Finance and Tax Subcommittee

Friday, March 8, 2013

10:00 a.m.

Morris Hall

MEETING PACKET

Will Weatherford
Speaker

Ritch Workman
Chair

The Florida House of Representatives

Finance and Tax Subcommittee

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AGENDA

March 8, 2013
10:00 a.m.
Morris Hall

I. Call to Order/Roll Call

II. Chair's Opening Remarks

III. Consideration of the following bill(s):
HB 165 Professional Sports Franchise Facilities by Gonzalez, Fresen
HB 95 Charitable Contributions by Holder
HB 531 Ad Valorem Tax Exemptions by Patronis
HB 4013 Tax Refund Programs by Santiago

IV. Closing Remarks and Adjournment

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HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 165 Professional Sports Franchise Facilities
SPONSOR(S): Gonzalez and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 306

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee		Pewitt	Langston
2) Economic Affairs Committee			
3) Appropriations Committee			

SUMMARY ANALYSIS

The bill authorizes a new distribution of state sales tax to a "professional sports franchise renovation facility." The Department of Economic Opportunity is charged with reviewing and certifying an applicant for this designation. In order to be certified, the facility must be owned by a local government or local government must hold title to the land on which the facility sits; the renovation must cost at least $250 million, of which at least half must be paid for by private sources; and the applicant must meet several other requirements. Upon certification, the Department of Revenue will distribute $250,000 monthly ($3 million annually) to the applicant for the purposes of renovating the facility. This money can be distributed to an applicant even if it has already been certified as a new or retained professional sports franchise under 288.1162, F.S., and receives the $2 million annual payment from sales tax revenues associated with that designation.

In addition, the bill creates a new allowable use of the additional professional sports franchise tourist development tax. A local government which levies this tax would be allowed to use it to pay for debt service on bonds issued to renovate a professional sports franchise facility if the renovation would cost at least $250 million, at least half of which must be paid for by private sources, and if the facility is publicly owned or sits on publicly owned land. The bill also expands the eligibility to levy this tax to include counties which levy the charter county convention development tax (i.e., Miami-Dade County), which are currently prohibited from doing so.

It provides an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Professional Sports in Florida

Florida currently has 9 major professional sports teams.[1] The oldest major professional sports team in the state is the Miami Dolphins football franchise of the National Football League (NFL). The Dolphins franchise began in 1966. The newest major professional sports team in the state is the Tampa Bay Rays baseball franchise of the Major League Baseball (MLB) league. The Rays franchise began in 1998.

In addition to the nine major professional sports teams, Florida is also home to 33 Minor League franchises in various sports and three Arena Football League teams. MLB's Spring Training Grapefruit League is also based in Florida, with 15 teams claiming the state as their second home for preseason training and exhibition games.

State Incentives for Professional Sports Teams

Section 288.1162, F.S., provides the procedure by which professional sports franchises in Florida may be certified to receive state funding for the purpose of paying for the acquisition, construction, reconstruction, or renovation of a facility for a new or retained professional sports franchise. Local governments, non-profit, and for-profit entities may apply to the program.

The Department of Economic Opportunity (DEO) is responsible for screening and certifying applicants for state funding. Applicants qualifying as new professional sports franchises may not have been based in Florida prior to April 1, 1987. Applicants qualifying as retained professional sports franchises must have had a league-authorized location in the state on or before December 31, 1976, and be continuously based at that location. The number of certified professional sports franchises, both new and retained, is limited to eight.

For both new and retained franchises, DEO must verify that:

- A local government is responsible for the construction, management, or operation of the professional sports franchise facility, or holds title to the property where the facility is located;
- The applicant has a verified copy of a signed agreement to use the facility with a new professional sports franchise for at least 10 years, or for 20 years in the case of a retained franchise;
- The applicant has a verified copy of the approval by the governing body of the NFL, MLB, NHL, or NBA authorizing the location;
- The applicant has projections demonstrating a paid attendance of over 300,000 annually;
- The applicant has an independent analysis demonstrating that the amount of sales taxes generated by the use or operation of the franchise's facility will generate $2 million annually;
- The city or county where the franchise's facility is located has certified by resolution after a public hearing that the application serves a public purpose; and
- The applicant has demonstrated that it will provide financial or other commitments of more than one-half of the costs incurred for the improvement or development of the franchise's facility.

[1] Department of Economic Opportunity, *Professional Sports Franchises* (January 8, 2013).

Any applicant certified pursuant to this section may receive monthly payments from the state of $166,667 for not more than 30 years, for an annual payment totaling $2,000,004. The Department of Revenue disburses the payments, which are taken out of sales tax revenues.

Payments may only be used for the purpose of paying for the acquisition, construction, reconstruction, or renovation of the facility; reimbursing associated costs for such activities; paying or pledging payments of debt service on bonds issued for such activities; funding debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to bonds issued for such activities; or refinancing the bonds. The state may only pursue recovery of funds if the Auditor General finds that the distributions were not expended as required by statute.

No facility may be certified more than once, and no sports franchise can be the basis for more than one certification unless the previous certification was withdrawn by the facility or invalidated by DEO before any funds were disbursed under s. 212.20(6)(d), F.S.

As of January 8, 2013, there were eight certified professional sports franchise facilities in Florida. The facilities and the payment distribution for each are listed below:

Facility Name	Certified Entity	Franchise	First Payment	Total to Date
Sun Life Stadium	Dolphins Stadium/South Florida Stadium	Florida Marlins	06/94	$39,166,745
Everbank Field	City of Jacksonville	Jacksonville Jaguars	06/94	$37,333,408
Tropicana Field	City of St. Petersburg	Tampa Bay Rays	06/95	$35,166,737
Tampa Bay Times Forum	Tampa Sports Authority	Tampa Bay Lightning	09/95	$34,833,403
BB&T Center	Broward County	Florida Panthers	08/96	$33,000,066
Raymond James Stadium	Hillsborough County	Tampa Bay Buccaneers	01/97	$29,666,726
American Airlines Arena	BPL, LTD	Miami Heat	03/98	$29,666,726
Amway Center	City of Orlando	Orlando Magic	02/08	$10,000,020

Local Incentives for Professional Sports Teams

Half-Cent Sales Tax Rebate

Part VI of Chapter 218, Florida Statutes, creates a revenue sharing program called the local government half-cent sales tax. Section 212.20(6)(d)2., F.S. provides that 8.814% of net state sales tax proceeds collected in each county be deposited into the Local Government Half-Cent Sales Tax Clearing Trust Fund. The funds are then distributed to the counties based on a formula accounting for the populations of incorporated and unincorporated areas of the county.

Revenues from this program must be expended on countywide or municipality-wide programs or tax relief. Subject to a majority vote of the county commission and a majority vote of the city commissions of municipalities making up at least 50% of the county population, up to $2 million annually may be used to fund an certified new or retained professional sports franchise, a spring training franchise certified under 288.11621, F.S., or a motorsport entertainment complex certified under 288.1171, F.S. All restrictions and certification requirements from those sections apply to the use of half-cent sales tax revenues, except the cap of 8 certifications and the prohibition on multiple certifications for one applicant.

As of March 3, 2013, no local governments have opted to provide funding under this section.

Transient Rentals Taxes

Section 125.0104, F.S., authorizes the levy of five separate local option taxes on rental charges subject to the transient rentals tax (commonly known as the "bed tax") under s. 212.03, F.S., to be used in various ways to promote tourism within the county. The authorized uses of each local option tax vary according to the particular levy.

- The **tourist development tax** may be levied at the rate of 1 or 2 percent. Currently, 62 counties levy this tax at 2 percent; all 67 counties are eligible to levy this tax.
- An **additional tourist development tax** of 1 percent may be levied. Currently 45 counties levy this tax and 57 which are eligible.
- A **professional sports franchise facility tax** may be levied up to an additional 1 percent by any county. Currently 36 counties levy this tax. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities, and convention centers, and to promote and advertise tourism.
- A **high tourism impact tax** may be levied at an additional 1 percent. Five counties are eligible to levy this tax (Broward, Monroe, Orange, Osceola, and Walton). Of these five counties, Monroe, Orange, and Osceola levy this additional tax.
- An **additional professional sports franchise facility tax** no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax. Out of 36 eligible counties, 20 levy an additional professional sports franchise facility tax. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities of professional sports franchises, and to promote and advertise tourism. Facilities funded under this provision must be publicly owned. Miami-Dade and Volusia counties may not levy the additional 1 percent professional sports franchise facility tax because they levy convention development taxes pursuant to section 212.0305(4), F.S.

