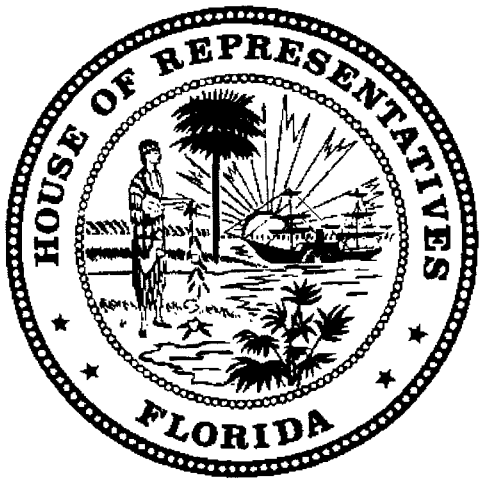

Committee on State Affairs

Wednesday, March 14, 2007
1:00 PM – 4:00 PM
Morris Hall

Revised

Marco Rubio
Speaker

Frank Attkisson
Chairman

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Committee on State Affairs

Start Date and Time:	Wednesday, March 14, 2007 01:00 pm
End Date and Time:	Wednesday, March 14, 2007 04:00 pm
Location:	Morris Hall (17 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

HB 73 Labor Organizations by Allen
HB 209 Indian Gaming Activities by Waldman
HB 261 Factors Used in Deriving Just Valuation by Lopez-Cantera
HB 389 Proposed Property Tax Notices by Richter

Workshop on the following:

PCB GEAC 07-22 relating to property tax relief for active duty deployed military personnel

NOTICE FINALIZED on 03/12/2007 16:25 by TUCK.SHIRLEY

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 73 Labor Organizations
SPONSOR(S): Allen and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 128

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on State Affairs		Camara	Williamson
2) Government Efficiency & Accountability Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

Public employees in the State of Florida have the constitutional right to collectively bargain. This includes all fire, police, corrections, school teachers and support personnel, medical personnel, state troopers, toll collectors, sanitation employees, and clerical. There are approximately 400,000 public employees of bargaining units throughout the state. Currently, there are two state law enforcement bargaining units under the Governor and Cabinet. Both are represented by the Police Benevolent Association (PBA).

This bill provides that any state law enforcement agency with 1200 or more officers must be in a bargaining unit that is separate from officers in other state law enforcement agencies. Accordingly, the bill would separate the Florida Highway Patrol officers from the general state law enforcement unit currently represented by the PBA.

If the creation of a new bargaining unit is required pursuant to this bill, a question concerning representation is not deemed to have arisen regarding the new or existing unit. The bill, however, further provides that the new bargaining unit must determine its own representative (or bargaining agent) by open election, whereby any certified agent may compete for the bargaining rights. As such, this bill could raise constitutional concerns regarding the creation of laws that impair the obligation of contracts.

The bill could have an insignificant negative trust fund fiscal impact on the Department of Management Services by increasing administrative costs associated with collective bargaining requirements. It does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates an additional employee bargaining unit.

Safeguard individual liberty – The bill increases the collective bargaining options for officers employed by a state law enforcement agency.

B. EFFECT OF PROPOSED CHANGES:

Background: Collective bargaining for public employees

Public employees[1] in the State of Florida have the constitutional right to collectively bargain.[2] This includes all fire, police, corrections, school teachers and support personnel, medical personnel, state troopers, toll collectors, sanitation employees, and clerical. There are approximately 400,000 public employees of bargaining units throughout the state.[3]

Current law provides that any employee organization designated or selected by a majority of public employees, in an appropriate unit, as their representative for purposes of collective bargaining must request recognition by the public employer who, if satisfied as to the majority status of the employee organization and the appropriateness of the proposed unit, must recognize this organization as the collective bargaining representative of employees in the designated unit.[4] Upon such recognition, this organization must immediately petition the Public Employees Relations Commission (PERC)[5] for certification. PERC only reviews the appropriateness of the unit proposed by the employee organization. If PERC determines the unit is appropriate (according to statutorily-specified criteria), it must immediately certify the employee organization as the exclusive representative of all employees in that unit.[6]

If the unit is inappropriate, the PERC may dismiss the petition. Whenever a public employer recognizes an employee organization on the basis of majority status and on the basis of appropriateness,[7] it must, in the absence of inclusion of a prohibited category of employees or violation of s. 447.401, F.S. (unfair labor practices), certify the proposed unit.[8]

An employee organization must follow certain procedures when filing a petition with PERC for certification as bargaining agent for a proposed bargaining unit when the public employer refuses to recognize the employee organization.[9] Once a certification petition has been filed by an employee organization, any registered employee organization desiring placement on the ballot in the election may be permitted by PERC to intervene in the proceeding upon motion accompanied by dated statements

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[1] "Public employee" means any person employed by a public employer (state or any county, municipality, or special district) with certain exceptions. Section 447.203(3), F.S.
[2] Section 6, Art. I of the State Constitution.
[3] Department of Management Services, Public Employees Relations Commission website: http://dms.myflorida.com/other_programs/perc (last visited March 11, 2007).
[4] Section 447.307(2), F.S.
[5] Part II of chapter 447, F.S., provides for the creation, powers, and duties of PERC.
[6] Section 447.307(1)(a), F.S.
[7] "Appropriateness" is in accordance with section 447.307(4)(f)5., F.S.: "The history of employee relations within the organization of the public employer concerning organization and negotiation and the interest of the employees and the employer in the continuation of a traditional, workable, and accepted negotiation relationship."
[8] Section 447.307(1)(b), F.S.
[9] Section 447.307(2), F.S., requires the petition to be accompanied by dated statements signed by at least 30 percent of the employees in the proposed unit, indicating that such employees desire to be represented for purposes of collective bargaining by the petitioning employee organization.

signed by at least 10 percent of the employees in the proposed unit, indicating that such employees desire to be represented for the purposes of collective bargaining by the moving employee organization.[10]

PERC must investigate the petition to determine its sufficiency. If PERC has reasonable cause to believe that the petition is sufficient, it must provide for an appropriate hearing upon due notice. If PERC finds the petition to be insufficient, it may dismiss the petition. If it finds upon the record of the hearing that the petition is sufficient, it must immediately: define the proposed bargaining unit and determine which public employees are qualified and entitled to vote at any election held by PERC; identify the public employer or employers for purposes of collective bargaining with the bargaining agent; and order an election by secret ballot. When an employee organization is selected by a majority of the employees voting in an election, PERC must certify this organization as the exclusive collective bargaining representative of all employees in the unit. Certification is effective upon the issuance of the final order by PERC or, if the final order is appealed, at the time the appeal is exhausted or any stay is vacated by PERC or the court. In any election in which none of the choices on the ballot receives the vote of a majority of the employees voting, a runoff election must be held according to rules promulgated by PERC.[11]

No petition may be filed seeking an election in any proposed or existing appropriate bargaining unit to determine the exclusive bargaining agent within 12 months after the date of a PERC order verifying a representation election or, if an employee organization prevails, within 12 months after the date of an effective certification covering any of the employees in the proposed or existing bargaining unit. Also, if a valid collective bargaining agreement covering any of the employees in a proposed unit is in effect, a petition for certification may be filed with PERC only during the period extending from 150 days to 90 days immediately preceding the expiration date of that agreement, or at any time subsequent to its expiration date, but prior to the effective date[12] of any new agreement.[13]

In defining a proposed bargaining unit, the PERC must take into consideration:

- The principles of efficient administration of government.
- The number of employee organizations with which the employer might have to negotiate.
- The compatibility of the unit with the joint responsibilities of the public employer and public employees to represent the public.
- The power of the officials of government at the level of the unit to agree, or make effective recommendations to another administrative authority or to a legislative body, with respect to matters of employment upon which the employee desires to negotiate.
- The organizational structure of the public employer.
- Community of interest among the employees to be included in the unit.[14]
- The statutory authority of the public employer to administer a classification and pay plan.
- Such other factors and policies as the PERC may deem appropriate.[15]

No unit, however, can be established or approved for purposes of collective bargaining which includes both professional and nonprofessional employees unless a majority of each group votes for inclusion in such unit.

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[10] Section 447.307(2), F.S.

[11] Section 447.307(3), F.S.

[12] *Id.* The effective date of a collective bargaining agreement means the date of ratification by both parties, if the agreement becomes effective immediately or retroactively; or its actual effective date, if the agreement becomes effective after its ratification date.

[13] Section 447.307(3), F.S.

[14] PERC must consider the: manner in which wages and other terms of employment are determined; method by which jobs and salary classifications are determined; interdependence of jobs and interchange of employees; desires of the employees; and history of employee relations within the organization of the public employer concerning organization and negotiation and the interest of the employees and the employer in the continuation of a traditional, workable, and accepted negotiation relationship. Section 447.307(4), F.S.

[15] Section 447.307(4), F.S.

Present Situation: State law enforcement bargaining units

Currently, there are two state law enforcement bargaining units under the Governor and Cabinet:

- State law enforcement officer bargaining unit.[16]
- Special agent bargaining unit within FDLE.

