures since DHSMV will incur programming costs associated with allowing license plate agencies to provide certain driver license services.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill may have a negative fiscal impact on local government revenues, as county tax collectors may see a reduction in revenues associated with additional services being provided by private license plate agencies. Any revenue losses may be offset to some extent by a reduction in expenditures.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

License plate agencies may see additional revenues associated with providing additional services.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue

The bill makes conforming changes to the Hope Scholarship Program to the replace the term "tag agency" with "license plate agency." According to the Department of Revenue, where the word

"agency" is replaced in this context, the term refers to both a "designated agent" and a "private tag agent" and the word "agent" should be put back in the bill in both locations.[11]

Other Comments

The bill authorizes license plate agencies to conduct limited driver license services, but it is not clear that these services must be provided under a contract with DHSMV and the county tax collector, or if the license plate agency is required to comply with applicable federal regulations associated with providing driver license services.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

[11] Florida Department of Revenue, Agency Analysis of 2021 House Bill 613, pp. 4-5. (February 26, 2021)

A bill to be entitled

An act relating to tax collector and license plate agency operations; amending s. 320.01, F.S.; defining the term "license plate agency"; amending s. 320.03, F.S.; conforming provisions to changes made by the act; requiring certain operational requirements to be the same for governmentally and privately managed license plate agencies; amending ss. 320.04, 320.06, and 320.0894, F.S.; conforming provisions to changes made by the act; amending s. 322.02, F.S.; requiring transition of specified driver license services to tax collectors and license plate agencies on a limited basis by a certain date; amending ss. 212.1832, 681.117, and 1002.40, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsection (46) is added to section 320.01, Florida Statutes, to read:

320.01 Definitions, general.—As used in the Florida Statutes, except as otherwise provided, the term:

(46) "License plate agency" means an office appointed by the tax collector which is equipped with the department's Florida Real Time Vehicle Information System and managed by a

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governmental or private entity to process transactions related to motorist services on behalf of the department.

Section 2. Subsections (4) and (8) of section 320.03, Florida Statutes, are amended to read:

320.03 Registration; duties of tax collectors; International Registration Plan.—

(4)(a) Each tax collector or license plate agency ~~tag agent who has online computer access to the department data center or other reasonable access thereto~~ shall, except when the department has issued a registration renewal notice, upon receipt of an application for the registration of a ~~any~~ motor vehicle, determine from the driver file of the applicant whether the applicant's driver license has been canceled, suspended, or revoked and, if so, whether the applicant has surrendered his or her license to the department as required by s. 322.251. If the applicant has not surrendered his or her license in accordance with s. 322.251 ~~the provisions of that section~~, the tax collector shall refuse to register the vehicle until such time as the applicant surrenders his or her driver license to the department.

(b) The Florida Real Time Vehicle Information System shall be installed in every tax collector's office and license plate agency ~~tag agent's office~~ in accordance with a schedule established by the department in consultation with the tax collectors and contingent upon funds being made available for

the system by the state.

(c) Operational requirements for license plate agencies which are established by department policies and procedures, including, but not limited to, purchases of equipment, license plates, and validation stickers and other costs incurred by the department, shall be the same for both governmentally and privately managed license plate agencies.

(8) If the applicant's name appears on the list referred to in s. 316.1001(4), s. 316.1967(6), s. 318.15(3), or s. 713.78(13), a license plate or revalidation sticker may not be issued until that person's name no longer appears on the list or until the person presents a receipt from the governmental entity or the clerk of court that provided the data showing that the fines outstanding have been paid. This subsection does not apply to the owner of a leased vehicle if the vehicle is registered in the name of the lessee of the vehicle. The tax collector and the clerk of the court are each entitled to receive monthly, as costs for implementing and administering this subsection, 10 percent of the civil penalties and fines recovered from such persons. As used in this subsection, the term "civil penalties and fines" does not include a wrecker operator's lien as described in s. 713.78(13). If the tax collector has private license plate agencies ~~tag agents~~, such license plate agencies ~~tag agents~~ are entitled to receive a pro rata share of the amount paid to the tax collector, based upon the percentage of

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license plates and revalidation stickers issued by the license plate agency ~~tag agent~~ compared to the total issued within the county. The authority of a ~~any~~ private license plate agent to issue license plates shall be revoked, after notice and a hearing as provided in chapter 120, if he or she issues a ~~any~~ license plate or revalidation sticker contrary to the provisions of this subsection. This section applies only to the annual renewal in the owner's birth month of a motor vehicle registration and does not apply to the transfer of a registration of a motor vehicle sold by a motor vehicle dealer licensed under this chapter, except for the transfer of registrations which includes the annual renewals. This section does not affect the issuance of the title to a motor vehicle, notwithstanding s. 319.23(8)(b).

Section 3. Paragraph (b) of subsection (1) of section 320.04, Florida Statutes, is amended to read:

320.04 Registration service charge.—

(1)

(b) A service charge of $1 shall also be imposed for the issuance of each license plate validation sticker, vessel decal, and mobile home sticker issued from an automated vending facility or printer dispenser machine. This service charge is payable to the department and shall be used to provide for automated vending facilities or printer dispenser machines that are used to dispense such stickers and decals by each tax

collector's or license plate agency's ~~tag agent's~~ employee.

Section 4. Subsection (2) of section 320.06, Florida Statutes, is amended to read:

320.06 Registration certificates, license plates, and validation stickers generally.—

(2) The department shall provide the several tax collectors and license plate agencies ~~agents~~ with the necessary number of validation stickers.

Section 5. Paragraph (b) of subsection (4) of section 320.0894, Florida Statutes, is amended to read:

320.0894 Motor vehicle license plates to Gold Star family members.—The department shall develop a special license plate honoring the family members of servicemembers who have been killed while serving in the Armed Forces of the United States. The license plate shall be officially designated as the Gold Star license plate and shall be developed and issued as provided in this section.

(4)

(b) The applicant must provide documentation of the fact that the servicemember was killed while serving and proof of relationship to the servicemember to the tax collector or license plate agency ~~agent~~ before being issued a Gold Star license plate. The tax collector or license plate agent may waive the requirement for such documentation and proof if he or she has actual knowledge of the family relationship and that the

servicemember was killed while serving.

Section 6. Subsection (1) of section 322.02, Florida Statutes, is amended to read:

322.02 Legislative intent; administration.—

(1) The Legislature finds that over the past several years the department and individual county tax collectors have entered into contracts for the delivery of full and limited driver license services where such contractual relationships best served the public interest through state administration and enforcement and local government implementation. It is the intent of the Legislature that the complete transition of all driver license issuance services to tax collectors who are constitutional officers under s. 1(d), Art. VIII of the State Constitution be completed no later than June 30, 2015. The transition of services to appointed charter county tax collectors and their license plate agencies as defined in s. 320.01(46) shall ~~may~~ occur on a limited basis by October 31, 2021, as directed by the department. Such services shall include:

(a) Renewal of a driver license using a convenience service.

(b) Replacement of a driver license or identification card.

(c) Update of address on a driver license or identification card.

(d) Reinstatement of a suspended driver license when the only condition of such reinstatement is payment of fees.

Section 7. Subsection (1) of section 212.1832, Florida Statutes, is amended to read:

212.1832 Credit for contributions to eligible nonprofit scholarship-funding organizations.—

(1) The purchaser of a motor vehicle shall be granted a credit of 100 percent of an eligible contribution made to an eligible nonprofit scholarship-funding organization under s. 1002.40 against any tax imposed by the state under this chapter and collected from the purchaser by a dealer, designated agent, or private license plate agency ~~tag agent~~ as a result of the purchase or acquisition of a motor vehicle, except that a credit may not exceed the tax that would otherwise be collected from the purchaser by a dealer, designated agent, or private license plate agency ~~tag agent~~. For purposes of this subsection, the term "purchase" does not include the lease or rental of a motor vehicle.

Section 8. Subsection (1) of section 681.117, Florida Statutes, is amended to read:

681.117 Fee.—

(1) A $2 fee shall be collected by a motor vehicle dealer, or by a person engaged in the business of leasing motor vehicles, from the consumer at the consummation of the sale of a motor vehicle or at the time of entry into a lease agreement for

a motor vehicle. Such fees shall be remitted to the county tax collector or private license plate ~~tag~~ agency acting as agent for the Department of Revenue. If the purchaser or lessee removes the motor vehicle from the state for titling and registration outside this state, the fee shall be remitted to the Department of Revenue. All fees, less the cost of administration, shall be transferred monthly to the department for deposit into the Motor Vehicle Warranty Trust Fund.

Section 9. Paragraphs (a), (b), (c), and (g) of subsection (13) of section 1002.40, Florida Statutes, are amended to read:

1002.40 The Hope Scholarship Program.—

(13) SCHOLARSHIP FUNDING TAX CREDITS.—

(a) A tax credit is available under s. 212.1832(1) for use by a person that makes an eligible contribution. Eligible contributions shall be used to fund scholarships under this section and may be used to fund scholarships under s. 1002.395. Each eligible contribution is limited to a single payment of $105 per motor vehicle purchased at the time of purchase of a motor vehicle or a single payment of $105 per motor vehicle purchased at the time of registration of a motor vehicle that was not purchased from a dealer, except that a contribution may not exceed the state tax imposed under chapter 212 that would otherwise be collected from the purchaser by a dealer, designated agent, or private license plate agency ~~tag agent~~. Payments of contributions shall be made to a dealer at the time

of purchase of a motor vehicle or to a designated agent or private license plate agency ~~tag agent~~ at the time of registration of a motor vehicle that was not purchased from a dealer. An eligible contribution shall be accompanied by a contribution election form provided by the Department of Revenue. The form shall include, at a minimum, the following brief description of the Hope Scholarship Program and the Florida Tax Credit Scholarship Program: "THE HOPE SCHOLARSHIP PROGRAM PROVIDES A PUBLIC SCHOOL STUDENT WHO WAS SUBJECTED TO AN INCIDENT OF VIOLENCE OR BULLYING AT SCHOOL THE OPPORTUNITY TO APPLY FOR A SCHOLARSHIP TO ATTEND AN ELIGIBLE PRIVATE SCHOOL RATHER THAN REMAIN IN AN UNSAFE SCHOOL ENVIRONMENT. THE FLORIDA TAX CREDIT SCHOLARSHIP PROGRAM PROVIDES A LOW-INCOME STUDENT THE OPPORTUNITY TO APPLY FOR A SCHOLARSHIP TO ATTEND AN ELIGIBLE PRIVATE SCHOOL." The form shall also include, at a minimum, a section allowing the consumer to designate, from all participating scholarship funding organizations, which organization will receive his or her donation. For purposes of this subsection, the term "purchase" does not include the lease or rental of a motor vehicle.

(b) A dealer, designated agent, or private license plate agency ~~tag agent~~ shall:

1. Provide the purchaser the contribution election form, as provided by the Department of Revenue, at the time of purchase of a motor vehicle or at the time of registration of a

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motor vehicle that was not purchased from a dealer.

2. Collect eligible contributions.

3. Using a form provided by the Department of Revenue, which shall include the dealer's or agency's ~~agent's~~ federal employer identification number, remit to an organization no later than the date the return filed pursuant to s. 212.11 is due the total amount of contributions made to that organization and collected during the preceding reporting period. Using the same form, the dealer or agency ~~agent~~ shall also report this information to the Department of Revenue no later than the date the return filed pursuant to s. 212.11 is due.

4. Report to the Department of Revenue on each return filed pursuant to s. 212.11 the total amount of credits granted under s. 212.1832 for the preceding reporting period.

(c) An organization shall report to the Department of Revenue, on or before the 20th day of each month, the total amount of contributions received pursuant to paragraph (b) in the preceding calendar month on a form provided by the Department of Revenue. Such report shall include:

1. The federal employer identification number of each designated agent, private license plate agency ~~tag agent~~, or dealer who remitted contributions to the organization during that reporting period.