Generally, the revenues from these levies may be used for capital construction, maintenance, and promotion of tourist-related facilities, tourism promotion, and beach and shoreline maintenance. Tourist-related facilities include convention centers, sports stadiums and arenas, coliseums, auditoriums, aquariums, and museums that are publically owned and operated within the area that the tax is levied. Tax revenues may also be used to promote zoos in some circumstances.

Only Duval County meets the requirements to levy a 2 percent consolidated county convention development tax, which can be used for many of the same purposes as the tourist development taxes. Miami-Dade County is the only county meeting the requirements to levy the 3% charter county convention development tax. These funds are primarily dedicated to the funding of two particular projects, but may be used on other projects similar to those approved under the tourist development tax provisions once those specific projects are completed. Volusia County is the only county authorized to levy three separate special district convention development taxes. The combined effect of the three separate taxing districts is a countywide tax of 3 percent. Proceeds from the tax may be used to promote and advertise tourism and to fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus.[2]

Proposed Changes

State Incentives

The bill creates a new designation for a "professional sports franchise renovation facility" under section 288.1162, F.S.. The Department of Economic Opportunity would be required to verify that:

[2] 212.0305, F.S.

- A public entity is responsible for construction, management, or operation of the facility, or holds title to the land where the facility is located;
- The applicant has a signed agreement with a professional sports franchise to use the facility for at least 20 years;
- The applicant has an independent analysis which projects that the renovated facility will generate at least $3 million annually in sales tax revenues;
- The county or municipality where the facility is located has certified by resolution that the application serves a public purpose;
- The applicant has demonstrated that the total cost of the renovation will exceed $250 million, of which at least 50% will be paid by private sources; and
- The applicant has been a league-authorized location for a professional sports franchise for at least 20 years.

Only one applicant may be certified as a professional sports franchise renovation facility. The Department of Revenue will distribute $250,000 monthly ($3 million annually) to such certified applicant out of sales tax revenues for a period of up to 30 years.

Local Incentives

The bill also amends section 125.0104, F.S. to allow the additional professional sports franchise facility tax to be used to pay for debt service on bonds issued to finance the renovation of a professional sports facility which is publicly owned, or which sits on publicly owned land, so long as the renovation will cost at least $250 million, of which at least half will be paid for by private sources. It further amends this section to allow counties which levy the charter county convention development tax (i.e. Miami-Dade County) to levy the additional professional sports franchise facility tax.

B. SECTION DIRECTORY:

Section 1: Amends section 125.0104, F.S., by providing a new approved use for the additional professional sports franchise facility tax, and by allowing Miami-Dade County to levy such tax.

Section 2: Amends section 212.20, F.S., by requiring the Department of Revenue to distribute $250,000 monthly from sales tax revenues to a certified professional sports franchise renovation facility.

Section 3: Amends section 288.1162, F.S., by creating certification requirements for a new designation as a "professional sports franchise renovation facility."

Section 4: Amends section 218.62, F.S., by updating a cross-reference.

Section 5: Amends section 288.11621, F.S., by updating a cross-reference.

Section 6: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference met on February 22, 2013, and estimated that the bill would have a negative impact on general revenues of $2.5 million in fiscal year 2013-2014, and a $3 million negative impact on general revenues on a recurring basis.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimated that there would be a positive, indeterminate impact on local government revenues.

2. Expenditures:

Any impact on expenditures would be subject to an ordinance approved by a supermajority vote of the county commission, and would be funded by the additional professional sports franchise facility tax.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions of the bill may encourage stadiums (which may be privately owned) to undertake a major renovation, which could have positive impacts on the construction sector. Additionally, such renovations could have a positive impact on ticket sales and other sales associated with sporting and other events.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to professional sports franchise facilities; amending s. 125.0104, F.S.; authorizing the use of certain local option tourist development taxes to pay debt service on bonds and other specified costs relating to financing the renovation of certain professional sports franchise facilities; providing for nonapplicability of a prohibition on the levy of such tax in charter counties that impose a convention development tax; amending s. 212.20, F.S.; providing for monthly distribution of a specified amount of sales tax revenues to a facility certified by the Department of Economic Opportunity as a professional sports franchise renovation facility; conforming a cross-reference; amending s. 288.1162, F.S.; authorizing the department to screen and certify applicants for funding as a professional sports franchise renovation facility; defining the term "professional sports franchise renovation facility"; authorizing a previously certified new or retained professional sports facility to be eligible for an additional certification and funding as a professional sports franchise renovation facility; requiring the department to determine that specified requirements have been met before certifying an applicant as a professional sports franchise renovation facility; limiting the expenditure of certain revenues by a certified professional sports franchise renovation

facility to specified purposes; amending ss. 218.64 and 288.11621, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Paragraph (n) of subsection (3) and paragraph (a) of subsection (5) of section 125.0104, Florida Statutes, are amended to read:

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—

(3) TAXABLE PRIVILEGES; EXEMPTIONS; LEVY; RATE.—

(n) In addition to any other tax that is imposed under this section, a county that has imposed the tax under paragraph (l) may impose an additional tax that is no greater than 1 percent on the exercise of the privilege described in paragraph (a) by a majority plus one vote of the membership of the board of county commissioners in order to:

1. Pay the debt service on bonds issued to finance:

a. The construction, reconstruction, or renovation of a facility either publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred prior to the issuance of such bonds for a new professional sports franchise as defined in s. 288.1162.

b. The acquisition, construction, reconstruction, or renovation of a facility either publicly owned and operated, or

publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred prior to the issuance of such bonds for a retained spring training franchise.

2. Pay the debt service on bonds issued to finance the renovation of a professional sports franchise facility that is publicly owned, or located on land that is publicly owned, and that is publicly operated or operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred before the issuance of such bonds for the renovated professional sports facility. The cost to renovate the facility must be greater than $250 million, including permitting, architectural, and engineering fees, of which more than 50 percent of the total construction cost, exclusive of in-kind contributions, must be paid for by the ownership group of the professional sports franchise or other private sources. For facilities funded pursuant to this subparagraph, tax revenues available to pay debt service on bonds may be used to pay for operation and maintenance costs of the facility.

3.~~2.~~ Promote and advertise tourism in the State of Florida and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists.

A county that imposes the tax authorized in this paragraph may not expend any ad valorem tax revenues for the acquisition, construction, reconstruction, or renovation of a facility for which tax revenues are used pursuant to subparagraph 1. The provision of paragraph (b) which prohibits any county authorized to levy a convention development tax pursuant to s. 212.0305 from levying more than the 2-percent tax authorized by this section shall not apply to the additional tax authorized by this paragraph in counties which levy convention development taxes pursuant to s. 212.0305(4)(a) or (b) ~~212.0305(4)(a)~~. Subsection (4) does not apply to the adoption of the additional tax authorized in this paragraph. The effective date of the levy and imposition of the tax authorized under this paragraph is the first day of the second month following approval of the ordinance by the board of county commissioners or the first day of any subsequent month specified in the ordinance. A certified copy of such ordinance shall be furnished by the county to the Department of Revenue within 10 days after approval of the ordinance.

(5) AUTHORIZED USES OF REVENUE.—

(a) All tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by that county for the following purposes only:

1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, auditoriums, aquariums, or museums

that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public, within the boundaries of the county or subcounty special taxing district in which the tax is levied. Tax revenues received pursuant to this section may also be used for promotion of zoological parks that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public. However, these purposes may be implemented through service contracts and leases with lessees with sufficient expertise or financial capability to operate such facilities;

2. To promote and advertise tourism in the State of Florida and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event shall have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists;

3. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations in the county, which may include any indirect administrative costs for services performed by the county on behalf of the promotion agency; ~~or~~

4. To finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup, or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river. However, any funds

identified by a county as the local matching source for beach renourishment, restoration, or erosion control projects included in the long-range budget plan of the state's Beach Management Plan, pursuant to s. 161.091, or funds contractually obligated by a county in the financial plan for a federally authorized shore protection project may not be used or loaned for any other purpose. In counties of less than 100,000 population, no more than 10 percent of the revenues from the tourist development tax may be used for beach park facilities; or

5. For other uses specifically allowed under subparagraph (3)(n)2.

Section 2. Paragraph (d) of subsection (6) of section 212.20, Florida Statutes, is amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.—

(6) Distribution of all proceeds under this chapter and s. 202.18(1)(b) and (2)(b) shall be as follows:

(d) The proceeds of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be distributed as follows:

1. In any fiscal year, the greater of $500 million, minus an amount equal to 4.6 percent of the proceeds of the taxes collected pursuant to chapter 201, or 5.2 percent of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in monthly installments into the General Revenue Fund.

