

Finance and Tax Subcommittee

Wednesday, March 20, 2013

3:30 p.m.

Morris Hall

MEETING PACKET

The Florida House of Representatives

Finance and Tax Subcommittee



Will Weatherford
Speaker

Ritch Workman
Chair

AGENDA

March 20, 2013
3:30 p.m.
Morris Hall

- I. Call to Order/Roll Call
- II. Chair's Opening Remarks
- III. **Consideration of the following bill(s):**
 - HB 495 Certified Audit Program by Raulerson
 - HB 807 Emergency Communication System by Steube
 - CS/HB 903 Adverse Possession by Civil Justice Subcommittee, Davis, Waldman
 - HB 921 Tax Exemptions for Property Used for Affordable Housing by Renuart
 - HB 1193 Taxation Of Property by Beshears, Raburn
 - HB 1295 Discretionary Sales Surtaxes by Fresen
 - PCS for HB 219 -- Professional Sports
 - PCS for HB 721 -- Professional Sports Franchise Facilities
 - PCS for HB 1049 -- Motorsports Entertainment Complexes
 - PCS for HB 1149 -- Business Entity Filing Fees
- IV. **Consideration of the following proposed committee bill(s):**
 - PCB FTSC 13-05 -- Relating to revising Local Business Tax
- V. **Workshop on the following:**
 - Selected Ad Valorem Tax Issues
- VI. Closing Remarks and Adjournment

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 495 Certified Audit Program
SPONSOR(S): Raulerson
TIED BILLS: IDEN./SIM. BILLS: SB 866

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee		Flieger <i>BF</i>	Langston <i>LB</i>
2) Government Operations Appropriations Subcommittee			
3) Appropriations Committee			

SUMMARY ANALYSIS

Section 213.285, Florida Statutes, F.S., establishes a Certified Audit Program as a cooperative effort between the Department of Revenue and the Florida Institute of Certified Public Accountants. The program allows taxpayers to hire qualified CPA firms to review their tax compliance for the tourist development taxes imposed by ss. 125.0104 and 125.0108, F.S, and the sales and use tax imposed by ch. 212, F.S.

To encourage participation in the program, taxpayers who undergo a certified audit receive a statutorily guaranteed waiver of all penalties, abatement of the first \$25,000 of interest, and an additional 25 percent of any interest liability in excess of the first \$25,000 if that audit reveals additional liability.

A taxpayer may not currently participate in the certified audit program if they are currently under audit or have received a written notice of intent to audit.

The bill allows taxpayers to participate in the certified audit program after they have received a notice of intent to audit. It also increases the amount of interest that is abated for participating taxpayers who have not received a notice of intent to audit to an abatement of the first \$50,000 of interest plus 50 percent of any amount over \$50,000.

On March 8, 2013, the Revenue Estimating Conference estimated that allowing taxpayers to enter the certified audit program after receiving a notice of intent to audit would have a recurring impact of -\$3.6 million to the state and a recurring impact of -\$0.8 million to local governments. However, impacts will not begin until FY 2014-15. The interest abatement changes for the current program will have an indeterminate impact.

The effective date is July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Department of Revenue ("DOR") routinely audits businesses in this state to determine if state taxes were collected, reported, and paid correctly. DOR begins the audit process by mailing a taxpayer a Notification of Intent to Audit Books and Records ("notice of intent").¹ This notice identifies the audit period and taxes to be examined. The types of records needed may include, but are not limited to: federal income tax returns, Florida tax returns, depreciation schedules, general ledgers and journals, property records, cash receipt and disbursement journals, purchase and sales journals, sales tax exemption or resale certificates, and documentation to verify amounts entered on tax returns. An audit may extend back 3 years.²

To encourage voluntarily compliance, s. 213.285, Florida Statutes, F.S., establishes a Certified Audit Program as a cooperative effort between DOR and the Florida Institute of Certified Public Accountants ("FICPA"). The program allows taxpayers to hire qualified CPA firms to review their tax compliance for the tourist development taxes imposed by ss. 125.0104 and 125.0108, F.S, and the sales and use tax imposed by ch. 212, F.S.³

To encourage participation in the program, taxpayers who undergo a certified audit receive a statutorily guaranteed waiver of all penalties, abatement of the first \$25,000 of interest, and an additional 25 percent of any interest liability in excess of the first \$25,000 in cases where the audit reveals additional liability.⁴ These incentives are not available where tax was collected but not remitted to the state. Additionally, except in cases of fraud or misrepresentation, DOR will not audit a taxpayer who uses the program for the same tax years that the certified audit reviewed.

A taxpayer may not participate in the certified audit program if they are currently under audit or have received a written notice of intent to audit from DOR.

To conduct a certified audit a CPA must possess an active Florida CPA license, attend a 2.5-day training seminar, and pass an examination to be certified. For a firm to be eligible to conduct certified audits, several additional requirements must be met. The firm must be a licensed audit firm with the Florida Board of Accountancy, have received a timely on-site peer review, and must conduct the audits using agreed-upon procedures. A staff member of the firm must have completed DOR-provided training on Florida multi-tax software.⁵

To be eligible to provide a certified audit service to a taxpayer, the qualified CPA firm must also be independent with respect to that taxpayer, pursuant to the guidelines established by Florida Board of Accountancy.⁶

When the certified audit project was authorized by the Legislature in 1998, a sunset provision was included of July 1, 2002. This was subsequently extended to July 1, 2006,⁷ and then repealed entirely.⁸

¹ Form DR-840 or CA-I

² Section 95.091, F.S.

³ Rule 12-25.0305, F.A.C.

⁴ Section 213.21(8), F.S.

⁵ Rule 12-25.0305, F.A.C.

⁶ <http://www.ficpa.org/Content/CPAResources/Professional/Audit/Issues.aspx> (last accessed 3/15/13)

⁷ Section 36, ch. 2002-218, L.O.F.

⁸ Section 40, ch. 2003-254, L.O.F.

STORAGE NAME:

DATE:

Proposed Changes

The bill allows taxpayers to participate in the certified audit program after they have received a notice of intent to audit from DOR. The time limits for administering a certified audit in that situation are modified, giving the taxpayer an additional 30 days to submit a proposed audit plan. Within 70 days after the proposed audit plan, the department shall designate the agreed-upon procedures for that audit. The certified auditor has 285 days from the date of the notice of intent to audit to timely complete the audit.

It also increases the amount of interest that is abated for participating taxpayers who have not received a notice of intent to audit, increasing the abatement to the first \$50,000 of interest plus 50 percent of any amount over \$50,000.

B. SECTION DIRECTORY:

Section 1. Amends s. 213.21, F.S., to increase the amount of interest abated.

Section 2. Amends s. 213.285, F.S., to allow taxpayers who have received a notice of intent to audit to participate in the certified audit program, providing procedures for such participation.

Section 3. Amends s. 213.053, F.S., conforming changes.

Section 4. Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On March 8, 2013, the Revenue Estimating Conference estimated that allowing taxpayers to enter the certified audit program after receiving a notice of intent to audit would have a recurring impact of -\$3.6 million to the state. However, impacts will not begin until FY 2014-15. The interest abatement changes for the current program will have an indeterminate impact.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On March 8, 2013, the Revenue Estimating Conference estimated that allowing taxpayers to enter the certified audit program after receiving a notice of intent to audit would have a recurring impact of -\$0.8 million to local governments. However, impacts will not begin until FY 2014-15. The interest abatement changes for the current program will have an indeterminate impact.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers who take advantage of the certified audit program may see their tax liability decrease due to the abatement of interest and waiver of penalties. CPAs who are certified by DOR to conduct such audits will see additional demand for their services should the expanded eligibility lead to more participation.

D. FISCAL COMMENTS:

Increased participation in the certified audit program should free up resources to allow DOR to conduct more audits and collect additional taxes from noncompliant taxpayers whose liability would have otherwise gone undetected.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may cause local governments to receive lower collections from local option sales taxes; however the impact should be below the threshold for an insignificant impact exemption.

2. Other:

None

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled
 2 An act relating to the certified audit program;
 3 amending s. 213.21, F.S.; revising the amounts of
 4 interest liability that the Department of Revenue may
 5 abate for taxpayers participating in the certified
 6 audit program; authorizing a taxpayer to participate
 7 in the certified audit program after the department
 8 has issued notice of intent to conduct an audit of the
 9 taxpayer; amending s. 213.285, F.S.; conforming
 10 provisions; revising procedures, deadlines, and notice
 11 requirements for certified audits; authorizing the
 12 department to adopt rules prohibiting a qualified
 13 practitioner from representing a taxpayer in informal
 14 conference procedures under certain circumstances;
 15 amending s. 213.053, F.S.; conforming terminology;
 16 providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Subsection (8) of section 213.21, Florida
 21 Statutes, is amended to read:

22 213.21 Informal conferences; compromises.—

23 (8) In order to determine whether certified audits are an
 24 effective tool in the overall state tax collection effort, the
 25 executive director of the department or the executive director's
 26 designee shall settle or compromise penalty liabilities of
 27 taxpayers who participate in the certified audit program ~~audits~~
 28 ~~project~~. As further incentive for participating in the program,

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29 the department shall:

30 (a) For a taxpayer who requests to participate in the
31 program before the department has issued the taxpayer a written
32 notice of intent to conduct an audit, abate the first \$50,000 of
33 any interest liability and 50 percent of any interest due in
34 excess of the first \$50,000; or

35 (b) For a taxpayer who requests to participate in the
36 program after the department has issued the taxpayer a written
37 notice of intent to conduct an audit, abate the first \$25,000 of
38 any interest liability and 25 percent of any interest due in
39 excess of the first \$25,000.

40

41 A settlement or compromise of penalties or interest pursuant to
42 this subsection shall not be subject to ~~the provisions of~~
43 paragraph (3)(a), except for the requirement relating to
44 confidentiality of records. The department may consider an
45 additional compromise of tax or interest pursuant to ~~the~~
46 ~~provisions of~~ paragraph (3)(a). This subsection does not apply
47 to any liability related to taxes collected but not remitted to
48 the department.

49 Section 2. Section 213.285, Florida Statutes, is amended
50 to read:

51 213.285 Certified audits.—

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

53 (a) "Certification program" means an instructional
54 curriculum, examination, and process for certification,
55 recertification, and revocation of certification of certified
56 public accountants that ~~which~~ is administered by an independent

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57 provider and that ~~which~~ is officially approved by the department
58 to ensure that a certified public accountant possesses the
59 necessary skills and abilities to successfully perform an
60 attestation engagement for tax compliance review in the a
61 certified audit program audits project.

62 (b) "Department" means the Department of Revenue.

63 (c) "Participating taxpayer" means any person subject to
64 the revenue laws administered by the department who enters into
65 an engagement with a qualified practitioner for tax compliance
66 review and who is approved by the department under the certified
67 audit program audits project.

68 (d) "Qualified practitioner" means a certified public
69 accountant who is licensed to practice in Florida and who has
70 completed the certification program.

71 (2) (a) The department may ~~is authorized to~~ initiate a
72 certified audit program audits project to further enhance tax
73 compliance reviews performed by qualified practitioners and ~~to~~
74 encourage taxpayers to hire qualified practitioners at their own
75 expense to review and report on their tax compliance. The nature
76 of certified audit work performed by qualified practitioners
77 shall be agreed-upon procedures in which the department is the
78 specified user of the resulting report.

79 (b) As an incentive for taxpayers to incur the costs of a
80 certified audit, the department shall compromise penalties and
81 abate interest due on any tax liabilities revealed by the a
82 certified audit:

83 1. For a taxpayer who requests to participate in the
84 certified audit program before the department has issued the

85 taxpayer a written notice of intent to conduct an audit, as
 86 provided in s. 213.21(8) (a); or

87 2. For a taxpayer who requests to participate in the
 88 certified audit program after the department has issued the
 89 taxpayer a written notice of intent to conduct an audit, as
 90 provided in s. 213.21(8) (b) ~~213.21~~.

91
 92 The ~~This~~ authority to compromise penalties or abate interest
 93 under this paragraph does ~~shall~~ not apply to any liability for
 94 taxes ~~that were~~ collected by the participating taxpayer but ~~that~~
 95 were not remitted to the department.

96 (3) Any practitioner responsible for planning, directing,
 97 or conducting a certified audit or reporting on a participating
 98 taxpayer's tax compliance in a certified audit must be a
 99 qualified practitioner. For the purposes of this subsection, a
 100 practitioner is considered responsible for:

101 (a) "Planning" in a certified audit when performing work
 102 that involves determining the objectives, scope, and methodology
 103 of the certified audit, when establishing criteria to evaluate
 104 matters subject to the review as part of the certified audit,
 105 when gathering information used in planning the certified audit,
 106 or when coordinating the certified audit with the department.

107 (b) "Directing" in a certified audit when the work
 108 involves supervising the efforts of others who are involved or
 109 when reviewing the work to determine whether it is properly
 110 accomplished and complete.

111 (c) "Conducting" a certified audit when performing tests
 112 and procedures or field audit work necessary to accomplish the

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113 audit objectives in accordance with applicable standards.

114 (d) "Reporting" on a participating taxpayer's tax
115 compliance in a certified audit when determining report contents
116 and substance or reviewing reports for technical content and
117 substance before ~~prior to~~ issuance.

118 (4) (a) A ~~The~~ qualified practitioner shall notify the
119 department of an engagement to perform a certified audit and
120 shall provide the department with the information that the
121 department deems necessary to identify the taxpayer, to confirm
122 whether ~~that~~ the taxpayer is ~~not~~ already under audit by the
123 department, and to establish the basic nature of the taxpayer's
124 business and the taxpayer's potential exposure to the Florida
125 revenue laws administered by the department. Once the department
126 has issued a taxpayer a written notice of intent to conduct an
127 audit, if the taxpayer requests to participate in the certified
128 audit program, the qualified practitioner or the taxpayer,
129 within 30 days after the notice of intent to conduct the audit
130 was issued to the taxpayer, must notify the department of the
131 engagement to perform the certified audit.

132 (b) The information provided in the notification shall
133 include the taxpayer's name, federal employer identification
134 number or social security number, state tax account number,
135 mailing address, and business location, and the specific taxes
136 and period proposed to be covered by the engagement for the
137 certified audit. In addition, the notice shall include the name,
138 address, identification number, contact person, e-mail address,
139 and telephone number of the engaged firm.

140 (c) ~~(b)~~ Upon the department's receipt of the engagement if

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141 ~~the taxpayer has not been issued a written notice of intent to~~
142 ~~conduct an audit,~~ the taxpayer becomes ~~shall be~~ a participating
143 taxpayer, and the department shall so advise the qualified
144 practitioner in writing within 10 days after receipt of the
145 engagement notice. However, the department may exclude a
146 taxpayer from a certified audit or may limit the taxes or
147 periods subject to the certified audit on the basis that the
148 department has previously conducted an audit or, ~~that it~~ is in
149 the process of conducting an investigation or other examination
150 of the taxpayer's records, ~~or~~ for just cause determined solely
151 by the department.

152 (d) ~~(e)~~ Notice of the qualification of a taxpayer for a
153 certified audit shall toll the statute of limitations provided
154 in s. 95.091 with respect to the taxpayer for the tax and
155 periods covered by the engagement.

156 (e) ~~(d)~~ ~~Within 30 days after receipt of the notice of~~
157 ~~qualification from the department,~~ The qualified practitioner
158 shall contact the department and, within the following periods,
159 shall submit a proposed audit plan and procedures for review and
160 agreement by the department:

161 1. For a taxpayer who requests to participate in the
162 certified audit program before the department has issued the
163 taxpayer a written notice of intent to conduct an audit, within
164 30 days after receipt of the notice of qualification from the
165 department; or

166 2. For a taxpayer who requests to participate in the
167 certified audit program after the department has issued the
168 taxpayer a written notice of intent to conduct an audit, within

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169 60 days after the department issued the taxpayer the notice of
170 intent to conduct the audit.

171
172 The department may extend the time for submission of the plan
173 and procedures for reasonable cause. The qualified practitioner
174 shall initiate action to advise the department that amendment or
175 modification of the plan and procedures is necessary in the
176 event that the qualified practitioner's inspection reveals that
177 the taxpayer's circumstances or exposure to the revenue laws is
178 substantially different than as described in the engagement
179 notice.

180 (f) If the taxpayer has been issued a written notice of
181 intent to conduct an audit but submits a proposed audit plan and
182 procedures in accordance with subparagraph (e)2., within 70 days
183 after the notice of intent to conduct the audit was issued to
184 the taxpayer, the department shall designate the agreed-upon
185 procedures to be followed by the qualified practitioner in the
186 certified audit.

187 (5) Upon the department's designation of the agreed-upon
188 procedures to be followed by the practitioner in the certified
189 audit, the qualified practitioner shall perform the engagement
190 and shall timely submit a completed report to the department.
191 The report shall affirm completion of the agreed-upon procedures
192 and shall provide any required disclosures. For a certified
193 audit completed pursuant to agreed-upon procedures designated by
194 the department under paragraph (4)(f), the completed report is
195 considered timely only if submitted to the department within 285
196 days after the notice of intent to conduct the audit was issued

197 to the taxpayer.