2. The amount of contributions received from each designated agent, private license plate agency ~~tag agent~~, or

dealer during that reporting period.

(g) A ~~Any~~ dealer, designated agent, private license plate agency ~~tag agent~~, or organization that fails to timely submit reports to the Department of Revenue as required in paragraphs (b) and (c) is subject to a penalty of $1,000 for every month, or part thereof, the report is not provided, up to a maximum amount of $10,000. Such penalty shall be collected by the Department of Revenue and shall be transferred into the General Revenue Fund. Such penalty must be settled or compromised if it is determined by the Department of Revenue that the noncompliance is due to reasonable cause and not due to willful negligence, willful neglect, or fraud.

Section 10. This act shall take effect July 1, 2021.

TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

HB 613 by Rep. Aloupis
TAX COLLECTOR and LICENSE PLATE AGENCY OPERATIONS

AMENDMENT SUMMARY
MARCH 9, 2021

Amendment 1 by Rep. Aloupis (# 768101)

- Relocates provisions of the bill that authorize license plate agencies to provide driver license services.
- Authorizes all tax collectors, effective October 1, 2021, to contract with one or more license plate agencies for specified driver license services.
- Requires the license plate agency to enter into an interagency agreement with the Department of Highway Safety and Motor Vehicles to provide driver license services.
- Provides that license plate agents are not authorized to issue driver licenses or identification cards or to possess blank driver licenses and identification cards.
- Requires funds collected from license plate agencies to be deposited into the state treasury in the same time frame as required for county tax collectors.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Representative Aloupis offered the following:

Amendment (with title amendment)

Remove lines 127-152 and insert:

Section 6. Subsection (1) of section 322.135, Florida Statutes, is amended to read:

322.135 Driver license agents.—

(1)(a) The department shall, upon application, authorize by interagency agreement any or all of the tax collectors who are constitutional officers under s. 1(d), Art. VIII of the State Constitution in the several counties of the state, subject to the requirements of law, in accordance with rules of the department, to serve as the department's ~~its~~ agent for the provision of specified driver license services.

~~(a)~~ These services shall be limited to the issuance of driver licenses and identification cards as authorized by this chapter.

(b) Effective October 1, 2021, any or all of the tax collectors may contract with one or more license plate agencies for the provision of the following specified driver license services:

1. Processing a licensee's application for renewal of any driver license eligible for renewal using a convenience service.

2. Processing a licensee's application for reinstatement of a suspended driver license and collecting the required fees therefor, if the only condition of reinstatement is payment of such fees.

3. Processing a licensee's or cardholder's request to change his or her address and application for a replacement driver license or identification card, and collecting the required fees therefor, if the licensee or cardholder is not required to renew in person.

If a tax collector who elects to contract with a license plate agency for the provision of these services has not entered into an interagency agreement with the department under paragraph (a), the department shall, upon application, authorize the tax collector by interagency agreement, subject to the requirements of law, in accordance with rules of the department, to provide

these services as the department's agent through one or more license plate agencies. A tax collector's election to contract with a license plate agency under this paragraph does not require the tax collector to provide all driver license services authorized under paragraph (a). This paragraph does not authorize a license plate agency to issue driver licenses or identification cards or possess any blank driver licenses or identification cards. If funds to be deposited into the State Treasury are collected under this paragraph by a license plate agency, the funds shall be paid into the State Treasury within the period specified in subsection (6) calculated from the date the funds are collected by the license plate agency.

(c) ~~(b)~~ Each tax collector who is authorized by the department to provide driver license services shall bear all costs associated with providing those services.

(d) ~~(c)~~ A service fee of $6.25 must be charged, in addition to the fees set forth in this chapter, for providing all services pursuant to this chapter. The service fee may not be charged:

1. More than once per customer during a single visit to a tax collector's office.

2. For a reexamination requested by the Medical Advisory Board or required pursuant to s. 322.221.

3. For a voter registration transaction.

4. In violation of any federal or state law.

5. To a veteran receiving any service pursuant to this chapter, upon presentation of a copy of the veteran's:

a. DD Form 214, issued by the United States Department of Defense;

b. Veteran health identification card, issued by the United States Department of Veterans Affairs;

c. Veteran identification card, issued by the United States Department of Veterans Affairs pursuant to the Veterans Identification Card Act of 2015, Pub. L. No. 114-31; or

d. Other acceptable form specified by the Department of Veterans' Affairs.

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

Remove lines 10-13 and insert:
made by the act; amending s. 322.135, F.S.; authorizing a tax collector to contract with license plate agencies for the provision of specified driver license services; requiring the Department of Highway Safety and Motor Vehicles to enter into interagency agreements with certain tax collectors, upon application, for the provision of those driver license services through license plate agencies; providing applicability; amending ss. 212.1832,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 621 Tax Collectors and Their Approved Agents
SPONSOR(S): Williamson
TIED BILLS: **IDEN./SIM. BILLS:** SB 342

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

SUMMARY ANALYSIS

County tax collectors serve as the Department of Highway Safety and Motor Vehicles' (DHSMV) authorized agents for motor vehicle, mobile home, and vessel titles and registrations. Some counties have contracted with privately-owned license plate agents (LPAs) to perform title and registration services. Additionally, tax collectors and their LPAs have access to DHSMV's Florida Real Time Vehicle Information System (FRVIS).

The bill requires that each LPA protect customer privacy and data collection. The bill requires each tax collector and his or her approved LPAs to enter into a memorandum of understanding (MOU) with DHSMV regarding the use of FRVIS.

The bill also requires tax collectors to determine the additional service charges that must be collected by private LPAs for motor vehicle, mobile home, and vessel titles and registrations. The additional service charges must be itemized and disclosed to the customer, and the LPA must enter into an MOU with the tax collector concerning these services and the disclosure of additional service charges.

The bill has an indeterminate fiscal impact on state and local government. *See* Fiscal Analysis section for details.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

License Plate Agencies and Fees

Under chs. 320 and 328, F.S. county tax collectors are the Department of Highway Safety and Motor Vehicles' (DHSMVs) authorized agents and may title and register motor vehicles, motor homes, and vessels.[1] When processing these transactions, tax collectors charge and collect fees specified in state law,[2] which are remitted to the state. However, chs. 319, 320, and 328, F.S., also require tax collectors to retain certain statutorily prescribed service fees and charges.[3]

Currently 65 counties have elected tax collectors who are constitutional officers. Currently, Broward and Miami-Dade Counties have appointed tax collectors under each county's charter government. However, pursuant to s. 1(d), Art. VIII of the State Constitution, these counties will have elected tax collectors effective January 7, 2025.[4]

Sixteen counties have, or until recently had, contracts with privately owned license plate agents (LPAs) to operate 57 offices to perform title and registration services for motor vehicles, mobile homes, and vessels. In counties with elected tax collectors, LPAs only charge the fees for those services as expressly authorized in statute. In these counties, the LPAs may retain all or a portion of the statutorily authorized service fee that tax collectors are allowed to collect for motor vehicle, mobile home, and vessel title and registration services, as provided in the contracts between the LPA and the tax collector.[5] The LPAs in Broward and Miami-Dade Counties charge[6] fees for motor vehicle, mobile home, and vessel title and registration fees *in addition* to the statutory fees authorized in chs. 319, 320, and 328, F.S. The additional fees levied in Broward and Miami-Dade Counties are levied pursuant to county ordinance and are retained by the LPAs.[7]

County tax collectors, as DHSMV's authorized agents, must issue registration certificates, registration license plates, validation stickers, and mobile home stickers to applicants, and provide to applicants for each the option to register emergency contact information and the option to be contacted with information about state and federal benefits available as a result of military service, in accordance with DHSMV's rules.[8]

Florida Real Time Vehicle Information System (FRVIS)

The Florida Real Time Vehicle Information System (FRVIS) is a database application used to title and register all motor vehicles, mobile homes, and vessels in Florida. The database provides real-time access to information on every motor vehicle, mobile home, and vessel registered in Florida, including residential and electronic mailing addresses.[9]

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[1] County tax collectors are expressly made agents of the state with respect to motor vehicle registration in s. 320.03(1), F.S., and with respect to vessel registration in s. 328.73(1), F.S.

[2] *See* s. 319.32, F.S., for motor vehicle title fees, s. 320.03, for motor vehicle registration fees, s. 320.04, F.S., as to motor vehicle service charges, and s. 328.72, F.S., as to vessel registration fees.

[3] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 621, p 2. (February 4, 2021).

[4] *Id.*

[5] *Id.*

[6] Formerly the LPAs in Volusia County charged fees. An elected county tax collector took office on January 5, 2021, and the LPA offices closed by February 4, 2021. *Id.*

[7] *Id.*

[8] Section 320.03(1), F.S.

[9] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 621, p 3. (February 4, 2021).

Section 320.03(4)(b), F.S., requires that FRVIS be installed in every tax collector's and LPA's office according to a scheduled established by DHSMV in consultation with the tax collectors and contingent upon the state providing funds for the system. FRVIS is administered by DHSMV in consultation with the Florida Tax Collectors, Inc., to ensure that each county tax collector's office is able to operate FRVIS. Only DHSMV, tax collectors, and LPAs have access to FRVIS. Access to FRVIS is governed by memoranda of understanding (MOUs) between DHSMV and each county tax collector. If a tax collector has contracted with an LPA, an additional MOU between DHSMV, the tax collector and the LPA is created.[10]

A fee of 50 cents is charged on each motor vehicle, mobile home, and vehicle registration to cover the cost of FRVIS.[11] These fees are deposited into the Highway Safety Operating Trust Fund to be used exclusively to fund FRVIS.[12]

Effect of the Bill

The bill amends s. 320.03, F.S., to require county tax collectors and their approved license tax agents to enter into an MOU with DHSMV regarding the use of FRVIS. This codifies existing practice.

The bill also amends ss. 319.32(2), 320.04(3), and 328.72(7), F.S., to require county tax collectors to determine the additional service charges to be collected by his or her LPAs[13] for motor vehicle, mobile home and vessel title and registration services. This service charge is in addition to the current fees or charges collected by a county tax collector. The bill requires these charges to be disclosed and itemized to any customer who is required to pay the additional service charges. The LPA is also required to enter into a contract with the tax collector regarding the disclosure of additional service changes.

The bill has an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1 Amends s. 320.03, F.S., relating to the registration duties of tax collectors.

Section 2 Amends s. 319.32, F.S., relating to fees; service charge; disposition.

Section 3 Amends s. 320.04, F.S., relating to the registration service charge.

Section 4 Amends s. 328.72, F.S., relating to classification, registration, fees and charges; disposition of fees; fines; marine turtle stickers.

Section 5 Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

[10] *Id.* at. 3-4. (January 14, 2021).
[11] *See* ss. 320.03(5) and 328.73(3), F.S.
[12] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 House Bill 621, pp. 3-4. (February 4, 2021).
[13] Different terms are used to describe the term "license plate agent" in each of the three statute sections.

2. Expenditures:

Indeterminate. If the bill leads to more tax collectors using LPAs or additional LPA offices being established, DHSMV's recurring costs for replacing equipment in tax collectors' and LPAs' office may increase. This could potentially impact the ability of the Highway Safety Trust Fund to pay all of the costs for FRVIS and other trust fund purposes.[14]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. To the extent that a tax collector performs a smaller share of title and registration work in his or her county and an LPA performs a greater share, the tax collector may retain a larger share of the statutorily authorized fees for such work, if those fees are not shared with the LPA.[15]

2. Expenditures:

Indeterminate. To the extent that a county tax collector performs less title and registration work in his or her county and an LPA performs a greater share, the tax collector's expenditures for performing such work may decrease.[16]

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. County tax collectors will determine the additional service charges that must be collected from license plate agencies.

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 revenue in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Fees

Article VII, s. 19 of the Florida Constitution requires the imposition, authorization, or raising of a state tax or fee be contained in a separate bill that contains no other subject and be approved by two-thirds of the membership of each house of the Legislature. Art. VII, s. 19 of the Florida Constitution may apply if the provisions of the bill that authorize county tax collectors to establish additional service charges for LPAs are determined to authorize a new state fee.