2. After the distribution under subparagraph 1., 8.814

percent of the amount remitted by a sales tax dealer located within a participating county pursuant to s. 218.61 shall be transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to be transferred shall be reduced by 0.1 percent, and the department shall distribute this amount to the Public Employees Relations Commission Trust Fund less $5,000 each month, which shall be added to the amount calculated in subparagraph 3. and distributed accordingly.

3. After the distribution under subparagraphs 1. and 2., 0.095 percent shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and distributed pursuant to s. 218.65.

4. After the distributions under subparagraphs 1., 2., and 3., 2.0440 percent of the available proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for Counties pursuant to s. 218.215.

5. After the distributions under subparagraphs 1., 2., and 3., 1.3409 percent of the available proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for Municipalities pursuant to s. 218.215. If the total revenue to be distributed pursuant to this subparagraph is at least as great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, no municipality shall receive less than the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000. If the

total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

6. Of the remaining proceeds:

a. In each fiscal year, the sum of $29,915,500 shall be divided into as many equal parts as there are counties in the state, and one part shall be distributed to each county. The distribution among the several counties must begin each fiscal year on or before January 5th and continue monthly for a total of 4 months. If a local or special law required that any moneys accruing to a county in fiscal year 1999-2000 under the then-existing provisions of s. 550.135 be paid directly to the district school board, special district, or a municipal government, such payment must continue until the local or special law is amended or repealed. The state covenants with holders of bonds or other instruments of indebtedness issued by local governments, special districts, or district school boards before July 1, 2000, that it is not the intent of this subparagraph to adversely affect the rights of those holders or relieve local governments, special districts, or district school boards of the duty to meet their obligations as a result of previous pledges or assignments or trusts entered into which obligated funds received from the distribution to county governments under then-existing s. 550.135. This distribution specifically is in lieu of funds distributed under s. 550.135

before July 1, 2000.

b. The department shall, pursuant to s. 288.1162, distribute $166,667 monthly ~~pursuant to s. 288.1162~~ to each applicant certified as a facility for a new or retained professional sports franchise and distribute $250,000 monthly to an applicant certified as a professional sports franchise renovation facility ~~pursuant to s. 288.1162~~. Up to $41,667 shall be distributed monthly by the department to each certified applicant as defined in s. 288.11621 for a facility for a spring training franchise. However, not more than $416,670 may be distributed monthly in the aggregate to all certified applicants for facilities for spring training franchises. Distributions begin 60 days after such certification and continue for not more than 30 years, except as otherwise provided in s. 288.11621. A certified applicant identified in this sub-subparagraph may not receive more in distributions than expended by the applicant for the public purposes provided for in s. 288.1162(6) ~~288.1162(5)~~ or s. 288.11621(3).

c. Beginning 30 days after notice by the Department of Economic Opportunity to the Department of Revenue that an applicant has been certified as the professional golf hall of fame pursuant to s. 288.1168 and is open to the public, $166,667 shall be distributed monthly, for up to 300 months, to the applicant.

d. Beginning 30 days after notice by the Department of Economic Opportunity to the Department of Revenue that the applicant has been certified as the International Game Fish Association World Center facility pursuant to s. 288.1169, and

the facility is open to the public, $83,333 shall be distributed monthly, for up to 168 months, to the applicant. This distribution is subject to reduction pursuant to s. 288.1169. A lump sum payment of $999,996 shall be made, after certification and before July 1, 2000.

7. All other proceeds must remain in the General Revenue Fund.

Section 3. Section 288.1162, Florida Statutes, is amended to read:

288.1162 Professional sports franchises; duties.—

(1) The department shall serve as the state agency for screening applicants for state funding under s. 212.20 and for certifying an applicant as a facility for a new or retained professional sports franchise or a professional sports franchise renovation facility.

(2) The department shall develop rules for the receipt and processing of applications for funding under s. 212.20.

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

(a) "New professional sports franchise" means a professional sports franchise that was not based in this state before April 1, 1987.

(b) "Retained professional sports franchise" means a professional sports franchise that has had a league-authorized location in this state on or before December 31, 1976, and has continuously remained at that location, and has never been located at a facility that has been previously certified under any provision of this section.

(c) "Professional sports franchise renovation facility"

means a sports facility that has continuously been a league-authorized location for a professional sports franchise for at least 20 years and otherwise meets the requirements for certification of the facility pursuant to this section.

(4) Before certifying an applicant as a facility for a new or retained professional sports franchise, the department must determine that:

(a) A "unit of local government" as defined in s. 218.369 is responsible for the construction, management, or operation of the professional sports franchise facility or holds title to the property on which the professional sports franchise facility is located.

(b) The applicant has a verified copy of a signed agreement with a new professional sports franchise for the use of the facility for a term of at least 10 years, or in the case of a retained professional sports franchise, an agreement for use of the facility for a term of at least 20 years.

(c) The applicant has a verified copy of the approval from the governing authority of the league in which the new professional sports franchise exists authorizing the location of the professional sports franchise in this state after April 1, 1987, or in the case of a retained professional sports franchise, verified evidence that it has had a league-authorized location in this state on or before December 31, 1976. As used in this section, the term "league" means the National League or the American League of Major League Baseball, the National Basketball Association, the National Football League, or the National Hockey League.

(d) The applicant has projections, verified by the department, which demonstrate that the new or retained professional sports franchise will attract a paid attendance of more than 300,000 annually.

(e) The applicant has an independent analysis or study, verified by the department, which demonstrates that the amount of the revenues generated by the taxes imposed under chapter 212 with respect to the use and operation of the professional sports franchise facility will equal or exceed $2 million annually.

(f) The municipality in which the facility for a new or retained professional sports franchise is located, or the county if the facility for a new or retained professional sports franchise is located in an unincorporated area, has certified by resolution after a public hearing that the application serves a public purpose.

(g) The applicant has demonstrated that it has provided, is capable of providing, or has financial or other commitments to provide more than one-half of the costs incurred or related to the improvement and development of the facility.

(h) An applicant previously certified as a new or retained professional sports facility under ~~any provision of~~ this section who has received funding under such certification is not eligible for an additional certification except as a professional sports franchise renovation facility.

(5) Before certifying an applicant as a professional sports franchise renovation facility, the department must determine that the following requirements are met:

(a) A county, municipality, or other public entity is

responsible for the construction, management, or operation of the professional sports franchise renovation facility or holds title to the property on which the professional sports franchise facility is located.

(b) The applicant has a verified copy of a signed agreement with a professional sports franchise for use of the facility for a term of at least 20 years.

(c) The applicant has an independent analysis or study, verified by the department, which demonstrates that the amount of the revenues generated by the taxes imposed under chapter 212 with respect to the use and operation of the renovated professional sports franchise facility will equal or exceed $3 million annually.

(d) The county or municipality in which the professional sports franchise renovation facility is located has certified by resolution after a public hearing that the application serves a public purpose.

(e) The applicant has demonstrated that the cost to renovate the facility will be greater than $250 million, including permitting, architectural, and engineering fees, of which more than 50 percent of the total construction cost, exclusive of in-kind contributions, will be paid for by the ownership group of the professional sports franchise or other private sources.

(6)~~(5)~~ An applicant certified as a facility for a new or retained professional sports franchise may use funds provided under s. 212.20 only for the public purpose of paying for the acquisition, construction, reconstruction, or renovation of a

facility for a new or retained professional sports franchise to pay or pledge for the payment of debt service on, or to fund debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to, bonds issued for the acquisition, construction, reconstruction, or renovation of such facility or for the reimbursement of such costs or the refinancing of bonds issued for such purposes. An applicant certified as a professional sports franchise renovation facility may use funds provided under s. 212.20 for the public purpose of renovating the facility only to pay or pledge for the debt service on, or to fund debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to, bonds issued for the renovation of such facility or for the reimbursement of such costs or the refinancing of bonds issued for such purposes.

(7) ~~(6)~~ The department shall notify the Department of Revenue of any facility certified as a facility qualified pursuant to this section ~~for a new or retained professional sports franchise~~. The department shall certify no more than eight facilities as facilities for a new professional sports franchise or as facilities for a retained professional sports franchise, including in the total any facilities certified by the former Department of Commerce before July 1, 1996. The department may make no more than one certification for any facility, except that the department may make an additional certification for one professional sports franchise renovation facility.

(8) ~~(7)~~ The Auditor General may conduct audits as provided

in s. 11.45 to verify that the distributions under this section are expended as required in this section. If the Auditor General determines that the distributions under this section are not expended as required by this section, the Auditor General shall notify the Department of Revenue, which may pursue recovery of the funds under the laws and rules governing the assessment of taxes.