198 (6) The department shall review the report of the
 199 certified audit and shall accept it when it is determined to be
 200 complete. Once the report is accepted by the department, the
 201 department shall issue a notice of proposed assessment
 202 reflecting the determination of any additional liability
 203 reflected in the report and shall provide the taxpayer with all
 204 the normal payment, protest, and appeal rights with respect to
 205 the liability. In cases where the report indicates an
 206 overpayment has been made, the taxpayer shall submit a properly
 207 executed application for refund to the department. Otherwise,
 208 the certified audit report is a final and conclusive
 209 determination with respect to the tax and period covered. An ~~No~~
 210 additional assessment may not be made by the department for the
 211 specific taxes and period referenced in the report, except upon
 212 a showing of fraud or misrepresentation of material facts and
 213 except for adjustments made under s. 198.16 or s. 220.23. This
 214 determination does ~~shall~~ not prevent the department from
 215 collecting liabilities not covered by the report or from
 216 conducting an audit or investigation and making an assessment
 217 for additional tax, penalty, or interest for any tax or period
 218 not covered by the report.

219 (7) To implement the certified audit program ~~audits~~
 220 ~~project~~, the department may ~~shall have authority to~~ adopt rules
 221 relating to:

222 (a) The availability of the certification program required
 223 for participation in the certified audit program ~~project~~;

224 (b) The requirements and basis for establishing just cause

225 for approval or rejection of participation by taxpayers;

226 (c) Procedures for assessment, collection, and payment of
 227 liabilities or refund of overpayments and provisions for
 228 taxpayers to obtain informal and formal review of certified
 229 audit results;

230 (d) The nature, frequency, and basis for the department's
 231 review of certified audits conducted by qualified practitioners,
 232 including the requirements for documentation, work-paper
 233 retention and access, and reporting; ~~and~~

234 (e) Requirements for conducting certified audits and for
 235 review of agreed-upon procedures; and

236 (f) Circumstances under which a qualified practitioner who
 237 conducts a certified audit for a taxpayer after the department
 238 has issued the taxpayer a written notice of intent to conduct
 239 the audit is prohibited from representing the taxpayer in
 240 informal conference procedures established pursuant to s.
 241 213.21.

242 Section 3. Paragraph (m) of subsection (8) of section
 243 213.053, Florida Statutes, is amended to read:

244 213.053 Confidentiality and information sharing.—

245 (8) Notwithstanding any other provision of this section,
 246 the department may provide:

247 (m) Information contained in returns, reports, accounts,
 248 or declarations to the Board of Accountancy in connection with a
 249 disciplinary proceeding conducted pursuant to chapter 473 when
 250 related to a certified public accountant participating in the
 251 certified audit program ~~audits project~~, or to the court in
 252 connection with a civil proceeding brought by the department

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253 relating to a claim for recovery of taxes due to negligence on
254 the part of a certified public accountant participating in the
255 certified audit program ~~audits project~~. In any judicial
256 proceeding brought by the department, upon motion for protective
257 order, the court shall limit disclosure of tax information when
258 necessary to effectuate the purposes of this section.

259
260 Disclosure of information under this subsection shall be
261 pursuant to a written agreement between the executive director
262 and the agency. Such agencies, governmental or nongovernmental,
263 shall be bound by the same requirements of confidentiality as
264 the Department of Revenue. Breach of confidentiality is a
265 misdemeanor of the first degree, punishable as provided by s.
266 775.082 or s. 775.083.

267 Section 4. This act shall take effect July 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 495 (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 _____

1 Committee/Subcommittee hearing bill: Finance & Tax Subcommittee
2 Representative Raulerson offered the following:

3

4 **Amendment**

5 Remove lines 37-39 and insert:

6 notice of intent to conduct an audit, abate the first \$15,000
7 ~~\$25,000~~ of any interest liability and 15 ~~25~~ percent of any
8 interest due in excess of the first \$15,000 ~~\$25,000~~.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 495 (2013)

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 _____

1 Committee/Subcommittee hearing bill: Finance & Tax Subcommittee
2 Representative Raulerson offered the following:

3

4 **Amendment**

5 Remove line 72 and insert:

6 certified audit program for sales and use taxes imposed under
7 chapter 212 and local option taxes imposed under ss. 125.0104
8 and 125.0108 and administered by the department audits project
9 to further enhance tax

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 495 (2013)

Amendment No. 3

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	_____	

1 Committee/Subcommittee hearing bill: Finance & Tax Subcommittee
2 Representative Raulerson offered the following:

3

4 **Amendment**

5 Remove line 182 and insert:

6 procedures in accordance with subparagraph (e)2., within 90 days

7

8

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 807 Emergency Communication System

SPONSOR(S): Steube and others

TIED BILLS: IDEN./SIM. **BILLS:** SB 1070

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	14 Y, 0 N	Keating	Collins
2) Finance & Tax Subcommittee		Flieger <i>BF</i>	Langston <i>[Signature]</i>
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Wireless Emergency Communications Act established a statewide E911 system for wireless telephone users. To fund the E911 system, the act imposed a monthly fee, capped at \$0.50, on voice communications services. This fee funds costs incurred by local governments to install and operate 911 systems and reimburses providers for costs incurred to provide 911 or E911 services. Section 365.172(8), F.S., requires voice communications services providers to collect the E911 fee from the subscribers of voice communications services on a service identifier basis. The fee is imposed upon local exchange service, wireless service, and other services that have access to E911 service, such as Voice over Internet Protocol, but is not currently imposed on prepaid wireless services. However, beginning July 1, 2013, state law requires collection of the fee from the sale of prepaid wireless service if it determines that a fee should be collected from such sales. According to the 2012 Annual Report of the E911 Board, the suspension of collections from prepaid wireless service has resulted in a continual loss of E911 fee revenues each year since 2007, including a loss of \$13.6 million in 2012.

The E911 Board, formerly the Wireless 911 Board, helps implement and oversee the E911 system and administers the funds derived from the E911 fee. The primary function of the Board is to make disbursements from the E911 Trust Fund to county governments and wireless providers according to s. 365.173, F.S. The Board has the authority to adjust the level of the fee, within the \$0.50 cap, once annually.

The bill amends ss. 365.172 and 365.173, F.S., as follows:

- Provides for the collection of a prepaid wireless E911 fee by retailers at the point of sale, beginning November 1, 2013, and establishes a new category in the E911 Trust Fund for revenues derived from this fee.
- Sets the existing E911 fee at \$0.46 per month per service identifier, and sets the prepaid wireless E911 fee at \$0.46 per month for each retail transaction.
- Retains the existing E911 fee cap of \$0.50 and allows the Board, after January 1, 2015, to adjust the rate under this cap by a two-thirds vote of the total number of all Board members.
- Expands the list of authorized county expenditures for which E911 system funds may be used.
- Modifies the percentage of funds to be distributed to counties, such that counties will receive 97 percent of the moneys in the wireline category (up from 96 percent), 76 percent of the moneys in the wireless category (up from 67 percent), and 61 percent of the moneys in the new prepaid wireless category.
- Reduces the percentage of funds available for distribution to wireless providers from 30 percent to 20 percent.
- Provides that 35 percent of the moneys in the new prepaid wireless category will be retained by the Board to provide E911 grants to counties for the purpose of upgrading and replacing E911 systems, developing and maintaining statewide 911 routing and mapping systems, and developing and maintaining next-generation 911 services and equipment.
- Amends and creates definitions to conform to the substantive provisions of the bill.
- Removes obsolete provisions.

The Revenue Estimating Conference estimates the bill's impact on state government trust fund revenues, compared to current law, at -\$25.1 million in FY 2013-14 (-\$13.8 million recurring). Department of Revenue costs to administer the bill are expected to be approximately \$1.3 million annually.

The effective date of the bill is July 1, 2013.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0807b.FTSC.DOCX

DATE: 3/15/2013

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Wireless Emergency Communications Act¹ established a statewide E911 system for wireless telephone users. To fund the E911 system, the act imposed a fee, capped at \$0.50, on voice communications services. This fee funds costs incurred by local governments to install and operate 911 systems and reimburses providers for costs incurred to provide 911 or E911 services.

Section 365.172(8), F.S., requires voice communications services providers to collect the E911 fee from the subscribers of voice communications services on a service identifier basis. The fee is imposed upon local exchange service, wireless service, and other services that have access to E911 service, such as Voice over Internet Protocol, but is not currently imposed on prepaid wireless services.² State and local governments are not subject to the fee.³

The E911 Board, formerly the Wireless 911 Board, helps implement and oversee the E911 system and administers the funds derived from the E911 fee. The primary function of the E911 Board (Board) is to make disbursements from the Emergency Communications Number E911 System Fund (E911 Fund) to county governments and wireless providers according to s. 365.173, F.S. The Board has the authority to adjust the level of the fee, within the \$0.50 cap, once annually.

As of March 31, 2008, all 67 counties in Florida reported capability to receive a call back number and location provided for a cellular caller from the service provider.⁴ The next progression in E911 systems is referred to as Next Generation 911 (NG 911). According to the E911 Board's 2012 Annual Report, NG-911 is the migration of E911 systems to Internet Protocol-capable equipment and networks, which will resolve deficiencies in the current systems while providing data, text, and video capabilities to support emergency communications. The Board and Florida's public safety agencies are currently planning, designing, and implementing emergency services IP (Internet protocol) networks and system replacements, though the development of an NG-911 system will likely involve a multi-year transition.⁵

E911 Fees for Prepaid Wireless Service

In 2006, the Board was required⁶ to evaluate the 911 system revenues and services costs to determine the date that the wireless E911 fee could be reduced to a level that still funds all counties' E911 costs, service provider costs, and Board administration costs. In its report, the Board concluded that there were insufficient fee revenues collected to cover all county and service provider E911 costs.⁷

In its report, the Board also recommended that the Legislature consider changing the provisions relating to prepaid calling services so that fees are imposed on users in a fair and consistent manner.

¹ Chapter 99-367, L.O.F., codified in s. 365.172, F.S. Today the statute is cited as the "Emergency Communications Number E911 Act." Section 365.172(1), F.S.

² Prepaid wireless service is defined as "the right to access telecommunications services that must be paid for in advance and is sold in predetermined units or dollars enabling the originator to make calls such that the number of units or dollars declines with use in a known amount." See s. 365.172(8)(a)2.b.(I), F.S.

³ Section 365.172(8)(c), F.S.

⁴ Florida Department of Management Services, *Florida Enhanced 911*, http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911 (last visited March 5, 2013).

⁵ *2012 Annual Report of the E911 Board*.

⁶ See proviso language accompanying specific appropriation 2946 of the Fiscal Year 2006-07 General Appropriations Act (HB 5001).

⁷ Florida Department of Management Services, E911 Board, *2006 Wireline and Wireless 911 Fee Evaluation Legislative Report* (Sept. 29, 2006).

At that time, E911 fees for prepaid wireless service were remitted based upon each prepaid wireless telephone associated with this state, for each wireless service customer that had a sufficient positive balance as of the last day of each month. Recognizing that direct billing may not be possible, the law provided that the surcharge amount, or an equivalent number of minutes, may be reduced from the prepaid wireless subscriber's account.

In 2007, the Legislature suspended collection of E911 fees on prepaid wireless service until July 1, 2009, and required the board to conduct a study on the collection of E911 fees on the sale of prepaid wireless service.⁸ The resulting report⁹ concluded that it is feasible to collect E911 fees from the sale of prepaid wireless service on an equitable, competitively neutral, and nondiscriminatory basis.

In 2010, the Legislature extended the suspension of E911 fee collections for prepaid wireless service through July 1, 2013, at which point the Board is required to collect the fee from the sale of prepaid wireless service if it determines that a fee should be collected from such sales.¹⁰

Distribution of E911 Funds

Funds generated from the E911 fees levied on subscribers are accounted for in the Emergency Communications Number E911 System Fund and segregated into two separate categories: wireless and nonwireless.¹¹ One percent of the moneys in each category is retained by the Board to cover the costs of managing, administering, and overseeing the E911 Fund. Two percent of the moneys in each category are used to make monthly distributions to rural counties for facilities, network and service enhancements, and assistance for their E911 systems and to make grants to rural counties to upgrade and replace such systems.

In the wireless category, 67 percent of the moneys are distributed monthly to counties, based on the total number of service identifiers in each county. The county may use these funds to pay for expenditures related to establishing or providing E911 services and contracting for E911 services, as well as to pay for complying with the requirements for E911 service contained in specified Federal Communications Commission orders.¹² The remaining 20 percent of the moneys in the wireless category are available for distribution to wireless providers as reimbursement for actual costs incurred to provide E911 service.

In the nonwireless category, 97 percent of the moneys are distributed monthly to counties based on the total number of service identifiers in each county. The county may use these funds exclusively to pay for expenditures related to establishing or providing E911 services and contracting for E911 services.¹³

Section 365.172(10), F.S., specifies the types of expenses for which funds derived from the E911 fee may be expended. In general, all costs directly attributable to the establishment or provision of E911 service and contracting for E911 services are eligible. For this purpose, the law defines E911 service to include the functions of database management, call taking, dispatching, location verification, and call transfer.

A county may carry forward up to 30 percent of the total funds it receives from the Board during a calendar year for expenditures for capital outlay, capital improvements, or equipment replacement provided that the expenditures are otherwise authorized uses of the funds derived from E911 fees.

⁸ Chapter 2007-78, Laws of Florida.

⁹ Florida Department of Management Services, E911 Board, *E911 Prepaid Wireless Fee Collection and E911 Fee Exemptions: A Feasibility Analysis*, 106 (Dec. 31, 2008), available at

http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911/e911_board_prepaid_study (last visited March 5, 2013).

¹⁰ Chapter 2010-50, Laws of Florida.

¹¹ Section 365.173(1), F.S.

¹² Section 365.173(2)(a), F.S. See also s. 365.172(9), F.S.

¹³ Section 365.173(2)(b), F.S.

Indemnification and Limitation of Liability

In general, a service provider that provides 911 or E911 service on a retail or wholesale basis is not liable for damages resulting from or in connection with 911 or E911 service, or for identification of the telephone number, or address, or name associated with any person accessing 911 or E911 service.¹⁴ Further, a provider is not liable for damages to any person resulting from or in connection with the provider's provision of any lawful assistance to any investigative or law enforcement officer of the United States, this state, or a political subdivision thereof, or of any other state or political subdivision thereof, in connection with any lawful investigation or other law enforcement activity by such law enforcement officer.¹⁵

A provider is not obligated to take legal action to enforce collection of the E911 fee that it bills a consumer.¹⁶

Effect of Proposed Changes

The bill amends ss. 365.172 and 365.173, F.S., as follows:

- Provides for the collection of a prepaid wireless E911 fee by retailers at the point of sale, beginning November 1, 2013, and establishes a new category in the E911 Fund for revenues derived from this fee.
- Sets the existing E911 fee at \$0.46 per month per service identifier, and sets the prepaid wireless E911 fee at \$0.46 per month for each retail transaction.
- Retains the existing E911 fee cap of \$0.50 and allows the Board, after January 1, 2015, to adjust the rate under this cap by a two-thirds vote of the total number of all Board members.
- Expands the list of authorized county expenditures for which E911 system funds may be used.
- Modifies the percentage of funds to be distributed to counties, such that counties will receive 97 percent of the moneys in the wireline category (up from 96 percent), 76 percent of the moneys in the wireless category (up from 67 percent), and 61 percent of the moneys in the new prepaid wireless category.
- Reduces the percentage of funds available for distribution to wireless providers from 30 percent to 20 percent.
- Provides that 35 percent of the moneys in the new prepaid wireless category will be retained by the Board to provide E911 grants to counties for the purpose of upgrading and replacing E911 systems, developing and maintaining statewide 911 routing and mapping systems, and developing and maintaining next-generation 911 services and equipment.
- Amends and creates definitions to conform to the substantive provisions of the bill.
- Removes obsolete provisions.

Prepaid Wireless E911 Fee

The bill creates subsection (9) of section 365.172, F.S., to impose a prepaid wireless E911 fee on each retail purchase of prepaid wireless service from a seller. The bill defines prepaid wireless service:

“Prepaid wireless service” means a right to access wireless service that allows a caller to contact and interact with 911 to access the 911 system, which service must be paid for in advance and is sold in predetermined units or dollars, which units or dollars expire on a predetermined schedule or are decremented on predetermined basis in exchange for the right to access wireless service.

¹⁴ Section 365.172(11), F.S. An exception exists when the provider acts with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of a person when providing such services.

¹⁵ Id.

¹⁶ Section 365.172(8)(b), F.S.

The bill ties the rate of the prepaid wireless E911 fee to the rate approved by the Board for other voice communications services. Initially, however, the bill sets the rate beginning January 1, 2014, at \$0.46. The bill provides that the fee may not exceed \$0.50 per month for each retail transaction. If the rate is adjusted by the Board (which may not occur before January 1, 2015), the Department of Revenue (DOR) must provide notice of the adjusted fee amount and the effective date to each seller no less than 90 days before the effective date.

The bill requires the fee to be collected by the seller of the prepaid wireless service on each retail transaction occurring in Florida. The amount of the fee must be separately stated or disclosed to the consumer. For purposes of collecting the fee, the bill provides that a retail transaction shall be treated as occurring in Florida if: (1) the retail transaction occurs in person at a seller's business location that is in this state; or (2) the retail transaction would be treated as occurring in Florida for purposes of collecting sales tax on prepaid calling arrangements.¹⁷ The bill provides that a seller may elect not to apply the fee to a transaction in which a prepaid wireless device is sold for a single, nonitemized price with a prepaid wireless service of 10 minutes or less or \$5 or less.

The bill includes provisions designed to address the expense incurred by sellers to implement the prepaid wireless E911 fee. Specifically, the bill provides that sellers will begin collecting the fee November 1, 2013, at a rate of \$0.46, and will retain all moneys collected through December 31, 2013, to offset setup costs. The bill allows sellers to retain five percent of the prepaid wireless E911 fees collected thereafter.

The bill provides that the prepaid wireless E911 fee is the liability of the consumer and not of the seller or the underlying service provider. The seller is, however, liable to remit all of the fees it collects from consumers. A seller must remit such fees to DOR in the manner specified in s. 212.11, F.S., which sets forth processes for state tax returns.