Both are represented by the Police Benevolent Association (PBA). An election was held in June 2006, whereby the International Union of Police Association was replaced by the PBA as bargaining agent for the state law enforcement bargaining unit. PBA was already the agent for the special agent bargaining unit.[17]

Proposed Changes

This bill provides that any state law enforcement agency with 1200 or more officers must be in a bargaining unit that is separate from officers in other state law enforcement agencies. According to the Department of Management Services, the bill would separate the Florida Highway Patrol officers from the general state law enforcement unit currently represented by the PBA.[18]

If the creation of a new bargaining unit is required pursuant to this bill, a question concerning representation is not deemed to have arisen regarding the new or existing unit. The bill, however, further provides that the new bargaining unit must determine its own representative (or bargaining agent) by open election, whereby any certified agent may compete for the bargaining rights. These two provisions appear to conflict with each other.

C. SECTION DIRECTORY:

Section 1 creates s. 447.3075, F.S., providing for the creation of a new law enforcement bargaining unit.

Section 2 provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   This bill could increase costs for collective bargaining if an additional collective bargaining unit is created. The cost, however, is unknown.[19]

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[16] The Police Benevolent Association represents (at the state level): (1) Security Services Unit: correctional and correctional probation officers working for the Department of Corrections and Institutional Security Specialists who work for Children and Family Services (approximately 20,000 total). (2) State Law Enforcement Officers Unit: 11 different law enforcement agencies (Florida Highway Patrol, Fish and Wildlife Commission, Capitol Police, Department of Transportation, Department of Agriculture and Consumer Services). There are approximately 2,900 officers in this unit. (3) FDLE Special Agents Unit (approximately 350 agents). (4) Lottery Officers Unit (approximately 10 officers). (5) University Police Officers. They have separate contracts for officers in eight state universities (approximately 400 officers). Gulf Coast University officers do not have anyone representing them, and the University of North Florida officers are represented by a separate employee organization. *See* Senate Staff Analysis and Economic Impact Statement for SB 128 (February 5, 2007) at 1. (on file with the Senate Criminal Justice Committee).

[17] Dept. of Mgmt. Svcs., HB 73 (2007) Substantive Bill Analysis (Jan. 24, 2007) (on file with dep't and Committee on State Affairs) [hereafter referred to as DMS Analysis].

[18] *Id.*

[19] *Id.* at 2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Laws impairing the obligation of contracts

The bill requires an election regardless of any existing contract prohibition to such an election. This provision appears to violate the provisions of section 10, Art. I of the United States Constitution, and section 10, Art. I of the State Constitution, which prohibits laws impairing the obligation of contracts.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issue: Conflicting provisions in the bill

The bill provides conflicting provisions:

- Subsection (1) provides that no question about representation is deemed to arise regarding the new bargaining unit created by this bill or the existing bargaining unit. Since the Florida Highway Patrol currently is the only state law enforcement agency affected by this bill and the PBA is its collective bargaining representative, subsection (1) would allow the PBA to continue its role as the collective bargaining representative for the Florida Highway Patrol.
- Subsection (2) requires an election upon appropriate petition to determine representation for the new unit notwithstanding any contract that prohibits such an election. This appears to conflict with the provisions in subsection (1) allowing the current collective bargaining representative to continue its role under the new bargaining unit.

An amendment is needed to resolve the conflict between the competing provisions.

Other Comments: Department of Management Services

The Department of Management Services (DMS) states the bill conflicts with the standards by which PERC certifies bargaining units. When defining a proposed bargaining unit, current law requires PERC to consider the:

- Principles of efficient administration of government when defining a proposed bargaining unit.[20]
  - According to DMS, "government efficiency will be reduced by increasing costs due to multiple units."
- Number of employee organizations with which the employer might have to negotiate.[21]
  - The number of bargaining units could be increased by the bill.
- Statutory authority of the public employer to administer a classification and pay plan.[22]
  - Only "DMS has such authority, not the affected agency (DHSMV)."[23]

D. STATEMENT OF THE SPONSOR

This legislation will simplify the structure of assisting law enforcement agencies with their compensation negotiations. Specifically, the bill allows for customized assistance and goal achievement for law enforcement organizations. This bill also provides exceptionally large law enforcement organizations with the independent means to seek their own needed benefits and compensation.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.

[20] Section 447.307(4)(a), F.S.
[21] Section 447.307(4)(b), F.S.
[22] Section 447.307(4)(g), F.S.
[23] DMS Analysis at 5.

A bill to be entitled

An act relating to labor organizations; creating s. 447.3075, F.S.; requiring that the officers of certain state law enforcement agencies be in a separate bargaining unit; providing guidelines for establishing such separate unit; providing an effective date.

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

Section 1. Section 447.3075, Florida Statutes, is created to read:

447.3075 Law enforcement bargaining units; separate units required; establishment.--

(1) Notwithstanding any other provision of law, administrative rule, or decision to the contrary, any state law enforcement agency that has 1,200 or more officers shall be in a bargaining unit that is separate from officers in other state law enforcement agencies. If the application of this subsection requires that a new state law enforcement bargaining unit be created, a question concerning representation is not deemed to have arisen regarding the new unit or the existing unit.

(2) Upon appropriate petition, a representation election to determine the bargaining representative for the new unit shall be held notwithstanding any contract that prohibits such election. After the initial election for the new unit is conducted, all statutory election and contract provisions shall apply.

Section 2. This act shall take effect July 1, 2007.

HB 209

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 209 Indian Gaming Activities
SPONSOR(S): Waldman
TIED BILLS: **IDEN./SIM. BILLS:** SB 160

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on State Affairs		Ligas AAL	Williamson
2) Government Efficiency & Accountability Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

Current law does not address tribal-state compacts in Florida; however, this is an issue Florida is facing with regards to slot machine gaming.

This bill provides that the Governor is the designated state officer responsible for negotiating and executing tribal-state compacts relating to Class III gaming under the federal Indian Gaming Regulatory Act of 1988. The Governor must submit a copy of any executed tribal-state compact to the Legislature for ratification by a majority vote of both houses, and must submit a copy to the Secretary of State pending ratification. Once the compact is ratified, the Secretary of State must forward a copy of the compact and the ratification act to the U.S. Secretary of the Interior for review and approval.

This bill does not appear to have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill designates the Governor as the state officer responsible for negotiating and executing tribal-state gaming compacts with federally recognized Indian tribes located within the state. It also requires the Legislature to ratify, by a majority vote, the executed tribal-state compact.

B. EFFECT OF PROPOSED CHANGES:

Present Situation: Indian Gaming Regulatory Act

The Indian Gaming Regulatory Act (IGRA)[1] divides gaming into three types of classes. Class I gaming means social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as part of, or in connection with, tribal ceremonies or celebrations.[2] Class I gaming is within the exclusive jurisdiction of the Indian tribes.[3]

Class II gaming includes bingo and lotto, and if played at the same location as bingo, pull-tabs, punch boards, and other games similar to bingo.[4] Class II gaming also includes non-banking card games (such as poker) which are authorized by state law or not explicitly prohibited by state law.[5] Card games must be played in conformity with state laws or regulations regarding hours of operation and limitations on wagers.[6] A tribe may conduct class II gaming if:

- The state in which the tribe is located permits such gaming for any purpose by any person, organization or entity; and
- The governing body of the tribe adopts a gaming ordinance which is approved by the Chairman of the National Indian Gaming Commission.[7]

Class II gaming is regulated by the tribes with oversight by the commission.

Class III gaming includes all forms of gaming that are not deemed Class I or Class II, such as banking card games, casino games, electronic or electromechanical facsimiles of games of chance, and pari-mutuel wagering.[8]

The Seminole and Miccosukee tribes currently have Class II slots, which are bingo-style devices where players compete against each other.

Present Situation: Slot Machines

Chapter 551, F.S., is the result of the passage of Amendment 4 to the State Constitution[9] (codified at s. 23, Art. X, Florida Constitution), which authorized slot machines at existing pari-mutuel facilities in Miami-Dade and Broward Counties upon an affirmative vote of the electors in those counties. Both Miami-Dade and Broward Counties held referenda elections on March 8, 2005.

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[1] 18 U.S.C. 1166-1168 and 25 U.S.C. 2701 et seq.
[2] 25 U.S.C. 2703(6).
[3] 25 U.S.C. 2710(1).
[4] 25 U.S.C. 2703(7)(A)(i).
[5] Poker is authorized at the par-mutuel facilities in Florida by s. 849.086, F.S.
[6] 25 U.S.C. 2703(7)(A)(ii).
[7] 25 U.S.C. 2710(b)(1)
[8] 25 U.S.C. 2703(8).
[9] The amendment was proposed by Initiative Petition filed with the Secretary of State on May 28, 2002 and adopted by the electorate at the General Election in 2004.