While a county tax collector's office is not a state agency, in its role as DHSMV's authorized agent it is considered a "state agency" when acting pursuant to s. 320.03, F.S., providing motor vehicle and mobile home services.[17] Additionally, a 1974 Attorney General Opinion concluded that tax collectors

[14] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 HB 621 342, p. 5. (January 14, 2021).
[15] *Id.*
[16] *Id.*
[17] *See Dealer Tag Agency, Inc. v. First Hillsborough Auto Tag Agency, Inc.*, 14 So. 3d. 1238, 1240 (Fla 2d DCA 2009).

are under DHSMV's direction and control when providing motor vehicle and mobile home registrations and issuing driver licenses.[18] Therefore, any fee that a tax collector authorizes an LPA to charge may be a state fee since they relate to a tax collector's duties pursuant to chs. 319, 320, and 328, F.S.[19]

Unlawful Delegation

The bill authorizes county tax collectors to determine the additional service charges to be collected by private LPAs. But does not provide guidance or limitations on these charges. This lack of guidance may violate the nondelegation doctrine, requiring that the Legislature make fundamental and primary policy decisions and that the administration of legislative programs be pursuant to minimal standards and guidelines ascertainable by reference to the law establishing the program.[20] However, a customer may avoid these charges by choosing to conduct business directly with the tax collector's office and not the LPA.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

In different sections of the bill, the terms "license tag agents"; "license plate agents," and "privately owned approved license plate agents" appear refer to the same type of entity, but using different terms.

Other Comments

According to DHSMV, the bill does not address Off-Highway Vehicle titles, since those types of vehicle are not included in the definition of the term "motor vehicle" in ch. 322, F.S. The definition of "off-highway vehicles" and their associated fees are in ch. 317, F.S., DHSMV recommends similar provisions to the tax collector fee provision be added to the bill for off-highway vehicles.[21]

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[18] FL AGO 74-101 (Apr. 1, 1974).
[19] Department of Highway Safety and Motor Vehicles, Agency Analysis of 2021 SB 342, p. 6-7. (January 14, 2021).
[20] *Id.* Citing *Askew v. Cross Key Waterways,* 372 So. 2d 913, 925 (Fla. 1978)
[21] *Id.*

A bill to be entitled

An act relating to tax collectors and their approved agents; amending s. 320.03, F.S.; requiring a tax collector's approved license tag agents to protect customer privacy and data collection while using the Florida Real Time Vehicle Information System; requiring tax collectors and their approved license tag agents to enter into a memorandum of understanding with the Department of Highway Safety and Motor Vehicles regarding use of the system; amending ss. 319.32, 320.04, and 328.72, F.S.; requiring a tax collector to determine service charges collected by privately owned approved license plate agents for motor vehicle title certificates, license plates for or registration of motor vehicles, and registration of vessels, respectively; requiring such agents to enter into contracts with the tax collector for the purpose of disclosing such service charges to customers; providing an effective date.

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

Section 1. Subsection (5) of section 320.03, Florida Statutes, is amended to read:

320.03 Registration; duties of tax collectors;

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

International Registration Plan.—

(5) In addition to the fees required under s. 320.08, a fee of 50 cents shall be charged on every license registration sold to cover the costs of the Florida Real Time Vehicle Information System. The fees collected shall be deposited into the Highway Safety Operating Trust Fund to be used exclusively to fund the system. The fee may only be used to fund the system equipment, software, personnel associated with the maintenance and programming of the system, and networks used in the offices of the county tax collectors as agents of the department and the ancillary technology necessary to integrate the system with other tax collection systems. The department shall administer this program upon consultation with the Florida Tax Collectors, Inc., to ensure that each county tax collector's office is technologically equipped and functional for the operation of the Florida Real Time Vehicle Information System and that each tax collector's approved license tag agents protect customer privacy and data collection. Each tax collector and his or her approved license tag agents shall enter into a memorandum of understanding with the department regarding use of the Florida Real Time Vehicle Information System in accordance with paragraph (4)(b). Any designated revenue collected to support functions of the county tax collectors and not used in a given year must remain exclusively in the trust fund as a carryover to the following year.

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

Section 2. Paragraph (c) is added to subsection (2) of section 319.32, Florida Statutes, to read:

319.32 Fees; service charges; disposition.—

(2)

(c) In exercising his or her authority to contract with a license plate agent, the tax collector shall determine the additional service charges to be collected by his or her privately owned approved license plate agents, which fees shall be fully itemized and disclosed to the customer. Each license plate agent shall enter into a contract with the tax collector regarding the disclosure of additional service charges.

Section 3. Subsection (3) of section 320.04, Florida Statutes, is renumbered as subsection (4), and a new subsection (3) is added to that section to read:

320.04 Registration service charge.—

(3) In exercising his or her authority to contract with a license tag agent, the tax collector shall determine the additional service charges to be collected by his or her privately owned approved license tag agents, which fees shall be fully itemized and disclosed to the customer. Each license tag agent shall enter into a contract with the tax collector regarding the disclosure of additional service charges.

Section 4. Subsection (7) of section 328.72, Florida Statutes, is amended to read:

328.72 Classification; registration; fees and charges;

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

surcharge; disposition of fees; fines; marine turtle stickers.—

(7) SERVICE FEE.—

(a) In addition to other registration fees, the vessel owner shall pay the tax collector a $2.25 service fee for each registration issued, replaced, or renewed. Except as provided in subsection (15), all fees, other than the service charge, collected by a tax collector must be remitted to the department not later than 7 working days following the last day of the week in which the money was remitted. Vessels may travel in salt water or fresh water.

(b) In exercising his or her authority to contract with a license plate agent, the tax collector shall determine the additional service charges to be collected by his or her privately owned approved license plate agents, which fees shall be fully itemized and disclosed to the customer. Each license plate agent shall enter into a contract with the tax collector regarding the disclosure of additional service charges.

Section 5. This act shall take effect July 1, 2021.

TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

HB 621 by Rep. Williamson
TAX COLLECTORS and THEIR APPROVED AGENTS

AMENDMENT SUMMARY
MARCH 3, 2021

Amendment 1 (Strike-All Amendment) by Rep. Williamson (# 742277)

- Clarifies that provisions authorizing a tax collector to contract with license plate agents are permissive.
- Provides that the tax collector may determine the additional service charges collected by license plates agents.
- Reorganizes the bill's provisions to place them in statutory order.

Amendment No.

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 Williamson offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (c) is added to subsection (2) of section 319.32, Florida Statutes, to read:

319.32 Fees; service charges; disposition.—

(2)

(c) If a tax collector elects to exercise his or her authority to contract with a license plate agent, the tax collector may determine additional service charges to be collected by the privately owned license plate agents approved by the tax collector. Additional service charges must be fully itemized and disclosed to the person paying the service charges

to the license plate agent. The license plate agent shall enter into a contract with the tax collector regarding the disclosure of additional service charges.

Section 2. Subsection (5) of section 320.03, Florida Statutes, is amended to read:

320.03 Registration; duties of tax collectors; International Registration Plan.—

(5) In addition to the fees required under s. 320.08, a fee of 50 cents shall be charged on every license registration sold to cover the costs of the Florida Real Time Vehicle Information System. The fees collected shall be deposited into the Highway Safety Operating Trust Fund to be used exclusively to fund the system. The fee may only be used to fund the system equipment, software, personnel associated with the maintenance and programming of the system, and networks used in the offices of the county tax collectors as agents of the department and the ancillary technology necessary to integrate the system with other tax collection systems. The department shall administer this program upon consultation with the Florida Tax Collectors, Inc., to ensure that each county tax collector's office is technologically equipped and functional for the operation of the Florida Real Time Vehicle Information System. Tax collectors and their approved license plate agents shall enter into a memorandum of understanding with the department regarding use of the Florida Real Time Vehicle Information System in accordance

with paragraph (4)(b). Any designated revenue collected to support functions of the county tax collectors and not used in a given year must remain exclusively in the trust fund as a carryover to the following year.

Section 3. Present subsection (3) of section 320.04, Florida Statutes, is redesignated as subsection (4), and a new subsection (3) is added to that section, to read:

320.04 Registration service charge.—

(3) If a tax collector elects to exercise his or her authority to contract with a license plate agent, the tax collector may determine additional service charges to be collected by privately owned license plate agents approved by the tax collector. Additional service charges must be fully itemized and disclosed to the person paying the service charges to the license plate agent. The license plate agent shall enter into a contract with the tax collector regarding the disclosure of additional service charges.

Section 4. Subsection (7) of section 328.72, Florida Statutes, is amended to read:

328.72 Classification; registration; fees and charges; surcharge; disposition of fees; fines; marine turtle stickers.—

(7) SERVICE FEE.—

(a) In addition to other registration fees, the vessel owner shall pay the tax collector a $2.25 service fee for each registration issued, replaced, or renewed. Except as provided in

subsection (15), all fees, other than the service charge, collected by a tax collector must be remitted to the department not later than 7 working days following the last day of the week in which the money was remitted. Vessels may travel in salt water or fresh water.

(b) If a tax collector elects to exercise his or her authority to contract with a license plate agent, the tax collector may determine additional service charges to be collected by privately owned license plate agents approved by the tax collector. Additional service charges must be fully itemized and disclosed to the person paying the service charges to the license plate agent. The license plate agent shall enter into a contract with the tax collector regarding the disclosure of additional service charges.

Section 5. This act shall take effect July 1, 2021.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to tax collectors and their approved agents; amending s. 319.32, F.S.; authorizing tax collectors to determine service charges collected by privately owned license plate agents for motor vehicle titles; requiring that additional service charges be

itemized and disclosed to the person paying them; requiring a license plate agent to enter into a contract with the tax collector for a certain purpose; amending s. 320.03, F.S.; requiring tax collectors and approved license plate agents to enter into a memorandum of understanding with the Department of Highway Safety and Motor Vehicles for a certain purpose; amending s. 320.04, F.S.; authorizing the tax collector to determine service charges collected by privately owned license plate agents for motor vehicle registrations; requiring that additional service charges be itemized and disclosed to the person paying them; requiring a license plate agent to enter into a contract with the tax collector for a certain purpose; amending s. 328.72, F.S.; authorizing the tax collector to determine service charges collected by privately owned license plate agents for vessel registrations and titles; requiring that additional service charges be itemized and disclosed to the person paying them; requiring a license plate agent to enter into a contract with the tax collector for a certain purpose; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1051 Environmental Compliance Costs
SPONSOR(S): Fernandez-Barquin
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 964

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

SUMMARY ANALYSIS

Under current law, investor-owned electric utilities may recover certain costs, such as fuel related expenses and environmental compliance costs, outside of base rates through separate cost recovery charges approved by the Public Service Commission (PSC). Environmental compliance costs are recovered through a statutorily created mechanism known as the Environmental Cost Recovery Clause (ECRC).

The bill revises the definition of "environmental compliance costs" for purposes of the ECRC to include costs or expenses incurred by an electric utility after July 1, 2021, pursuant to an agreement between the electric utility and a wastewater utility for the construction and operation of a wastewater reuse system that fully or partially satisfies a local government's statutory reclaimed water reuse requirements. The bill also requires at least 50 percent of the reclaimed water the reuse system produces to be used in conjunction with the water requirements of an electrical generating facility or facilities owned by the electric utility.

The bill does not have a fiscal impact on state or local governments, but may result in changes to electric rates paid be private and government entities. *See* Fiscal Analysis for details.