(9) ~~(8)~~ For new or retained professional sport franchise facilities, an applicant is not qualified for certification under this section if the franchise formed the basis for a previous certification, unless the previous certification was withdrawn by the facility or invalidated by the department or the former Department of Commerce before any funds were distributed under s. 212.20. This subsection does not disqualify an applicant if the previous certification occurred between May 23, 1993, and May 25, 1993; however, any funds to be distributed under s. 212.20 for the second certification shall be offset by the amount distributed to the previous certified facility. Distribution of funds for the second certification shall not be made until all amounts payable for the first certification are distributed.

Section 4. Paragraph (a) of subsection (3) of section 218.64, Florida Statutes, is amended to read:

218.64 Local government half-cent sales tax; uses; limitations.—

(3) Subject to ordinances enacted by the majority of the members of the county governing authority and by the majority of the members of the governing authorities of municipalities

representing at least 50 percent of the municipal population of such county, counties may use up to $2 million annually of the local government half-cent sales tax allocated to that county for funding for any of the following applicants:

(a) A certified applicant as a facility for a new or retained professional sports franchise under s. 288.1162 or a certified applicant as defined in s. 288.11621 for a facility for a spring training franchise. It is the Legislature's intent that the provisions of s. 288.1162, including, but not limited to, the evaluation process by the Department of Economic Opportunity except for the limitation on the number of certified applicants or facilities as provided in that section and the restrictions set forth in s. 288.1162(9) ~~288.1162(8)~~, shall apply to an applicant's facility to be funded by local government as provided in this subsection.

Section 5. Paragraph (c) of subsection (1) of section 288.11621, Florida Statutes, is amended to read:

288.11621 Spring training baseball franchises.—

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

(c) "Certified applicant" means a facility for a spring training franchise that was certified before July 1, 2010, under s. 288.1162(6) ~~288.1162(5)~~, Florida Statutes 2009, or a unit of local government that is certified under this section.

Section 6. This act shall take effect July 1, 2013.

Amendment No. 1

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

Committee/Subcommittee hearing bill: Finance & Tax Subcommittee
Representative Caldwell offered the following:

Amendment

Remove lines 46-78 and insert:

of county commissioners, or as otherwise provided in this paragraph, in order to:

1. Pay the debt service on bonds issued to finance:

a. The construction, reconstruction, or renovation of a facility either publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred prior to the issuance of such bonds for a new professional sports franchise as defined in s. 288.1162.

b. The acquisition, construction, reconstruction, or renovation of a facility either publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the

planning and design costs incurred prior to the issuance of such bonds for a retained spring training franchise.

2. Pay the debt service on bonds issued to finance the renovation of a professional sports franchise facility that is publicly owned, or located on land that is publicly owned, and that is publicly operated or operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility, and to pay the planning and design costs incurred before the issuance of such bonds for the renovated professional sports facility. The cost to renovate the facility must be greater than $300 million, including permitting, architectural, and engineering fees, of which more than 50 percent of the total construction cost, exclusive of in-kind contributions, must be paid for by the ownership group of the professional sports franchise or other private sources. Tax revenues available to pay debt service on bonds may be used to pay for operation and maintenance costs of the facility. A county levying the tax for the purposes in this subparagraph may do so only by a majority plus one vote of the membership of the board of county commissioners and after approval of the proposal by a majority vote of the electors voting in the referendum. Referendum approval of the proposal may be in an election held prior to or after the effective date of the law enacting this subparagraph. The referendum ballot must include a brief description of the proposal and the following question:

FOR the Proposal

AGAINST the Proposal

Amendment No. 2

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

Committee/Subcommittee hearing bill: Finance & Tax Subcommittee

Representative Caldwell offered the following:

Amendment

Remove lines 343-391 and insert:

facility for a term of at least the next 20 years.

(c) The applicant has an independent analysis or study, verified by the department, which demonstrates that the amount of the revenues generated by the taxes imposed under chapter 212 with respect to the use and operation of the renovated professional sports franchise facility will equal or exceed $3 million annually.

(d) The county or municipality in which the professional sports franchise renovation facility is located has certified by resolution after a public hearing that the application serves a public purpose.

(e) The applicant has demonstrated that the cost to renovate the facility will be greater than $300 million, including permitting, architectural, and engineering fees, of which more than 50 percent of the total construction cost,

exclusive of in-kind contributions, will be paid for by the ownership group of the professional sports franchise or other private sources.

(6) ~~(5)~~ An applicant certified as a facility for a new or retained professional sports franchise may use funds provided under s. 212.20 only for the public purpose of paying for the acquisition, construction, reconstruction, or renovation of a facility for a new or retained professional sports franchise to pay or pledge for the payment of debt service on, or to fund debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to, bonds issued for the acquisition, construction, reconstruction, or renovation of such facility or for the reimbursement of such costs or the refinancing of bonds issued for such purposes. An applicant certified as a professional sports franchise renovation facility may use funds provided under s. 212.20 only for the public purpose of renovating the facility to pay or pledge for the debt service on, or to fund debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to, bonds issued for the renovation of such facility or for the reimbursement of such costs or the refinancing of bonds issued for such purposes.

(7) ~~(6)~~ The department shall notify the Department of Revenue of any facility certified as a facility qualified pursuant to this section ~~for a new or retained professional sports franchise~~. The department shall certify no more than eight facilities as facilities for a new professional sports franchise or as facilities for a retained professional sports

franchise, including in the total any facilities certified by the former Department of Commerce before July 1, 1996. The department may not certify more than one facility as a professional sports franchise renovation ~~make no more than one certification for any~~ facility.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 95 Charitable Contributions
SPONSOR(S): Holder
TIED BILLS: **IDEN./SIM. BILLS:** SB 102

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N	Bauer	Cooper
2) Finance & Tax Subcommittee		Tarich BT.	Langston
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Chapter 726, F.S., the Uniform Fraudulent Transfer Act (UFTA) (hereinafter "Florida Uniform Fraudulent Transfer Act" or "FUFTA"), provides remedies for creditors when debtors fraudulently make transfers or incur obligations. Under FUFTA, creditors are granted a statutory remedy commonly referred to as a "clawback" action. These clawback actions allow for a debtor's fraudulently transferred property to be surrendered to the creditors and/or voided. FUFTA does not contain an exception for contributions received in good faith by charitable or religious organizations.

The federal Bankruptcy Code also gives bankruptcy trustees clawback powers against fraudulent transfers made within 2 years before the filing of a bankruptcy petition. The filing of a bankruptcy petition also stays lawsuits by creditors, including state fraudulent transfer claims. Unlike FUFTA, the Bankruptcy Code contains a specific exception for charitable contributions made to qualified religious or charitable entities or organizations by natural persons, if certain criteria are met. Thus, while charities are protected from bankruptcy trustees and creditors during a bankruptcy proceeding, they may still be subject to a creditor's FUFTA clawback action if there is no bankruptcy proceeding.

The bill first amends FUFTA by a) creating a statutory defense that protects qualified entities against clawback actions that attempt to recover charitable contributions, if the recipient organization received the contribution in good faith, and b) by defining "charitable contribution" and "qualified religious or charitable entity or organization." The bill states that a natural person's charitable contributions are fraudulent transfers if they were received on, or within 2 years before, the commencement of a FUFTA, bankruptcy, or insolvency proceeding, unless a) the transfer was made consistent with the transferor's practices in making charitable contributions, or b) the transfer was received in good faith and did not exceed 15% of the transferor's gross annual income for the year in which the transfer was made. Except for the added requirement that the qualified entity "receive in good faith," these requirements parallel those found in the Bankruptcy Code's protection for charitable contributions against a bankruptcy trustee's clawback action.

The bill amends various provisions of the Florida Statutes to conform and correct cross-references to FUFTA's current definition of "insider." The bill does not make any substantive changes to the definition of "insider."