The bill requires DOR to aggregate and identify the prepaid wireless E911 fee by the county in which it was collected. The bill also requires DOR to establish registration and payment procedures that "substantially coincide" with the procedures that apply to the sales and use tax imposed by chapter 212, F.S. Further, the bill requires DOR to establish procedures for a seller to document that a particular sale of prepaid wireless service is not a retail transaction, which procedures must "substantially coincide" with the procedures for documenting a sale for resale transaction under s. 212.186, F.S.

The bill specifies that DOR, to reimburse its direct costs of administering the collection and remittance of prepaid wireless E911 fees, will retain up to one percent of the funds remitted to it. All remaining funds must be transferred to into the E911 Trust Fund on or before the 15th day of each month and within 30 days of receipt.

Existing E911 Fee

The bill provides that the E911 fee, beginning January 1, 2014, shall be set at \$0.46 per month per each service identifier for voice communications services other than prepaid wireless service. The bill authorizes the Board to adjust this fee after January 1, 2015, but requires a two-thirds vote of the total number of Board members.

¹⁷ The bill cross-references s. 212.05(1)(e)1.a.(II), F.S., which provides:

If the sale . . . does not take place at the dealer's place of business, it shall be deemed to take place at the customer's shipping address or, if no item is shipped, at the customer's address or the location associated with the customer's mobile telephone number.

Distribution of E911 Funds

The bill establishes a new category in the E911 Fund for revenues derived from the prepaid wireless E911 fee. The bill specifies that the moneys in this category will be distributed as follows:

- 61 percent will be distributed each month to counties based on the total number of sales in each county,
- 35 percent will be retained by the Board to provide E911 grants to all counties for the purpose of upgrading and replacing E911 systems, developing and maintaining statewide 911 routing and mapping systems, and developing and maintaining next-generation 911 services and equipment,
- Three percent will be used to make monthly distributions to rural counties for facilities, network and service enhancements, and assistance for their E911 systems and to make grants to rural counties to upgrade and replace such systems,
- One percent will be retained by the Board to cover the costs of managing, administering, and overseeing the E911 Fund.¹⁸

The bill increases distributions from the wireless category to counties from 67 percent to 76 percent. The bill decreases the percentage of funds available from the wireless category for distribution to wireless providers from 30 percent to 20 percent.

The bill decreases distributions from the nonwireless category to counties from 97 percent to 96 percent.

The bill increases the percentage of funds available from both the wireless and nonwireless categories to be used to make monthly distributions to rural counties for facilities, network and service enhancements, and assistance for their E911 systems and to make grants to rural counties to upgrade and replace such systems. Three percent of the funds in these categories will be available for these purposes, rather than the current two percent.

The bill clarifies that any county that receives funds from the E911 Fund may not reduce, withhold, or allocate such funds (plus any interest accrued on such funds) for purposes other than covering the costs specified in statute. Further, the bill provides that the county's annual financial audit must assure that all E911 fee revenues, interest, and E911 grant funding are used as specified in statute and as specified by the E911 Board's grant and special disbursement programs. The bill also requires counties to submit these financial audit reports to the Board.

The bill expands the list of authorized expenditures for which funds distributed from the E911 Fund may be used. The bill provides that Department of Health certification and recertification and training costs for 911 public safety communications, including dispatching, are functions of 911 services. In addition, it adds the following items to the list of authorized expenditures:

- Circuits
- GIS system and software equipment and information displays
- Salary and associated expenses for a county to employ technical system maintenance, database, and administration personnel
- Emergency medical, fire, and law enforcement prearrival instruction software, charts, and training costs

¹⁸ The Board currently retains one percent of all moneys in the E911 Fund for this purpose.

Indemnification and Limitation of Liability

The bill applies existing indemnification and limitation of liability protections to sellers and providers of prepaid wireless service. These protections, which are substantially similar to existing provisions related to the provision of 911 or E911 service by other voice communications services, provide as follows:

- A provider or seller of prepaid wireless service is not liable for damages to any person resulting from or incurred in connection with providing or failing to provide 911 or E911 service or for identifying or failing to identify the telephone number, address, location, or name associated with any person or device that is accessing or attempting to access 911 or E911 service.
- A provider or seller of prepaid wireless service is not liable for damages to any person resulting from or incurred in connection with providing any lawful assistance to any investigative or law enforcement officer of the United States, any state, or any political subdivision of any state in connection with any lawful investigation or other law enforcement activity by such law enforcement officer.

Miscellaneous Provisions

The bill specifies, with respect to both the E911 fee and the prepaid wireless E911 fee, that the amount of the fee collected may not be included in the base for measuring any tax, fee, surcharge, or other charge imposed by the state, any political subdivision of the state, or any governmental agency.

The bill also provides, with respect to both the E911 fee and the prepaid wireless E911 fee, that a local government may not levy any additional fee for the provision of E911 service.

The bill provides that the Board, when determining the funding provided in a state 911 grant application, must take into account information concerning the amount of carry-forward funds retained by the county from prior years. Such grants shall be limited by any county carry-forward funds in excess of the allowable 30 percent carry over, calculated on a 2-year basis.

The bill removes obsolete provisions from ss. 365.172 and 365.173, F.S. The bill also amends and creates definitions to conform to the substantive provisions of the bill.

B. SECTION DIRECTORY:

Section 1. Amends s. 365.172, F.S., relating to the emergency communications number E911.

Section 2. Amends s. 365.173, F.S., relating to the emergency communications number E911 system fund.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimates the bill's impact on state government trust fund revenues (which are shared with local governments), compared to revenues that would be collected under current law upon expiration of the moratorium on collecting the E911 fee on prepaid wireless, at -\$25.1 million in FY 2013-14 (-\$13.8 million recurring).

2. Expenditures:

The Department of Revenue estimates that, to administer the changes made by the bill, there will be a non-recurring cost of \$303,925, and partial-year, recurring expenses of \$710,454 in FY 2013-14. The department estimates annual recurring costs thereafter at \$1,286,867. The department's 1% collection allowance allowed by the bill is estimated by staff to generate approximately \$0.2 million in FY 2013-14, and \$0.46 million annually thereafter.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

As of the date of this analysis, the Revenue Estimating Conference had not released an estimate of the bill's impact on local government revenues. Staff estimates there will not be one.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires retail sellers of prepaid wireless service to collect the prepaid wireless E911 fee on such transactions (other than those involving service of 10 minutes or less or \$5 or less) and remit the proceeds to the Department of Revenue (DOR). For these sellers, this requirement imposes initial costs for system setup and ongoing costs for collections and remittance. To address these costs, the bill allows sellers to retain 100 percent of their E911 fee collections for the first two months of collections (between November 1, 2013, and December 31, 2013), and allows sellers to retain five percent of their E911 fee collections thereafter. Further, the bill includes additional provisions that appear to ease the burden on sellers by requiring the use of familiar processes. For example, the bill requires DOR to establish registration and payment procedures that "substantially coincide" with the procedures applicable to registration and payment of sales and use taxes, with which retailers are familiar. The bill also provides that the audit and appeals procedures applicable to sales and use taxes will apply to prepaid wireless E911 fees.

Consumers of prepaid wireless service with access to the E911 system will now pay an E911 fee on those services. The E911 fee currently paid by consumers of other voice communications services will be reduced by eight percent.

D. FISCAL COMMENTS:

Revenues from collection of the E911 fee are distributed by the Board to counties to cover authorized E911 system costs. Although the Board has not collected this fee from the sale of prepaid wireless service since 2007, users of prepaid wireless service are provided access to the E911 system. According to the 2012 Annual Report of the E911 Board, the suspension of collections from prepaid wireless service has resulted in a continual loss of E911 fee revenues each year since 2007, including a decrease of \$13.6 million in 2012 (representing a 15.4% decrease in E911 fee revenues from wireless service and a 3.7% decrease in E911 fee revenues from nonwireless service).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The 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:

The bill provides that the prepaid wireless E911 fee shall be imposed *per retail transaction*. The bill also states that this fee may not exceed a specified rate *per month for each retail transaction*. Thus, it is not clear whether the fee must be collected on each retail transaction or on only one retail transaction per month for a given consumer.

The bill provides that state and local governments are not "subscribers" for purposes of the prepaid wireless E911 fee. The term "subscriber" is not defined in s. 365.172, F.S.

The bill provides that "all revenues" derived from the prepaid wireless E911 fee must be paid by the Department of Revenue (DOR) into the E911 Fund on or before the 15th of each month. The bill separately requires DOR to retain one percent of the funds derived from the fees it collects and transfer the remaining funds to the Board within 30 days. The bill could be clarified to reconcile these two provisions.

The bill provides that the funds transferred by DOR to the Board are to be used as provided in s. 365.172(5), F.S. The referenced subsection does not describe how the funds may be used.

The bill does not provide penalties for a seller's failure to remit fees at the times and in the manner prescribed by the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled
2 An act relating to emergency communication system;
3 amending s. 365.172, F.S., relating to the Emergency
4 Communications Number E911 System; revising
5 definitions; revising provisions relating to oversight
6 of certain fees by the Technology Program within the
7 Department of Management Services; revising E911 board
8 appointment provisions; revising duties of the board;
9 revising provisions for administration, distribution,
10 and use of the E911 fee; revising fee collection
11 procedures; providing for the amount of the fee;
12 authorizing the board to adjust the rate of the fee;
13 prohibiting a local government from imposing a fee on
14 sellers of prepaid wireless services; providing for a
15 prepaid wireless E911 fee; requiring the Department of
16 Revenue to provide notice to sellers and establish
17 registration, payment, and documentation procedures;
18 providing for distribution and use of fees collected;
19 providing that fees collected may not be included in
20 the base for measuring any tax, fee, surcharge, or
21 other charge; providing for application of specified
22 audit and appeals procedures; limiting liability of
23 provider or seller of prepaid wireless service;
24 providing that the state and local governments are not
25 subscribers for certain purposes; providing
26 definitions for specified purposes; revising
27 provisions for authorized expenditures of the E911
28 fee; providing that certain costs of the Department of

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29 Health are functions of 911 services; amending s.
30 365.173, F.S.; revising provisions for accounting,
31 distribution, use, and auditing of the Emergency
32 Communications Number E911 System Fund; providing for
33 a prepaid wireless category in such fund; providing an
34 effective date.

35

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

37

38 Section 1. Subsections (3) through (9) of section 365.172,
39 Florida Statutes, are amended, subsections (9) through (14) are
40 renumbered as subsections (10) through (15), respectively, and a
41 new subsection (9) is added to that section, to read:

42 365.172 Emergency communications number "E911."~~—~~

43 (3) DEFINITIONS.—Only as used in this section and ss.

44 365.171, 365.173, and 365.174, the term:

45 (a) "Answering point" means the public safety agency that
46 receives incoming 911 calls and dispatches appropriate public
47 safety agencies to respond to the calls.

48 (b) "Authorized expenditures" means expenditures of the
49 fee, as specified in subsection (10) ~~(9)~~.

50 (c) "Automatic location identification" means the
51 capability of the E911 service which enables the automatic
52 display of information that defines the approximate geographic
53 location of the wireless telephone, or the location of the
54 address of the wireline telephone, used to place a 911 call.

55 (d) "Automatic number identification" means the capability
56 of the E911 service which enables the automatic display of the

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57 service number used to place a 911 call.

58 (e) "Board" or "E911 Board" means the board of directors
59 of the E911 Board established in subsection (5).

60 (f) "Building permit review" means a review for compliance
61 with building construction standards adopted by the local
62 government under chapter 553 and does not include a review for
63 compliance with land development regulations.

64 (g) "Collocation" means the situation when a second or
65 subsequent wireless provider uses an existing structure to
66 locate a second or subsequent antennae. The term includes the
67 ground, platform, or roof installation of equipment enclosures,
68 cabinets, or buildings, and cables, brackets, and other
69 equipment associated with the location and operation of the
70 antennae.

71 (h) "Designed service" means the configuration and manner
72 of deployment of service the wireless provider has designed for
73 an area as part of its network.

74 (i) "E911" is the designation for an enhanced 911 system
75 or enhanced 911 service that is an emergency telephone system or
76 service that provides a subscriber with 911 service and, in
77 addition, directs 911 calls to appropriate public safety
78 answering points by selective routing based on the geographical
79 location from which the call originated, or as otherwise
80 provided in the state plan under s. 365.171, and that provides
81 for automatic number identification and automatic location-
82 identification features. E911 service provided by a wireless
83 provider means E911 as defined in the order.

84 (j) "Existing structure" means a structure that exists at

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85 the time an application for permission to place antennae on a
86 structure is filed with a local government. The term includes
87 any structure that can structurally support the attachment of
88 antennae in compliance with applicable codes.

89 (k) "Fee" means the E911 fee authorized and imposed under
90 subsection (8) or the prepaid wireless E911 fee authorized and
91 imposed under subsection (9).

92 (l) "Fund" means the Emergency Communications Number E911
93 System Fund established in s. 365.173 and maintained under this
94 section for the purpose of recovering the costs associated with
95 providing 911 service or E911 service, including the costs of
96 implementing the order. The fund shall be segregated into
97 wireless, prepaid wireless, and nonwireless categories.

98 (m) "Historic building, structure, site, object, or
99 district" means any building, structure, site, object, or
100 district that has been officially designated as a historic
101 building, historic structure, historic site, historic object, or
102 historic district through a federal, state, or local designation
103 program.

104 (n) "Land development regulations" means any ordinance
105 enacted by a local government for the regulation of any aspect
106 of development, including an ordinance governing zoning,
107 subdivisions, landscaping, tree protection, or signs, the local
108 government's comprehensive plan, or any other ordinance
109 concerning any aspect of the development of land. The term does
110 not include any building construction standard adopted under and
111 in compliance with chapter 553.

112 (o) "Local exchange carrier" means a "competitive local

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113 exchange telecommunications company" or a "local exchange
114 telecommunications company" as defined in s. 364.02.

115 (p) "Local government" means any municipality, county, or
116 political subdivision or agency of a municipality, county, or
117 political subdivision.

118 (q) "Medium county" means any county that has a population
119 of 75,000 or more but less than 750,000.

120 (r) "Mobile telephone number" or "MTN" means the telephone
121 number assigned to a wireless telephone at the time of initial
122 activation.

123 (s) "Nonwireless category" means the revenues to the fund
124 received from voice communications services providers other than
125 wireless providers.

126 (t) "Office" means the Technology Program within the
127 Department of Management Services, as designated by the
128 secretary of the department.

129 (u) "Order" means:

130 1. The following orders and rules of the Federal
131 Communications Commission issued in FCC Docket No. 94-102:

132 a. Order adopted on June 12, 1996, with an effective date
133 of October 1, 1996, the amendments to s. 20.03 and the creation
134 of s. 20.18 of Title 47 of the Code of Federal Regulations
135 adopted by the Federal Communications Commission pursuant to
136 such order.

137 b. Memorandum and Order No. FCC 97-402 adopted on December
138 23, 1997.

139 c. Order No. FCC DA 98-2323 adopted on November 13, 1998.

140 d. Order No. FCC 98-345 adopted December 31, 1998.

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141 2. Orders and rules subsequently adopted by the Federal
142 Communications Commission relating to the provision of 911
143 services, including Order Number FCC-05-116, adopted May 19,
144 2005.

145 (v) "Prepaid wireless category" means all revenues in the
146 fund received through the Department of Revenue from the fee
147 authorized and imposed under subsection (9).

148 (w) "Prepaid wireless service" means a right to access
149 wireless service that allows a caller to contact and interact
150 with 911 to access the 911 system, which service must be paid
151 for in advance and is sold in predetermined units or dollars,
152 which units or dollars expire on a predetermined schedule or are
153 decremented on a predetermined basis in exchange for the right
154 to access wireless service.

155 ~~(v) "Prepaid calling arrangements" has the same meaning as~~
156 ~~defined in s. 212.05(1)(e).~~

157 ~~(x)(w)~~ "Public agency" means the state and any
158 municipality, county, municipal corporation, or other
159 governmental entity, public district, or public authority
160 located in whole or in part within this state which provides, or
161 has authority to provide, firefighting, law enforcement,
162 ambulance, medical, or other emergency services.

163 ~~(y)(x)~~ "Public safety agency" means a functional division
164 of a public agency which provides firefighting, law enforcement,
165 medical, or other emergency services.

166 (z) "Public safety answering point" or "PSAP" means the
167 public safety agency that receives incoming 911 requests for
168 assistance and dispatches appropriate public safety agencies to

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169 respond to the requests in accordance with the state E911 plan.

170 (aa)~~(y)~~ "Rural county" means any county that has a
171 population of fewer than 75,000.

172 (bb)~~(z)~~ "Service identifier" means the service number,
173 access line, or other unique subscriber identifier assigned to a
174 subscriber and established by the Federal Communications
175 Commission for purposes of routing calls whereby the subscriber
176 has access to the E911 system.

177 (cc)~~(aa)~~ "Tower" means any structure designed primarily to
178 support a wireless provider's antennae.

179 (dd)~~(bb)~~ "Voice communications services" means two-way
180 voice service, through the use of any technology, which actually
181 provides access to E911 services, and includes communications
182 services, as defined in s. 202.11, which actually provide access
183 to E911 services and which are required to be included in the
184 provision of E911 services pursuant to orders and rules adopted
185 by the Federal Communications Commission. The term includes
186 voice-over-Internet-protocol service. For the purposes of this
187 section, the term "voice-over-Internet-protocol service" or
188 "VoIP service" means interconnected VoIP services having the
189 following characteristics:

190 1. The service enables real-time, two-way voice
191 communications;

192 2. The service requires a broadband connection from the
193 user's locations;

194 3. The service requires IP-compatible customer premises
195 equipment; and

196 4. The service offering allows users generally to receive

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197 calls that originate on the public switched telephone network
 198 and to terminate calls on the public switched telephone network.