The bill has an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Ratemaking for Investor-Owned Electric Utilities

The Public Service Commission (PSC) has broad jurisdiction over the rates and service of investor-owned electric utilities (IOUs) in Florida.[1] Under this broad grant of authority, and through more specific grants of authority in chapter 366, F.S., the PSC sets rates for each IOU through five primary components, each of which is established in a separate administrative proceeding:

- Base rates
  - Designed to recover most operations and maintenance expenses, capital investments, and a return on capital investment.
- Fuel and purchased power cost recovery charges
  - Designed to recover the costs of fuel and the energy component of wholesale power purchases.
  - By PSC order, may include recovery of capital investments, including a return on investment, in limited circumstances.
- Capacity cost recovery charges
  - Designed to recover costs of the capacity component of wholesale power purchases.
  - By statute, may include recovery of certain costs related to development of new nuclear power plants, including a return, provided that the costs will be moved into base rates when the new plant becomes operational.[2]
- Environmental cost recovery charges
  - Designed to recover costs to comply with government-mandated environmental standards.
  - By statute, may include recovery of certain capital investments, including a return on investment, provided that these costs may be moved into base rates at the IOU's next rate case.[3]
- Energy conservation and efficiency cost recovery charges
  - Designed to recover costs of implementing PSC-approved energy conservation and efficiency programs.

In each base rate proceeding, the PSC sets a reasonable rate of return on equity for the IOU. After rates are set, the actual rate of return on equity earned by an IOU fluctuates over time as utility revenues and expenses fluctuate.

Environmental Cost Recovery Charges

Separate from base rates, environmental cost recovery charges are set annually, and revenue collected through the Environmental Cost Recovery Clause (ECRC) provides cash flow for the specific operations and maintenance activities and large equipment modifications necessary to comply with environmental laws and regulations.[4]

The ECRC was established by the Legislature in 1993. To implement this law, the PSC established three criteria for approval of recovery through the ECRC:

- The electric utility's costs were prudently incurred after April 13, 1993.

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[1] *See, e.g.,* ss. 366.01, 366.04(1), 366.041, 366.05(1), and 366.06, F.S. There are five public electric utilities in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Company. Florida Power & Light Company and Gulf Power Company operate under the same parent company, NextEra Energy, Inc.

[2] S. 366.93, F.S.

[3] S. 366.8255, F.S.

[4] Public Service Commission, Agency Analysis of 2021 House Bill 1051 p. 1 (March 3, 2021).

- The activity is legally required to comply with a governmentally imposed environmental regulation enacted, became effective, or whose effect was triggered after the electric utility's last test year upon which rates are based.
- The electric utility's costs are not recovered through some other cost recovery mechanism or through base rates.[5]

Environmental compliance costs are defined in statute as all costs or expenses incurred by an electric utility in complying with environmental laws or regulations.[6] Environmental compliance costs include, but are not limited to:

- Inservice capital investments, including the electric utility's last authorized rate of return on equity;
- Operation and maintenance expenses;
- Fuel procurement costs;
- Purchased power costs;
- Emission allowance costs;
- Direct taxes on environmental equipment;
- Costs or expenses prudently incurred by an electric utility pursuant to an agreement entered into between the electric utility and the Department of Environmental Protection (DEP) or the United States Environmental Protection Agency (EPA) for the exclusive purpose of ensuring compliance with ozone ambient air quality standards by an electrical generating facility owned by the electric utility; and
- Costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage conducted in this state for the purpose of reducing an electric utility's greenhouse gas emissions when such costs or expenses are incurred in joint research projects with Florida state government agencies and universities.[7]

Reuse of Reclaimed Water

Water conservation and the promotion of reuse of reclaimed water have been established by the Legislature as formal state objectives.[8] Reuse is defined as the deliberate application of reclaimed water for a beneficial purpose.[9] Reclaimed water is defined as water from a domestic wastewater[10] treatment facility that has received at least secondary treatment[11] and basic disinfection[12] for reuse.[13]

Reclaimed water is reused for various purposes, such as irrigation, industrial uses, groundwater recharge, and prevention of saltwater intrusion in coastal groundwater aquifers.[14] Industrial uses of

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[5] *See* PSC Order No. PSC-94-0044-FOF-EI, issued January 12, 1994, in Docket No. 930613-EI, In re: Petition to establish an environmental cost recovery clause pursuant to Section 366.0825, Florida Statutes by Gulf Power Company. Section 120.80(13), F.S., exempts cost recovery clause proceedings from rulemaking requirements.

[6] S. 366.8255(1)(d), F.S. Environmental laws or regulations are defined as "all federal, state, or local statutes, administrative regulations, orders, ordinances, resolutions, or other requirements that apply to electric utilities and are designed to protect the environment."

[7] S. 366.8255(1)(d), F.S.

[8] Ss. 403.064(1) and 373.250(1), F.S.

[9] R. 62-610.200(52), F.A.C.

[10] Section 367.021(5), F.S., defines the term "domestic wastewater" to mean wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

[11] Rule 62-610.200(54), F.A.C. defines the term "secondary treatment" to mean "wastewater treatment to a level that will achieve the effluent limitations specified in paragraph 62-600.420(1)(a), F.A.C."

[12] Rule 62-600.440(5), F.A.C., provides the requirements for basic disinfection.

[13] Section 373.019(17), F.S.; R. 62-610.200(48), F.A.C.

[14] Martinez, Christopher J. and Clark, Mark W., *Reclaimed Water and Florida's Water Reuse Program*, UF/IFAS Agricultural and Biological Engineering Department (rev. 07/2012), *available at* https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.590.5063&rep=rep1&type=pdf.

reclaimed water include plant wash-down and processing and cooling water.[15] Several power plants throughout the state use reclaimed water for cooling purposes.[16]

Local governments are authorized and encouraged under Florida law to implement programs for the reuse of reclaimed water and are authorized to allocate the costs of such programs in a reasonable manner.[17]

Ocean Outfalls

An ocean outfall occurs when a wastewater treatment facility or other facility discharges treated effluent into coastal or ocean waters.[18] State law prohibits construction of new ocean outfalls and requires that all six ocean outfalls in Florida cease discharging wastewater by December 31, 2025.[19] In addition, wastewater facilities that discharged wastewater through an ocean outfall on July 1, 2008, are required to install a reuse system no later than December 31, 2025.[20] Existing discharges through ocean outfalls were required to meet advanced wastewater treatment requirements[21] by December 31, 2018.[22]

Effect of the Bill

The bill amends 366.8255(1)(d), F.S., by expanding the definition of environmental compliance costs to include the costs or expenses incurred by an electric utility, after July 1, 2021, in constructing and operating a wastewater reuse system pursuant to an agreement between the electric utility and a wastewater utility. The bill requires that the wastewater reuse system fully or partially satisfy a local government's reclaimed water reuse requirements under s. 403.064, F.S.,[23] or s. 403.086, F.S.[24] The bill further requires that at least 50 percent of the produced reclaimed water is used in conjunction with the water requirements of one or more of the utility's electrical generating facilities.

Under the bill, an electric utility that constructs a new wastewater reuse system that satisfies the expanded definition of environmental compliance costs may begin to seek recovery of all its prudently incurred costs and expenses through the ECRC. The electric utility's level of cost recovery through the ECRC may include depreciation of the capital investments in the wastewater reuse system, the associated direct operating and maintenance expenses, and associated indirect expenses such as taxes and a return on its capital investments.

The bill has an effective date July 1, 2021.

B. SECTION DIRECTORY:

Section 1 Amends s. 366.8255, F.S., relating to environmental cost recovery.

Section 2 Provides an effective date of July 1, 2021.

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[15] Department of Environmental Protection (DEP), *Uses of Reclaimed Water*, https://floridadep.gov/water/domestic-wastewater/content/uses-reclaimed-water (last visited Mar. 5, 2021).
[16] DEP, *Industrial Uses of Reclaimed Water*, https://floridadep.gov/water/domestic-wastewater/content/industrial-uses-reclaimed-water (last visited Mar. 5, 2021).
[17] Section 403.064(9)-(10), F.S.
[18] DEP, *Ocean Outfall Study Final Report* ES-1 (Apr. 18, 2006), *available at* https://floridadep.gov/sites/default/files/OceanOutfallStudy_0.pdf.
[19] S. 403.086(10), F.S.; Ch. 2008-232, L.O.F.
[20] S. 403.086(10)(c), F.S.
[21] S. 403.086(4), F.S.
[22] S. 403.086(10)(b), F.S.
[23] Section 403.064, F.S., relates to the use of reclaimed water.
[24] Section 403.086, F.S., relates to sewage disposal facilities.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None. Any increased workload associated with the PSC's review of the ECRC petition is expected to be handled within existing PSC resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill may result in higher electric rates for local governments if an electric utility's costs increase due to agreements with wastewater utilities for wastewater reuse systems.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in higher electric rates if an electric utility's costs increase due to agreements with wastewater utilities for wastewater reuse systems.

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 revenue in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Due to economies of scale, it is possible that a joint-use wastewater reuse system will result in lower total costs to the electric utility and wastewater utility when compared with two independent actions by these parties. While it is possible that the agreement between the parties could apportion cost and liability responsibilities, the bill does not require the agreement to address these matters. Therefore, the

bill may be read to create an incentive or an expectation that local governments shift cost and liability responsibilities from wastewater utilities to electric utilities.

Additionally, the bill appears to alter the scope of the statute by expanding the definition of environmental compliance costs to include costs for projects that are not imposed on an investor-owned electric utility by an environmental law or regulation. The new provision is not associated with any government environmental mandate but rather includes the construction and operation of a wastewater reuse facility or system based on the decisions and agreements made by private entities.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

A bill to be entitled

An act relating to environmental compliance costs; amending s. 366.8255, F.S.; redefining the term "environmental compliance costs" to include costs or expenses prudently incurred by an electric utility in complying with specified reclaimed water reuse requirements; providing an effective date.

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

Section 1. Paragraph (d) of subsection (1) of section 366.8255, Florida Statutes, is amended to read:

366.8255 Environmental cost recovery.—

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

(d) "Environmental compliance costs" includes all costs or expenses incurred by an electric utility in complying with environmental laws or regulations, including, but not limited to:

1. Inservice capital investments, including the electric utility's last authorized rate of return on equity thereon.

2. Operation and maintenance expenses.

3. Fuel procurement costs.

4. Purchased power costs.

5. Emission allowance costs.

6. Direct taxes on environmental equipment.

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

7. Costs or expenses prudently incurred by an electric utility pursuant to an agreement entered into on or after the effective date of this act and prior to October 1, 2002, between the electric utility and the Florida Department of Environmental Protection or the United States Environmental Protection Agency for the exclusive purpose of ensuring compliance with ozone ambient air quality standards by an electrical generating facility owned by the electric utility.

8. Costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage conducted in this state for the purpose of reducing an electric utility's greenhouse gas emissions when such costs or expenses are incurred in joint research projects with Florida state government agencies and Florida state universities.

9. Costs or expenses prudently incurred by an electric utility after July 1, 2021, pursuant to an agreement between the electric utility and a wastewater utility for the exclusive purpose of the electric utility constructing and operating a wastewater reuse system that fully or partially satisfies a local government's reclaimed water reuse requirements under s. 403.064 or s. 403.086, where at least 50 percent of the reclaimed water the reuse system produces is used in conjunction with the water requirements of an electrical generating facility or facilities owned by the electric utility.

Section 2. This act shall take effect July 1, 2021.