The electors approved slot machines at the pari-mutuel facilities in Broward County, but the measure was defeated in Miami-Dade County. Under the provisions of the amendment, four pari-mutuel facilities are eligible to conduct slot machine gaming in Broward County:

- Gulfstream Park Racing and Casino,[10] a thoroughbred permit holder;
- Pompano Park,[11] a harness racing permit holder;
- Dania Jai Alai,[12] a jai alai permit holder; and
- Mardi Gras Racetrack and Gaming Center,[13] formerly known as Hollywood Greyhound Track, a greyhound permit holder.[14]

Under the Indian Gaming Regulatory Act (IGRA) slot machines are considered Class II gaming and open the possibility for tribes to negotiate a compact with the state allowing slots in the tribal casinos.[15] The law provides that before a tribe my lawfully conduct Class III gaming, the following conditions must be met, the:

- Particular form of Class III gaming that the tribe wants to conduct must be permitted in the state in which the tribe is located;
- Tribe and the state must have negotiated a compact[16] that has been approved by the Secretary of the Interior, or the Secretary must have approved regulatory procedures; and
- Tribe must have adopted a tribal gaming ordinance that has been approved by the Indian Gaming Commission or its chairman.[17]

A state or political subdivision does not have authority to impose taxes, fees, charges, or other assessments upon tribes that seek to operate Class III gaming and a state is prohibited from refusing to negotiate based on the lack of authority in such state, or its political subdivision, to impose such a tax, fee, charge, or other assessment.[18] A tribe may agree to pay assessments to a state or political subdivision to defray the costs of state regulation of its Class III gaming activities and may agree to a payment, in lieu of taxes, to the state in amounts comparable to amounts assessed by the state for comparable activities.[19]

Present Situation: Compacts

The IGRA provides, in relevant part, that an Indian tribe may initiate a cause of action 180 days after the date the tribe requested the state to enter into negotiations if:

- A tribal-state compact has not been entered into;
- The state did not respond to the request of the Indian tribe or did not respond to the request in good faith.[20]

The U.S. Supreme Court held in part in *Seminole Tribe v. State of Florida* that the Eleventh Amendment prohibits an Indian tribe from suing a state in Federal court for an alleged failure of the state to negotiate a compact in good faith.[21] The Department of Interior subsequently responded to the

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[10] Gulfstream Park Racing and Casino was licensed to operate slots by the state on October 13, 2006, and opened on November 15, 2006.
[11] Pompano Park was licensed January 10, 2007, and is expected to open in March 15, 2007.
[12] Dania Jai Alai was licensed January 17, 2007, and is expected to open in the fall of 2008.
[13] Mardi Gras Racetrack and Gaming Center was licensed on September 29, 2006 and opened on December 26, 2006.
[14] Senate Staff Analysis and Economic Impact Statement for SB 160 (January 25, 2007) at 2. (on file with the Senate Regulated Industries Committee).
[15] 25 U.S.C. 2701, et seq.
[16] The compact may contain any subjects directly related to the operation of gaming activities.
[17] 12 U.S.C. 2710(d).
[18] 25 U.S.C. 2710(d)(4)
[19] *Id.* (Sometimes referred to as "revenue sharing.")
[20] 25 U.S.C. 2710(d)(7)(B).
[21] 517 U.S. 44 (1996).

Seminole decision by publishing a regulation[22] to address this issue. [23] The U.S. Supreme Court also noted in its decision that the duty imposed by the IGRA to negotiate in good faith "is not likely to be performed by an individual state executive officer or even a group of officers."[24]

In 1999, the states of Florida and Alabama challenged the Secretary's authority to promulgate this regulation.[25] The case was administratively closed in 2003 pending administrative action by the Department of Interior to promulgate rules. The Order further stated that the case would be reopened at the request of any party, if at any time further proceedings appear to be appropriate.

According to an affidavit of the General Counsel for the Seminole Indian Tribe,[26] negotiations continued. Compact negotiations began subsequent to the passage of the Constitutional Amendment authorizing slot machines. The affidavit further stated the negotiations continued on and off from June 6, 2005 until December 2006, but did not result in the negotiation of a compact. The affidavit further stated that while the State of Florida agreed that the Seminole tribe was entitled to operate slot machines, the state made unlawful demands for a major share of the tribal gaming revenues without providing substantial exclusivity or other valuable consideration.[27]

In July 2006, the Seminole Tribe requested that the Secretary of Interior issue Class III Secretarial Procedures in order to comply with the governing provisions of 25 C.F.R. 291.8(c). On September 26, 2006, the Department of Interior responded to the Seminole Tribes request for Secretarial Procedures stating the department was encouraged by the willingness of the State of Florida to negotiate a Class III gaming compact with the tribe. It stated further that the department had completed its review of the tribe's application and would in the next 60 days, absent a negotiation of a compact between the tribe and state, issue a final decision setting forth the proposed Class III gaming procedures of the tribe. The department did not issue procedures within the 60 days stated in the September 26, 2006 letter.[28]

In January 2007, the Seminole Tribe moved to reopen the case against the Department of Interior and restore it to active status, amend the Court-approved Scheduling Report to provide for briefing on cross-motions for summary judgment no later than 45 days after the date of the Court's Order and irrespective of when the secretary issues a decision on Secretarial Procedures; and direct the secretary to issue a final decision on procedures no later than 30 days after the court has acted on the motion.[29]

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[22] The regulation provides, in part, that an Indian tribe may ask the Secretary of the Interior to issue Class III gaming procedures when the following steps have taken place: (a) The Indian tribe submitted a written request to the Sate to enter into negotiations to establish a Tribal-State compact governing the conduct of Class III gaming activities; (b) The Sate and the Indian tribe failed to negotiate a compact 180 days after the State received the Indian tribe's request; (c) The Indian tribe initiated a cause of action in Federal district court against the State alleging that the State did not respond, or did not respond in good faith, to the request of the Indian tribe to negotiate such a compact; (d) The State raised an Eleventh Amendment defense to the tribal action; and (e) The Federal district court dismissed the action due to the State's sovereign immunity under the Eleventh Amendment.

[23] 25 CFR 291.3. The states of Florida and Alabama have challenged the Secretary's authority to promulgate this regulation. *State of Florida and State of Alabama v. United States of America, United States Department of the Interior and Dirk Kempthorne in his official capacity as Secretary of the Interior and Seminole Tribe of Florida, Miccosukee Tribe of Florida and Poarch Band of Creek Indians,* Case No. 4:99-CV137-RH (N.D.Fla.).

[24] 517 U.S. 44, at 75 n. 17 [citing *State ex rel. Stephan v. Finney*, 836 P.2d 1169, 251 Kan. 559 (1992) that the Governor of Kansas may negotiate but may not enter into a compact without a grant of power from the Legislature].

[25] 25 CFR 291.3.

[26] Affidavit of Jim Shore, *State of Florida and State of Alabama v. United States of America, United States Department of the Interior and Seminole Tribe of Florida, Miccosukee Tribe of Florida and Poarch Band of Creek Indians*, Case No. 4:99-CV137-RH (N.D. Fla. Filed January 16, 2007).

[27] *Id.*

[28] Senate Staff Analysis and Economic Impact Statement for SB 160 (January 25, 2007) at 4.

[29] In the motion, counsel for the Seminoles stated that the Federal Defendants oppose the motion and were unable to resolve the matter and the Poarch Band of Creek Indians support the motion. The Seminole Tribe attempted to confer with the states of Florida and Alabama and the Miccosukee Tribe and was not able to resolve the issue.

On January 8, 2007, Governor Crist sent a letter to the Interior Secretary asking for the federal government to hold off on any action so his administration could enter into discussions with the tribe.[30]

Several state supreme courts have reviewed whether the Governor of the state has the power to unilaterally negotiate and execute an Indian gaming compact. The Supreme Court in the states of New Mexico, Kansas, Rhode Island, New York, and Wisconsin has held that the Governor does not have the power to bind the state to a tribal-state compact without legislative authority.[31] Two federal district courts have held that the Governor has the unilateral authority to negotiate and execute tribal-state Indian gaming compacts.[32] The state supreme courts that have addressed these two cases have dismissed their decisions as not well reasoned and distinguishable.[33]

Currently, there is no statutory provision related to tribal-state compacts in Florida. Tribal-state compacts are an issue that Florida is facing with the recent passage of ch.2005-362, L.O.F.,[34] regarding slot machine gaming.

Effect of Proposed Changes

The bill provides that the Governor is the designated state officer responsible for negotiating and executing tribal-state compacts relating to Class III gaming under the federal Indian Gaming Regulatory Act of 1988.

The Governor must submit a copy of any executed tribal-state compact to the Legislature for ratification by a majority vote of both houses. The Governor also must submit a copy to the Secretary of State pending receipt of ratification.

Once the compact is ratified, the Secretary of State must forward a copy of the tribal-state compact and the ratifying act to the U.S. Secretary of the Interior for review and approval in accordance with the United States Code.[35]

C. SECTION DIRECTORY:

Section 1 designates the Governor as the official to negotiate tribal-state compacts and provides for ratification by the Legislature.