199 (ee)~~(ee)~~ "Voice communications services provider" or
 200 "provider" means any person or entity providing voice
 201 communications services, except that the term does not include
 202 any person or entity that resells voice communications services
 203 and was assessed the fee authorized and imposed under subsection
 204 (8) by its resale supplier.

205 (ff)~~(dd)~~ "Wireless 911 system" or "wireless 911 service"
 206 means an emergency telephone system or service that provides a
 207 subscriber with the ability to reach an answering point by
 208 accessing the digits "911."

209 (gg)~~(ee)~~ "Wireless category" means the revenues to the
 210 fund received from a wireless provider from the fee authorized
 211 and imposed under subsection (8).

212 (hh)~~(ff)~~ "Wireless communications facility" means any
 213 equipment or facility used to provide service and may include,
 214 but is not limited to, antennae, towers, equipment enclosures,
 215 cabling, antenna brackets, and other such equipment. Placing a
 216 wireless communications facility on an existing structure does
 217 not cause the existing structure to become a wireless
 218 communications facility.

219 (ii)~~(gg)~~ "Wireless provider" means a person who provides
 220 wireless service and:

- 221 1. Is subject to the requirements of the order; or
- 222 2. Elects to provide wireless 911 service or E911 service
- 223 in this state.

224 (jj)~~(hh)~~ "Wireless service" means "commercial mobile radio

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225 service" as provided under ss. 3(27) and 332(d) of the Federal
226 Telecommunications Act of 1996, 47 U.S.C. ss. 151 et seq., and
227 the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-
228 66, August 10, 1993, 107 Stat. 312. The term includes service
229 provided by any wireless real-time two-way wire communication
230 device, including radio-telephone communications used in
231 cellular telephone service; personal communications service; or
232 the functional or competitive equivalent of a radio-telephone
233 communications line used in cellular telephone service, a
234 personal communications service, or a network radio access line.
235 The term does not include wireless providers that offer mainly
236 dispatch service in a more localized, noncellular configuration;
237 providers offering only data, one-way, or stored-voice services
238 on an interconnected basis; providers of air-to-ground services;
239 or public coast stations.

240 (4) POWERS AND DUTIES OF THE OFFICE.—The office shall
241 oversee the administration of the fee authorized ~~and imposed on~~
242 ~~subscribers of voice communications services~~ under subsections
243 ~~subsection~~ (8) and (9).

244 (5) THE E911 BOARD.—

245 (a) The E911 Board is established to administer, with
246 oversight by the office, the fees ~~fee~~ imposed under subsections
247 ~~subsection~~ (8) and (9), including receiving revenues derived
248 from the fee; distributing portions of the revenues to wireless
249 providers, counties, and the office; accounting for receipts,
250 distributions, and income derived by the funds maintained in the
251 fund; and providing annual reports to the Governor and the
252 Legislature for submission by the office on amounts collected

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253 and expended, the purposes for which expenditures have been
254 made, and the status of E911 service in this state. In order to
255 advise and assist the office in implementing the purposes of
256 this section, the board, which has the power of a body
257 corporate, has the powers enumerated in subsection (6).

258 (b) The board shall consist of 11 members, one of whom
259 must be the system director designated under s. 365.171(5), or
260 his or her designee, who shall serve as the chair of the board.
261 The remaining 10 members of the board shall be appointed by the
262 Governor and must be composed of 5 county 911 coordinators,
263 consisting of a representative from a rural county, a
264 representative from a medium county, a representative from a
265 large county, and 2 at-large representatives recommended by the
266 Florida Association of Counties in consultation with the county
267 911 coordinators; 3 local exchange carrier member
268 representatives, one of whom must be a representative of the
269 local exchange carrier having the greatest number of access
270 lines in the state and one of whom must be a representative of a
271 certificated competitive local exchange telecommunications
272 company; and 2 member representatives from the wireless
273 telecommunications industry, with consideration given to
274 wireless providers that are not affiliated with local exchange
275 carriers. Not more than one member may be appointed to represent
276 any single provider on the board.

277 (c) The system director, designated under s. 365.171(5),
278 or his or her designee, must be a permanent member of the board.
279 Each of the remaining ten ~~eight~~ members of the board shall be
280 appointed to a 4-year term and may not be appointed to more than

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281 two successive terms. However, for the purpose of staggering
282 terms, two of the original board members shall be appointed to
283 terms of 4 years, two shall be appointed to terms of 3 years,
284 and four shall be appointed to terms of 2 years, as designated
285 by the Governor. A vacancy on the board shall be filled in the
286 same manner as the original appointment.

287 ~~(d) The first vacancy in a wireless provider~~
288 ~~representative position occurring after July 1, 2007, must be~~
289 ~~filled by appointment of a local exchange company~~
290 ~~representative. Until the appointment is made, there shall be~~
291 ~~only one local exchange company representative serving on the~~
292 ~~board, notwithstanding any other provision to the contrary.~~

293 (6) AUTHORITY OF THE BOARD; ANNUAL REPORT.—

294 (a) The board shall:

- 295 1. Administer the E911 fee.
- 296 2. Implement, maintain, and oversee the fund.
- 297 3. Review and oversee the disbursement of the revenues
298 deposited into the fund as provided in s. 365.173.

299 a. The board may establish a schedule for implementing
300 wireless E911 service by service area, and prioritize
301 disbursements of revenues from the fund to providers and rural
302 counties as provided in s. 365.173(2)(e) ~~365.173(2)(d)~~ and (g)
303 pursuant to the schedule, in order to implement E911 services in
304 the most efficient and cost-effective manner.

305 b. Revenues in the fund which have not been disbursed
306 because sworn invoices as required by s. 365.173(2)(e)
307 ~~365.173(2)(d)~~ have not been submitted to the board may be used
308 by the board as needed to provide grants to counties for the

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309 purpose of upgrading E911 systems. The counties must use the
310 funds only for capital expenditures directly attributable to
311 establishing and provisioning E911 services, which may include
312 next-generation deployment. Prior to the distribution of grants,
313 the board shall provide 90 days' written notice to all counties
314 and publish electronically an approved application process.
315 County grant applications shall be prioritized based on the
316 availability of funds, current system life expectancy, system
317 replacement needs, and Phase II compliance per the Federal
318 Communications Commission. No grants will be available to any
319 county for next-generation deployment until all counties are
320 Phase II complete. The board shall take all actions within its
321 authority to ensure that county recipients of such grants use
322 these funds only for the purpose under which they have been
323 provided and may take any actions within its authority to secure
324 county repayment of grant revenues upon determination that the
325 funds were not used for the purpose under which they were
326 provided.

327 c. When determining the funding provided in a state 911
328 grant application request, the board shall take into account
329 information on the amount of carry forward funds retained by the
330 counties. The information will be based on the amount of county
331 carry forward funds reported in the financial audit required in
332 s. 365.173(2)(d). State E911 Grant Program funding requests will
333 be limited by any county carry forward funds in excess of the
334 allowable 30 percent amount of fee revenue calculated on a 2-
335 year basis.

336 d.e. The board shall reimburse all costs of a wireless

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337 provider in accordance with s. 365.173(2)(e) ~~365.173(2)(d)~~
338 before taking any action to transfer additional funds.

339 ~~d. By September 1, 2007, the board shall authorize the~~
340 ~~transfer of up to \$15 million to the counties from existing~~
341 ~~money within the fund established under s. 365.173(1). The money~~
342 ~~shall be disbursed equitably to all of the counties using a~~
343 ~~timeframe and distribution methodology established by the board~~
344 ~~before September 1, 2007, in order to prevent a loss to the~~
345 ~~counties in the ordinary and expected time value of money caused~~
346 ~~by any timing delay in remittance to the counties of wireline~~
347 ~~fees caused by the one-time transfer of collecting wireline fees~~
348 ~~by the counties to the board. All disbursements for this purpose~~
349 ~~must be returned to the fund from future remittances by the~~
350 ~~nonwireless category.~~

351 e. After taking the action required in sub-subparagraphs
352 a.-d., the board may review and, with all members participating
353 in the vote, adjust the percentage allocations or adjust the
354 amount of the fee as provided, ~~or both~~, under paragraph (8)(g)
355 ~~(8)(h)~~, and, if the board determines that the revenues in the
356 wireless category exceed the amount needed to reimburse wireless
357 providers for the cost to implement E911 services, the board may
358 transfer revenue to the counties from the existing funds within
359 the wireless category. The board shall disburse the funds
360 equitably to all counties using a timeframe and distribution
361 methodology established by the board.

362 4. Review documentation submitted by wireless providers
363 which reflects current and projected funds derived from the fee,
364 and the expenses incurred and expected to be incurred in order

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365 to comply with the E911 service requirements contained in the
366 order for the purposes of:

367 a. Ensuring that wireless providers receive fair and
368 equitable distributions of funds from the fund.

369 b. Ensuring that wireless providers are not provided
370 disbursements from the fund which exceed the costs of providing
371 E911 service, including the costs of complying with the order.

372 c. Ascertaining the projected costs of compliance with the
373 requirements of the order and projected collections of the fee.

374 d. Implementing changes to the allocation percentages or
375 adjusting the fee under paragraph (8) (h) ~~(8) (i)~~.

376 5. Meet monthly in the most efficient and cost-effective
377 manner, including telephonically when practical, for the
378 business to be conducted, to review and approve or reject, in
379 whole or in part, applications submitted by wireless providers
380 for recovery of moneys deposited into the wireless category, and
381 to authorize the transfer of, and distribute, the fee allocation
382 to the counties.

383 6. Hire and retain employees, which may include an
384 independent executive director who shall possess experience in
385 the area of telecommunications and emergency 911 issues, for the
386 purposes of performing the technical and administrative
387 functions for the board.

388 7. Make and enter into contracts, pursuant to chapter 287,
389 and execute other instruments necessary or convenient for the
390 exercise of the powers and functions of the board.

391 8. Sue and be sued, and appear and defend in all actions
392 and proceedings, in its corporate name to the same extent as a

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393 natural person.

394 9. Adopt, use, and alter a common corporate seal.

395 10. Elect or appoint the officers and agents that are
396 required by the affairs of the board.

397 11. The board may adopt rules under ss. 120.536(1) and
398 120.54 to implement this section and ss. 365.173 and 365.174.

399 12. Provide coordination, support, and technical
400 assistance to counties to promote the deployment of advanced 911
401 and E911 systems in the state.

402 13. Provide coordination and support for educational
403 opportunities related to E911 issues for the E911 community in
404 this state.

405 14. Act as an advocate for issues related to E911 system
406 functions, features, and operations to improve the delivery of
407 E911 services to the residents of and visitors to this state.

408 15. Coordinate input from this state at national forums
409 and associations, to ensure that policies related to E911
410 systems and services are consistent with the policies of the
411 E911 community in this state.

412 16. Work cooperatively with the system director
413 established in s. 365.171(5) to enhance the state of E911
414 services in this state and to provide unified leadership for all
415 E911 issues through planning and coordination.

416 17. Do all acts and things necessary or convenient to
417 carry out the powers granted in this section in a manner that is
418 competitively and technologically neutral as to all voice
419 communications services providers, including, but not limited
420 to, consideration of emerging technology and related cost

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421 savings, while taking into account embedded costs in current
 422 systems.

423 18. Have the authority to secure the services of an
 424 independent, private attorney via invitation to bid, request for
 425 proposals, invitation to negotiate, or professional contracts
 426 for legal services already established at the Division of
 427 Purchasing of the Department of Management Services.

428 (b) Board members shall serve without compensation;
 429 however, members are entitled to per diem and travel expenses as
 430 provided in s. 112.061.

431 (c) By February 28 of each year, the board shall prepare a
 432 report for submission by the office to the Governor, the
 433 President of the Senate, and the Speaker of the House of
 434 Representatives which addresses for the immediately preceding
 435 state fiscal year and county fiscal calendar year:

436 1. The annual receipts, including the total amount of fee
 437 revenues collected by each provider, the total disbursements of
 438 money in the fund, including the amount of fund-reimbursed
 439 expenses incurred by each wireless provider to comply with the
 440 order, and the amount of moneys on deposit in the fund.

441 2. Whether the amount of the fee and the allocation
 442 percentages set forth in s. 365.173 have been or should be
 443 adjusted to comply with the requirements of the order or other
 444 provisions of this chapter, and the reasons for making or not
 445 making a recommended adjustment to the fee.

446 3. Any other issues related to providing E911 services.

447 4. The status of E911 services in this state.

448 (7) REQUEST FOR PROPOSALS FOR INDEPENDENT ACCOUNTING

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449 FIRM.—

450 (a) The board shall issue a request for proposals as
451 provided in chapter 287 for the purpose of retaining an
452 independent accounting firm. The independent accounting firm
453 shall perform all material administrative and accounting tasks
454 and functions required for administering the fee. The request
455 for proposals must include, but need not be limited to:

456 1. A description of the scope and general requirements of
457 the services requested.

458 2. A description of the specific accounting and reporting
459 services required for administering the fund, including
460 processing checks and distributing funds as directed by the
461 board under s. 365.173.

462 3. A description of information to be provided by the
463 proposer, including the proposer's background and qualifications
464 and the proposed cost of the services to be provided.

465 (b) The board shall establish a committee to review
466 requests for proposals which must include the statewide E911
467 system director designated under s. 365.171(5), or his or her
468 designee, and two members of the board, one of whom is a county
469 911 coordinator and one of whom represents a voice
470 communications services provider. The review committee shall
471 review the proposals received by the board and recommend an
472 independent accounting firm to the board for final selection. By
473 agreeing to serve on the review committee, each member of the
474 review committee shall verify that he or she does not have any
475 interest or employment, directly or indirectly, with potential
476 proposers which conflicts in any manner or degree with his or

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477 her performance on the committee.

478 (c) ~~After July 1, 2004,~~ The board may secure the services
479 of an independent accounting firm via invitation to bid, request
480 for proposals, invitation to negotiate, or professional
481 contracts already established at the Division of Purchasing,
482 Department of Management Services, for certified public
483 accounting firms, or the board may hire and retain professional
484 accounting staff to accomplish these functions.

485 (8) E911 FEE.—

486 (a) Each voice communications services provider shall
487 collect the fee described in this subsection. Each provider, as
488 part of its monthly billing process, shall bill the fee as
489 follows. The fee shall not be assessed on any pay telephone in
490 the state.

491 1. Each voice communications service provider other than a
492 wireless provider shall bill the fee to a subscriber based on
493 the number of access lines having access to the E911 system, on
494 a service-identifier basis, up to a maximum of 25 access lines
495 per account bill rendered.

496 2. Each voice communications service provider other than a
497 wireless provider shall bill the fee to a subscriber on a basis
498 of five service-identified access lines for each digital
499 transmission link, including primary rate interface service or
500 equivalent Digital-Signal-1-level service, which can be
501 channelized and split into 23 or 24 voice-grade or data-grade
502 channels for communications, up to a maximum of 25 access lines
503 per account bill rendered.

504 3. Except in the case of prepaid wireless service, each

505 wireless provider shall bill the fee to a subscriber on a per-
 506 service-identifier basis for service identifiers whose primary
 507 place of use is within this state. ~~Before July 1, 2013, the fee~~
 508 ~~shall not be assessed on or collected from a provider with~~
 509 ~~respect to an end user's service if that end user's service is a~~
 510 ~~prepaid calling arrangement that is subject to s. 212.05(1)(c).~~

511 a. ~~An E911 fee shall not be collected from the sale of~~
 512 ~~prepaid wireless service before July 1, 2013.~~

513 b. ~~For purposes of this section, the term:~~

514 ~~(I) "Prepaid wireless service" means the right to access~~
 515 ~~telecommunications services, which must be paid for in advance~~
 516 ~~and sold in predetermined units or dollars enabling the~~
 517 ~~originator to make calls such that the number of units or~~
 518 ~~dollars declines with use in a known amount.~~

519 ~~(II) "Prepaid wireless service providers" includes those~~
 520 ~~persons who sell prepaid wireless service regardless of its~~
 521 ~~form, as a retailer or reseller.~~

522 4. Except in the case of prepaid wireless service, each
 523 ~~The~~ voice communications services provider ~~providers~~ not
 524 addressed under subparagraphs 1., 2., and 3. shall bill the fee
 525 on a per-service-identifier basis for service identifiers whose
 526 primary place of use is within the state up to a maximum of 25
 527 service identifiers for each account bill rendered.

528
 529 The provider may list the fee as a separate entry on each bill,
 530 in which case the fee must be identified as a fee for E911
 531 services. A provider shall remit the fee to the board only if
 532 the fee is paid by the subscriber. If a provider receives a

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533 partial payment for a monthly bill from a subscriber, the amount
534 received shall first be applied to the payment due the provider
535 for providing voice communications service.

536 (b) A provider is not obligated to take any legal action
537 to enforce collection of the fees for which any subscriber is
538 billed. A county subscribing to 911 service remains liable to
539 the provider delivering the 911 service or equipment for any 911
540 service, equipment, operation, or maintenance charge owed by the
541 county to the provider.

542 (c) For purposes of this section, the state and local
543 governments are not subscribers.

544 (d) Each provider may retain 1 percent of the amount of
545 the fees collected as reimbursement for the administrative costs
546 incurred by the provider to bill, collect, and remit the fee.
547 The remainder shall be delivered to the board and deposited by
548 the board into the fund. The board shall distribute the
549 remainder pursuant to s. 365.173.