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

TOURISM, INFRASTRUCTURE & ENERGY SUBCOMMITTEE

HB 1051 by Rep. Fernandez-Barquin
ENVIRONMENTAL COMPLIANCE COSTS

AMENDMENT SUMMARY
MARCH 9, 2021

Amendment 1 (Strike-All Amendment) by Rep. Fernandez-Barquin (# 697643)

- Specifies that an electric utility's water reuse project, to be eligible for cost recovery as an environmental compliance cost under the bill, must:
    - Be incurred pursuant to an agreement between the electric utility and a governmental wastewater utility; and
    - Serve to further compliance with environmental laws or regulations that apply to the electric utility.
- Provides that at least 50 percent of the reclaimed water produced by an eligible project must be used in conjunction with the water requirements of an electric generating facility.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

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

Representative Fernandez-Barquin offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (d) of subsection (1) of section 366.8255, Florida Statutes, is amended to read:

366.8255 Environmental cost recovery.—

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

(d) "Environmental compliance costs" includes all costs or expenses incurred by an electric utility in complying with environmental laws or regulations, including, but not limited to:

1. Inservice capital investments, including the electric utility's last authorized rate of return on equity thereon.

2. Operation and maintenance expenses.

3. Fuel procurement costs.

4. Purchased power costs.

5. Emission allowance costs.

6. Direct taxes on environmental equipment.

7. Costs or expenses prudently incurred by an electric utility pursuant to an agreement entered into on or after the effective date of this act and prior to October 1, 2002, between the electric utility and the Florida Department of Environmental Protection or the United States Environmental Protection Agency for the exclusive purpose of ensuring compliance with ozone ambient air quality standards by an electrical generating facility owned by the electric utility.

8. Costs or expenses prudently incurred for scientific research and geological assessments of carbon capture and storage conducted in this state for the purpose of reducing an electric utility's greenhouse gas emissions when such costs or expenses are incurred in joint research projects with Florida state government agencies and Florida state universities.

9. Costs or expenses prudently incurred by an electric utility after July 1, 2021, pursuant to an agreement between the electric utility and a governmental wastewater utility for the exclusive purpose of the electric utility constructing and operating a wastewater reuse system where operation of the system will serve to further compliance with environmental laws

or regulations that apply to the electric utility and where the system fully or partially satisfies a local government's reclaimed water reuse requirements under s. 403.064 or s. 403.086. At least 50 percent of the reclaimed water the system produces must be used in conjunction with the water requirements of an electrical generating facility or facilities owned by the electric utility in order to offset all or part of the electric utility's water use authorized by permit.

Section 2. This act shall take effect July 1, 2021.

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

Remove everything before the enacting clause and insert:

A bill to be entitled

An act relating to environmental compliance costs; amending s. 366.8255, F.S.; redefining the term "environmental compliance costs" to include costs or expenses prudently incurred by an electric utility in complying with specified reclaimed water reuse requirements; providing an effective date.

PCS for HB 839

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 839 Preemption of Energy Infrastructure Regulation
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		Willson MW	Keating CK

SUMMARY ANALYSIS

Municipalities and counties derive broad home rule authority from the Florida Constitution and general law. Special districts are separate local governmental entities that exist for specific purposes. General law authorizes local governments to regulate a variety of matters related to energy infrastructure, including the ability to own and operate their own energy infrastructure.

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies it precludes a local government from exercising authority in that particular area.

The bill expressly preempts the regulation of transportation energy infrastructure to the state, and specifies that any existing or future law, ordinance, regulation, policy, or resolution that is contrary to the preemption is void.

Except as authorized by general law, the bill prohibits local governments from:

- Adopting or implementing any law, ordinance, regulation, policy, or resolution that has the effect of prohibiting, restricting, or requiring, the construction of new transportation energy infrastructure or the expansion, upgrading, or repair of existing transportation energy infrastructure, or
- imposing any requirement regulating transportation energy infrastructure that is more stringent than state law or DEP rule, except for certain county ordinances regulating underground petroleum storage tanks enacted before Sept. 1, 1984.
- Amending its comprehensive plan, land use map, zoning districts, or land development regulations in a manner that would conflict with an existing transportation energy infrastructure classification as a permitted and allowable use including, but not limited to, an amendment that causes an existing transportation energy infrastructure to be a nonconforming use, structure, or development.
- Imposing transportation energy infrastructure requirements that are more stringent than state law or DEP rule.

The bill does not limit the authority of a local government to adopt, implement, modify, and enforce applicable federal and state requirements for transportation energy infrastructure, including safety and building standards.

The bill defines the term "transportation energy infrastructure" as "infrastructure supporting the production, import, storage, and distribution of fuels used for transportation including, but not limited to, petroleum, petroleum products, gasoline, diesel fuel, motor fuel, alternative fuel, marine fuel, aviation fuel, renewable fuel, natural gas, hydrogen, and electricity."

The fiscal impact of the bill is indeterminate. See *Fiscal Comments* Section.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Local Government Powers[1]

Article VIII of the Florida Constitution establishes the authority for home rule by counties and municipalities in Florida. The Legislature is required to divide the state into counties[2] and has the authority to choose to create municipalities.[3] The Florida Constitution recognizes two types of county government in Florida: those operating under a county charter and those without a charter. Florida currently has 67 counties.[4] County ordinances must be filed with the custodian of state records, and take effect at the time provided by law.[5]

Noncharter Counties

A county without a charter has such power of self-government *as provided* by general[6] or special law, and may enact county ordinances not inconsistent with general law.[7] General law authorizes counties "the power to carry on county government"[8] and to "perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."[9]

Section 125.01, F.S., provides that the legislative and governing body of a county shall have the power to carry on county government and that "to the extent not inconsistent with general or special law, this power includes, among other things, the power to:"

- Prepare and enforce comprehensive plans for the development of the county.
- Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.
- Establish and administer programs of housing, slum clearance, community redevelopment, conservation, flood and beach erosion control, air pollution control, and navigation and drainage and cooperate with governmental agencies and private enterprises in the development and operation of such programs.
- Establish, merge or abolish municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which may be provided a number of essential facilities and municipal services from funds derived from service charges, special assessments, or taxes.
- Levy and collect taxes and special assessments; borrow and expend money; and issue bonds, revenue certificates, and other obligations of indebtedness.
- Adopt ordinances and resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law.
- Enforce the Florida Building Code, and adopt and enforce local technical amendments thereto.

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[1] *See generally* Florida House of Representatives, *Local Government Formation Manual 2018-2020*, Chapter 1.
[2] FLA. CONST. art. VIII, s. 1(a).
[3] FLA. CONST. art. VIII, s. 2(a).
[4] *See* Local Government Formation Manual 2018-2020, Appendix B for a list of these counties and their dates of incorporation.
[5] FLA. CONST. art. VIII, s. 2(i).
[6] ch. 125, Part I, F.S.
[7] FLA. CONST. art. VIII, s. 1(f).
[8] S. 125.01(1), F.S.
[9] S. 125.01(1)(w), F.S.

Section 125.01, F.S., also provides:

- The enumeration of powers herein may not be deemed exclusive or restrictive, but is deemed to incorporate all implied powers necessary or incident to carrying out such powers enumerated.
- The provisions of this section shall be liberally construed in order to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution.

The governing body of a county also has the power to establish, and subsequently merge or abolish, dependent special districts including both incorporated and unincorporated areas.

This delegation of home rule power to noncharter counties is broad.[10] Nevertheless, it is a legislative, not a constitutional, grant of home rule power, and as such is subject to legislative regulation through law in the same manner as is a municipality.[11]

Noncharter counties must organize their governing body either in the traditional commission form or the commission-administrator form of county government, which may be enacted by county ordinance.[12] If an ordinance enacted by a noncharter county conflicts with a municipal ordinance, the county ordinance is not effective within the municipality to the extent of the conflict.[13]

Charter Counties

Pursuant either to general[14] or special law, a county government may be adopted by charter approved by the county voters. A county with a charter has all powers of self-government *not inconsistent* with general law or special law approved by the county voters. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. In the event of a conflict between a county and municipal ordinance, the charter must provide which ordinance prevails.[15]

Article VIII, section 6(e) of the Florida Constitution incorporates by reference sections of the 1885 Constitution, providing unique authorization[16] for specific home rule charters including those of Duval[17] and Miami-Dade Counties.[18] Currently, 20 Florida counties have adopted charters.[19]

The most significant distinction between charter and non-charter county power is the constitutional provision for direct power of self-government to a county upon charter approval, whereas a non-charter county has "such power of self-government as is provided by general or special law." Charter counties possess greater home rule authority than non-charter counties, as follows[20]:

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[10] *Santa Rosa County v. Gulf Power Corp.*, 635 So. 2d 96 (Fla. 1st DCA. 1994).
[11] David G. Tucker, *A Primer On Counties and Municipalities - Part 1,* 81 FLA. BAR J. 49 (2007).
[12] *See* ss. 125.01(1), 125.72, F.S.
[13] *Id.*
[14] S. 125.60, F.S.
[15] FLA. CONST. art. VIII, s. 1(g).
[16] Article VIII, section 6(e) of the Florida Constitution, states that specific provisions for Duval, Miami-Dade, Monroe, and Hillsborough Counties "shall remain in full force and effect as to each county affected, as if this article had not been adopted, until that county shall expressly adopt a charter or home rule plan pursuant to this article."
[17] The consolidated government of the City of Jacksonville was created by Ch. 67-1320, Laws of Fla., adopted pursuant to article VIII, section 9 of the 1885 Florida Constitution.
[18] Dade County, now known as Miami-Dade County, has unique home rule status. Article VIII, section 11(5) of the 1885 Florida Constitution, now incorporated by reference in article VIII, section 6(e) of the 1968 Florida Constitution, further provided the Metropolitan Dade County Home Rule Charter, and any subsequent ordinances enacted pursuant to the charter, may conflict with, modify, or nullify any existing local, special, or general law applicable only to Dade County. Accordingly, Miami-Dade County ordinances enacted pursuant to the Charter may implicitly, as well as expressly, amend or repeal a special act that conflicts with a Miami-Dade County ordinance. Effectively, the Miami-Dade Charter can only be altered through constitutional amendment, general law, or County actions approved by referendum. *Chase v. Cowart*, 102 So. 2d 147, 149-50 (Fla. 1958).
[19] Alachua, Brevard, Broward, Charlotte, Clay, Columbia, Duval (consolidated government with the City of Jacksonville, ch. 67-1320, Laws of Fla.), Hillsborough, Lee, Leon, Miami-Dade, Orange, Osceola, Palm Beach, Pinellas, Polk, Sarasota, Seminole, Volusia, and Wakulla Counties. Local Government Formation Manual 2018-2020, p. 4.
[20] *Id.* at 4.

- A special act of the Legislature may not diminish the home rule powers of a charter county unless the act is approved by electors in the county.[21]
- A county's charter may authorize the county to regulate an activity on a countywide basis and provide that the county regulation prevails over any conflicting municipal ordinance.[22]
- A charter county may levy any tax within its jurisdiction that is authorized by general law for a municipality unless the general law prohibits levy by a county.[23]

Municipalities[24]

A municipality is a local government entity created to perform functions and provide services for the particular benefit of the population within the municipality, in addition to those provided by the county. The term "municipality" may be used interchangeably with the terms "town," "city," and "village."

Article VIII, section 2 of the Florida Constitution provides that municipalities "shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.[25]

Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,[26] acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.[27] Chapter 166, F.S., provides municipalities with broad home rule powers, respecting expressed limits on municipal powers established by the Florida Constitution, applicable laws, and county charters.[28] Pursuant to these powers, approximately 32 Florida municipalities own, operate, and control electric utilities, and 26 municipalities own, operate and control natural gas utilities.

Currently, there are approximately 412 municipalities in Florida.[29] With the exception of Miami-Dade County, the Legislature is authorized to establish or abolish municipalities or amend their charters by general or special law.[30] In Miami-Dade County, the Board of County Commissioners has exclusive authority to provide a method for establishing new municipalities and prescribing their jurisdiction and powers.[31]

Special Districts[32]

Special districts are separate governmental entities existing for specific purposes and having substantial fiscal and administrative independence from general purpose governments. Special districts have existed in the United States for over 200 years and are found in every state and the District of Columbia.