Section 2 provides that the bill will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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[30] Jon Burstein, "Seminoles ask federal judge for OK on Vegas-style slot machines," *South Florida Sun Sentinel,* 17 Jan. 2007 (http://www.sun-sentinel.com/news/local/broward/sfl-cseminole17jan17,0,5424919.story?coll=sfla-news-broward, last visited February 28, 2007)

[31] *State ex rel. Stephan v. Finney*, 251 Kan. 559, 836 P.2d 1169 (Kan. 1992); *State v. Johnson*, 120 N.M. 562, 904 P.2d 11 (N.M. 1995); *Narragansett Indian Tribe of R.I. v. Rhode Island*, 667 A.2d 280 (R.I. 1995); *Saratoga Co. Chamber of Commerce, Inc. v. Pataki*, 100 N.Y.2d 801, 798 N.E.2d 1047 (N.Y. 2003); and *Panzer v. Doyle* 271 Wis.2d, 680 N.W. 2d 666 (Wisc. 2004).

[32] *State ex rel. Stephan v. Finney*, 251 Kan. 559, 836 P.2d 1169 (Kan. 1992); *State v. Johnson*, 120 N.M. 562, 904 P.2d 11 (N.M. 1995); *Narragansett Indian Tribe of R.I. v. Rhode Island*, 667 A.2d 280 (R.I. 1995); *Saratoga Co. Chamber of Commerce, Inc. v. Pataki*, 100 N.Y.2d 801, 798 N.E.2d 1047 (N.Y. 2003); and *Panzer v. Doyle* 271 Wis.2d, 680 N.W. 2d 666 (Wisc. 2004).

[33] *Panzer v. Doyle*, 680 N.W.2d at 687.

[34] Codified at ch. 551, F.S.

[35] 25 U.S.C. 2710(d)(3)(B).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not Applicable.

A bill to be entitled

An act relating to Indian gaming activities; designating the Governor as the official to negotiate tribal-state compacts; providing for ratification of tribal-state compacts by the Legislature; providing for submission of the tribal-state compact to the Legislature and Secretary of State; providing for submission of the tribal-state compact to the Secretary of the Interior; providing an effective date.

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

Section 1. (1) The Governor is the designated state officer responsible for negotiating and executing, on behalf of the state, tribal-state gaming compacts with federally recognized Indian tribes located within the State of Florida pursuant to the federal Indian Gaming Regulatory Act of 1988, 18 U.S.C. ss. 1166-1168, and 25 U.S.C. s. 2701 et seq., for the purpose of authorizing class III gaming, as defined in that act, on Indian lands within this state.

(2) Any tribal-state compact relating to gaming activities which is entered into by an Indian tribe in this state and the Governor pursuant to subsection (1) must be conditioned upon ratification by the Legislature.

(3) Following completion of negotiations, the Governor shall submit a copy of any executed tribal-state compact for ratification by a majority vote by both houses of the Legislature and shall submit a copy of the executed tribal-state

compact to the Secretary of State pending receipt of an act ratifying the tribal-state compact under the provisions of this section.

(4) Upon receipt of an act ratifying the tribal-state compact, the Secretary of State shall forward a copy of the executed tribal-state compact and the ratifying act to the United States Secretary of the Interior for his or her review and approval, in accordance with 25 U.S.C. s. 2710(8)(d).

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 261 Factors Used in Deriving Just Valuation
SPONSOR(S): Lopez-Cantera and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 722

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on State Affairs		Ligas/Levin	Williamson
2) Government Efficiency & Accountability Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

Section 193.011, F.S., lists the factors to consider when deriving just valuation of property as required by Article VII, s. 4 of the Florida Constitution. The bill amends this section to remove the requirement that property appraisers consider the highest and best use to which the property can be expected to be put in the immediate future when arriving at just valuation.

The bill adds a provision which requires property appraisers to appraise income-producing properties based solely on the income produced from that property.

Although this bill has not been heard at the Revenue Estimating Impact Conference, it may have a significant impact on local revenues.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – The bill would eliminate the requirement that property appraisers consider the highest and best use to which a property can be expected to be put in the immediate future when arriving at just valuation. It also would require property appraisers to consider only the income from income producing property in determining just valuation. A significant percentage of non-homestead properties may experience a decrease in the assessed value of the property.

B. EFFECT OF PROPOSED CHANGES:

Present Situation: Just Valuation

Article VII, s. 4 of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes. Since1965, it has been well settled that "just valuation" is synonymous with "fair market value" and is defined as what a willing buyer and willing seller would agree upon as a transaction price for the property.[1]

The Florida Constitution includes certain limitations to the just value criteria. Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes are exceptions that may be assessed solely on the basis of their character or use.[2] Tangible personal property held for sale as stock in trade and livestock may be assessed at a specified percentage of its value or totally exempted.[3] In addition, the Save-Our-Homes amendment to the Florida Constitution provides a limitation to the extent that assessments for homesteads may be changed annually on January 1 of each year. Changes in assessment may not exceed the lower of three percent of the assessment for the prior year or the percent change in the Consumer Price Index.[4] Counties and municipalities also may provide for reduction in the assessed value of historic properties and improvements to homesteads that are made to accommodate parent or grandparents in an existing homestead.[5]

Section 193.011, F.S., implements the just valuation requirement of the Constitution. It requires property appraisers to take into consideration the following factors in arriving at just valuation:

- Present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;[6]
- Highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and considering any executive order, ordinance, regulation, resolution or proclamation or judicial limitation when it prohibits or restricts the development or improvement of property;[7]
- Location of the property;[8]
- Quantity or size of the property;[9]

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[1] *Walter v. Schuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. DadeCounty*, 275 So.2d 4 (Fla. 1973).
[2] Article VII, §4 (a), Florida Constitution.
[3] Article VII, §4 (b), Florida Constitution.
[4] Article VII, §4 (c), Florida Constitution.
[5] Article VII, §4 (d) and (e), Florida Constitution.
[6] Fla. Stat. §193.011(1).
[7] Fla. Stat. §193.011(2).
[8] Fla. Stat. §193.011(3).
[9] Fla. Stat. §193.011(4).

- Cost of the property and the present replacement value of any improvements thereon;[10]
- Condition of the property;[11]
- Income from the property;[12] and
- Net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of sale.[13]

The Florida Supreme Court has held that "the appraisal of real estate is an art, not a science,"[14] and "the tax assessor is, of necessity, provided with great discretion due to the difficulty in fixing property values with certainty."[15] In *Lanier v. Walt Disney World Company*, the court held that assessors are not obliged, under the law, to give each factor equal weight provided each factor is first carefully considered and such weight is given to a factor as the facts justify.[16]

Present Situation: Fair Market Value

The constitutional standard of fair market value includes a consideration of (1) the highest and best use of property; and (2) the three approaches to value.

A common definition of highest and best use is: "The reasonably probable and legal use of property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value."[17] A highest and best use analysis requires the appraiser to determine the most likely use for the property. Unless a change in the highest and best use is reasonably probable within the immediate future, the present use[18] may represent the highest and best use of the property.[19] While the actual use of the property may be the highest and best use of the property, in times of rapidly growing population and property value escalation, this is not always the case.

Once the highest and best use of the property is determined, the appraiser then applies one or more of the three approaches to value the property to arrive at an estimate of the fair market value.

There are three well-accepted approaches to valuing real estate: (1) the sales comparison approach; (2) the cost approach; and (3) the income approach. For any given property type, one of the three approaches to value might give a more accurate estimate of the fair market value of the property than the other two. It is not unusual for appraisers to use a combination of the approaches in order to arrive at the fair market value of the property.

The sales comparison approach estimates the value of real estate by looking at what similar pieces of real estate have sold for during the same time frame. Sales of properties that are similar in location, size, condition, and highest and best use, are used to determine the value of the property in question. Various adjustments are made to take into account the differences between the sales properties and the subject property.

The cost approach to valuation simply adds together the value of the land (determined by the sales comparison approach) with the cost of the improvements to arrive at the fair market value of the property. For older properties, the appraiser makes adjustments to consider the age and condition of the property or any other appropriate factors. Land values are market-derived and what a buyer is

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[10] Fla. Stat. §193.011(5).
[11] Fla. Stat. §193.011(6).
[12] Fla. Stat. §193.011(7).
[13] Fla. Stat. §193.011(8).
[14] *Powell v. Kelley*, 223 So.2d 305, 309 (Fla. 1969).
[15] *District School Board of Lee County v. Askew*, 278 So.2d 272, 276 (Fla. 1973).
[16] *Lanier v. Walt Disney World Company*, 316 So.2d 59, 62 (Fla. 1975).
[17] Appraisal Standards Board, *The Uniform Standards of Professional Appraisal Practice,* 2002 Edition (Washington D.C.: The Appraisal Foundation), at 218.
[18] Present use means "the existing use of real property as of the date of appraisal." The Florida Real Property Appraisal Guidelines, prepared by the Florida Department of Revenue Property Tax Administration Program (Adopted November 16, 2002).
[19] *Lanier v. Overstreet,* 175 So.2d 521 (Fla. 1965).

willing to pay for new construction is always influenced by the amount the buyer might otherwise spend to buy an already existing similar property.