The bill has no fiscal impact on state or local government.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida Uniform Fraudulent Transfer Act

According to the National Conference of Commissioners on Uniform State Laws, 43 states, the District of Columbia, and the U.S. Virgin Islands have adopted the Uniform Fraudulent Transfer Act ("UFTA")[1]. UFTA "provides a creditor with the means to reach assets that a debtor has transferred to another person to keep them from being used to satisfy a debt."[2] Florida adopted the UFTA in 1987 (Chapter 87-79, Laws of Florida; codified at Chapter 726, F.S., "FUFTA") to provide a civil cause of action for creditors in addition to their rights under the federal Bankruptcy Code. FUFTA broadly defines "creditor" as "a person who has a claim."[3] Courts have interpreted "creditor" to include lenders, investors - seeking to hold a corporate officer liable,[4] the U.S. government seeking delinquent taxes,[5] and court-appointed receivers in Securities and Exchange Commission enforcement actions to recover assets used to defraud investors in Ponzi schemes.[6]

FUFTA provides redress to creditors by allowing them to recover transferred property when a debtor has fraudulently transferred it to third parties, or fraudulently incurred obligations, before or after a creditor's claim arises.[7] The debtor's transfer or obligation may involve actual fraud, whereby a debtor makes a transfer or incurs an obligation with the intent to hinder, delay, or defraud his or her creditors, or it may involve constructive fraud, whereby the debtor makes a transfer or incurs an obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation.[8] In both situations, FUFTA provides statutory remedies to creditors; most notably through a "clawback" action that allows a prevailing creditor to void a debtor's fraudulent transfer or obligation to a third party, and surrender the property to the creditor.[9] These remedies are generally subject to a 4-year statute of limitations, unless otherwise specified in s. 726.110, F.S.

FUFTA contains defenses to seemingly fraudulent transfers, some of which operate as exceptions and protect against a clawback.[10] The primary defense provides that "a transfer or obligation is not voidable ...against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee" (emphasis added).[11] However, since this defense mandates that "reasonably equivalent value" be exchanged, in practice FUFTA does not protect contributions received in good faith by charitable organizations since they generally do not give value in exchange for such contribution. Currently, FUFTA leaves charitable organizations vulnerable to clawback actions and may put such organizations in precarious positions where they find themselves owing a third party creditor funds that they have already spent. In fact, under a similar Illinois law, the U.S. Court of Appeals for the Seventh Circuit ruled in favor of a creditor in a clawback action, and noted that the fraudulent

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[1] Legislative Fact Sheet, at http://uniformlaws.org/LegislativeFactSheet.aspx?title=Fraudulent%20Transfer%20Act (last accessed March 4, 2013).
[2] Overview of the Uniform Fraudulent Transfer Act, at http://uniformlaws.org/Act.aspx?title=Fraudulent Transfer Act (last accessed March 5, 2013).
[3] Section 726.102(4), F.S.; Section 726.102(3) broadly defines "claim" as "a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured."
[4] *Dillon v. Axxsys Int'l, Inc.,* 185 Fed. Appx. 823, 830 (11th Cir. 2006).
[5] *Harper v. U.S.*, 769 F. Supp. 362, 367 (M.D. Fla. 1991).
[6] *Wiand v. Waxenberg*, 611 F.Supp.2d 1299, 1309 (M.D. Fla. 2009).
[7] Section 726.108 F.S.
[8] Sections 726.105 and 726.106, F.S.
[9] Section 726.108 F.S.
[10] Section 726.109, F.S.
[11] Section 726.109, F.S.

conveyance statute could not be interpreted to exclude gifts to religious groups and other charitable organizations even if the organization received the contribution in good faith.[12]

Federal Bankruptcy Code

Like FUFTA, the federal Bankruptcy Code authorizes bankruptcy trustees (who are appointed to marshal, manage, and distribute a debtor's assets) to void certain transfers or obligations by debtors if they involve actual or constructive fraud on, or within 2 years before, the date of the debtor filing for bankruptcy ("lookback period").[13]

Unlike the FUFTA, however, the Bankruptcy Code insulates charitable contributions[14] made by natural persons to a qualified religious or charitable entity or organization if: a) the amount of the contribution does not exceed 15% of the debtor's gross annual income for the year in which the contribution was made, or b) if the contribution does exceed 15% of the debtor's gross annual income, such contribution would still be protected if the contribution was consistent with the debtor's practices in making charitable contributions.[15] However, the Bankruptcy Code does not exempt charitable contributions made with actual intent to hinder, delay or defraud creditors, nor does it protect charitable donations received from non-natural persons.[16]

Generally, bankruptcy trustees have the power to step into the shoes of existing creditors, under authority outside the Bankruptcy Code, such as a state UFTA, to void a debtor's transfers or obligations;[17] however, the filing of a petition for bankruptcy will preempt such an action, as well as all other federal and state claims to void a transfer of a charitable contribution as described above.[18]

Additionally, once a debtor files a bankruptcy petition, creditors are subject to the "automatic stay" provision of the Bankruptcy Code, which bars litigation and other actions, judicial or otherwise. The automatic stay prevents creditors from enforcing or collecting on claims arising before the bankruptcy petition, subject to some exceptions.[19]

Thus, once a debtor files for bankruptcy, a charitable organization that has received a contribution from the debtor is protected from creditors and is partially protected from a bankruptcy trustee's clawback action. However, if no bankruptcy is filed, the charitable organization could still be subject to a clawback action brought by creditors in a state action, such as FUFTA.

Effect of Bill

House Bill 95 amends FUFTA by a) creating a statutory defense that protects qualified entities against clawback actions that attempt to recover charitable contributions, if the recipient organization received the contribution in good faith, and b) by defining "charitable contribution" and "qualified religious or charitable entity or organization."

A. The bill states that a natural person's charitable contributions are fraudulent transfers if they were received on, or within 2 years before, the commencement of a FUFTA, bankruptcy, or insolvency proceeding, *unless* a) the transfer was consistent with the transferor's practices in making charitable contributions, or b) the transfer was received in good faith and did not exceed 15% of the transferor's gross annual income for the year in which the transfer was made. Except for the added

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[12] See, *Scholes v. Lehmann*, 56 F.3d 750, 761 (7th Cir. 1995).
[13] 11 U.S.C. § 548(a)(1).
[14] "Charitable contribution" must be made by a natural person in the form of a financial instrument (defined in section 731(c)(2)(C) of the Internal Revenue Code of 1986) or cash. 11 U.S.C. § 548(3).
[15] 11 U.S.C. § 548(a)(2).
[16] 11 U.S.C. § 548(a)(1)(A).
[17] 11 U.S.C. § 544(b).
[18] 11 U.S.C. § 544(b)(2).
[19] 11 U.S.C. § 362.

requirement that the qualified entity "receive in good faith," the bill's requirements parallel those found in the Bankruptcy Code's protection for charitable contributions against a bankruptcy trustee's clawback action. The bill would protect qualified entities from many clawback actions.

B. The bill defines "charitable contribution" as either cash or a "financial instrument" as defined in s. 731(c)(2)(C) of the Internal Revenue Code of 1986, which includes stocks and other equity interests, evidences of indebtedness, options, forward or futures contracts, notional principal contracts, and derivatives.

The bill defines a "qualified religious or charitable entity or organization" as an entity described in ss. 170(c)(1) or 170(c)(2) of the Internal Revenue Code, meaning a "state, a possession of the United States, or any political subdivision of any of the foregoing, or the United States or the District of Columbia, but only if the contribution or gift is made exclusively for public purposes," or a corporation, trust, or foundation created or organized in the United States, operating exclusively for certain purposes including religious and charitable, no part of the net earnings of which inure to the benefit of any private shareholder or individual; and which is not disqualified for tax exemption under s. 501(c)(3) of the Internal Revenue Code, by reason of attempting to influence legislation.

The bill's definitions of "charitable contributions" and "qualified religious or charitable entity or organization" are identical to those in the Bankruptcy Code.

The bill's exception for qualified religious or charitable entities and organizations is substantially similar to the one found in section 548(a) of the Bankruptcy Code. However, the Bankruptcy Code's exception does not protect charitable contributions made with "actual intent to hinder, delay, or defraud any entity to which the debtor was or became on or after the date that such transfer was made or such obligation was incurred or indebted," i.e., actual fraud. The bill does not have a corresponding exclusion for charitable contributions made with actual fraud. Additionally, the bill requires that qualified entities must receive the contribution in good faith.

The bill amends various provisions of the Florida Statutes to conform and correct cross-references to the definition of "insider" currently found in s. 726.102(7), F.S. The bill does not make any substantive changes to the definition of "insider." The bill also makes minor technical revisions to s. 721.05, F.S.

The bill provides that the act shall take effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 726.102, F.S., relating to definitions.

Section 2: Amends s. 726.109, F.S., relating to defense, liability, and protection of transferee.

Section 3: Amends s. 213.758, F.S., relating to transfer of tax liabilities.

Section 4: Amends s. 718.704, F.S., relating to assignment and assumption of developer rights by bulk assignee; bulk buyer.

Section 5: Amends s. 721.05, F.S., relating to definitions.