In Florida, special districts perform a wide variety of functions, such as providing fire protection services, delivering urban community development services, and managing water resources. Special districts typically are funded through ad valorem taxes, special assessments, user fees, or impact fees. The Uniform Special District Accountability Act, ch. 189, F. S., generally governs the creation and

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[21] FLA. CONST. art. VIII, s. 1(g).
[22] *Id.*
[23] *McLeod v. Orange County,* 645 So. 2d 411, 413 (Fla. 1994); *State ex rel. Volusia County v. Dickerson,* 269 So. 2d 9, 11 (Fla. 1972).
[24] *See generally* Local Government Formation Manual 2018-2020, Chapter 2.
[25] FLA. CONST. art. VIII, s. 2(b).
[26] S. 166.011, F.S.
[27] Local Government Formation Manual 2018-2020, p. 16.
[28] S. 166.021(4), F.S.
[29] *See* Local Government Formation Manual 2018-2020, Appendix E for a list of these cities and their dates of incorporation.
[30] Local Government Formation Manual 2018-2020, p. 15.
[31] FLA. CONST. art. VIII, s. 6(e), incorporating 1885 FLA. CONST. art. VIII, s. 11(e).
[32] *See generally* Local Government Formation Manual 2018-2020, Chapter 5.

operations of special districts; however, other general laws may more specifically govern the operations of certain types of special districts.

As of February 28, 2021, there are 628 active dependent[33] special districts and 1,158 active independent special districts in Florida.[34] Community development districts are the most frequently created form of independent special district. Other common special districts in Florida include drainage and water control districts, fire control districts, and community redevelopment districts.[35] Currently, one special electric district and four special natural gas districts exist in Florida.[36]

Intergovernmental Utility Authorities

The Florida Interlocal Cooperation Act of 1969 (Act) allows local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.[37] The Act provides that local governmental entities may jointly exercise their powers by entering into a contract in the form of an interlocal agreement.[38] Under such an agreement, the local governmental units may create a separate legal or administrative entity "to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities."[39]

In 1978, the Florida Municipal Power Agency (FMPA) was created through a series of interlocal agreements under s. 163.01, F.S., to provide wholesale power supply to municipal electric utilities. FMPA is currently owned by 31 municipalities.[40] Through various joint power supply projects[41], it supplies all of the electrical power needs of 13 member utilities (referred to as "All-Requirements Project" or "ARP" members) and some of the power needs for seven other member utilities. Through these projects, FMPA members maintain ownership interests in various electrical power plants throughout Florida. FMPA manages the transmission of electrical power over facilities owned by FMPA or its ARP members. FMPA also manages a "power pool" that includes the generating resources of its All-Requirements Project, Lakeland Electric, and Orlando Utilities Commission.[42]

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[33] Dependent special districts are under some control by a single county or municipality, whereas independent special districts do not have any dependent characteristics. A special district that includes more than one county is independent unless it lies wholly within the boundaries of a single municipality.

[34] Florida Department of Economic Opportunity, Division of Community Development, Special District Accountability Program, Official List of Special Districts Online, *State Totals*, http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/report.cfm (last visited Feb. 28, 2021).

[35] Florida Department of Economic Opportunity, Division of Community Development, Special District Accountability Program, Official List of Special Districts Online, *Special District Function Totals* at http://www.floridajobs.org/community-planning-and-development/assistance-for-governments-and-organizations/special-district-accountability-program (last visited Feb. 28, 2021).

[36] *See* PSC, Facts & Figures of the Florida Utility Industry http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/April%202020.pdf (last visited Feb. 28, 2021).

[37] S. 163.01(2), F.S.

[38] S. 163.01(5), F.S.

[39] S. 163.01(2), F.S.

[40] Currently, FMPA serves the following municipalities: Alachua, Bartow, Blountstown, Bushnell, Chattahoochee, Clewiston, Fort Meade, Fort Pierce, Gainesville, Green Cove Springs, Havana, Homestead, Jacksonville Beach, Key West, Kissimmee, Lake Worth, Lakeland, Leesburg, Moore Haven, Mount Dora, New Smyrna Beach, Newberry, Ocala, Orlando, Quincy, St. Cloud, Starke, Vero Beach, Wauchula, Williston, and Winter Park. FLORIDA MUNICIPAL POWER AGENCY, *Members*, http://fmpa.com/about/members/ (last visited Feb. 28, 2021).

[41] Section 361.12, F.S., authorizes any electric utility, or any organization, association, or separate legal entity whose membership consists only of electric utilities, to join with any other such entity to finance, acquire, construct, manage, operate, or own an electric power supply project for the joint generation or transmission of electrical energy, or both. Further, section 361.13, F.S., authorizes any such entity to purchase capacity or energy, or both, in an agreed upon quantity from any project in which the purchaser has an ownership interest.

[42] FLORIDA MUNICIPAL POWER AGENCY. For a list of the projects and the cities participating in each project, see FLORIDA MUNICIPAL POWER AGENCY, *Projects*, https://fmpa.com/power-supply-projects/ (last visited Feb. 28, 2021).

Local Government Authority to Regulate Matters Related to Energy Infrastructure

Local Regulation of Oil and Gas Exploration and Production

While cities and counties do not operate oil and gas permitting programs in Florida, some, through their land use regulations or zoning ordinances, require special exceptions for oil and gas activities or limit oil and gas activities to certain zoning classifications.[43] When authorizing oil and gas exploration and production activities, local governments consider factors such as consistency with their comprehensive plan, injuries to communities or the public welfare, and compliance with zoning ordinances.[44]

In certain instances, DEP may not issue a permit without specified approval. DEP may not issue permits to drill a gas or oil well:

- Within the corporate limits of a municipality without a resolution approving the permit from the governing authority;[45]
- In tidal waters abutting or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters without a resolution approving the permit from the governing authority;[46] or
- On any improved beach, located outside of an incorporated town or municipality, or at a location in the tidal waters abutting or immediately adjacent to an improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters without a resolution approving the permit from the county commission.[47]

If the proposed oil or gas well is on lands owned by the Board of Trustees of the Internal Improvement Trust Fund (BOT), it may not grant a lease for gas, oil, or mineral rights:

- Within the corporate limits of a municipality without a resolution approving the lease from the governing authority;[48]
- In tidal waters abutting or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters without a resolution approving the lease from the governing authority;[49]
- On any improved beach, located outside of an incorporated town or municipality, or at a location in the tidal waters abutting or immediately adjacent to an improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters without a resolution approving the lease from the county commission;[50] or
- In Florida's territorial waters in the Gulf of Mexico or Atlantic Ocean.[51]

Six municipalities (Estero, Bonita Springs, Coconut Creek, Cape Coral, Dade, and Zephyrhills) and thirteen counties (Alachua, Bay, Brevard, Broward, Citrus, Indian River, Martin, Miami-Dade, Osceola, Pinellas, St. Lucie, Volusia, Wakulla, and Walton) have banned one or more forms of well stimulation techniques (commonly referred to as 'fracking') by ordinance.[52] Additionally, many other counties and

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[43] *See, e.g.*, Lee County's Land Development Code §§ 34-1651 and 34-145(c).
[44] *Id.*
[45] S. 377.24(5), F.S.
[46] S. 377.24(6), F.S.
[47] S. 377.24(7), F.S.
[48] S. 253.61(1)(a), F.S.
[49] S. 253.61(1)(b), F.S.
[50] S. 253.61(1)(c), F.S.
[51] S. 253.61(1)(d), F.S.
[52] Village of Estero, Ordinance No. 2015-19; Bonita Spring's Land Development Code, Chapter 4, Article VI, Division 15, Section 4-1380; Coconut Creek's Land Development Code, Article IV, Section 13-1000; City of Cape Coral, Ordinance §3.23; City of Dade, Ordinance No. 2016-08; City of Zephyrhills, Ordinance No. 1310-16; Alachua County's Code of Ordinances, §77.13.5; Bay County's Land Development Regulation, §311; Brevard County's Code of Ordinances, §46-375; Citrus County's Code of Ordinances, §66-133; Indian River County's Code of Ordinances, §317.03; Osceola County's Land Development Code, §4.12.3; Broward County's Code of Ordinances, §27-193; Martin County's Code of Ordinances, §67.441; Miami-Dade County's Code of Ordinances, §33-437; Pinellas County's Code of Ordinances, §58-489; St. Lucie County's Code of Ordinances, Policy 6.1.5.7; Volusia County's Code of Ordinances, §50-42; Wakulla County's Code of Ordinances, §6-34; Walton County's Code of Ordinances, §9-156.

cities have passed resolutions supporting various types of bans and moratoriums relating to well stimulation techniques.[53]

Other Specific Authority Related to Energy Infrastructure

Chapter 403, F.S., provides for the regulation of air and water pollution control in Florida, which entails a variety of pollution-related directives to DEP and delegates specific authority to local governments concerning a number of issues.[54] For example, part II of ch. 403, F.S. provides a participatory role to local governments related to power plant and transmission line siting,[55] including a consistency determination with local land use plans, zoning ordinances, local environmental regulations, and other standards[56], and part VIII of ch. 403, F.S., provides a participatory role to local governments related to the siting of natural gas transmission pipelines.[57]

Additionally, general law provides specific authority for certain local governments to:

- Prepare and enforce comprehensive plans for the development of the county.[58]
- Establish, coordinate, and enforce zoning and such business regulations as are necessary for the protection of the public.[59]
- Enter into contracts with utility companies or others for the supplying by such utility companies or others of water, electricity, or telephone service to or in connection with any project.[60]
- Construct, operate and maintain gas plants and distribution systems for domestic, municipal and industrial uses;[61] construct such other buildings and facilities as may be required to properly and economically operate and maintain such works;[62] and make all necessary rules or regulations governing the use, control and operation of such works;[63]
- Contract with private companies for the right to construct, operate and maintain gas plants and distribution systems for domestic, municipal and industrial uses, including the privilege or franchise of exercising its corporate powers for such terms of years and upon such conditions and limitations as may be deemed expedient and for the best interest of the municipality, for up to 30 years, provided that the rates or charges to be made by the private company to the individual users of the utility are fixed by the municipality.[64]
- Provide and regulate roads, rights-of-way, and related transportation facilities.[65]
- Enforce the Florida Building Code and adopt and enforce local technical amendments thereto.[66]

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[53] *See* Food & Water Watch, *Local Regulations Against Fracking*, http://www.foodandwaterwatch.org/insight/local-resolutions-against-fracking#florida (last visited Feb. 28, 2021). The page shows a list of local governments that passed resolutions against fracking.

[54] Section 403.021(4), F.S., declares that "local and regional air and water pollution control programs are to be supported to the extent practicable as essential instruments to provide for a coordinated statewide program of air and water pollution prevention, abatement, and control for the securing and maintenance of appropriate levels of air and water quality" and s. 403.061(18), F.S., directs DEP to "Encourage local units of government to handle pollution problems within their respective jurisdictions on a cooperative basis and provide technical and consultative assistance therefor."

[55] Section 403.506(3), F.S., states that "the filing of an application shall not prevent an electric utility from seeking separate licenses for facilities that are necessary to construct the electrical power plant. Licenses, permits, or approvals issued by any state, regional, or local agency for such facilities shall be incorporated by the department into a final certification upon completion of construction." Section 403.50665, F.S.,

[56] Ss. 403.50655, F.S. 403.507(2)(a)3., F.S., 403.526(2)(a)5., F.S.

[57] Section 43.9405, F.S. states that "Except as otherwise provided in this section, the exemption of a natural gas transmission pipeline under ss. 403.9401-403.9425 does not constitute an exemption for the natural gas transmission pipeline from other applicable permitting processes under other provisions of law or local government ordinances." Additionally, s. 403.941, F.S., provides that "Each local government in which the natural gas transmission pipeline or natural gas transmission pipeline corridor will be located shall prepare a report as to the impact of each proposed natural gas transmission pipeline or corridor on matters within its jurisdiction, including the consistency of the proposed natural gas transmission pipeline or corridor with all applicable local ordinances, regulations, standards, or criteria that apply to the proposed natural gas transmission pipeline or corridor, including local comprehensive plans, zoning regulations, land development regulations, and any applicable local environmental regulations adopted pursuant to s. 403.182 or by other means"

[58] S. 125.01(1)(g), F.S.

[59] S. 125.01(1)(h), F.S.

[60] S. 125.012(19), F.S.