The income approach applies to properties where an income is typically derived from the real estate. The just valuation of the property is determined by studying how much revenue the property would generate if it were rented. The appraiser must consider operating expenses, taxes, insurance, maintenance costs, and the return or profit most people would expect for that type of property.[20] Purchasers of income-producing property typically base their offer to buy the property on the potential future income of the property, thus the income is the basis of the purchase price agreed upon between the willing buyer and willing seller.

Effect of Proposed Changes

The bill eliminates the requirement that property appraisers consider the factor of 'highest and best use' when arriving at just valuation. By removing this language property appraisers would only be required to evaluate the property based on its present use in conjunction with the other seven evaluation factors. The removal of the 'highest and best use' criteria may create disparities in value between like properties.

The bill requires property appraisers to disregard the other factors outlined in s. 193.011, F.S., and only use the income generated when arriving at just valuation of income-producing properties. Under these standards, property appraisers would not consider other factors such as the location, condition, or size of the property.

C. SECTION DIRECTORY:

Section 1 amends s. 193.011, F.S., to revise the requirements that property appraisers consider in arriving at just valuation.

Section 2 amends s. 192.011, F.S., to make conforming changes.

Section 3 amends s. 193.015, F.S., to make conforming changes.

Section 4 amends s. 193.017, F.S., to make conforming changes.

Section 5 provides an effective date of upon becoming a law and provides for application beginning January 1, 2008.

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:

   This bill has not been to a Revenue Estimating Impact Conference, but the effect on local government revenues should be anticipated to be significant.

[20] The Florida Real Property Appraisal Guidelines, prepared by the Florida Department of Revenue Property Tax Administration Program (Adopted November 16, 2002).

2. Expenditures:

No direct fiscal impact.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A significant percentage of non-homestead properties may experience a decrease in the assessed value of the property.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. By eliminating the requirement that property appraisers consider the highest and best use in determining the just valuation of a parcel of property, for those cities and counties that assessed their entire allotted constitutional millage on February 1, 1989, the bill may reduce the authority that counties and municipalities have to raise revenue.

2. Other:

Currently, limitations on ad valorem assessments based on the character or use of the property are contained within Article VII of the Florida Constitution. While the highest and best use currently is one of the eight criteria county property appraisers must consider in valuing property for ad valorem tax purposes pursuant to s. 193.011, F.S., the current judicial interpretation of "just valuation" as "fair market value" may require a highest and best use analysis. Limitation by general law may not withstand judicial scrutiny.

The requirement that just valuation of income producing properties be determined solely by the income produced from the property could raise constitutional concerns based upon Article VII, s. 2 of the Florida Constitution, which requires ad valorem taxation to be at a uniform rate within each taxing unit.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments: Public school funding

Public school funding is statutorily tied to property taxes through the Required Local Effort of School Boards (RLE). The legislature sets the RLE millage rate in the Appropriations Act. State general revenue funds the remainder of public schools. This bill may result in a decrease in local government revenue which could result in a greater need for funding from the state.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not Applicable.

A bill to be entitled

An act relating to factors used in deriving just valuation; amending s. 193.011, F.S.; deleting a requirement that property appraisers consider the highest and best use of property as a factor in arriving at just valuation; requiring property appraisers to use only the income factor in arriving at just value of income-producing properties; amending ss. 192.011, 193.015, and 193.017, F.S., to conform; providing application; providing an effective date.

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

Section 1. Section 193.011, Florida Statutes, is amended to read:

193.011 Factors to consider in deriving just valuation.--

(1) In arriving at just valuation as required under s. 4, Art. VII of the State Constitution, the property appraiser shall take into consideration the following factors:

(a) ~~(1)~~ The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;

(b) ~~(2)~~ The ~~highest and best use to which the property can be expected to be put in the immediate future and the~~ present use of the property, taking into consideration any applicable judicial limitation, local or state land use regulation, or

historic preservation ordinance, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;

(c) ~~(3)~~ The location of said property;

(d) ~~(4)~~ The quantity or size of said property;

(e) ~~(5)~~ The cost of said property and the present replacement value of any improvements thereon;

(f) ~~(6)~~ The condition of said property;

(g) ~~(7)~~ The income from said property; and

(h) ~~(8)~~ The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

(2) Notwithstanding the requirement that property appraisers consider all of the factors enumerated in subsection (1) in arriving at just valuation, property appraisers shall consider only the income from income-producing property in determining the just valuation of such property.

Section 2. Section 192.011, Florida Statutes, is amended to read:

192.011 All property to be assessed.--The property appraiser shall assess all property located within the county, except inventory, whether such property is taxable, wholly or partially exempt, or subject to classification reflecting a value less than its just value at its present ~~highest and best~~ use. Extension on the tax rolls shall be made according to regulation promulgated by the department in order properly to reflect the general law. Streets, roads, and highways which have been dedicated to or otherwise acquired by a municipality, a county, or a state agency may be assessed, but need not be.

Section 3. Subsection (1) of section 193.015, Florida Statutes, is amended to read:

193.015 Additional specific factor; effect of issuance or denial of permit to dredge, fill, or construct in state waters to their landward extent.--

(1) If the Department of Environmental Protection issues or denies a permit to dredge, fill, or otherwise construct in or on waters of the state, as defined in chapter 403, to their landward extent as determined under s. 403.817(2), the property appraiser is expressly directed to consider the effect of that issuance or denial on the value of the property and any

limitation that the issuance or denial may impose on the present ~~highest and best~~ use of the property to its landward extent.

Section 4. Subsection (4) of section 193.017, Florida Statutes, is amended to read:

193.017 Low-income housing tax credit.--Property used for affordable housing which has received a low-income housing tax credit from the Florida Housing Finance Corporation, as authorized by s. 420.5099, shall be assessed under s. 193.011 and, consistent with s. 420.5099(5) and (6), pursuant to this section.

(4) If an extended low-income housing agreement is filed in the official public records of the county in which the property is located, the agreement, and any recorded amendment or supplement thereto, shall be considered a land-use regulation and a limitation on the present ~~highest and best~~ use of the property during the term of the agreement, amendment, or supplement.

Section 5. This act shall take effect upon becoming a law and shall apply to assessments beginning January 1, 2008.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 389 Proposed Property Tax Notices
SPONSOR(S): Richter
TIED BILLS: **IDEN./SIM. BILLS:** SB 1470

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on State Affairs		Ligas	Williamson
2) Government Efficiency & Accountability Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

The property appraiser is responsible for preparing a notice of proposed property taxes and non-ad valorem assessments, in the name of all the taxing authorities and local governing boards levying both ad valorem taxation and non-ad valorem assessments. The property appraiser must prepare and deliver notice of proposed property taxes to each taxpayer listed on the current year's assessment roll. This notice is called the Truth in Millage notice (TRIM)

This bill revises the Truth in Millage notice (TRIM) to include millage rates by adding three additional columns for the following factors used to determine the actual tax:

- The millage rate last year.
- The millage rate this year if the proposed budget change is made.
- The millage rate if no budget change is made.

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

This bill will take effect on January 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates additional requirements for the Truth in Millage notice.

Ensure lower taxes – The bill increases the information given to taxpayers in the Truth in Millage notice, which will help them in evaluating the fees and taxes local governments propose for the next fiscal year.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The property appraiser is responsible for preparing a notice of proposed property taxes and non-ad valorem assessments, in the name of all the taxing authorities and local governing boards levying both ad valorem taxation and non-ad valorem assessments. The property appraiser must prepare and deliver notice of proposed property taxes to each taxpayer listed on the current year's assessment roll.[1] This notice is called the Truth in Millage notice (TRIM).

Section 200.069, F.S., provides the elements and format of the TRIM notice, which is generally the only acceptable means of providing notice to taxpayers. A county officer may use a form other than that provided by the Department of Revenue for notice purposes only if the substantive content is the same, his or her office pays the related expenses, and he or she obtains prior written permission from the executive director of the department.[2]

The information in the TRIM notice is in columnar form:

TAXING AUTHORITY	Your Property Taxes Last Year	Your Taxes This Year IF PROPOSED Budget Change is Made	A Public Hearing on the Proposed Taxes and Budget Will be Held:	Your Taxes This Year IF NO Budget Change is Made

The following information must be listed underneath each of the five headings:

- **Taxing Authority** – A brief commonly used name for the taxing authority or local governing body.
- **Your Property Taxes Last Year** – The gross amount of ad valorem taxes levied against the parcel in the previous year. If the parcel did not exist in the previous year, this column shall be blank.
- **Your Taxes This Year IF PROPOSED Budget Change is Made** – The gross amount of ad valorem taxes proposed to be levied in the current year, which amount shall be based on the proposed millage rates.
- **A Public Hearing on the Proposed Taxes and Budget Will be Held** – The date, time, and a brief description of the location of the required public hearing.
- **Your Taxes This Year IF NO Budget Change is Made** – The gross amount of ad valorem taxes which would apply to the parcel in the current year if each taxing authority were to levy the rolled-back rate.[3]

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[1] "Non-ad valorem assessment roll" means a roll prepared by a local government and certified to the tax collector for collection. Fla. Stat. §197.102 (2006).

