Here are some thoughts on the proposed amendment regarding witnessing of commercial leases:

1- A clearer distinction between residential and commercial leases could be achieved by reference to the landlord and tenant statute, ch. 83, rather than by reference to a taxing statute. So for example, this proposal could apply to any lease governed by Chapter 83 of the Florida Statutes, except for leases governed by Part II of Chapter 83 (that part is the Florida Residential Landlord and Tenant Act).

2- FS 689.01 applies the witnessing requirement to the signature by the “the party creating, making, granting, conveying, transferring or releasing” the leasehold estate. That party would be the landlord, I think, not the tenant. Is it also the practice to require witnesses for the tenant’s signature? If the witnessing requirement applies to the landlord only, then the tenant would be the only party waiving the witness requirement (i.e., the landlord would not need to waive witnesses as to its own signature).

3- I don’t think per-transaction waivers are the best way to achieve relief from witnessing commercial leases, or that parties should be able to withdraw their waivers as to future signatures, since third parties not privy to the waiver information may be called upon to determine the validity of the lease (such as a title insurance company, a buyer of the property, a lender, a lease assignee or a sublessee of the leased space). The witnesses should be required or not based on objectively determinable criteria, rather than on party waivers.

4- I think a better mechanical implementation would be similar to FS 692.01, which already excuses the witness requirement for corporations that execute deeds, mortgages or leases with the signature of certain specified officers plus the corporate seal. Anyone looking at the executed document can determine whether subscribing witnesses were excused. In a modern digital world, we should be able to enact a similar provision excusing witnesses from non-residential leases when specified digital safeguards are evident on the face of the lease—surely a digital signature can be done at least as securely as affixing a corporate seal.

5- Our real property problem study committee should take a look at this proposal with a view towards allowing certain business entities (not just corporations) to skip witnesses on non-residential leases as well as on other real estate documents (deeds, mortgages, easements, etc.) when the document shows that alternative reliable means of determining authenticity and authority have been used. I do not think that this proposal is ready or appropriate to add to the pending remote notary / electronic wills legislation.