550 (e) ~~Effective September 1, 2007,~~ Voice communications
551 services providers billing the fee to subscribers shall deliver
552 revenues from the fee to the board within 60 days after the end
553 of the month in which the fee was billed, together with a
554 monthly report of the number of service identifiers in each
555 county. Each wireless provider and other applicable provider
556 identified in subparagraph (a)4. shall report the number of
557 service identifiers for subscribers whose place of primary use
558 is in each county. All provider subscriber information provided
559 to the board is subject to s. 365.174. If a provider chooses to
560 remit any fee amounts to the board before they are paid by the

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561 subscribers, a provider may apply to the board for a refund of,
562 or may take a credit for, any such fees remitted to the board
563 which are not collected by the provider within 6 months
564 following the month in which the fees are charged off for
565 federal income tax purposes as bad debt.

566 (f) The rate of the fee ~~shall be set by the board after~~
567 ~~considering the factors set forth in paragraphs (h) and (i), but~~
568 may not exceed 50 cents per month per each service identifier.
569 Beginning on January 1, 2014, the fee shall be 46 cents. The fee
570 shall apply uniformly and be imposed throughout the state,
571 except for those counties that, before July 1, 2007, had adopted
572 an ordinance or resolution establishing a fee less than 50 cents
573 per month per access line. In those counties the fee established
574 by ordinance may be changed only to the uniform statewide rate
575 no sooner than 30 days after notification is made by the
576 county's board of county commissioners to the board.

577 ~~(g) It is the intent of the Legislature that all revenue~~
578 ~~from the fee be used as specified in s. 365.173(2)(a)-(i).~~

579 ~~(g)(h) No later than November 1, 2007,~~ The board may
580 adjust the allocation percentages for distribution of the fund
581 as provided in s. 365.173. After January 1, 2015, the board may
582 adjust the rate of the fee under paragraph (f) based on the
583 criteria in this paragraph and paragraph (h). Any adjustment in
584 the rate must be approved by a two-thirds vote of the total
585 number of E911 board members. When setting the percentages or
586 ~~and~~ contemplating any adjustments to the fee, the board shall
587 consider the following:

588 1. The revenues currently allocated for wireless service

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589 provider costs for implementing E911 service and projected costs
590 for implementing E911 service, including recurring costs for
591 Phase I and Phase II and the effect of new technologies;

592 2. The appropriate level of funding needed to fund the
593 rural grant program provided for in s. 365.173(2)(g); and

594 3. The need to fund statewide, regional, and county grants
595 in accordance with sub-subparagraph (6)(a)3.b.

596 (h)~~(i)~~ The board may adjust the allocation percentages or
597 adjust the amount of the fee as provided in paragraph (g)~~, or~~
598 ~~both~~, if necessary to ensure full cost recovery or prevent
599 overrecovery of costs incurred in the provision of E911 service,
600 including costs incurred or projected to be incurred to comply
601 with the order. Any new allocation percentages or reduced or
602 increased fee may not be adjusted for 1 year. In no event shall
603 the fee may not exceed 50 cents per month for ~~per~~ each service
604 identifier. ~~The board-established~~ fee, and any board adjustment
605 of the fee, shall be uniform throughout the state, except for
606 the counties identified in paragraph (f). No less than 90 days
607 before the effective date of any adjustment to the fee, the
608 board shall provide written notice of the adjusted fee amount
609 and effective date to each voice communications services
610 provider from which the board is then receiving the fee.

611 (i) It is the intent of the Legislature that all revenue
612 from the fee be used as specified in s. 365.173(2)(a)-(i).

613 (j) State and local taxes do not apply to the fee. The
614 amount of the E911 fee collected by a seller or provider may not
615 be included in the base for measuring any tax, fee, surcharge,
616 or other charge imposed by this state, any political subdivision

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617 of this state, or any governmental agency.

618 (k) A local government may not levy the fee or any
619 additional fee on providers, ~~or subscribers,~~ or sellers of
620 prepaid wireless services for the provision of E911 service.

621 (l) For purposes of this section, the definitions
622 contained in s. 202.11 and the provisions of s. 202.155 apply in
623 the same manner and to the same extent as the definitions and
624 provisions apply to the taxes levied under chapter 202 on mobile
625 communications services.

626 (9) PREPAID WIRELESS E911 FEE.-

627 (a) There is imposed a prepaid wireless E911 fee per
628 retail transaction at the rate and in the manner set forth in
629 paragraphs (8)(f)-(h). Beginning January 1, 2014, the fee shall
630 be 46 cents. In no event shall the fee exceed 50 cents per month
631 for each retail transaction. No less than 90 days before the
632 effective date of any adjustment to the fee under paragraph
633 (8)(g), the Department of Revenue shall provide written notice
634 of the adjusted fee amount and its effective date to each seller
635 from which the department is then receiving the fee.

636 (b) The prepaid wireless E911 fee shall be collected by
637 the seller from the consumer with respect to each retail
638 transaction occurring in this state. The amount of the prepaid
639 wireless E911 fee shall either be separately stated on an
640 invoice, receipt, or other similar document that is provided to
641 the consumer by the seller or otherwise disclosed to the
642 consumer.

643 (c) For purposes of paragraph (b), a retail transaction
644 that is effected in person by a consumer at a business location

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645 of the seller shall be treated as occurring in this state if
646 that business location is in this state, and any other retail
647 transaction shall be treated as occurring in this state if the
648 retail transaction is treated as occurring in this state under
649 s. 212.05(1)(e)1.a.(II).

650 (d) If a prepaid wireless device is sold for a single,
651 nonitemized price with a prepaid wireless service of 10 minutes
652 or less or \$5 or less, the seller may elect not to apply the
653 wireless E911 fee to the transaction.

654 (e) The prepaid wireless E911 fee is the liability of the
655 consumer and not of the seller or of any provider, except that
656 the seller is liable to remit all prepaid wireless E911 fees
657 that the seller collects from consumers as provided in this
658 subsection, including all such charges that the seller is deemed
659 to collect where the amount of the charge has not been
660 separately stated on an invoice, receipt, or other similar
661 document provided to the consumer by the seller.

662 (f) The amount of the prepaid wireless E911 fee that is
663 collected by a seller from a consumer, whether or not such
664 amount is separately stated on an invoice, receipt, or similar
665 document provided to the consumer by the seller, shall not be
666 included in the base for measuring any tax, fee, surcharge, or
667 other charge that is imposed by this state, any political
668 subdivision of this state, or any intergovernmental agency.

669 (g) Prepaid wireless E911 fees collected by sellers shall
670 be remitted to the Department of Revenue at the times and in the
671 manner provided under s. 212.11. The Department of Revenue shall
672 aggregate and identify the prepaid wireless E911 fee by the

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673 county in which the fee was collected. The Department of Revenue
674 shall establish registration and payment procedures that
675 substantially coincide with the registration and payment
676 procedures that apply to the tax imposed by chapter 212.

677 (h) The Department of Revenue shall retain up to 1 percent
678 of the funds remitted under this subsection to reimburse its
679 direct costs of administering the collection and remittance of
680 prepaid wireless fees. Thereafter, the department shall transfer
681 all remaining funds remitted under this subsection to the E911
682 Board within 30 days after receipt for use as provided in
683 subsection (5).

684 (i) In order to allow sellers of all sizes and
685 technological capabilities adequate time to comply with this
686 subsection, a seller will begin collecting the prepaid wireless
687 fee November 1, 2013. From November 1, 2013, until December 31,
688 2013, the fee will be in the amount of 46 cents. Sellers will
689 retain 100 percent of collections for 2 months to offset the
690 cost of setup.

691 (j) Beginning January 1, 2014, a seller may retain 5
692 percent of the prepaid wireless E911 fees that are collected by
693 the seller from consumers.

694 (k) The audit and appeals procedures applicable under s.
695 212.13 applies to prepaid wireless E911 fees.

696 (l) The Department of Revenue shall establish procedures
697 for a seller of prepaid wireless service to document that a sale
698 is not a retail transaction. The procedures shall substantially
699 coincide with the procedures for documenting a sale for resale
700 transaction under s. 212.186.

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701 (m) A provider or seller of prepaid wireless service is
702 not liable for damages to any person resulting from or incurred
703 in connection with providing or failing to provide 911 or E911
704 service or for identifying or failing to identify the telephone
705 number, address, location, or name associated with any person or
706 device that is accessing or attempting to access 911 or E911
707 service.

708 (n) A provider or seller of prepaid wireless service is
709 not liable for damages to any person resulting from or incurred
710 in connection with providing any lawful assistance to any
711 investigative or law enforcement officer of the United States,
712 any state, or any political subdivision of any state in
713 connection with any lawful investigation or other law
714 enforcement activity by such law enforcement officer.

715 (o) The limitations of liability under this subsection for
716 providers and sellers is in addition to any other limitation of
717 liability provided for under this section.

718 (p) A local government may not levy any additional fee on
719 providers or sellers of prepaid wireless service for the
720 provision of E911 service.

721 (q) For purposes of this section, the state and local
722 governments are not subscribers.

723 (r) For purposes of this subsection, the term:

724 1. "Consumer" means a person who purchases prepaid
725 wireless service in a retail sale.

726 2. "Prepaid wireless E911 fee" means the fee that is
727 required to be collected by a seller from a consumer in the
728 amount established under paragraphs (8)(f)-(h).

729 3. "Provider" means a person that provides prepaid wireless
 730 service pursuant to a license issued by the Federal
 731 Communications Commission.

732 4. "Retail transaction" means the purchase of prepaid
 733 wireless service from a seller for any purpose other than
 734 resale.

735 5. "Seller" means a person who sells prepaid wireless
 736 service to another person.

737 ~~(10)(9)~~ AUTHORIZED EXPENDITURES OF E911 FEE.-

738 (a) For purposes of this section, E911 service includes
 739 the functions of database management, call taking, dispatching,
 740 location verification, and call transfer. Department of Health
 741 certification and recertification and training costs for 911
 742 public safety telecommunications, including dispatching, are
 743 functions of 911 services.

744 (b) All costs directly attributable to the establishment
 745 or provision of E911 service and contracting for E911 services
 746 are eligible for expenditure of moneys derived from imposition
 747 of the fee authorized by this section. These costs include the
 748 acquisition, implementation, and maintenance of Public Safety
 749 Answering Point (PSAP) equipment and E911 service features, as
 750 defined in the providers' published schedules ~~Public Service~~
 751 ~~Commission's lawfully approved 911 and E911 and related tariffs~~
 752 or the acquisition, installation, and maintenance of other E911
 753 equipment, including circuits, call answering equipment, call
 754 transfer equipment, ANI controllers, ALI controllers, ANI
 755 displays, ALI displays, station instruments, E911
 756 telecommunications systems, visual call information and storage

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757 devices, recording equipment, telephone devices and other
758 equipment for the hearing impaired used in the E911 system, PSAP
759 backup power systems, consoles, automatic call distributors, and
760 interfaces, including hardware and software, for computer-aided
761 dispatch (CAD) systems, integrated CAD systems for that portion
762 of the systems used for E911 call taking, GIS system and
763 software equipment and information displays, network clocks,
764 salary and associated expenses for E911 call takers for that
765 portion of their time spent taking and transferring E911 calls,
766 salary and associated expenses for a county to employ a full-
767 time equivalent E911 coordinator position and a full-time
768 equivalent mapping or geographical data position, and technical
769 system maintenance, database, and administration personnel and a
770 staff assistant position per county for the portion of their
771 time spent administrating the E911 system, emergency medical,
772 fire, and law enforcement prearrival instruction software,
773 charts and training costs, training costs for PSAP call takers,
774 supervisors, and managers in the proper methods and techniques
775 used in taking and transferring E911 calls, costs to train and
776 educate PSAP employees regarding E911 service or E911 equipment,
777 including fees collected by the Department of Health for the
778 certification and recertification of 911 public safety
779 telecommunicators as required under s. 401.465, and expenses
780 required to develop and maintain all information, including ALI
781 and ANI databases and other information source repositories,
782 necessary to properly inform call takers as to location address,
783 type of emergency, and other information directly relevant to
784 the E911 call-taking and transferring function. Moneys derived

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785 from the fee may also be used for next-generation E911 network
 786 services, next-generation E911 database services, next-
 787 generation E911 equipment, and wireless E911 routing systems.

788 (c) The moneys may not be used to pay for any item not
 789 listed in this subsection, including, but not limited to, any
 790 capital or operational costs for emergency responses which occur
 791 after the call transfer to the responding public safety entity
 792 and the costs for constructing, leasing, maintaining, or
 793 renovating buildings, except for those building modifications
 794 necessary to maintain the security and environmental integrity
 795 of the PSAP and E911 equipment rooms.

796 Section 2. Section 365.173, Florida Statutes, is amended
 797 to read:

798 365.173 Emergency Communications Number E911 System Fund.—

799 (1) (a) All revenues derived from the fee levied on
 800 subscribers under s. 365.172(8) must be paid by the board into
 801 the State Treasury on or before the 15th day of each month. Such
 802 moneys must be accounted for in a special fund to be designated
 803 as the Emergency Communications Number E911 System Fund, a fund
 804 created in the Technology Program, or other office as designated
 805 by the Secretary of Management Services. All revenues derived
 806 from the fee levied on prepaid wireless service under s.
 807 365.172(9) must be paid by the Department of Revenue into the
 808 Emergency Communications Number E911 System Fund on or before
 809 the 15th day of each month., and, For accounting purposes, the
 810 Emergency Communications Number E911 System Fund must be
 811 segregated into three ~~two~~ separate categories:

812 1.(a) The wireless category; ~~and~~

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813 2.~~(b)~~ The nonwireless category; and

814 3. The prepaid wireless category.

815 (b) All moneys must be invested by the Chief Financial
816 Officer pursuant to s. 17.61. All moneys in such fund are to be
817 expended by the office for the purposes provided in this section
818 and s. 365.172. These funds are not subject to s. 215.20.

819 (2) As determined by the board pursuant to s.
820 365.172(8)(g) ~~365.172(8)(h)~~, and subject to any modifications
821 approved by the board pursuant to s. 365.172(6)(a)3. or (8)(h)
822 ~~(8)(i)~~, the moneys in the fund shall be distributed and used
823 only as follows:

824 (a) Seventy-six ~~Sixty-seven~~ percent of the moneys in the
825 wireless category shall be distributed each month to counties,
826 based on the total number of service identifiers in each county,
827 and shall be used exclusively for payment of:

828 1. Authorized expenditures, as specified in s. 365.172(10)
829 ~~365.172(9)~~.

830 2. Costs to comply with the requirements for E911 service
831 contained in the order and any future rules related to the
832 order.

833 (b) Ninety-six ~~Ninety-seven~~ percent of the moneys in the
834 nonwireless category shall be distributed each month to counties
835 based on the total number of service identifiers in each county
836 and shall be used exclusively for payment of authorized
837 expenditures, as specified in s. 365.172(10) ~~365.172(9)~~.

838 (c) Sixty-one percent of the moneys in the prepaid
839 wireless category shall be distributed each month to counties
840 based on the total number of sales in each county and shall be

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841 used exclusively for payment of authorized expenditures, as
842 specified in s. 365.172(10).

843 (d)~~(e)~~ Any county that receives funds under paragraphs
844 (a), ~~and~~ (b), and (c) shall establish a fund to be used
845 exclusively for the receipt and expenditure of the revenues
846 collected under paragraphs (a), ~~and~~ (b), and (c). All fees
847 placed in the fund and any interest accrued shall be used solely
848 for costs described in subparagraphs (a)1. and 2. and may not be
849 reduced, withheld, or allocated for other purposes. The money
850 collected and interest earned in this fund shall be appropriated
851 for these purposes by the county commissioners and incorporated
852 into the annual county budget. The fund shall be included within
853 the financial audit performed in accordance with s. 218.39. The
854 financial audit shall assure that all E911 fee revenues,
855 interest, and E911 grant funding are used for payment of
856 authorized expenditures, as specified in s. 365.172(10) and as
857 specified in the E911 Board grant and special disbursement
858 programs. The county is responsible for all expenditures of
859 revenues distributed from the county E911 fund and shall submit
860 the financial audit reports to the board for review. A county
861 may carry forward up to 30 percent of the total funds disbursed
862 to the county by the board during a calendar year for
863 expenditures for capital outlay, capital improvements, or
864 equipment replacement, if such expenditures are made for the
865 purposes specified in subparagraphs (a)1. and 2.; however, the
866 30-percent limitation does not apply to funds disbursed to a
867 county under s. 365.172(6)(a)3., and a county may carry forward
868 any percentage of the funds, except that any grant provided

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869 shall continue to be subject to any condition imposed by the
870 board. In order to prevent an excess recovery of costs incurred
871 in providing E911 service, a county that receives funds greater
872 than the permissible E911 costs described in s. 365.172(10)
873 ~~365.172(9)~~, including the 30-percent carryforward allowance,
874 must return the excess funds to the E911 board to be allocated
875 under s. 365.172(6)(a).