[2] Section 195.022, F.S.

[3] "Rolled-back rate" is a millage rate which, exclusive of new construction, additions to structures, deletions, increase in the value of improvements that have undergone substantial rehabilitation which increased the assessed value by at least 100 percent, and property

Effect of Proposed Changes

This bill amends section 200.069, F.S., to include three additional columns in the TRIM notice, bringing the total to eight. The new factors included on the notice are as follows:

- **Millage Rate Last Year** – The millage rate for ad valorem taxes levied against the parcel in the previous year. If the parcel did not exist in the previous year, this column shall be blank.
- **Millage Rate This Year IF PROPOSED Budget Change is Made** – The proposed millage rate for ad valorem taxes to be levied against the parcel in the current year.
- **Millage Rate IF NO Budget Change is Made** – The millage rate for ad valorem taxes to be levied against the parcel if no budget change is made.

The changes would result in the following format:

Taxing Authority	Your Property Taxes Last Year	Millage Rate Last Year	Your Taxes This Year IF PROPOSED Budget Change is Made	Millage Rate This Year IF PROPOSED Budget Change is Made	A Public Hearing on the Proposed Taxes and Budget will be Held:	Your Taxes This Year IF NO Budget Change is Made	Millage Rate IF NO Budget Change is Made

The inclusion of the millage rates would provide the taxpayers with not only the historical and proposed property taxes but the millage rate used to determine the taxes.

C. SECTION DIRECTORY:

Section 1 amends s. 200.069, F.S., to include historic and proposed millage rates in the TRIM notice.

Section 2 amends s. 200.065, F.S., to conform a cross-reference.

Section 3 provides an effective date of January 1, 2008.

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.[4]

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added due to geographic boundary changes, will provide the same ad valorem tax revenue for each taxing authority as was levied during the prior year. Fla. Stat. § 200.065(1) (2006).

[4] Fla. Stat. § 195.022 (2006) All counties may use the form developed by the Department of Revenue.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Line 67 of this bill references the second column of the TRIM notice when it should reference the third column.

D. STATEMENT OF THE SPONSOR

HB 389 amends the current requirements of 200.065 F.S. This statute requires the property appraisers, pursuant to s. 206.065 (2) (b) to prepare and deliver each taxpayer a notice of proposed taxes. This notice is commonly called the Truth in Millage Notice (TRIM). Presently the TRIM notice does not include the millage each taxing authority and local governing boards levy within their jurisdiction. This bill requires the Truth in Millage Notice to disclose the actual millage used to determine the actual tax.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not Applicable.

A bill to be entitled

An act relating to proposed property tax notices; amending s. 200.069, F.S.; revising the form of the notice of proposed property taxes to include certain millage rates; amending s. 200.065, F.S.; conforming a cross-reference; providing an effective date.

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

Section 1. Subsections (2), (4), and (6) of section 200.069, Florida Statutes, are amended to read:

200.069 Notice of proposed property taxes and non-ad valorem assessments.--Pursuant to s. 200.065(2)(b), the property appraiser, in the name of the taxing authorities and local governing boards levying non-ad valorem assessments within his or her jurisdiction and at the expense of the county, shall prepare and deliver by first-class mail to each taxpayer to be listed on the current year's assessment roll a notice of proposed property taxes, which notice shall contain the elements and use the format provided in the following form. Notwithstanding the provisions of s. 195.022, no county officer shall use a form other than that provided herein. The Department of Revenue may adjust the spacing and placement on the form of the elements listed in this section as it considers necessary based on changes in conditions necessitated by various taxing authorities. If the elements are in the order listed, the placement of the listed columns may be varied at the discretion and expense of the property appraiser, and the property

appraiser may use printing technology and devices to complete the form, the spacing, and the placement of the information in the columns. A county officer may use a form other than that provided by the department for purposes of this part, but only if his or her office pays the related expenses and he or she obtains prior written permission from the executive director of the department; however, a county officer may not use a form the substantive content of which is at variance with the form prescribed by the department. The county officer may continue to use such an approved form until the law that specifies the form is amended or repealed or until the officer receives written disapproval from the executive director.

(2) The notice shall further contain information applicable to the specific parcel in question. The information shall be in columnar form. There shall be eight ~~five~~ column headings which shall read: "Taxing Authority," "Your Property Taxes Last Year," "Millage Rate Last Year," "Your Taxes This Year IF PROPOSED Budget Change is Made," "Millage Rate This Year IF PROPOSED Budget Change is Made," "A Public Hearing on the Proposed Taxes and Budget Will be Held:", ~~and~~ "Your Taxes This Year IF NO Budget Change is Made," and "Millage Rate IF NO Budget Change is Made."

(4) For each entry listed in subsection (3), there shall appear on the notice the following:

(a) In the first column, a brief, commonly used name for the taxing authority or its governing body. The entry in the first column for the levy required pursuant to s. 1011.60(6) shall be "By State Law." The entry for other operating school

district levies shall be "By Local Board." Both school levy entries shall be indented and preceded by the notation "Public Schools:". For each voted levy for debt service, the entry shall be "Voter Approved Debt Payments."

(b) In the second column, the gross amount of ad valorem taxes levied against the parcel in the previous year. If the parcel did not exist in the previous year, the second column shall be blank.

(c) In the third column, the millage rate for ad valorem taxes levied against the parcel in the previous year. If the parcel did not exist in the previous year, the second column shall be blank.

(d) ~~(c)~~ In the fourth ~~third~~ column, the gross amount of ad valorem taxes proposed to be levied in the current year, which amount shall be based on the proposed millage rates provided to the property appraiser pursuant to s. 200.065(2)(b) or, in the case of voted levies for debt service, the millage rate previously authorized by referendum, and the taxable value of the parcel as shown on the current year's assessment roll.

(e) In the fifth column, the proposed millage rate for ad valorem taxes to be levied against the parcel in the current year as provided in paragraph (d).

(f) ~~(d)~~ In the sixth ~~fourth~~ column, the date, the time, and a brief description of the location of the public hearing required pursuant to s. 200.065(2)(c).

(g) ~~(e)~~ In the seventh ~~fifth~~ column, the gross amount of ad valorem taxes which would apply to the parcel in the current year if each taxing authority were to levy the rolled-back rate

computed pursuant to s. 200.065(1) or, in the case of voted levies for debt service, the amount previously authorized by referendum.

(h) In the eighth column, the millage rate for ad valorem taxes to be levied against the parcel if no budget change is made.

(i) ~~(f)~~ For special assessments collected utilizing the ad valorem method pursuant to s. 197.363, the previous year's assessment amount shall be added to the ad valorem taxes shown in the second and seventh ~~fifth~~ columns, and the amount proposed to be imposed for the current year shall be added to the ad valorem taxes shown in the fourth ~~third~~ column.

(6) Following the entries for each taxing authority, a final entry shall show: in the first column, the words "Total Property Taxes:" and in the second, fourth ~~third~~, and seventh ~~fifth~~ columns, the sum of the entries for each of the individual taxing authorities. The second, fourth ~~third~~, and seventh ~~fifth~~ columns shall, immediately below said entries, be labeled Column 1, Column 2, and Column 3, respectively. Below these labels shall appear, in boldfaced type, the statement: SEE REVERSE SIDE FOR EXPLANATION.

Section 2. Subsection (10) of section 200.065, Florida Statutes, is amended to read:

200.065 Method of fixing millage.--

(10) Notwithstanding the provisions of paragraph (2)(b) and s. 200.069(4) (d) ~~(c)~~ to the contrary, the proposed millage rates provided to the property appraiser by the taxing authority, except for millage rates adopted by referendum, for

rates authorized by s. 1011.71, and for rates required by law to be in a specified millage amount, shall be adjusted in the event that a review notice is issued pursuant to s. 193.1142(4) and the taxable value on the approved roll is at variance with the taxable value certified pursuant to subsection (1). The adjustment shall be made by the property appraiser, who shall notify the taxing authorities affected by the adjustment within 5 days of the date the roll is approved pursuant to s. 193.1142(4). The adjustment shall be such as to provide for no change in the dollar amount of taxes levied from that initially proposed by the taxing authority.

Section 3. This act shall take effect January 1, 2008.

A bill to be entitled

An act relating to payment of homestead property taxes for active duty deployed military personnel; providing legislative intent; authorizing deployed active duty military personnel to apply to the Department of Revenue for payment of certain ad valorem taxes for a certain time period; providing duties of property appraisers and the department; providing an appropriation; providing an effective date.

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

Section 1. (1) It is the intent of the Legislature that the state pay the ad valorem property taxes on homestead property of any active duty deployed military personnel for up to 1 year or prorated for the days of active deployment in a given year.