Section 6: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Under the bill, creditors cannot void a natural person's charitable contributions received on, or within 2 years before, the commencement of a FUFTA, bankruptcy, or insolvency proceeding, if the transfer was received in good faith and was less than 15% of the transferor's gross annual income for the year in which the transfer was made, or was consistent with the transferor's practices in making charitable contributions.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- The Bankruptcy Code's protection for charitable contributions does not extend to transfers made with actual fraud. The bill is silent as to whether transfers made with actual fraud to charitable organizations would be similarly excluded from the exemption. The bill states that the qualified entity must *receive* the contribution in good faith, however, it is does not require the contribution be *made* in good faith. It appears that a contribution not necessarily made in good faith (bad faith is different than not in good faith), but received in good faith, may be protected from a clawback action.
- The bill is silent regarding how, or if, the changes would apply to pending FUFTA actions or to fraudulent transfers that were made to charitable organizations prior to the bill's effective date that are within the two-year lookback period.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to charitable contributions; amending s. 726.102, F.S.; defining the terms "charitable contribution" and "qualified religious or charitable entity or organization"; amending s. 726.109, F.S.; providing that a transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer; providing exceptions; amending ss. 213.758, 718.704, and 721.05, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Subsections (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), and (13) of section 726.102, Florida Statutes, are renumbered as subsections (4), (5), (6), (7), (8), (9), (10), (11), (13), (14), and (15), respectively, and new subsections (3) and (12) are added to that section to read:

726.102 Definitions.—As used in ss. 726.101-726.112:

(3) "Charitable contribution" means a charitable contribution as that term is defined in s. 170(c) of the Internal Revenue Code of 1986, if that contribution consists of:

(a) A financial instrument as defined in s. 731(c)(2)(C) of the Internal Revenue Code of 1986; or

(b) Cash.

(12) "Qualified religious or charitable entity or organization" means:

(a) An entity described in s. 170(c)(1) of the Internal Revenue Code of 1986; or

(b) An entity or organization described in s. 170(c)(2) of the Internal Revenue Code of 1986.

Section 2. Subsection (7) is added to section 726.109, Florida Statutes, to read:

726.109 Defenses, liability, and protection of transferee.—

(7)(a) The transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a fraudulent transfer under this chapter.

(b) However, a charitable contribution from a natural person is a fraudulent transfer if the transfer was received on, or within 2 years before, the earlier of the date of commencement of an action under this chapter, the filing of a petition under the federal Bankruptcy Code, or the commencement of insolvency proceedings by or against the transferor under any state or federal law, including the filing of an assignment for the benefit of creditors or the appointment of a receiver, unless:

1. The transfer was consistent with the practices of the transferor in making the charitable contribution; or

2. The transfer was received in good faith and the amount of the charitable contribution did not exceed 15 percent of the gross annual income of the transferor for the year in which the transfer of the charitable contribution was made.

Section 3. Paragraph (c) of subsection (1) of section

213.758, Florida Statutes, is amended to read:

213.758 Transfer of tax liabilities.—

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

(c) "Insider" means:

1. Any person included within the meaning of insider as used in s. 726.102~~(7)~~; or

2. A manager of, a managing member of, or a person who controls a transferor that is a limited liability company, or a relative as defined in s. 726.102~~(11)~~ of any such persons.

Section 4. Subsection (4) of section 718.704, Florida Statutes, is amended to read:

718.704 Assignment and assumption of developer rights by bulk assignee; bulk buyer.—

(4) An acquirer of condominium parcels is not a bulk assignee or a bulk buyer if the transfer to such acquirer was made:

(a) Before the effective date of this part;

(b) With the intent to hinder, delay, or defraud any purchaser, unit owner, or the association; or

(c) By a person who would be considered an insider under s. 726.102~~(7)~~.

Section 5. Subsection (10) of section 721.05, Florida Statutes, is amended to read:

721.05 Definitions.—As used in this chapter, the term:

(10) "Developer" includes:

(a)1. A "creating developer," which means any person who creates the timeshare plan;

2.~~(b)~~ A "successor developer," which means any person who

succeeds to the interest of the persons in this subsection by sale, lease, assignment, mortgage, or other transfer, but the term includes only those persons who offer timeshare interests in the ordinary course of business; and

3.~~(c)~~ A "concurrent developer," which means any person acting concurrently with the persons in this subsection with the purpose of offering timeshare interests in the ordinary course of business.

(b)~~(d)~~ The term "developer" does not include:

1. An owner of a timeshare interest who has acquired the timeshare interest for his or her own use and occupancy and who later offers it for resale; provided that a rebuttable presumption exists ~~shall exist~~ that an owner who has acquired more than seven timeshare interests did not acquire them for his or her own use and occupancy;

2. A managing entity, not otherwise a developer, that offers, or engages a third party to offer on its behalf, timeshare interests in a timeshare plan which it manages, provided that such offer complies with the provisions of s. 721.065;

3. A person who owns or is conveyed, assigned, or transferred more than seven timeshare interests and who subsequently conveys, assigns, or transfers all acquired timeshare interests to a single purchaser in a single transaction, which transaction may occur in stages; or

4. A person who acquires ~~has acquired~~ or has the right to acquire more than seven timeshare interests from a developer or other interestholder in connection with a loan, securitization,

conduit, or similar financing arrangement transaction and who subsequently arranges for all or a portion of the timeshare interests to be offered by a developer ~~one or more developers~~ in the ordinary course of business on its ~~their~~ own behalf ~~behalves~~ or on behalf of such person.

(c) ~~(e)~~ A successor or concurrent developer is ~~shall be~~ exempt from any liability inuring to a predecessor or concurrent developer of the same timeshare plan, except as provided in s. 721.15(7). ~~, provided that~~ This exemption does ~~shall~~ not apply to any of the successor or concurrent developer's responsibilities, duties, or liabilities with respect to the timeshare plan which ~~that~~ accrue after the date the successor or concurrent developer became a successor or concurrent developer, and ~~provided that~~ such transfer does not constitute a fraudulent transfer. ~~In addition to other provisions of law,~~ A transfer by a predecessor developer to a successor or concurrent developer shall be deemed fraudulent if the predecessor developer made the transfer:

1. With actual intent to hinder, delay, or defraud any purchaser or the division; or

2. To a person that would constitute an insider under s. 726.102 ~~(7)~~.

~~The provisions of~~ This paragraph does ~~shall~~ not ~~be construed to~~ relieve any successor or concurrent developer from the obligation to comply with the provisions of any applicable timeshare instrument.

Section 6. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 531 Ad Valorem Tax Exemptions
SPONSOR(S): Patronis
TIED BILLS: **IDEN./SIM. BILLS:** SB 354

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Veteran & Military Affairs Subcommittee	13 Y, 0 N	Thompson	De La Paz
2) Finance & Tax Subcommittee		Aldridge	Langston
3) Economic Affairs Committee			

SUMMARY ANALYSIS

In response to challenges the Department of Defense (DoD) was facing to repair, renovate, and construct military family housing, Congress enacted the Military Housing Privatization Initiative (Housing Initiative) in 1996. The Housing Initiative authorizes public-private partnerships between the military and private developers to facilitate cost effective construction, financing, and management of military family housing.

Section 196.199, F.S., currently provides an exemption from ad valorem taxation for United States property. This exemption specifically applies to leasehold interests in property owned by the United States government when the lessee serves or performs a governmental, municipal or public purpose or function.

HB 531 provides a definition of property of the United States that includes any leasehold interest of, and improvements affixed to, land owned by the United States acquired or constructed and used pursuant to the Housing Initiative. The bill provides that the term "improvements" includes actual housing units and any facilities that are directly related to such units. The bill provides that an application for exemption is not necessary for leasehold interests and improvements described in the bill.

The Revenue Estimating Conference estimated that the bill will have no revenue impact.