876 (e)~~(d)~~ Twenty ~~Thirty~~ percent of the moneys in the wireless
877 category shall be distributed to wireless providers in response
878 to sworn invoices submitted to the board by wireless providers
879 to reimburse such wireless providers for the actual costs
880 incurred to provide 911 or E911 service, including the costs of
881 complying with the order. Such costs include costs and expenses
882 incurred by wireless providers to design, purchase, lease,
883 program, install, test, upgrade, operate, and maintain all
884 necessary data, hardware, and software required to provide E911
885 service. Each wireless provider shall submit to the board, by
886 August 1 of each year, a detailed estimate of the capital and
887 operating expenses for which it anticipates that it will seek
888 reimbursement under this paragraph during the ensuing state
889 fiscal year. In order to be eligible for recovery during any
890 ensuing state fiscal year, a wireless provider must submit all
891 sworn invoices for allowable purchases made within the previous
892 calendar year no later than March 31 of the fiscal year. By
893 September 15 of each year, the board shall submit to the
894 Legislature its legislative budget request for funds to be
895 allocated to wireless providers under this paragraph during the
896 ensuing state fiscal year. The budget request shall be based on

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897 the information submitted by the wireless providers and
 898 estimated surcharge revenues. Distributions of moneys in the
 899 fund by the board to wireless providers must be fair and
 900 nondiscriminatory. If the total amount of moneys requested by
 901 wireless providers pursuant to invoices submitted to the board
 902 and approved for payment exceeds the amount in the fund in any
 903 month, wireless providers that have invoices approved for
 904 payment shall receive a pro rata share of moneys in the fund and
 905 the balance of the payments shall be carried over to the
 906 following month or months until all of the approved payments are
 907 made. The board may adopt rules necessary to address the manner
 908 in which pro rata distributions are made when the total amount
 909 of funds requested by wireless providers pursuant to invoices
 910 submitted to the board exceeds the total amount of moneys on
 911 deposit in the fund.

912 ~~(e) Notwithstanding paragraphs (a) and (d), the amount of~~
 913 ~~money that remained in the wireless 911 system fund on December~~
 914 ~~31, 2006, must be disbursed to wireless providers for the~~
 915 ~~recovery of allowable costs incurred in previous years ending~~
 916 ~~December 31, 2006, and in accordance with paragraph (d). In~~
 917 ~~order to be eligible for recovered costs incurred under~~
 918 ~~paragraph (d), a wireless provider must submit sworn invoices to~~
 919 ~~the board by December 31, 2007. The board must disburse the~~
 920 ~~designated funds in the wireless 911 system fund on or after~~
 921 ~~January 1, 2008.~~

922 (f) One percent of the moneys in each category of the fund
 923 shall be retained by the board to be applied to costs and
 924 expenses incurred for the purposes of managing, administering,

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925 and overseeing the receipts and disbursements from the fund and
926 other activities as defined in s. 365.172(6). Any funds retained
927 for such purposes in a calendar year which are not applied to
928 such costs and expenses by March 31 of the following year shall
929 be redistributed as determined by the board.

930 (g) Three ~~Two~~ percent of the moneys in each category of
931 the fund shall be used to make monthly distributions to rural
932 counties for the purpose of providing facilities and network and
933 service enhancements and assistance for the 911 or E911 systems
934 operated by rural counties and for the provision of grants by
935 the office to rural counties for upgrading and replacing E911
936 systems.

937 (h) Thirty-five percent of the moneys in the prepaid
938 wireless category shall be retained by the board to provide
939 state E911 grants to be awarded in accordance with the following
940 order of priority: ~~By September 1, 2007, up to \$15 million of~~
941 ~~the existing 911 system fund shall be available for distribution~~
942 ~~by the board to the counties in order to prevent a loss in the~~
943 ~~ordinary and expected time value of money caused by any timing~~
944 ~~delay in remittance to the counties of wireline fees caused by~~
945 ~~the one-time transfer of collecting wireline fees by the~~
946 ~~counties to the board. All disbursements for this purpose must~~
947 ~~be returned to the fund from the future remittance by the~~
948 ~~nonwireless category.~~

949 1. For all large, medium, and rural counties to upgrade or
950 replace E911 systems.

951 2. For all large, medium, and rural counties to develop
952 and maintain statewide 911 routing, geographic, and management

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953 information systems.

954 3. For all large, medium, and rural counties to develop
955 and maintain next-generation 911 services and equipment.

956 (i) If the wireless category has funds remaining in it on
957 December 31 after disbursements have been made during the
958 calendar year immediately prior to December 31, the board may
959 disburse the excess funds in the wireless category in accordance
960 with s. 365.172(6)(a)3.b.

961 (3) The Legislature recognizes that the fee authorized
962 under s. 365.172 may not necessarily provide the total funding
963 required for establishing or providing the E911 service. It is
964 the intent of the Legislature that all revenue from the fee be
965 used as specified in ~~this~~ subsection (2).

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 807 (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	_____	

1 Committee/Subcommittee hearing bill: Finance & Tax Subcommittee
2 Representative Steube offered the following:

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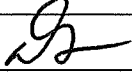
Amendment

Remove line 677 and insert:

(h) The Department of Revenue shall retain up to 3 percent

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 903 Adverse Possession
SPONSOR(S): Civil Justice Subcommittee; Davis; Waldman and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1166

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Ward	Bond
2) Finance & Tax Subcommittee		Tarich 	Langston 
3) Judiciary Committee			

SUMMARY ANALYSIS

Adverse possession is a method of acquiring title to real property by possession of such property for a statutorily defined period of time. It may be accomplished by possession with color of title (some evidence in a recorded, but faulty, document that the occupant owns the property), or without color of title (without having a deed or other recorded document). To acquire title by adverse possession without color of title, a claimant must openly possess the real property, must protect it by an enclosure or cultivate it, must maintain and occupy the land, and must file a return with the county property appraiser. The claimant must pay all taxes for a period of seven years, and must have filed a return of the land for taxes during the first year of occupation. The property appraiser must also notify the owner of record of the filing of the return for adverse possession.

This bill adds a number of requirements related to adverse possession without color of title. The bill requires that a person who files a return for taxes with the intent of claiming the property by adverse possession must:

- Wait for all taxes and liens on the property to accrue for two years.
- Have actual and continued control of the property.
- Maintain or improve the exterior of any structures on the land.
- Pay all mortgages and liens on the property.
- Not apply for adverse possession for more than one property in the state at the same time.
- Not enter any structure on the land until the end of the adverse possession period.
- Maintain the property without entering any of the structures.

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

The bill is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Adverse possession is a method of acquiring title to real property by possession of such land for a statutorily defined period of time. There are several means by which adverse possession of real property can lead to title to real property.

To acquire title by adverse possession without color of title (without having a deed or other recorded document), s. 95.18, F.S., provides that a claimant must:

- Show open, continuous, and hostile possession;
- Pay all taxes due for a period of seven years;
- File a return of the land for taxes with the county property appraiser;
- Protect the property by an enclosure or cultivate it; and
- Maintain and occupy the land.

The property appraiser must also notify the owner of record of the filing of the return for adverse possession.¹

Origins of Adverse Possession

The doctrine of adverse possession “dates back at least to sixteenth century England and has been an element of [U.S.] law since the country's founding.”² The first adverse possession statute appeared in the United States in North Carolina in 1715.³

Adverse possession is defined as “[a] method of acquisition of title to real property by possession for a statutory period under certain conditions.”⁴ Generally, an adverse possessor must establish five elements in relationship to possession of the property. The possession must be:

- Open;
- Continuous for the statutory period;
- For the entirety of the area;
- Adverse to the true owner's interests; and
- Notorious.⁵

In most jurisdictions, state statutory law prescribes the limitations period – the period within which the record owner must act to preserve his or her interests in the property – while the state's body of common law governs the nature of use and possession necessary to trigger the running of the statutory time period.⁶ As legal scholars have noted, “[a]dverse possession decisions are inherently fact-specific.”⁷ Therefore, an adverse possessor must establish “multiple elements whose tests are elastic and provide the trier of fact with flexibility and discretion.”⁸

¹ Section 95.18(3), F.S.

² Alexandra B. Klass, Adverse Possession and Conservation: Expanding Traditional Notions of Use and Possession, 77 U. COLO. L. REV. 283, 286 (Spring 2006).

³ Brian Gardiner, Squatters' Rights and Adverse Possession: A Search for Equitable Application of Property Laws, 8 IND. INT'L & COMP. L. REV. 119, 129 (1997).

⁴ *Id.* at 122 (quoting BLACK'S LAW DICTIONARY 53 (6th ed. 1990)).

⁵ *Id.*

⁶ Klass, *supra* note 1, at 287.

⁷ Geoffrey P. Anderson and David M. Pittinos, Adverse Possession After House Bill 1148, 37 COLO. LAW 73, 74 (Nov. 2008).

⁸ *Id.*

Adverse Possession in Florida

In Florida, there are two ways to acquire land by adverse possession, both of which are prescribed by statute.⁹ First, an individual adversely occupying property may claim property under color of title if he or she can demonstrate that the claim to title is derived from a recorded written document and that he or she has been in possession of the property for at least seven years.¹⁰ It is irrelevant whether the recorded document is legally valid, fraudulent, or faulty. To demonstrate possession, the adverse possessor must prove that he or she cultivated or improved the land, or protected the land by a substantial enclosure.¹¹

Alternatively, in the event a person occupies land continuously without color of title – i.e., without any legal document to support a claim for title – the person may seek title to the property by filing a return with the county property appraiser's office within one year of entry onto the property and paying all property taxes and any assessed liens during the possession of the property for seven consecutive years, so long as the person adhered to the statutory guidelines for proper adverse possession.¹² Similar to claims made with color of title, the adverse possessor may demonstrate possession of the property by showing that that he or she made a return of intent to claim the property with the property appraiser¹³ and either:

- Protected the property by a substantial enclosure (typically a fence);
- Cultivated or improved the property; or
- Occupied and maintained the property.¹⁴

Courts have noted that “[p]ublic policy and stability of our society . . . requires strict compliance with the appropriate statutes by those seeking ownership through adverse possession.”¹⁵ Adverse possession is not favored, and all doubts relating to the adverse possession claim must be resolved in favor of the property owner of record.¹⁶ The adverse possessor must prove each essential element of an adverse possession claim by clear and convincing evidence.¹⁷ Therefore, the adverse possession claim cannot be ‘established by loose, uncertain testimony which necessitates resort to mere conjecture.’¹⁸

Abuse of the Adverse Possession Process

As a result of foreclosures, a glut of vacant homes has increased the propensity of ‘squatters’ who attempt to gain ownership through adverse possession by illegally occupying homes that have been foreclosed. There have also been instances where these foreclosed home were rented to unsuspecting tenants.

⁹ *Candler Holdings Ltd. I v. Watch Omega Holdings, L.P.*, 947 So. 2d 1231, 1234 (Fla. 1st DCA 2007). In addition to adverse possession, a party may gain use of adversely possessed property by acquiring a prescriptive easement upon a showing of 20 years of adverse use.

¹⁰ Section 95.16, F.S. See also *Bonifay v. Dickson*, 459 So. 2d 1089 (Fla. 1st DCA 1984). The Florida Legislature, by acts now embodied in statute, reduced the period of limitations as to adverse possession to 7 years but left at 20 years the period for acquisition of easements by prescription. *Crigger v. Florida Power Corp.*, 436 So. 2d 937, 945 (Fla. 5th DCA 1983).

¹¹ Section 95.16, F.S.

¹² Section 95.18(1), F.S. The 1939 Legislature added to what is now s. 95.18(1), F.S., a provision which required that an adverse possessor without color of title must file a tax return and pay the annual taxes on the property during the term of possession. Chapter 19254, s. 1, Laws of Fla. (1939). A 1974 amendment to the statute eliminated the requirement that taxes be paid annually. Chapter 74-382, s. 1, Laws of Fla.

¹³ Section 95.18(3), F.S.

¹⁴ Section 95.18(2), F.S.

¹⁵ *Candler Holdings Ltd. I*, 947 So. 2d at 1234.

¹⁶ *Id.*

¹⁷ *Id.* (citing *Bailey v. Hagler*, 575 So. 2d 679, 681 (Fla. 1st DCA 1991)).

¹⁸ *Id.* (quoting *Grant v. Strickland*, 385 So. 2d 1123, 1125 (Fla. 1st DCA 1980)).

Changes and Effect of Bill

This bill amends s. 95.18, F.S., to:

- Change the term "occupant" to "adverse possessor."
- Require that the adverse possessor have actual and continued "control" of the property.
 - Under the current law, an adverse possessor only has to 'occupy' the property. This change mandates that an adverse possessor actually control, through maintenance or improvement of the exterior of any structure or the land, the property in order to be eligible to gain title. This change attempts to prevent individuals from adversely possessing property while not actively *controlling* such property; in order to acquire title, the adverse possessor would essentially have to tend to the land. For example, a neighbor that tends to a deceased neighbor's yard, garden, home, etc., when the deceased has no legal heirs, may be deemed to be in control and therefore, eligible to be an adverse possessor. The change would probably prevent a claimant from simply placing personal property on the real property and claiming that he or she 'occupies' the real property.
- Provide that the adverse possessor manifest control by actual maintenance or improvement of the exterior of any structures on the land.
 - This addition helps define, and set the standard for, "control." It appears that it will help ensure that an adverse possessor is actually in control of the property and not just making a claim of the property while not having actual dominion of it.
- Add that the adverse possessor must pay all mortgages and liens on the property.
- Add that taxes must have accrued without payment for at least two years prior to application for the claim.
 - This additional requirement appears to help ensure that the property being adversely possessed is abandoned or not under control or the dominion of the true owner. It also provides protection to true owners who have neglected paying for taxes for only one year.
- Provide that a person may not apply for adverse possession for more than one property in the state at the same time.
 - This restriction, in conjunction with several others, would probably prohibit an 'entrepreneurial' adverse possessor from attempting to adversely possess multiple properties throughout the state that are actually owned (e.g., owned by banks and other lenders) and not abandoned.
- Provide that the adverse possessor may not enter any structure on the land until the end of the adverse possession period and after a deed has been issued to the possessor.
 - This addition appears to help prevent squatters from making adverse possession claims. Squatters will probably not be able to exert continuous possession of the property for seven years if they are prohibited from entering any structure on the property.
- Add to the elements necessary for adverse possession that the property has been "maintained without entering any of the structures."
 - This addition appears to help prevent squatters from making adverse possession claims. Squatters will probably not be able to exert continuous possession of the property for seven years if they are prohibited from entering any structure on the property.

B. SECTION DIRECTORY:

Section 1 amends s. 95.18, F.S., regarding actions for adverse possession without color of title.

Section 2 provides for an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill calls for changes to form DR 452, "Return of real Property in Attempt to Establish Adverse Possession without Color of Title." It appears that the Department of Revenue has sufficient existing rulemaking authority,

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill limits adverse possession by a person to one property (Line 34) at a time, but does not define that term. It is possible that a legitimate adverse possession claim could affect more than one property at a time (for instance, contiguous lots or adjacent lots that are in two separate plats).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 13, 2013, the Civil Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The first amendment removes lines 57 through 62 of the bill, which required written permission from the owner of the property as a condition of adverse possession, and the second amendment removed a portion of line 39 of the bill, which made reference to the issuance of a deed upon completion of the adverse possession requirements. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

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1 A bill to be entitled
2 An act relating to adverse possession; amending s.
3 95.18, F.S.; revising terminology; requiring certain
4 conditions to be met before real property is legally
5 adversely possessed without color of title; providing
6 an effective date.

7
8 Be It Enacted by the Legislature of the State of Florida:

9
10 Section 1. Subsections (1), (2), and (3) of section 95.18,
11 Florida Statutes, are amended to read:

12 95.18 Real property actions; adverse possession without
13 color of title.—

14 (1) When the adverse possessor ~~occupant~~ has, or those
15 under whom the adverse possessor ~~occupant~~ claims have, been in
16 actual continued control ~~occupation~~ of real property for 7 years
17 under a claim of title exclusive of any other right, but not
18 founded on a written instrument, judgment, or decree, the
19 property, when actually controlled through maintenance or
20 improvement of the exterior of any structure or the land,
21 ~~occupied~~ is held adversely if the person claiming adverse
22 possession made a return, as required under subsection (3), of
23 the property by proper legal description to the property
24 appraiser of the county where it is located within 1 year after
25 entering into possession and has subsequently paid, subject to
26 s. 197.3335, all taxes and matured installments of special
27 improvement liens levied against the property by the state,
28 county, and municipality, as well as all mortgages and liens .

29 upon the property. All municipal, county, and state taxes must
30 have accrued against the property, without payment, for at least
31 2 years. A person or entity may not apply for adverse possession
32 for more than one property in this state at the same time. The
33 adverse possessor, or those persons under whom the possessor
34 claims a possessory right, may not enter any structure on the
35 possessed property until the end of the adverse possession
36 period.

37 (2) For the purpose of this section, property is deemed to
38 be possessed if the property has been:

- 39 (a) Protected by substantial enclosure;
40 (b) Cultivated or improved in a usual manner; or
41 (c) Maintained without entering any of the structures
42 ~~Occupied and maintained.~~

43 (3) A person claiming adverse possession under this
44 section must make a return of the property by providing to the
45 property appraiser a uniform return on a form provided by the
46 Department of Revenue. The return must include all of the
47 following:

- 48 (a) The name and address of the person claiming adverse
49 possession.
50 (b) The date that the person claiming adverse possession
51 entered into controlled possession of the property.
52 (c) A full and complete legal description of the property
53 that is subject to the adverse possession claim.
54 (d) A notarized attestation clause that states:

55 UNDER PENALTY OF PERJURY, I DECLARE THAT I HAVE READ THE
56 FOREGOING RETURN AND THAT THE FACTS STATED IN IT ARE TRUE AND

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57 CORRECT.

58 (e) A description of the use of the property by the person
59 claiming adverse possession.

60 (f) A receipt to be completed by the property appraiser.

61

62 The property appraiser shall refuse to accept a return if it
63 does not comply with this subsection. The executive director of
64 the Department of Revenue is authorized, and all conditions are
65 deemed met, to adopt emergency rules under ss. 120.536(1) and
66 120.54(4) for the purpose of implementing this subsection. The
67 emergency rules shall remain in effect for 6 months after
68 adoption and may be renewed during the pendency of procedures to
69 adopt rules addressing the subject of the emergency rules.