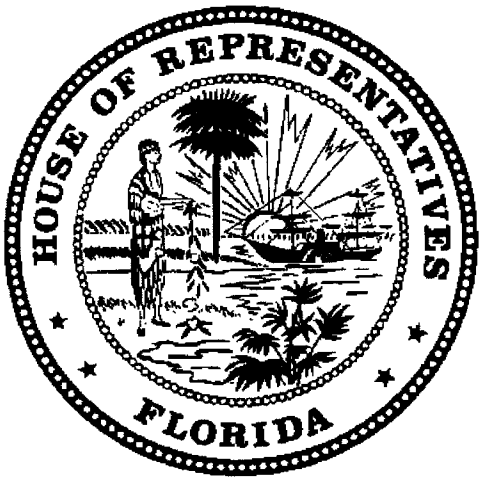
(2) Any active duty deployed military personnel may apply to the Department of Revenue to have the ad valorem taxes imposed upon his or her homestead property paid by the state for up to 1 year or for the prorated days of active employment during 1 year.

(3) The property appraiser of each county shall submit a request to the Department of Revenue for each homestead property for which the owner submits appropriate documentation showing his or her impending deployment or actual deployment. Within 30 days after receiving such request, the Department of Revenue shall remit to the county tax collector the amount of the tax bill for the period of the estimated deployment, rounded to the nearest complete month, up to 1 year.

Section 2. The sum of $1 million is appropriated from the

General Revenue Fund to the Department of Revenue for purposes of paying ad valorem taxes as provided by this act.

Section 3. This act shall take effect upon becoming a law.



Committee on State Affairs

Wednesday, March 14, 2007
1:00 PM – 4:00 PM
Morris Hall

Addendum A

Marco Rubio
Speaker

Frank Attkisson
Chairman

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. #1

Bill No. **73**

COUNCIL/COMMITTEE ACTION

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

Council/Committee hearing bill: Committee on State Affairs

Representative(s) Allen offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. This act may be cited as the "Florida Highway Patrol Sergeant Nicholas Sottile Act."

Section 2. Section 447.3075, Florida Statutes, is created to read:

447.3075 Law enforcement bargaining units; separate units required; establishment.--Notwithstanding any other provision of law, administrative rule, or administrative agency decision to the contrary, any state law enforcement agency that has 1,200 or more officers shall be in a bargaining unit that is separate from officers in other state law enforcement agencies. If the application of this section requires that a new state law enforcement bargaining unit be created, a question concerning representation is not deemed to have arisen regarding the new unit or the existing unit.

Section 3. This act shall take effect July 1, 2007.

Amendment No. #1

23

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

25 Remove the entire title and insert:

26

27 An act relating to labor organizations; providing a short

28 title; creating s. 447.3075, F.S.; requiring that the

29 officers of certain state law enforcement agencies be in a

30 separate bargaining unit; providing an effective date.

31

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0389**

COUNCIL/COMMITTEE ACTION

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

Council/Committee hearing bill: Committee on State Affairs

Representative(s) Richter offered the following:

Amendment

Remove line 67 and insert:

parcel did not exist in the previous year, the third column

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amendmentdraft19819.doc

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0261**

COUNCIL/COMMITTEE ACTION

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

Council/Committee hearing bill: Committee on State Affairs

Representatives Attkisson and Lopez-Cantera offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Effective upon becoming a law and applicable to assessments beginning January 1, 2008, section 193.011, Florida Statutes, is amended to read:

193.011 Factors to consider in deriving just valuation.--

(1) In arriving at just valuation as required under s. 4, Art. VII of the State Constitution, the property appraiser shall take into consideration the following factors:

(a) ~~(1)~~ The present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length, which does not require as a condition precedent to the proposed use of the property:

1. The granting of a variance from existing zoning;

2. A change in zoning;

3. Relief from any existing local ordinance or regulation;

4. Relief from any judicial limitation; or

5. The permitting of the intended use of the property by the state or any state agency, local or regional agency, local or regional government, or taxing authority;

(b) ~~(2)~~ The highest and best use to which the property can be expected to be put in the immediate future, which does not require satisfaction of any of the conditions precedent enumerated in paragraphs (a)1. through (a)5., and the present use of the property, taking into consideration any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;

(c) ~~(3)~~ The location of said property;

(d) ~~(4)~~ The quantity or size of said property;

(e) ~~(5)~~ The cost of said property and the present replacement value of any improvements thereon;

(f) ~~(6)~~ The condition of said property;

(g) ~~(7)~~ The income from said property; and

(h) ~~(8)~~ The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. When the net proceeds

of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

2. Notwithstanding the requirement that property appraisers consider all of the factors enumerated in subsection (1) in arriving at just valuation, property appraisers shall consider only the income from income-producing property in determining the just valuation of such property.

Section 2. Subsection (3), subsection (4), and subsection (5) of section 194.011, Florida Statutes, are amended to read:

194.011 Assessment notice; objections to assessments.--

(3) A petition to the value adjustment board must be in substantially the form prescribed by the department. Notwithstanding s. 195.022, a county officer may not refuse to accept a form provided by the department for this purpose if the taxpayer chooses to use it. A petition to the value adjustment board shall describe the property by parcel number and shall be filed as follows:

(a) The property appraiser shall have available and shall distribute forms prescribed by the Department of Revenue on which the petition shall be made. Such petition shall be sworn to by the petitioner.

(b) The completed petition shall be filed with the clerk of the value adjustment board of the county, who shall acknowledge receipt thereof and promptly furnish a copy thereof to the property appraiser.

(c) The petition shall state the approximate time anticipated by the taxpayer to present and argue his or her petition before the board.

(d) The petition may be filed, as to valuation issues, at any time during the taxable year on or before the 25th day following the mailing of notice by the property appraiser as provided in subsection (1). If the actual receipt of the notice is disputed, the burden of proof shall be on the property appraiser to establish receipt by clear and convincing evidence. With respect to an issue involving the denial of an exemption, an agricultural or high-water recharge classification application, an application for classification as historic property used for commercial or certain nonprofit purposes, or a deferral, the petition must be filed at any time during the taxable year on or before the 30th day following the mailing of the notice by the property appraiser under s. 193.461, s. 193.503, s. 193.625, or s. 196.193 or notice by the tax collector under s. 197.253.

(e) A condominium association, cooperative association, or any homeowners' association as defined in s. 723.075, with approval of its board of administration or directors, may file with the value adjustment board a single joint petition on behalf of any association members who own parcels of property which the property appraiser determines are substantially similar with respect to location, proximity to amenities, number of rooms, living area, and condition. The condominium association, cooperative association, or homeowners' association as defined in s. 723.075 shall provide the unit owners with notice of its intent to petition the value adjustment board and shall provide at least 20 days for a unit owner to elect, in writing, that his or her unit not be included in the petition.

(f) An owner of contiguous, undeveloped parcels may file with the value adjustment board a single joint petition if the property appraiser determines such parcels are substantially similar in nature.

(g) The individual, agent, or legal entity that signs the petition becomes an agent of the taxpayer for the purpose of serving process to obtain personal jurisdiction over the taxpayer for the entire value adjustment board proceedings, including any appeals of a board decision by the property appraiser pursuant to s. 194.036.

(4)(a) At least 15 days before the hearing the petitioner shall provide to the property appraiser a list of evidence to be presented at the hearing, together with copies of all documentation to be considered by the value adjustment board and a summary of evidence to be presented by witnesses. Failure of the petitioner to timely comply with the requirements of this paragraph shall result in the rescheduling of the hearing.

(b) At least 15 ~~No later than 7~~ days before the hearing, ~~if the petitioner has provided the information required under paragraph (a), and if requested in writing by the petitioner,~~ the property appraiser shall provide to the petitioner a list of evidence to be presented at the hearing, together with copies of all documentation to be considered by the value adjustment board and a summary of evidence to be presented by witnesses. The evidence list must contain the property record card if provided by the clerk. Failure of the property appraiser to timely comply with the requirements of this paragraph shall result in a rescheduling of the hearing.

(5) The department shall by rule prescribe uniform procedures for hearings before the value adjustment board which include requiring:

(a) Procedures for the exchange of information and evidence by the property appraiser and the petitioner consistent with s. 194.032; and

(b) That the value adjustment board hold an organizational meeting for the purpose of making these procedures available to petitioners.

Section 3. Section 194.013, Florida Statutes, is amended to read:

194.013 Filing fees for petitions; disposition; waiver.--

(1) If so required by resolution of the value adjustment board, a petition filed pursuant to s. 194.011 shall be accompanied by a filing fee to be paid to the clerk of the value adjustment board in an amount determined by the board not to exceed $15 for each separate parcel of property, real or personal, covered by the petition and subject to appeal. However, no such filing fee may be required with respect to an appeal from the disapproval of homestead exemption under s. 196.151 or from the denial of tax deferral under s. 197.253. Only a single filing fee shall be charged under this section as to any particular parcel of property despite the existence of multiple issues and hearings pertaining to such parcel. For joint petitions filed pursuant to s. 194.011(3)(e) or (f), a single filing fee shall be charged. Such fee shall be calculated as the cost of the special magistrate for the time involved in hearing the joint petition and shall not exceed $5 per parcel. Said fee is to be proportionately paid by affected parcel owners.