The bill is effective upon becoming law and applies retroactively to January 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background- Military Housing Privatization Initiative

During the 1990s, DoD designated nearly two-thirds (approximately 180,000 houses) of its domestic family housing inventory as inadequate, needing repair or complete replacement.[1] Many of the housing units were constructed during World War II or soon after, and were designed only to last a few years. The problem was severe enough that many feared that service members would leave the military due to the lack of adequate housing. In addition, many older units had environmental problems such as lead-based paint, asbestos, and could not meet current building codes.[2] To remedy the problem, DoD estimated it would cost approximately $20 billion and take up to 40 years using the traditional military construction (MILCON) approach. In response, DoD began seeking a cheaper and faster solution.[3]

In 1996, Congress enacted the Military Housing Privatization Initiative (Housing Initiative) codified at 10 U.S.C. § 2871 et seq.[4] The Housing Initiative provides DoD with various authorities to allow private-sector financing and expertise in order to improve the military housing situation. Such authorities can be used individually or in combination and include:

- Guarantees, both loan and rental;
- Conveyance or leasing of existing property and facilities;
- Differential lease payments;
- Investments, both limited partnerships and stock or bond ownership; and
- Direct loans.[5]

In a typical privatized military housing project, a military department (Army, Navy, or Air Force) enters into an agreement with a private developer selected in a competitive process to own, maintain and operate military family housing. Jointly, the military department and private developer create a public-private venture (PPV). The military department then leases land, improved, unimproved or both, to the PPV for a term of 50 years while retaining both a present and future interest in the land and any improvements. As part of the terms of the lease agreement, the private developer is subsequently responsible for constructing new homes or renovating existing houses and leasing this housing, giving preference to service members and their families. The land and title to the houses conveyed to the PPV, as well as any improvements made by the PPV, during the duration of the lease automatically revert to the military department upon expiration or termination of the ground lease.[6] The Housing Initiative provides flexibility in the structure and terms of the transactions with the private sector. Unlike traditional MILCON projects, these projects are controlled by a private developer acting through the PPV rather than through unilateral government control.[7,8]

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[1] GAO-09-352, *Military Housing Privatization* , http://www.gao.gov/assets/290/289739.pdf, at 1.

[2] Phillip Morrison, *State Property Tax Implications for Military Privatized Family Housing Program*, Air Force Law Review, Vol. 56 (2005) at 263. http://www.afjag.af.mil/shared/media/document/AFD-081009-011.pdf.

[3] The Office of the Deputy Under Secretary of Defense Installations and Environment, Military Privatization Initiative, Overview, http://www.acq.osd.mil/housing/overview.htm, provides that DoD currently owns 257,000 family housing units on- and off-base. About 60 percent need to be renovated or replaced because they have not been sufficiently maintained or modernized over the last 30 years. (site last visited 3/2/2013).

[4] National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104-106, §§ 2801-2841 (1996).

[5] 10 U.S.C. § 2871 et seq.

[6] GAO-09-352, http://www.gao.gov/assets/290/289739.pdf, at pages 10 and 11.

[7] Phillip Morrison, *State Property Tax Implications for Military Privatized Family Housing Program*, *supra* note 2 at 266.

There are currently Housing Initiative developments at the following military installations in Florida:[9]

- Tyndall Air Force Base
- MacDill Air Force Base
- Patrick Air Force Base
- Naval Air Station Jacksonville
- Naval Air Station Key West
- Naval Air Station Pensacola
- Naval Air Station Whiting Field
- Naval Station Mayport
- Naval Support Activity Panama City

Property Taxes in Florida

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.[10] The ad valorem tax or "property tax" is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.[11] Section 4, Article VII of the Florida Constitution, requires that all property be assessed at just value for ad valorem tax purposes. Sections 3, 4, and 6, Article VII of the Florida Constitution, provide for specified assessment limitations, property classifications and exemptions. After the property appraiser has considered any assessment limitation or use classification affecting the just value of a property, an assessed value is produced. The assessed value is then reduced by any exemptions to produce the taxable value.[12] Such exemptions include, but are not limited to: homestead exemptions and exemptions for property used for educational, religious, or charitable purposes.[13] The Florida Constitution strictly limits the Legislature's authority to provide exemptions or adjustments to fair market value.[14] However, the Florida Constitution provides for property tax relief in the form of certain valuation differentials, assessment limitations, and exemptions.[15]

Taxation of United States Property

Generally, the federal government and property owned by the federal government are immune from state and local taxation.[16] The federal government's immunity from taxation required by state law to fall upon the federal government extends to its agents and its instrumentalities.[17] Congress has the exclusive authority to determine whether and to what extent its instrumentalities are immune from state and local taxes.[18]

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[8] The Office of the Deputy Under Secretary of Defense Installations and Environment, Housing Projects, Projects Awarded, http://www.acq.osd.mil/housing/projawarded.htm, reported as of February, 2012, 105 housing projects have been awarded; and 11 projects are pending. (site last visited 3/2/2013)

[9] The Office of the Deputy Under Secretary of Defense Installations and Environment, Housing Projects, Projects Awarded, Florida. http://www.acq.osd.mil/housing/state_fl.htm (site last visited 3/2/2013)

[10] Section 1(a), Art. VII, Florida Constitution.

[11] Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in s. 1(b), Art. VII of the State Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.

[12] See s. 196.031, F.S.

[13] Sections 3, and 6, Art. VII, Florida Constitution.

[14] Sections 3, 4, and 6, Art. VII, Florida Constitution.

[15] Valuation differentials, assessment limitations, and exemptions are authorized in Article VII, Florida Constitution.

[16] *McCullough v. Maryland,* 17 U.S. (4 Wheat.) 316 (1819); *United States v. New Mexico*, 455 U.S. 720 (1982).

[17] *Kern-Limerick, Inc. v. Scurlock,* 347 U.S. 110 (1954); Rohr Corp. v. San Diego County, 362 U.S. 628 (1960).

[18] *Maricopa County v. Valley Bank*, 318 U.S. 357 (1943).

Statutory Exemption for United States Property

Section 196.199(1)(a), F.S., recognizes the immunity that property of the United States enjoys, and the ability of Congress to waive that immunity in specified circumstances: "All property of the United States shall be exempt from ad valorem taxation except such property as is subject to tax . . . under any law of the United States." This section of statute does not specifically describe leaseholds and improvements constructed pursuant to the Housing Initiative as being eligible for this exemption from ad valorem taxation.

Section 196.199(2)(a), F.S., provides an exemption from ad valorem and intangible taxation for leasehold interests in property owned by the United States when the lessee is performing a "governmental, municipal, or public purpose or function" as defined in s. 196.012(6), F.S. Under s. 196.012(6), F.S., such a purpose is deemed served when "the lessee... is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit or ... would otherwise be a valid subject for the allocation of public funds."

Current Litigation

Until recently, no attempt had been made to subject the Housing Initiatives projects in Florida to ad valorem tax. In 2012, the Monroe County property appraiser asserted that the Housing Initiative project improvements at Naval Air Station Key West were subject to tax retroactive to 2008. A legal case is currently pending on this matter in the Sixteenth Judicial Circuit.[19]

Proposed Changes

HB 531 expressly recognizes in statute that property constructed pursuant to the federal Housing Initiative on land owned by the federal government is in fact federal government property and exempt from ad valorem taxation.

Specifically, the bill amends s. 196.199(1)(a), F.S., to provide a definition of property of the United States that includes any leasehold interest of and improvements affixed to land owned by the United States, any branch of the United States Armed Forces, or any agency or quasi-governmental agency of the United States, if the leasehold interest and improvements are acquired or constructed and used pursuant to the Housing Initiative.

The bill provides that the term "improvements" includes but is not limited to actual housing units and any facilities that are directly related to such housing units, including any housing maintenance facilities, housing rental and management offices, parks and community centers, and recreational facilities.

The bill further provides that it is not necessary for an application for an exemption to be filed or approved by the property appraiser.

The bill has an effective date of upon becoming law and provides for retroactive application to January 1, 2007.

B. SECTION DIRECTORY:

Section 1. Amends s. 196.199, F.S., relating to government property exemption.

Section 2. Provides an effective date of upon becoming law, and applies it retroactively to January 1, 2007.

[19] *See Southeast Housing LLC, v. Borglum*, No. 2012-CA-000831-K (Fla. 16th Cir. Ct. 2012).

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:

   The Revenue Estimating Conference estimated that the bill will have no revenue impact on local governments.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Clarifying ad valorem tax exemption eligibility standards for United States property may ensure that military housing developed pursuant to the Housing Initiative will not be subjected to taxation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to ad valorem tax exemptions; amending s. 196.199, F.S.; providing that certain leasehold interests and improvements to land owned by the United States, a branch of the United States Armed Forces, or any agency or quasi-governmental agency of the United States are exempt from ad valorem taxation under specified circumstances; providing that such leasehold interests and improvements are entitled to an exemption from ad valorem taxation without an application being filed for the exemption or the property appraiser approving the exemption; providing for retroactive application; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 196.199, Florida Statutes, is amended to read:

196.199 Government property exemption.—

(1) Property owned and used by the following governmental units shall be exempt from taxation under the following conditions:

(a)1. All property of the United States is ~~shall be~~ exempt from ad valorem taxation, except such property as is subject to tax by this state or any political subdivision thereof or any municipality under any law of the United States.