70 Section 2. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 921 Tax Exemptions for Property Used for Affordable Housing

SPONSOR(S): Renuart

TIED BILLS: IDEN./SIM. **BILLS:** SB 740

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	11 Y, 0 N	Duncan	West
2) Finance & Tax Subcommittee		Aldridge <i>W</i>	Langston <i>B</i>
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill removes the provision authorizing the affordable housing property exemption to apply to affordable housing owned by a Florida-based limited partnership whose sole general partner is a not for profit corporation qualified as charitable under the Internal Revenue Code. The bill also makes technical corrections to the amended provision.

The Revenue Estimating Conference estimated the provisions of the bill will have a positive impact on local government revenue in FY 2013-14 of \$23.4 million (\$117.2 million recurring).

The bill is effective upon becoming a law and the removal of the exemption applies to the 2013 ad valorem tax rolls.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

In 1999,¹ the Legislature authorized property owned entirely by a not for profit corporation, used to provide affordable housing through any state housing program under ch. 420, F.S., and serving low-income and very-low-income persons, to be considered property as owned by an exempt entity used for charitable purpose and therefore to be exempt from ad valorem taxation. The not for profit corporation must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code and other federal regulations.

In 2009,² and later reenacted in 2011,³ the Legislature expanded the affordable housing property exemption to include property owned entirely by a Florida-based limited partnership whose sole general partner is a not for profit corporation qualified as charitable under s. 501(c)(3) of the Internal Revenue Code. Any property owned by a limited partnership which is disregarded as an entity for federal income tax purposes is treated as if owned by its sole general partner.

The unintended effect of the expanded provision is that an affordable housing (i.e., low income housing tax credit) development with a nonprofit general partner can claim a tax exemption even though the limited partnership that owns the property is a for-profit corporation. While the provision may be beneficial to non-profit developments, the provision may also be misused if a for-profit developer uses a compliant non-profit, which has no significant role in the development's construction or operations, to gain the tax exemption.

Effect of Proposed Changes

The bill removes the provision authorizing the affordable housing property exemption to apply to affordable housing owned by a Florida-based limited partnership whose sole general partner is a not for profit corporation. The bill also makes technical corrections to the amended provision. The removal of such authority is effective upon becoming a law and applies to the 2013 ad valorem tax rolls.

B. SECTION DIRECTORY:

Section 1: Amends s. 196.1978, F.S., relating to the affordable housing property exemption, to remove the application of the exemption to property owned by a Florida-based limited partnership whose sole general partner is a not for profit corporation; and to make technical corrections.

Section 2: Provides that the act becomes effective upon becoming a law and must apply first to the 2013 ad valorem tax rolls.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

¹ Section 15, ch. 99-378, L.O.F., codified at s. 196.1978, F.S.

² Section 18, ch. 2009-96, L.O.F., amending s. 196.1978, F.S.

³ Section 4, ch. 2011-15, L.O.F., reenacting s. 196.1978, F.S.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimated the provisions of the bill will have a positive impact on local government revenue in FY 2013-14 of \$23.4 million (\$117.2 million recurring).

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Property used to provide affordable housing and owned by Florida-based limited partnerships, the sole general partner of which is a not for profit corporations will be prohibited from claiming an affordable housing tax exemption.

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

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1 A bill to be entitled
 2 An act relating to tax exemptions for property used
 3 for affordable housing; amending s. 196.1978, F.S.;
 4 deleting an ad valorem tax exemption for property
 5 owned by certain Florida-based limited partnerships
 6 and used for affordable housing for certain income-
 7 qualified persons; providing for retroactive
 8 application; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Section 196.1978, Florida Statutes, is amended
 13 to read:

14 196.1978 Affordable housing property exemption.—Property
 15 used to provide affordable housing to ~~to serving~~ eligible persons
 16 as defined by s. 159.603(7) and natural persons or families
 17 meeting the extremely-low-income, very-low-income, low-income,
 18 or moderate-income limits specified in s. 420.0004, which
 19 ~~property~~ is owned entirely by a nonprofit entity that is a
 20 corporation not for profit, qualified as charitable under s.
 21 501(c)(3) of the Internal Revenue Code and in compliance with
 22 Rev. Proc. 96-32, 1996-1 C.B. 717, is ~~or a Florida-based limited~~
 23 ~~partnership, the sole general partner of which is a corporation~~
 24 ~~not for profit which is qualified as charitable under s.~~
 25 ~~501(e)(3) of the Internal Revenue Code and which complies with~~
 26 ~~Rev. Proc. 96-32, 1996-1 C.B. 717,~~ shall be considered property
 27 owned by an exempt entity and used for a charitable purpose, and
 28 those portions of the affordable housing property that ~~which~~

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29 | provide housing to natural persons or families classified as
30 | extremely low income, very low income, low income, or moderate
31 | income under s. 420.0004 are ~~shall be~~ exempt from ad valorem
32 | taxation to the extent authorized under ~~in~~ s. 196.196. All
33 | property identified in this section must ~~shall~~ comply with the
34 | criteria provided under s. 196.195 for determining ~~determination~~
35 | ~~of~~ exempt status and ~~to be~~ applied by property appraisers on an
36 | annual basis ~~as defined in s. 196.195~~. The Legislature intends
37 | that any property owned by a limited liability company ~~or~~
38 | ~~limited partnership~~ which is disregarded as an entity for
39 | federal income tax purposes pursuant to Treasury Regulation
40 | 301.7701-3(b)(1)(ii) ~~shall~~ be treated as owned by its sole
41 | member ~~or sole general partner~~.

42 | Section 2. This act shall take effect upon becoming a law
43 | and shall first apply to the 2013 ad valorem tax rolls.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1193 Taxation Of Property
SPONSOR(S): Beshears and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 1200

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee		Aldridge <i>A</i>	Langston <i>[Signature]</i>
2) Agriculture & Natural Resources Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

The bill eliminates the following three specific statutory guidelines under which agricultural land can be reclassified as nonagricultural for property taxation purposes:

- Land has been zoned to a nonagricultural use at the request of the owner,
- When there is contiguous urban or metropolitan development the board of county commissioners finds that the continued use of such lands for agricultural purposes will act as a deterrent to the timely and orderly expansion of the community,
- Sale of land for a purchase price which is three or more times the agricultural assessment placed on the land creates a presumption that such land is not used primarily for bona fide agricultural purposes (this presumption may be rebutted upon a showing of special circumstances by the landowner demonstrating that the land is to be continued in bona fide agriculture).

The bill also amends several statutory provisions to remove the authority of the value adjustment board to review all property classified by the property appraiser upon its own motion.

The Revenue Estimating Conference (REC) estimated that the provisions of the bill related to value adjustment boards would have an impact on local government revenues of either zero or negative indeterminate beginning in FY 2013-14. The REC estimated that the provisions of the bill related to reclassification of lands as nonagricultural to have a recurring negative revenue impact on local governments of \$0.5 million beginning in FY 2013-14.

The bill is effective upon becoming a law and applies retroactively to January 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Agricultural Classification for Property Tax Assessments

Pursuant to section 4, Art. VII, of the State Constitution, agricultural land may be assessed solely on the basis of its character or use. For property to be classified as agricultural land, it must be used "primarily for bona fide agricultural purposes"¹

In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration by the property appraiser²:

- The length of time the land has been so used.
- Whether the use has been continuous.
- The purchase price paid.
- Size, as it relates to specific agricultural use, but a minimum acreage may not be required for agricultural assessment.
- Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforestation, and other accepted agricultural practices.
- Whether the land is under lease and, if so, the effective length, terms, and conditions of the lease.
- Such other factors as may become applicable.

Offering property for sale does not constitute a primary use of land and may not be the basis for denying an agricultural classification if the land continues to be used primarily for bona fide agricultural purposes while it is being offered for sale³.

Once property is qualified to receive agricultural classification, the property appraiser must assess the land based solely on its agricultural use, considering the following use factors only:

- The quantity and size of the property;
- The condition of the property;
- The present market value of the property as agricultural land;
- The income produced by the property;
- The productivity of land in its present use;
- The economic merchantability of the agricultural product; and
- Such other agricultural factors as may from time to time become applicable, which are reflective of the standard present practices of agricultural use and production.⁴

¹ Section 193.461(3)(b), F.S.

² Section 193.461(3)(b)1., F.S.

³ Section 193.461(3)(b)2., F.S.

⁴ Section 193.461(6), F.S.

Reclassification of Lands as Nonagricultural

Section 193.461(4), F.S., provides statutory direction for when lands should be reclassified as nonagricultural.

1. The property appraiser must reclassify the following lands as nonagricultural:
 - Land diverted from an agricultural to a nonagricultural use.
 - Land no longer being utilized for agricultural purposes.
 - Land that has been zoned to a nonagricultural use at the request of the owner.

2. The board of county commissioners may also reclassify lands classified as agricultural to nonagricultural when there is contiguous urban or metropolitan development and the board of county commissioners finds that the continued use of such lands for agricultural purposes will act as a deterrent to the timely and orderly expansion of the community.

3. Sale of land for a purchase price which is three or more times the agricultural assessment placed on the land shall create a presumption that such land is not used primarily for bona fide agricultural purposes. Upon a showing of special circumstances by the landowner demonstrating that the land is to be continued in bona fide agriculture, this presumption may be rebutted.

Value Adjustment Board Authority to Review all Property Classified by the Property Appraiser

There are several statutory provisions that provide the value adjustment board the authority to review all property classified by the property appraiser upon its own motion.⁵

Proposed Changes

Reclassification of Lands as Nonagricultural

The bill amends s. 193.461(4), F.S., to delete the statutory direction for when lands should be reclassified as nonagricultural described above, leaving the following:

1. The property appraiser must reclassify the following lands as nonagricultural:
 - Land diverted from an agricultural to a nonagricultural use.
 - Land no longer being utilized for agricultural purposes.

Value Adjustment Board Authority to Review all Property Classified by the Property Appraiser

The bill amends the cited statutory provisions to remove the authority of the value adjustment board to review all property classified by the property appraiser upon its own motion.

B. SECTION DIRECTORY:

Section 1: Amends s. 193.461, F.S., removing authority of the value adjustment board to review all property classified by the property appraiser upon its own motion, and amending provisions related to reclassification of lands as nonagricultural.

Section 2: Amends s. 193.503(7), F.S., removing authority of the value adjustment board to review all property classified by the property appraiser upon its own motion.

⁵ See s. 193.461(2), F.S., s. 193.503(7), F.S., s. 193.625(2), F.S., s. 196.194(1), F.S.
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DATE: 3/16/2013

Section 3: Amends s. 193.625(2), F.S., removing authority of the value adjustment board to review all property classified by the property appraiser upon its own motion.

Section 4: Amends s. 196.194(1), F.S., removing authority of the value adjustment board to review all property classified by the property appraiser upon its own motion.

Section 5: Provides an effective date of upon becoming law and applies retroactive to January 1, 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 (REC) estimated that the provisions of the bill related to value adjustment boards would have an impact on local government revenues of either zero or negative indeterminate beginning in FY 2013-14. The REC estimated that the provisions of the bill related to reclassification of lands as nonagricultural to have a recurring negative revenue impact on local governments of \$0.5 million beginning in FY 2013-14.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989; however, an exemption may apply because the bill has an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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29 appraiser and deleting certain notice requirements
 30 relating to the review of such exemptions; providing
 31 for retroactive application; providing an effective
 32 date.

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

35
 36 Section 1. Subsections (2) and (4) of section 193.461,
 37 Florida Statutes, are amended to read:

38 193.461 Agricultural lands; classification and assessment;
 39 mandated eradication or quarantine program.—

40 (2) Any landowner whose land is denied agricultural
 41 classification by the property appraiser may appeal to the value
 42 adjustment board. The property appraiser shall notify the
 43 landowner in writing of the denial of agricultural
 44 classification on or before July 1 of the year for which the
 45 application was filed. The notification shall advise the
 46 landowner of his or her right to appeal to the value adjustment
 47 board and of the filing deadline. ~~The board may also review all~~
 48 ~~lands classified by the property appraiser upon its own motion.~~
 49 The property appraiser shall have available at his or her office
 50 a list by ownership of all applications received showing the
 51 acreage, the full valuation under s. 193.011, the valuation of
 52 the land under the provisions of this section, and whether or
 53 not the classification requested was granted.

54 (4) ~~(a)~~ The property appraiser shall reclassify the
 55 following lands as nonagricultural:

56 (a) ~~1.~~ Land diverted from an agricultural to a

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57 nonagricultural use.

58 (b)2. Land no longer being utilized for agricultural
59 purposes.

60 ~~3. Land that has been zoned to a nonagricultural use at~~
61 ~~the request of the owner subsequent to the enactment of this~~
62 ~~law.~~

63 ~~(b) The board of county commissioners may also reclassify~~
64 ~~lands classified as agricultural to nonagricultural when there~~
65 ~~is contiguous urban or metropolitan development and the board of~~
66 ~~county commissioners finds that the continued use of such lands~~
67 ~~for agricultural purposes will act as a deterrent to the timely~~
68 ~~and orderly expansion of the community.~~

69 ~~(c) Sale of land for a purchase price which is three or~~
70 ~~more times the agricultural assessment placed on the land shall~~
71 ~~create a presumption that such land is not used primarily for~~
72 ~~bona fide agricultural purposes. Upon a showing of special~~
73 ~~circumstances by the landowner demonstrating that the land is to~~
74 ~~be continued in bona fide agriculture, this presumption may be~~
75 ~~rebutted.~~

76 Section 2. Subsection (7) of section 193.503, Florida
77 Statutes, is amended to read:

78 193.503 Classification and assessment of historic property
79 used for commercial or certain nonprofit purposes.—

80 (7) Any property owner who is denied classification under
81 this section may appeal to the value adjustment board. The
82 property appraiser shall notify the property owner in writing of
83 the denial of such classification on or before July 1 of the
84 year for which the application was filed. The notification shall

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85 | advise the property owner of his or her right to appeal to the
 86 | value adjustment board and of the filing deadline. ~~The board may~~
 87 | ~~also review all property classified by the property appraiser~~
 88 | ~~upon its own motion.~~ The property appraiser shall have available
 89 | at his or her office a list by ownership of all applications
 90 | received showing the full valuation under s. 193.011, the
 91 | valuation of the property under the provisions of this section,
 92 | and whether or not the classification requested was granted.

93 | Section 3. Subsection (2) of section 193.625, Florida
 94 | Statutes, is amended to read:

95 | 193.625 High-water recharge lands; classification and
 96 | assessment.—

97 | (2) Any landowner whose land is within a county that has a
 98 | high-water recharge protection tax assessment program and whose
 99 | land is denied high-water recharge classification by the
 100 | property appraiser may appeal to the value adjustment board. The
 101 | property appraiser shall notify the landowner in writing of the
 102 | denial of high-water recharge classification on or before July 1
 103 | of the year for which the application was filed. The
 104 | notification must advise the landowner of a right to appeal to
 105 | the value adjustment board and of the filing deadline. ~~The board~~
 106 | ~~may also review all lands classified by the property appraiser~~
 107 | ~~upon its own motion.~~ The property appraiser shall have available
 108 | at her or his office a list by ownership of all applications
 109 | received showing the acreage, the full valuation under s.
 110 | 193.011, the valuation of the land under the provisions of this
 111 | section, and whether or not the classification requested was
 112 | granted.

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113 Section 4. Subsection (1) of section 196.194, Florida
 114 Statutes, is amended to read:

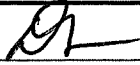
115 196.194 Value adjustment board; notice; hearings;
 116 appearance before the board.—

117 (1) The value adjustment board shall hear disputed or
 118 appealed applications for exemption and shall grant such
 119 exemptions in whole or in part in accordance with criteria set
 120 forth in this chapter. ~~It may review exemptions on its own~~
 121 ~~motion or upon motion of the property appraiser. Review of an~~
 122 ~~exemption application upon motion of the board shall not be held~~
 123 ~~until the applicant has had at least 5 calendar days' notice of~~
 124 ~~the intent of the board to review the application.~~

125 Section 5. This act shall take effect upon becoming a law
 126 and applies retroactively to January 1, 2012.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1295 Discretionary Sales Surtaxes
SPONSOR(S): Fresen
TIED BILLS: IDEN./SIM. **BILLS:** SB 1718

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee		Flieger BF	Langston 
2) Education Committee			
3) Appropriations Committee			

SUMMARY ANALYSIS

The bill creates a ninth discretionary sales and use surtax in s. 212.055, F.S. The newly created "Florida College Surtax" allows a county as defined in s. 125.011(1), F.S., to levy a surtax of up to 0.5 percent for the benefit of a Florida College System institution as defined by s. 1000.21, F.S., which is located within that county. Currently, Miami-Dade is the only county in Florida whose charter satisfies the s. 125.011(1), F.S., definition. The only Florida College System institution located within Miami-Dade county is Miami-Dade College.

The bill has not been evaluated by the Revenue Estimating Conference. Staff estimates that a 0.5 percent surtax in Miami-Dade could raise \$202M in annual revenue.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by ch. 212, F.S., and on communications services as defined in ch. 202, F.S.¹ The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered into, and is levied in addition to the state sales and use tax of 6 percent. The surtax does not apply to sales price above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service, rentals of real property, or transient rentals.