[61] S. 180.06(8), F.S.

[62] S. 180.06(9), F.S.

[63] S. 180.13, F.S.

[64] S. 180.14, F.S.

[65] S. 125.01(1)(m), F.S.

[66] S. 125.01(1)(bb), F.S.

- To adopt, revise, and amend, from time to time, appropriate ordinances, rules, and regulations reasonably necessary to maintain air quality standards established pursuant to state and federal law, including the federal Clean Air Act.[67]
- License the use of gas and power lines in right-of-ways.[68]
- Issue development permits and orders.[69]
- Code enforcement.[70]

Interlocal Service Boundary Agreements[71]

As an alternative process for annexation, the respective governing bodies of counties, municipalities, or independent special districts may enter into an interlocal service boundary agreement, jointly determining how services are provided to residents and property.[72] The statute creates a more flexible process for adjusting municipal boundaries and addresses a wider range of the effects of annexation. The purpose is to encourage intergovernmental coordination in planning, service delivery, and boundary adjustments and to reduce conflicts and litigation between local entities. Local governments may develop their own process for reaching an interlocal service boundary agreement meeting certain requirements or use the process provided in statute.

One issue that may be addressed in an interlocal service boundary agreement is identifying services and infrastructure not currently provided by an electric utility or a natural gas transmission company (the law does not affect territorial agreements between electric or public utilities or affect the determination of territorial disputes by the Florida Public Service Commission).

The agreement may address other issues related to service delivery and include the transfer of services and infrastructure, fiscal compensation to one county, municipality, or independent special district from another local government or special district, and provide for the joint use of facilities and colocation of services.[73] The agreement may require the municipality to send the county a report on its planned service delivery.[74] Finally, an interlocal service boundary agreement may be valid for up to 20 years, must include a provision requiring periodic review, and must require renegotiations to begin at least 18 months before the termination date.[75]

The ability of counties and municipalities to negotiate interlocal service boundary agreements does not impair any existing franchise agreement or contract without the consent of the franchisee or contracting party. Local governments retain their authority to negotiate franchise agreements for the use of public rights-of-way and providing service.[76]

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[67] S. 125.275, F.S.
[68] S. 125.42, F.S.
[69] Ss. 125.022, F.S. and 166.033, F.S.
[70] S. 166.0415, F.S.
[71] *See generally* Local Government Formation Manual 2018-2020, Chapter 3, Part XII.
[72] Ch. 171, part II, F.S
[73] S. 171.203(6)(g)-(h), F.S.
[74] S. 171.203(6)(i), F.S.
[75] S. 171.203(12), F.S.
[76] *See* S. 171.203(19)-(20), F.S. "This part does not impair any existing franchise agreement without the consent of the franchisee, any existing territorial agreement between electric utilities or public utilities under chapter 366, or the jurisdiction of the Public Service Commission to resolve a territorial dispute involving electric utilities or public utilities in accordance with s. 366.04. In addition, an interlocal agreement entered into under this section has no effect in a proceeding before the Public Service Commission involving a territorial dispute. A municipality or county shall retain all existing authority, if any, to negotiate a franchise agreement with any private service provider for use of public rights-of-way or the privilege of providing a service"

State Regulation of Energy Infrastructure

Oil and Gas Exploration and Production

The Department of Environmental Protection's (DEP) Mining and Minerals Regulation Program in the Division of Water Resource Management (Division) oversees permitting for oil and gas drilling, production, and exploration within Florida through its Oil and Gas Program (Program).[77] The Program's primary responsibilities include conserving and controlling the state's oil and gas resources and products; protecting the correlative rights of landowners, owners and producers of oil and gas resources and products, and others interested in these resources and products; safeguarding the health, property, and public welfare of the state's residents; and protecting the environment.[78] DEP addresses these concerns through a system of permits and field inspections to ensure compliance.

DEP must adopt rules and issue orders to implement and enforce the Program.[79] The rules and orders must ensure that all precautions are taken to prevent the spillage of oil or any other pollutant in all phases of the drilling for, and extracting of, oil, gas, or other petroleum products, or during the injection of gas into and recovery of gas from a natural gas storage reservoir.[80] DEP must adopt rules and orders for the following purposes:

- To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the pollution of the fresh, salt, or brackish waters or the lands of the state and to protect the integrity of natural gas storage reservoirs;
- To prevent the alteration of the sheet flow of water in any area;
- To require that appropriate safety equipment be installed to minimize the possibility of an escape of oil or other petroleum products in the event of accident, human error, or a natural disaster during drilling, casing, or plugging of any well and during extraction operations;
- To require the drilling, casing, and plugging of wells to be done in such a manner as to prevent the escape of oil or other petroleum products from one stratum to another;
- To prevent the intrusion of water into an oil or gas stratum from a separate stratum;
- To require a reasonable bond, or other form of security acceptable to the department, conditioned upon the performance of the duty to plug properly each dry and abandoned well and the full and complete restoration by the applicant of the area over which geophysical exploration, drilling, or production is conducted to the similar contour and general condition in existence prior to such operation;
- To require and carry out a reasonable program of monitoring or inspection of all drilling operations, producing wells, or injecting wells, including regular inspections by division personnel;
- To require the making of reports showing the location of all oil and gas wells; the making and filing of logs; the taking and filing of directional surveys; the filing of electrical, sonic, radioactive, and mechanical logs of oil and gas wells; if taken, the saving of cutting and cores, the cuts of which shall be given to the Bureau of Geology; and the making of reports with respect to drilling and production records;
- To prevent wells from being drilled, operated, or produced in such a manner as to cause injury to neighboring leases, property, or natural gas storage reservoirs;
- To prevent the drowning by water of any stratum, or part thereof, capable of producing oil or gas in paying quantities and to prevent the premature and irregular encroachment of water which reduces, or tends to reduce, the total ultimate recovery of oil or gas from any pool.
- To require the operation of wells with efficient gas-oil ratio, and to fix such ratios;
- To prevent "blowouts," "caving," and "seepage;"
- To prevent fires;

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[77] The Oil and Gas Program is governed by part 1 of ch. 377, F.S., and chs. 62C-25 through 62C-30, F.A.C.
[78] S. 377.06, F.S.
[79] S. 377.22(2), F.S.
[80] *Id.*

- To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures, and storage and transportation equipment and facilities;
- To regulate the "shooting," perforating and chemical treatment of wells;
- To regulate secondary recovery methods, including the introduction of gas, air, water, or other substance into producing formations;
- To regulate gas cycling operations;
- To regulate the storage and recovery of gas injected into natural gas storage facilities;
- To, if necessary, determine, limit, and prorate the production of oil or gas, or both, from any pool or field in the state;
- To require certificates of clearance or tenders in connection with the transportation or delivery of oil or gas, or any product;
- To regulate the spacing of wells and to establish drilling units;
- To prevent, so far as is practicable, reasonably avoidable drainage from each developed unit which is not equalized by counterdrainage;
- To require that geophysical operations requiring a permit be conducted in a manner which will minimize the impact on hydrology and biota of the area, especially environmentally sensitive lands and coastal areas;
- To regulate aboveground crude oil storage tanks in a manner which will protect the water resources of the state; and
- To act in a receivership capacity for fractional mineral interests for which the owners are unknown or unlocated and to administratively designate the operator as the lessee.[81]

DEP possesses the power and authority to issue permits:

- For the drilling for, exploring for, or production of oil, gas, or other petroleum products that are to be extracted from below the surface of the land, including submerged land, only through the well hole drilled for oil, gas, and other petroleum products.[82]
- To explore for and extract minerals that are subject to extraction from the land by means other than through a well hole.[83]
- To establish natural gas storage facilities or construct wells for the injection and recovery of any natural gas for storage in natural gas storage reservoirs.[84]

DEP may not permit to drill a well in search of oil or gas:

- In Florida's territorial waters in the gulf of Mexico or Atlantic Ocean;[85]
- In bays or estuaries;[86]
- Within one mile of coastline;[87]
- Within 1 mile of seaward boundary of any local, state, or federal park or aquatic or wildlife preserve;[88] and
- Within 1 mile inland from Gulf, Atlantic, any bay, or any estuary 1 mile of any freshwater lake, river, or stream unless the DEP is satisfied that the natural resources of such bodies of water and shore areas of the state will be adequately protected in the event of accident or blowout.[89]

DEP monitors and inspects drilling operations, producing wells, or injecting wells.[90] Division staff working in the field offices inspect all permitted activities. Each permit issued by DEP must contain an agreement that the permit holder will not prevent inspection by Division personnel at any time.[91]

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[81] Id.
[82] S. 377.242(1), F.S.
[83] S. 377.242(2), F.S.
[84] S. 377.242(3), F.S.
[85] Ss. 377.24(9) and 377.242(1)(a)5., F.S.
[86] S. 377.242(1)(a)1., F.S.
[87] S. 377.242(1)(a)2., F.S.
[88] S. 377.242(1)(a)3., F.S.
[89] S. 377.242(1)(a)4., F.S.
[90] Section 377.22(2)(g), F.S.
[91] Section 377.242, F.S.

Well Stimulation ("Fracking")

Well stimulation refers to any action taken by a well operator to increase the inherent productivity of an oil or gas well.[92] Common examples of well stimulation treatments are hydraulic fracturing and acid fracturing. Both hydraulic fracturing and acid fracturing involve the pressurized injection of fluids and chemicals to create fractures within a rock formation. The fractures then allow for more oil and gas to escape the rock formation and migrate up the well.

DEP's rules currently require an operator to notify DEP before beginning any workover operation on an oil or gas well.[93] A workover is defined as "an operation involving a deepening, plug back, repair, cement squeeze, perforation, hydraulic fracturing, acidizing, or other chemical treatment which is performed in a production, disposal, or injection well in order to restore, sustain, or increase production, disposal, or injection rates."[94] Thus, an operator performing a well stimulation need not apply for a separate permit authorizing the well stimulation, but must only provide notification to DEP before beginning the operation.

Florida Public Service Commission

The Florida Public Service Commission ("PSC" or "commission") is an arm of the legislative branch of government.[95] 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.[96] 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.[97]

The PSC monitors the safety and reliability of the electric power grid[98] and may order the addition or repair of infrastructure as necessary.[99] Further, the PSC reviews application to determine the need for certain new electrical power plants[100] and certain large transmission lines[101] as part of DEP's siting process.

Florida Solar Energy Center

In order to develop a sound energy policy relating to incident solar energy[102] in Florida and ensure that solar energy systems manufactured or sold within the state are effective and represent a high level of quality, the Legislature formed the Florida Solar Energy Center (FSEC)[103] in 1976 to serve as the state's energy research institute.[104]

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[92] Keith B. Hall, *Recent Developments in Hydraulic Fracturing Regulation and Litigation*, 29 J. LAND USE & ENVTL. L. 29, 22 (2013).
[93] R. 62C-29.006(1), F.A.C.
[94] R. 62C-25.002(61), F.A.C.
[95] s. 350.001, F.S.
[96] FLA. PUBLIC SERVICE COMMISSION, *The PSC's Role*, http://www.psc.state.fl.us (last visited Feb. 26, 2021).
[97] *Id.* The PSC regulated five investor-owned electric companies, eight investor-owned natural gas utilities, and 151 investor-owned water and/or wastewater utilities. While the PSC does not fully regulate publicly owned municipal or cooperative electric utilities, the Commission does have jurisdiction, with regard to rate structure, territorial boundaries, bulk power supply operations, and planning, over 35 municipally owned electric systems and 18 rural electric cooperatives. The PSC has jurisdiction, with regard to territorial boundaries and safety, over 27 municipally owned natural gas utilities and 4 gas districts, and also exercises safety authority over all electric and natural gas systems operating in the state. FLA. PUBLIC SERVICE COMMISSION, 2020 ANNUAL REPORT 14 (2020), http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf. (last visited Feb. 28, 2021).
[98] S. 366.04(5) & (6), F.S.
[99] S. 366.05(1) & (8), F.S.
[100] S. 403.519, F.S.
[101] S. 403.537, F.S.
[102] "Incident" in the study of physics means "the striking of a ray of light, beam of electrons, etc., on a surface;" therefore, in this instance, "incident solar energy" means solar energy from solar rays striking a building, etc. Dictionary.com, LLC, *Incidence*, http://www.dictionary.com/browse/incidence (last visited Feb. 28, 2021).
[103] S. 377.705(2)(a)-(b), F.S.
[104] Florida Solar Energy Center, *About Us*, http://www.fsec.ucf.edu/en/about/index.htm (last visited Feb. 26, 2021).