2. Notwithstanding any other provision of law, for

purposes of the exemption from ad valorem taxation provided in subparagraph 1., property of the United States includes any leasehold interest of and improvements affixed to land owned by the United States, any branch of the United States Armed Forces, or any agency or quasi-governmental agency of the United States if the leasehold interest and improvements are acquired or constructed and used pursuant to the federal Military Housing Privatization Initiative of 1996, 10 U.S.C. ss. 2871 et seq. As used in this subparagraph, the term "improvements" includes, but is not limited to, actual housing units and any facilities that are directly related to such housing units, including any housing maintenance facilities, housing rental and management offices, parks and community centers, and recreational facilities. Any leasehold interest and improvements described in this subparagraph shall be construed as being owned by the United States, the applicable branch of the United States Armed Forces, or the applicable agency or quasi-governmental agency of the United States and are exempt from ad valorem taxation without the necessity of an application for exemption being filed or approved by the property appraiser.

Section 2. This act shall take effect upon becoming a law and shall apply retroactively to January 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4013 Tax Refund Programs
SPONSOR(S): Santiago
TIED BILLS: **IDEN./SIM. BILLS:** SB 236

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	12 Y, 0 N	Collins	West
2) Finance & Tax Subcommittee		Pewitt	Langston
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill eliminates the maximum amount of tax refunds a business could receive over all fiscal years for both the Qualified Target Industry and Qualified Defense and Space Flight Business Programs. The current limits imposed on the percentage of total award and the dollar amount a qualifying project could receive in a given fiscal year would remain in effect.

These programs are subject to annual appropriation by the Legislature.

The bill has an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Qualified Target Industry Tax Refund

The Qualified Target Industry Tax Refund (QTI), established in 1995, serves to attract new high quality, high wage jobs for Floridians. Tax refunds are made to qualifying, pre-approved businesses creating new jobs within Florida's target industries. All QTI projects include a performance-based contract with the state, which outlines specific milestones that must be achieved and verified by the state prior to payment of refunds.

This incentive requires that 20 percent of the award comes from the local city or county government, but that may be reduced by one-half for a qualified target industry business located in the counties of Bay, Escambia, Franklin, Gadsden, Gulf, Jefferson, Leon, Okaloosa, Santa Rosa, Wakulla or Walton. The reduction in local match is determined by the Department of Economic Opportunity and based on a determination that the project facilitates economic development, growth, or new employment within the previously referenced counties, and is in the best interest of the state.

The program also requires that a project must propose to create at least 10 new jobs, or in the case of a business expansion must result in a net increase in employment of at least 10 percent at that business. The jobs proposed to be created or retained must pay an average annual wage of at least 115% of the average private sector wage in the area where the business is located, or the statewide private sector average wage. The statewide private sector average wage being used currently is $40,555[1].

The amount of the refund is based on the average wages paid by the business, number of jobs created, and where in the state the eligible business chooses to locate or expand. The minimum tax refund is $3,000 per employee, and the maximum amount is $11,000 per employee over the term of the incentive agreement. Jobs created in rural communities and enterprise zones, as well as those paying higher annual average wages, are eligible for more incentives.

Since the inception of the QTI program, 1,134 applications have been approved, 967 contracts have been executed, and 97 agreements have been completed. Of those 967 projects, 335 remain active, meaning they are eligible to receive refunds through the QTI program. These 335 projects have committed to create 45,157 jobs cumulatively. The 97 completed agreements cumulatively created 19,694 new jobs, above the initial commitment to create 19,094. In fiscal year 2011-2012, $58,063,500 in QTI incentives were awarded.[2]

Qualified Defense and Space Contractor Tax Refund

The Qualified Defense and Space Contractor Tax Refund (QDSC), established in 1996, serves to attract new high quality, high wage jobs for Floridians in the defense and space industries. Tax refunds are made to qualifying, pre-approved businesses bidding on new competitive contracts or consolidating existing defense or space contracts. This incentive is a partnership between the State and local community—20 percent of the award comes from the local city or county government. All QDSC projects include a performance-based contract with the State of Florida, which outlines specific milestones that must be achieved and verified by the State prior to payment of refunds.

[1] Enterprise Florida Inc., *State of Florida Incentives Average Wage Requirements*; 2012
[2] Enterprise Florida, Inc, *2012 Annual Incentive Report*; 2012

Like QTI, the program requires that jobs created by a QDSC project have an average annual wage of at least 115% of the average private sector wage in the area where the business is located, or the statewide private sector average wage.

The amount of the refund is based on the average wages paid by the business, number of jobs created, and where in the state the eligible business chooses to locate or expand. The minimum tax refund is $3,000 per employee, and the maximum amount is $8,000 per employee over the term of the incentive agreement.

Since the QDSC project's inception, 22 QDSC applications have been approved, 15 contracts, have been executed, and 5 projects have been completed. Of those 15 executed contracts, 6 remain active. These 6 projects have committed to create 418 cumulative jobs. The 5 completed projects cumulatively created 1,521 new jobs, exceeding their commitment to create 795 new jobs. In fiscal year 2011-2012, $2,180,000 in QDSC incentives were awarded.[3]

QTI/QDSC Program Limits

Sections 288.106 and 288.1045, Florida Statutes, set the criteria for the QTI and QDSC programs. Included in these criteria are limits on awards for qualified projects under both programs. The limits include:

- The QTI and QDSC programs limit applicants to 25 percent of the total tax refunds in any given fiscal year.
- The QDSC program limits applicants to $2.5 million in tax refunds in any given fiscal year.
- The QTI program limits applicants to $1.5 million in tax refunds in any given fiscal year or $2.5 million if the project is located within an enterprise zone.
- The QDSC program limits applicants to $7 million in tax refunds over all fiscal years.
- The QTI program limits applicants to $7 million in tax refunds over all fiscal years, or $7.5 million if the project is located within an enterprise zone.

Proposed Changes

The bill eliminates the maximum amount of tax refunds a business could receive over all fiscal years for the QTI and QDSC programs. The limits imposed on the percentage of total award and dollar amount a qualified project could receive in a single fiscal year would remain in effect.

B. SECTION DIRECTORY:

Section 1: Amends s. 288.1045 F.S., by removing program limits for applicants to the Qualified Defense Contractor or Space Flight Business Tax Refund Program.

Section 2: Amends s. 288.106 F.S., by removing program limits for applicants to the Qualified Target Industry Tax Refund Program.

Section 3: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

[3] Enterprise Florida, Inc, *2012 Annual Incentive Report*; 2012

None.

2. Expenditures:

This bill could increase the number of businesses who would qualify for future awards by removing a lifetime cap on receipt of the eligible tax refunds. The amount of additional awards, if any, is unknown. However, both the QTI and QDSC programs' funding are subject to an annual appropriation in the General Appropriation Act, so any additional impact would require specific Legislative appropriation. Further, both programs are included in an annual cap of $35 million in total awards issued by the Department of Economic Opportunity for programs funded through the Economic Development Incentives Account[4].

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would increase the number of jobs created or retained in the state if additional businesses that qualify for the tax refund programs decide to locate or expand in Florida as a result of the programs.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[4] Section 288.095(3)(a) F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to tax refund programs; amending ss. 288.1045 and 288.106, F.S.; deleting caps on tax refunds for qualified defense contractors and space flight businesses and for qualified target industry businesses; providing an effective date.

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

Section 1. Present paragraphs (d) through (h) of subsection (2) of section 288.1045, Florida Statutes, are redesignated as paragraphs (c) through (g), respectively, and present paragraph (c) of that subsection is amended, to read:

288.1045 Qualified defense contractor and space flight business tax refund program.—

(2) GRANTING OF A TAX REFUND; ELIGIBLE AMOUNTS.—

~~(c) A qualified applicant may not receive more than $7 million in tax refunds pursuant to this section in all fiscal years.~~

Section 2. Paragraph (c) of subsection (3) of section 288.106, Florida Statutes, is amended to read:

288.106 Tax refund program for qualified target industry businesses.—

(3) TAX REFUND; ELIGIBLE AMOUNTS.—

(c) A qualified target industry business may not receive refund payments of more than 25 percent of the total tax refunds specified in the tax refund agreement under subparagraph (5)(a)1. in any fiscal year. Further, a qualified target

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

industry business may not receive more than $1.5 million in refunds under this section in any single fiscal year, or more than $2.5 million in any single fiscal year if the project is located in an enterprise zone. ~~A qualified target industry business may not receive more than $7 million in refund payments under this section in all fiscal years, or more than $7.5 million if the project is located in an enterprise zone.~~

Section 3. This act shall take effect July 1, 2013.