(2) The value adjustment board shall waive the filing fee with respect to a petition filed by a taxpayer who <u>is eligible to receive one or more of the exemptions under s. 6(c), (f), or (g), Art. VII of the State Constitution, regardless of whether</u>

the taxpayer's local government grants the additional local homestead exemptions. The filing fee also shall be waived for a taxpayer who demonstrates at the time of filing, by an appropriate certificate or other documentation issued by the Department of Children and Family Services and submitted with the petition, that the petitioner is then an eligible recipient of temporary assistance under chapter 414.

(3) All filing fees imposed under this section shall be paid to the clerk of the value adjustment board at the time of filing. If such fees are not paid at that time, the petition shall be deemed invalid and shall be rejected.

(4) All filing fees collected by the clerk shall be allocated and utilized to defray, to the extent possible, the costs incurred in connection with the administration and operation of the value adjustment board.

Section 4. Section 194.015, Florida Statutes, is amended to read:

194.015 Value adjustment board.--

(1) There is hereby created a value adjustment board for each county, which shall consist of a total of five members.

(2)(a) Three members shall be appointed by ~~of~~ the governing body of the county:

1. One member must own a homestead property within the county;

2. One member must own a business which occupies commercial space located within the county; and

3. No appointee may be either a member or an employee of any taxing authority. ~~as elected from the membership of the board of said governing body,~~

(b) One of these three appointees ~~whom~~ shall be elected chairperson.~~, and~~

(3) Two members shall be appointed by ~~of~~ the school board:

(a) One member must own a business which occupies commercial space located within the school district.

(b) One member must be eligible to receive one or more of the exemptions under s. 6(c), (f), or (g), Art. VII of the State Constitution, regardless of whether the taxpayer's local government grants the additional local homestead exemptions.

(c) No appointee may be either a member or an employee of any taxing authority. ~~as elected from the membership of the school board. The members of the board may be temporarily replaced by other members of the respective boards on appointment by their respective chairpersons.~~

(4) Any three members shall constitute a quorum of the board, except that each quorum must include at least one member appointed by the ~~of said~~ governing body of the county ~~board~~ and at least one member appointed by the ~~of the~~ school board, and no meeting of the board shall take place unless a quorum is present.

(5) Members of the board may receive such per diem compensation as is allowed by law for state employees if both bodies elect to allow such compensation.

(6) The clerk of the governing body of the county shall be the clerk of the value adjustment board.

(7)(a) The office of the county attorney may be counsel to the board unless the county attorney represents the property appraiser, in which instance the board shall appoint private counsel who has practiced law for over 5 years and who shall receive such compensation as may be established by the board.

(b) No meeting of the board shall take place unless counsel to the board is present. However, counsel for the property appraiser shall not be required when the county

attorney represents only the board at the board hearings, even though the county attorney may represent the property appraiser in other matters or at a different time.

(8) Two-fifths of the expenses of the board shall be borne by the district school board and three-fifths by the district county commission.

Section 5. Subsection (2) of section 194.032, Florida Statutes, is amended to read:

194.032 Hearing purposes; timetable.--

(2) The clerk of the governing body of the county shall prepare a schedule of appearances before the board based on petitions timely filed with him or her. The clerk shall notify each petitioner of the scheduled time of his or her appearance no less than 25 calendar days prior to the day of such scheduled appearance. Upon receipt of this notification, the petitioner shall have the right to reschedule the hearing an unlimited number of times for the failure of the property appraiser to comply with the requirements of s. 194.011(4)(b). The petitioner also shall have the right to reschedule a single time by submitting to the clerk of the governing body of the county a written request to reschedule, no less than 5 calendar days before the day of the originally scheduled hearing. Additional rescheduling of the hearing may be granted to the taxpayer upon receipt of an affidavit from a physician which states a medical reason as to why the petitioner needs to reschedule the hearing. A copy of the property record card containing relevant information used in computing the taxpayer's current assessment shall be included with such notice, if said card was requested by the taxpayer. Such request shall be made by checking an appropriate box on the petition form. No petitioner shall be required to wait for more than 24 hours from the scheduled time;

and, if his or her petition is not heard in that time, the petitioner may, at his or her option, report to the chairperson of the meeting that he or she intends to leave; and, if he or she is not heard immediately, the petitioner's hearing shall be rescheduled for a time reserved exclusively for the petitioner ~~administrative remedies will be deemed to be exhausted, and he or she may seek further relief as he or she deems appropriate~~. Failure on three occasions with respect to any single tax year to convene at the scheduled time of meetings of the board shall constitute grounds for removal from office by the Governor for neglect of duties.

Section 6. Subsection (2) of section 194.034, Florida Statutes, is amended to read:

194.034 Hearing procedures; rules.--

(2) In each case, except when a complaint is withdrawn by the petitioner or is acknowledged as correct by the property appraiser, the value adjustment board shall render a written decision. All such decisions shall be issued within 20 calendar days of the last day the board is in session under s. 194.032. The decision of the board shall contain findings of fact and conclusions of law and shall include reasons for upholding or overturning the determination of the property appraiser. If the determination of the property appraiser is overturned, the board shall order the refunding of the filing fee required by s. 194.013. When a special magistrate has been appointed, the recommendations of the special magistrate shall be considered by the board. The clerk, upon issuance of the decisions, shall, on a form provided by the Department of Revenue, notify by first-class mail each taxpayer, the property appraiser, and the department of the decision of the board.

Section 7. Section 194.192, Florida Statutes, is amended to read:

194.192 Costs; interest on unpaid taxes; penalty and attorney fees.--

(1) In any suit involving the assessment or collection of any tax, the court shall assess all costs.

(2) If the court finds that the amount of tax owed by the taxpayer is greater than the amount the taxpayer has in good faith admitted and paid, it shall enter judgment against the taxpayer for the deficiency and for interest on the deficiency at the rate of 12 percent per year from the date the tax became delinquent. If it finds that the amount of tax which the taxpayer has admitted to be owing is grossly disproportionate to the amount of tax found to be due and that the taxpayer's admission was not made in good faith, the court shall also assess a penalty at the rate of 10 percent of the deficiency per year from the date the tax became delinquent.

(3) If the court finds that the amount owed by the taxpayer is less than the amount of tax paid, it shall enter judgment against the appraiser at the rate of 12 percent per year from the date of payment. If the final assessment established by the court is lower than the value assessed by the property appraiser by more than 10 percent the court also shall assess and award reasonable attorney fees to the taxpayer.

Section 8. Section 194.301, Florida Statutes, is amended to read:

194.301 Presumption of correctness.--In any administrative ~~or judicial~~ action in which a taxpayer challenges an ad valorem tax assessment of value, the property appraiser shall have the burden of providing by clear and convincing evidence that the assessment is correct. In any judicial action the burden of

proof shall be upon the party initiating the action. ~~appraiser's assessment shall be presumed correct. This presumption of correctness is lost if the taxpayer shows by a preponderance of the evidence that either the property appraiser has failed to consider properly the criteria in s. 193.011 or if the property appraiser's assessment is arbitrarily based on appraisal practices which are different from the appraisal practices generally applied by the property appraiser to comparable property within the same class and within the same county. If the presumption of correctness is lost, the taxpayer shall have the burden of proving by a preponderance of the evidence that the appraiser's assessment is in excess of just value. If the presumption of correctness is retained, the taxpayer shall have the burden of proving by clear and convincing evidence that the appraiser's assessment is in excess of just value. In no case shall the taxpayer have the burden of proving that the property appraiser's assessment is not supported by any reasonable hypothesis of a legal assessment. If the property appraiser's assessment is determined to be erroneous, the Value Adjustment Board or the court can establish the assessment if there exists competent, substantial evidence in the record, which cumulatively meets the requirements of s. 193.011. If the record lacks competent, substantial evidence meeting the just value criteria of s. 193.011, the matter shall be remanded to the property appraiser with appropriate directions from the Value Adjustment Board or the court.~~

Section 9. This act shall take effect upon becoming a law and shall apply to assessments beginning January 1, 2008.

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

Remove the entire title and insert:

Amendment No. (for drafter's use only)

An act relating to an assessment and review of ad valorem taxation; amending s. 193.011, F.S.; providing conditions precedent; requiring property appraisers to use only the income factor in arriving at just value of income-producing properties; providing application; amending s. 194.011, F.S.; placing the burden of proof on the property appraiser if receipt of the assessment notice is disputed; revising the deadline that a property appraiser must meet when providing the petitioner a list of evidence to be presented at the hearing; removing the requirement that the petitioner request in writing the evidence; amending s. 194.013, F.S.; requiring the value adjustment board to waive the petition filing fee for taxpayers eligible for certain exemptions under the Florida Constitution; amending s. 194.015, F.S.; revising the membership of the value adjustment board, appointment criteria, and the quorum requirements; reorganizing the section; amending s. 194.032, F.S.; allowing a petitioner to reschedule a hearing before the value adjustment board under certain conditions; amending s. 194.034, F.S.; providing for refunding of the filing fee if the determination of a property appraiser is overturned; amending s. 194.192, F.S.; providing for payment of attorney fees; amending s. 194.301, F.S.; placing the burden of proof upon the property appraiser; providing an effective date.