All solar energy systems manufactured or sold in Florida must meet the standards set by FSEC.[105] FSEC also accepts standards and certifications for solar thermal products from the Solar Rating & Certification Corporation (SRCC) [106] and the International Association of Plumbing and Mechanical Officials[107] (IAPMO).[108] In addition, the current version of the Code provides that solar energy systems installed in Florida are required to meet certain standards.[109]

Florida Department of Agriculture and Consumer Services

The Florida Department of Agriculture and Consumer Services (FDACS) is responsible for the administration of a number of programs relating to energy infrastructure, including the Renewable Energy and Energy-Efficient Technologies Grants Program,[110] the Energy efficiency and conservation clearinghouse,[111] the Florida Green Government Grants Act,[112] the Natural gas fuel fleet vehicle rebate program,[113] as well as statutory authorization to allocate federal energy conservation bonds[114] and to post information on its website relating to alternative fueling stations or electric vehicle charging stations that are available for public use.[115]

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature "has preempted a particular subject area" or (2) the local enactment conflicts with a state statute. Where state preemption applies it precludes a local government from exercising authority in that particular area.[116]

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[117] Express preemption of a field by the

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[105] s. 377.705(4)(d), F.S.
[106] SRCC produces solar thermal standards and certifications which are widely used globally. Solar Rating & Certification Corporation, *About Us – General*, https://solar-rating.org/ (last visited Feb. 28, 2021).
[107] IAPMO certifies solar thermal products for use in North America. International Association of Plumbing and Mechanical Officials, *Solar Product Certification*, http://www.iapmort.org/Pages/SolarCertification.aspx (last visited Feb. 28, 2021).
[108] Florida Solar Energy Center, *Testing and Certification*, http://www.fsec.ucf.edu/En/certification-testing/index.htm (last visited Feb. 28, 2021).
[109] Chapter 14 of the 5th edition of the Florida Building Code (Mechanical), Chapters 9 and 23 of the 5th edition of the Florida Building Code (Residential), Chapter 15 of the 5th edition of the Florida Building Code (Building), and Chapter 4 of the 5th edition of the Florida Building Code (Energy Conservation).
[110] Section 377.804, F.S., is established within FDACS "to provide renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies and innovative technologies that significantly increase energy efficiency for vehicles and commercial buildings."
[111] Section 377.805, F.S., states that "The Office of Energy within the Department of Agriculture and Consumer Services, in consultation with the Public Service Commission, the Florida Building Commission, and the Florida Energy Systems Consortium, shall develop a clearinghouse of information regarding cost savings associated with various energy efficiency and conservation measures."
[112] Section 377.808, F.S., directs FDACS to "use funds specifically appropriated to award grants under this section to assist local governments, including municipalities, counties, and school districts, in the development and implementation of programs that achieve green standards. Green standards shall be determined by the department and shall provide for cost-efficient solutions, reducing greenhouse gas emissions, improving quality of life, and strengthening the state's economy."
[113] Section 377.810, F.S., establishes the program within FDACS "to help reduce transportation costs in this state and encourage freight mobility investments that contribute to the economic growth of the state."
[114] S. 37.816, F.S.
[115] S. 377.815, F.S.
[116] Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009). "Historically, certain types of local action have been found to frustrate the purpose of state law, and, thus, conflict has resulted. Specifically, Florida jurisprudence makes clear that local action cannot 1) provide for more stringent regulation than the state legislation in violation of the express wording of the statute; 2) provide for a more stringent penalty than that allowed by state statute; 3) prohibit behavior otherwise allowed by state legislation; 4) allow behavior otherwise prohibited by state statute; or 5) provide for a different method for doing a particular act than the method proscribed by state legislation. Generally, a local government can pass more stringent regulations than those provided for by statute. However, if the state legislation expressly forbids a stricter regulation or if the imposition of a stricter regulation frustrates the purpose of the statute, the local government must abstain."
[117] *See City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So. 2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

Legislature must be accomplished by clear language stating that intent.[118] In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.[119] In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.[120]

Effect of the Bill

The bill creates s. 377.707, F.S., relating to state preemption of transportation energy infrastructure regulation. The bill expressly preempts the regulation of transportation energy infrastructure to the state, and specifies that any existing or future law, ordinance, regulation, policy, or resolution that is contrary to the preemption is void.

Except as authorized by general law, the bill prohibits local governments from:

- Adopting or implementing any law, ordinance, regulation, policy, or resolution that prohibits, restricts, or requires, or that has the effect of prohibiting, restricting, or requiring, the construction of new transportation energy infrastructure or the expansion, upgrading, or repair of existing energy infrastructure, or
- imposing any requirement regulating transportation energy infrastructure that is more stringent than state law or DEP rule, except for county ordinances regulating underground petroleum storage system construction, operation, and maintenance that were enacted pursuant to s. 376.317(3)(a), F.S.[121]
- Amending its comprehensive plan, land use map, zoning districts, or land development regulations in a manner that would conflict with an existing transportation energy infrastructure classification as a permitted and allowable use including, but not limited to, an amendment that causes an existing transportation energy infrastructure to be a nonconforming use, structure, or development.
- Imposing transportation energy infrastructure requirements that are more stringent than state law or DEP rule.

The bill does not limit the authority of a local government to adopt, implement, modify, and enforce applicable federal and state requirements for transportation energy infrastructure, including safety and building standards. However, the bill specifies that the exercise of local authority may not conflict with federal or state safety and security requirements for transportation energy infrastructure.

The bill defines the term "transportation energy infrastructure" as "infrastructure supporting the production, import, storage, and distribution of fuels used for transportation including, but not limited to, petroleum, petroleum products, gasoline, diesel fuel, motor fuel, alternative fuel, marine fuel, aviation fuel, renewable fuel, natural gas, hydrogen, and electricity."

The bill provides a Legislative finding which recognizes that affordable, reliable, and sustainable transportation energy throughout the state is dependent upon transportation energy infrastructure networks extending beyond local government boundaries and recognizes the importance of consumer choice in the transportation energy market.

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[118] *Mulligan*, 934 So. 2d at 1243.
[119] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010).
[120] *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).
[121] Section 376.317(3)(a), F.S. authorizes county governments to adopt countywide ordinances that regulate underground storage tanks if the ordinance is the same as or more stringent or extensive than any state law regulating underground storage tanks and the original ordinance was legally adopted and in force before September 1, 1984.

B. SECTION DIRECTORY:

Section 1 Creates s. 377.707, F.S.; providing a definition; providing legislative findings; preempting regulation of transportation energy infrastructure to the state; prohibiting a local government from regulating transportation energy infrastructure; providing an exception; providing construction.

Section 2 Provides for an effective date

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. *See Fiscal Comments.*

2. Expenditures:

   Indeterminate. *See Fiscal Comments.*

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Indeterminate. *See Fiscal Comments.*

2. Expenditures:

   Indeterminate. *See Fiscal Comments.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. *See Fiscal Comments.*

D. FISCAL COMMENTS:

Due to the breadth of the bill's preemption provisions, the potential fiscal impacts to government and the direct economic impact on the private sector cannot be determined.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   Article I, section 10 of the Florida Constitution prohibits the passage of any law which impairs the obligation of contracts. The Florida Supreme Court has held that, relating to the interpretation of substantive changes to statutory law, the general rule is that in the absence of clear legislative intent to the contrary, a law affecting substantive rights, liabilities and duties is presumed to apply

prospectively but not retroactively.[122] Florida courts have also held that "Even where the Legislature has expressly stated that a statute will have retroactive application, this Court will reject such an application if the statute impairs a vested right, creates a new obligation, or imposes a new penalty."[123]

Current law authorizes local governments to provide and contract for certain services related to transportation energy infrastructure. To the extent that the bill would retroactively abrogate such authority and impair a local government's vested rights or contractual obligations, the bill might impair a local government's ability to satisfy a contractual obligation.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill prohibits local regulations that "... have the effect of prohibiting, restricting, or requiring, the construction of new transportation energy infrastructure or the expansion, upgrading, or repair or existing transportation energy infrastructure ..." This language could have the effect of rendering void a wide array of local regulations that only incidentally affect or are incidentally related to transportation energy infrastructure. Due to the breadth of this language and the variation in local government regulations, these impacts cannot be determined.

It is unclear whether the bill would impact a local government's ability to implement ordinances or policies related to the operation of their own electric and natural gas utility infrastructure.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[122] *Smiley v. State*, 966 So. 2d 330, 336 (Fla. 2007). *See also* Eric Glazer and Louis Goetz, *Florida Community Association Law: Contracts Clause Application In An Ever-Changing Legislative Landscape*, Florida Bar Journal, Vol. 89, No. 8 (Sept./Oct. 2015). "In Florida, all laws are presumed to apply prospectively, unless they are remedial in nature, or designed to clarify law already in effect, and the legislature clearly expresses its intention that the law is to apply retroactively."

[123] *Menendez v. Progressive Exp. Ins. Co., Inc.*, 35 So.3d 873 (Fla. 2010).

A bill to be entitled

An act relating to state preemption of transportation energy infrastructure regulation; creating s. 377.707, F.S.; providing a definition; providing legislative findings; preempting regulation of transportation energy infrastructure to the state; prohibiting a local government from regulating transportation energy infrastructure; providing an exception; providing construction; providing an effective date.

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

Section 1. Section 377.707, Florida Statutes, is created to read:

377.707 State preemption of transportation energy infrastructure regulation.—

(1) As used in this section, the term "transportation energy infrastructure" means infrastructure supporting the production, import, storage, and distribution of fuels used for transportation including, but not limited to, petroleum, petroleum products, gasoline, diesel fuel, motor fuel, alternative fuel, marine fuel, aviation fuel, renewable fuel, natural gas, hydrogen, and electricity.

(2) The Legislature finds that affordable, reliable, and sustainable transportation energy throughout the state is

dependent upon transportation energy infrastructure networks extending beyond local government boundaries and recognizes the importance of consumer choice in the transportation energy market. Therefore, the regulation of transportation energy infrastructure is expressly preempted to the state.

(3) Except as authorized by general law, a local government is prohibited from:

(a) Adopting or implementing any law, ordinance, regulation, policy, or resolution that prohibits, restricts, or requires, or that has the effect of prohibiting, restricting, or requiring, the construction of new transportation energy infrastructure or the expansion, upgrading, or repair of existing transportation energy infrastructure, or imposing any requirement regulating transportation energy infrastructure that is more stringent than state law or department rule, except for local ordinances regulating underground petroleum storage system construction, operation, and maintenance that were enacted pursuant to s. 376.317(3)(a).

(b) Amending its comprehensive plan, land use map, zoning districts, or land development regulations in a manner that would conflict with an existing transportation energy infrastructure classification as a permitted and allowable use including, but not limited to, an amendment that causes an existing transportation energy infrastructure to be a nonconforming use, structure, or development.

(c) Imposing transportation energy infrastructure requirements that are more stringent than state law or department rule.

(4) This section does not limit the authority of a local government to adopt, implement, modify, and enforce applicable federal and state requirements for transportation energy infrastructure including safety and building standards. However, the exercise of local authority may not conflict with federal or state safety and security requirements for transportation energy infrastructure.

(5) Any existing or future law, ordinance, regulation, policy, or resolution that is contrary to this section is void

Section 2. This act shall take effect July 1, 2021.