The eight discretionary sales surtaxes and their maximum rates are:

- Charter County and Regional Transportation System Surtax, 1 percent
- Emergency Fire Rescue Services and Facilities Surtax, 1 percent
- Local Government Infrastructure Surtax, 1 percent
- Small County Surtax, 1 percent
- Indigent Care and Trauma Center Surtax, 0.5 percent
- County Public Hospital Surtax, 0.5 percent
- School Capital Outlay Surtax, 0.5 percent
- Voter-Approved Indigent Care Surtax, 1 percent

Every county is eligible to levy the School Capital Outlay and Local Government Infrastructure Surtaxes, the others have varying requirements. Section 212.055, F.S., further provides caps on the combined rates. The maximum discretionary sales surtax that any county can levy depends upon the county's eligibility. Currently, the highest surtax imposed is 1.5 percent in several counties;² however, the theoretical maximum combined rate ranges between 2 percent and 3.5 percent, depending on the specifics of each individual county.³

Section 212.054, F.S., requires that any increase or decrease in a discretionary sales surtax must take effective on January 1.

Of the four discretionary sales surtaxes Miami-Dade may levy, the county currently levies a 0.5 percent Charter County and Regional Transportation Surtax and a 0.5 percent County Public Hospital Surtax.

Proposed Changes

The bill creates a ninth discretionary surtax in s. 212.055, F.S. The "Florida College Surtax" allows a county as defined in s. 125.011(1), F.S.,⁴ to levy a surtax of up to 0.5 percent for the benefit of a Florida College System institution as defined by s. 1000.21, F.S.,⁵ which is located within that county. Miami-

¹ The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

² See DOR Form DR-15 DSS, "Discretionary Sales Surtax Information", available at <http://dor.myflorida.com/dor/forms/2013/dr15dss.pdf> (last visited 1/31/2013).

³ See pg. 212-213 of the REC's 2012 Florida Tax Handbook, available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2012.pdf> (last visited 3/9/12)

⁴ A county "operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred."

⁵ <http://data.fldoe.org/workforce/contacts/default.cfm?action=showList&ListID=52> (last accessed 3/18/13)

Dade is the only county in Florida whose charter satisfies the s. 125.011(1), F.S., definition, though Hillsborough and Monroe County are authorized to operate under such a charter.

The only Florida College System institution currently located within Miami-Dade county is Miami-Dade College.

To levy the surtax, a qualifying county must approve an ordinance via referendum. The ordinance must set forth the permissible uses of the surtax proceeds. The expense of holding the referendum must be paid for by the Florida College System institution and may not use student fees or state funding, the referendum shall be paid for only through funds received from private donors or with college auxiliary funds.

The bill provides that if the referendum is successful, a seven member oversight board shall be established to provide guidance and accountability for the expenditure of the revenue raised by the surtax. The board shall be composed of:

- One member appointed by the board of directors of the Greater Miami Chamber of Commerce,
- One member appointed by the board of directors of the United Way of Miami-Dade County,
- One member appointed by the Beacon Council, Miami-Dade County's official economic development partnership,
- Two members appointed by the board of trustees of the Florida College System institution, and
- Two members appointed by the chair of the county legislative delegation.

The board will annually meet to approve a proposed spending plan. Members will be appointed to 4 year terms, with no member serving for more than 2 consecutive terms.

The bill prohibits any reduction in the annual apportionment of state funds allocated to support a Florida College System institution that has received funds from a Florida College Surtax.

The surtax would expire 10 years after enactment unless extended via another referendum.

B. SECTION DIRECTORY:

Section 1. Amends s. 212.055, F.S., creating a ninth discretionary surtax

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill has not been evaluated by the Revenue Estimating Conference. Staff estimates that a 0.5 percent surtax in Miami-Dade could raise \$202M in annual revenue.⁶

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

⁶ Office of Economic and Demographic Research, 2012 Local Government Financial Information Handbook , pg 164. Available at <http://edr.state.fl.us/Content/local-government/reports/lgfi12.pdf> (last accessed 3/19/13)

1 A bill to be entitled
 2 An act relating to discretionary sales surtaxes;
 3 amending s. 212.055, F.S.; authorizing a county
 4 defined in s. 125.011(1), F.S., to levy a surtax up to
 5 a specified amount for the benefit of a Florida
 6 College System institution in the county pursuant to
 7 an ordinance conditioned to take effect upon approval
 8 in a county referendum; requiring the ordinance to
 9 include a plan for the use of the proceeds; providing
 10 referendum requirements and procedures; requiring that
 11 the proceeds from the surtax be deposited and managed
 12 in a specified manner; establishing an oversight board
 13 with specified duties, responsibilities, and
 14 requirements relating to the expenditure of surtax
 15 proceeds; providing for the appointment of members of
 16 the oversight board; requiring that the board of
 17 trustees of a college receiving surtax proceeds
 18 prepare an annual plan for submission to the oversight
 19 board for approval; providing that state funding may
 20 not be reduced because an institution receives surtax
 21 funds; providing for the scheduled expiration of the
 22 surtax unless reenacted by an ordinance approved at a
 23 subsequent referendum; providing an effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

26
 27 Section 1. Subsection (9) is added to section 212.055,
 28 Florida Statutes, to read:

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29 212.055 Discretionary sales surtaxes; legislative intent;
30 authorization and use of proceeds.—It is the legislative intent
31 that any authorization for imposition of a discretionary sales
32 surtax shall be published in the Florida Statutes as a
33 subsection of this section, irrespective of the duration of the
34 levy. Each enactment shall specify the types of counties
35 authorized to levy; the rate or rates which may be imposed; the
36 maximum length of time the surtax may be imposed, if any; the
37 procedure which must be followed to secure voter approval, if
38 required; the purpose for which the proceeds may be expended;
39 and such other requirements as the Legislature may provide.
40 Taxable transactions and administrative procedures shall be as
41 provided in s. 212.054.

42 (9) FLORIDA COLLEGE SURTAX.—A county as defined in s.
43 125.011(1) may levy a surtax of up to 0.5 percent for the
44 benefit of a Florida College System institution as defined in s.
45 1000.21, located in the county, pursuant to an ordinance that is
46 conditioned to take effect only upon approval by a majority vote
47 of the electors of the county voting in a referendum.

48 (a) The ordinance must set forth a plan for using the
49 surtax proceeds for the benefit of the Florida College System
50 institution by the institution's board of trustees. Such plan
51 must provide for the permissible uses of the surtax proceeds,
52 including, but not limited to, the maintenance, improvement, and
53 expansion of academic and workforce training programs; teaching
54 enhancements; student scholarships and other financial aid;
55 capital expenditures and infrastructure projects; fixed capital
56 costs associated with the construction, reconstruction,

57 renovation, maintenance, or improvement of facilities and
 58 campuses that have a useful life expectancy of at least 5 years;
 59 deferred maintenance; land acquisition, land improvement,
 60 design, and engineering costs related thereto; and the expansion
 61 and enhancement of services, programs, and facilities at all
 62 institution sites within the county. The proceeds of the surtax
 63 must be set aside and invested as permitted by law, with the
 64 principal and income to be used for the purposes listed in this
 65 subsection as administered by the board of trustees.

66 (b) If the county, at the request of a Florida College
 67 System institution in the county, calls for a referendum, the
 68 expense of holding the referendum may not be paid with student
 69 fees or moneys that the institution receives from the state, but
 70 shall be paid only with funds received from private sources or
 71 with college auxiliary funds. The county must provide at least
 72 30 days' notice of the election as provided under s. 100.342.

73 (c) The referendum providing for the imposition of the
 74 surtax shall include a statement that provides a brief and
 75 general description of the purposes for which the proceeds of
 76 the surtax may be used, conform to the requirements of s.
 77 101.161, and be placed on the ballot by the governing body of
 78 the county. The following questions shall be placed on the
 79 ballot:

80
 81 FOR THE. . . .CENTS TAX
 82 AGAINST THE. . . .CENTS TAX
 83

84 (d) Upon approval of the referendum, proceeds from the

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85 surtax must be deposited by the Department of Revenue into a
86 Florida Prime account managed by the Florida State Board of
87 Administration and used only for the operation, maintenance, and
88 administration of the Florida College System institution within
89 that county.

90 (e) Upon approval of the referendum, an oversight board
91 shall be established to review and provide guidance,
92 transparency, and accountability for the expenditure of the
93 proceeds of the surtax and to review the plan prepared by the
94 board of trustees pursuant to paragraph (f). Annually, the
95 oversight board shall meet to approve the proposed spending
96 plan.

97 1. The board shall be composed of seven members who are
98 residents of the county and appointed as follows:

99 a. One member appointed by the board of directors of the
100 Greater Miami Chamber of Commerce.

101 b. One member appointed by the board of directors of the
102 United Way of Miami-Dade County.

103 c. One member appointed by the Beacon Council, Miami-Dade
104 County's official economic development partnership.

105 d. Two members appointed by the board of trustees of the
106 Florida College System institution.

107 e. Two members appointed by the chair of the county
108 legislative delegation.

109 2. Initial appointments to the oversight board shall be
110 made by the respective entities within 60 days after the passage
111 of the referendum. Each member shall be appointed for a 4-year
112 term. A vacancy on the board shall be filled for the unexpired

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113 portion of the term in the same manner as the original
114 appointment. No member may serve for more than the remaining
115 portion of a previous member's unexpired term, plus two
116 consecutive 4-year terms.

117 (f) Consistent with the purposes set forth in the plan
118 included in the ordinance under paragraph (a), the board of
119 trustees of the Florida College System institution shall
120 annually prepare a plan that specifies how the board of trustees
121 intends to allocate and expend the funds for the institution's
122 upcoming fiscal year and submit such plan to the oversight board
123 for approval.

124 (g) The annual apportionment of state funds for the
125 support of a Florida College System institution allocated under
126 general law may not be reduced because the institution has
127 received funds pursuant to a sales surtax levied under this
128 subsection.

129 (h) A surtax imposed under this subsection expires 10
130 years after the effective date of the surtax unless reenacted by
131 an ordinance that is subject to approval by a majority of the
132 electors of the county voting in a subsequent referendum.

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

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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

1 Committee/Subcommittee hearing bill: Finance & Tax Subcommittee
 2 Representative Fresen offered the following:

3
 4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:
 6 Section 1. Subsection (9) is added to section 212.055, Florida
 7 Statutes, to read:

8 212.055 Discretionary sales surtaxes; legislative intent;
 9 authorization and use of proceeds.—It is the legislative intent
 10 that any authorization for imposition of a discretionary sales
 11 surtax shall be published in the Florida Statutes as a
 12 subsection of this section, irrespective of the duration of the
 13 levy. Each enactment shall specify the types of counties
 14 authorized to levy; the rate or rates which may be imposed; the
 15 maximum length of time the surtax may be imposed, if any; the
 16 procedure which must be followed to secure voter approval, if
 17 required; the purpose for which the proceeds may be expended;
 18 and such other requirements as the Legislature may provide.

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19 Taxable transactions and administrative procedures shall be as
20 provided in s. 212.054.

21 (9) FLORIDA COLLEGE SURTAX.—A county as defined in s.
22 125.011(1) may levy a surtax of up to 0.5 percent for the
23 benefit of a Florida College System institution as defined in s.
24 1000.21, located in the county, pursuant to an ordinance that is
25 conditioned to take effect only upon approval by a majority vote
26 of the electors of the county voting in a referendum.

27 (a) The ordinance must set forth a plan for using the
28 surtax proceeds for the benefit of the Florida College System
29 institution by the institution's board of trustees. Such plan
30 must provide for the permissible uses of the surtax proceeds,
31 including, but not limited to, the maintenance, improvement, and
32 expansion of academic and workforce training programs; teaching
33 enhancements; capital expenditures and infrastructure projects;
34 fixed capital costs associated with the construction,
35 reconstruction, renovation, maintenance, or improvement of
36 facilities and campuses that have a useful life expectancy of at
37 least 5 years; deferred maintenance; land improvement, design,
38 and engineering costs related thereto; and the expansion and
39 enhancement of facilities at all institution sites within the
40 county. The proceeds of the surtax must be set aside and
41 invested as permitted by law, with the principal and income to
42 be used for the purposes listed in this subsection as
43 administered by the board of trustees.

44 (b) If the county, at the request of a Florida College
45 System institution in the county, calls for a referendum, the
46 expense of holding the referendum may not be paid with student

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47 fees or moneys that the institution receives from the state, but
48 shall be paid only with funds received from private sources or
49 with college auxiliary funds. The county must provide at least
50 30 days' notice of the election as provided under s. 100.342.

51 (c) The referendum providing for the imposition of the
52 surtax shall include a statement that provides a brief and
53 general description of the purposes for which the proceeds of
54 the surtax may be used, conform to the requirements of s.
55 101.161, and be placed on the ballot by the governing body of
56 the county. The following questions shall be placed on the
57 ballot:

58
59 FOR THE. . . .CENTS TAX
60 AGAINST THE. . . .CENTS TAX
61

62 (d) Upon approval of the referendum, proceeds from the
63 surtax must be deposited by the Department of Revenue into a
64 Florida Prime account managed by the Florida State Board of
65 Administration and used only for the operation, maintenance, and
66 administration of the Florida College System institution within
67 that county.

68 (e) Upon approval of the referendum, an oversight board
69 shall be established to review and accept or amend expenditures
70 of the proceeds of the surtax and to review the plan prepared by
71 the board of trustees pursuant to paragraph (f). Annually, or as
72 needed, the oversight board shall meet to approve the proposed
73 spending plan.

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74 1. The board shall be composed of seven members who are
75 residents of the county and appointed as follows:

76 a. One member appointed by the board of directors of the
77 Greater Miami Chamber of Commerce.

78 b. One member of the board of directors of the United Way
79 of Miami-Dade County appointed by the board of directors of the
80 United Way of Miami-Dade County.

81 c. One member appointed by the Beacon Council, Miami-Dade
82 County's official economic development partnership.

83 d. Two members appointed by the board of trustees of the
84 Florida College System institution who may not be members of the
85 board of trustees of the Florida College System institution.

86 e. Two members appointed by the chair of the county
87 legislative delegation.

88 2. Initial appointments to the oversight board shall be
89 made by the respective entities within 60 days after the passage
90 of the referendum. Each member shall be appointed for a 4-year
91 term. A vacancy on the board shall be filled for the unexpired
92 portion of the term in the same manner as the original
93 appointment. No member may serve for more than the remaining
94 portion of a previous member's unexpired term.

95 (f) Consistent with the purposes set forth in the plan
96 included in the ordinance under paragraph (a), the board of
97 trustees of the Florida College System institution shall
98 annually prepare a plan that specifies how the board of trustees
99 intends to allocate and expend the funds for the institution's
100 upcoming fiscal year and submit such plan to the oversight board
101 for approval.

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102 (g) The annual apportionment of state funds for the
103 support of a Florida College System institution allocated under
104 general law may not be reduced because the institution has
105 received funds pursuant to a sales surtax levied under this
106 subsection.

107 (h) A surtax imposed under this subsection expires 5 years
108 after the effective date of the surtax.

109 Section 1. This act shall take effect upon becoming a law.
110

111 -----

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

113 Remove everything before the enacting clause and insert:

114 A bill to be entitled
115 An act relating to discretionary sales surtaxes;
116 amending s. 212.055, F.S.; authorizing a county
117 defined in s. 125.011(1), F.S., to levy a surtax up to
118 a specified amount for the benefit of a Florida
119 College System institution in the county pursuant to
120 an ordinance conditioned to take effect upon approval
121 in a county referendum; requiring the ordinance to
122 include a plan for the use of the proceeds; providing
123 referendum requirements and procedures; requiring that
124 the proceeds from the surtax be deposited and managed
125 in a specified manner; establishing an oversight board
126 with specified duties, responsibilities, and
127 requirements relating to the expenditure of surtax
128 proceeds; providing for the appointment of members of
129 the oversight board; requiring that the board of

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1295 (2013)

Amendment No. 1

130 trustees of a college receiving surtax proceeds
131 prepare an annual plan for submission to the oversight
132 board for approval; providing that state funding may
133 not be reduced because an institution receives surtax
134 funds; providing for the scheduled expiration of the
135 surtax; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 219 Professional Sports
SPONSOR(S): Finance & Tax Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee		Pewitt <i>gp</i>	Langston <i>SL</i>

SUMMARY ANALYSIS

The bill allows Major League Soccer to serve as a league authorizing a location for the purposes of certification of a new or retained professional sports franchise facility under current section 288.1162, Florida Statutes. Certification under this section would allow the owner of a facility to receive a distribution of \$2 million per year from sales tax revenues for up to 30 years, to be used essentially for the acquisition, construction, reconstruction, or renovation of the facility, and payment of debt service on bonds used for these purposes. The bill increases the number of applicants allowed to receive such certification from 8 to 9, and reserves the new certification for a Major League Soccer team.

The bill adds Major League Soccer All-Star games to the list of events which are exempt from the sales tax on admissions pursuant to section 212.04, F.S. It further replaces a group of specified NBA events with all events associated with the NBA All-Star week on the list of events exempt from this tax.

The Revenue Estimating Conference (REC) has not estimated the impact of the specific provisions of the bill relating to the distribution of funds under section 212.20, F.S. However, based on REC estimates of similar language, staff estimates that the bill would have a -\$0.8 million impact on General Revenue in fiscal year 2013-2014 (-\$2.0 million on a recurring basis).

The REC estimated that the language relating to the exemption on admissions to certain MLS and NBA events would have a negative indeterminate impact on state revenues. The indeterminate impact reflects the irregular and uncertain timing of All Star events in Florida. The REC noted, however, that if a qualifying MLS event were to occur, it would have a -\$0.1 million cash impact on general revenues. An NBA event qualifying as a result of this bill would also have a -\$0.1 million cash impact.

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

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. Two Major League Soccer teams were based in Florida until 2001, when the league eliminated them. The teams were the Tampa Bay Mutiny and the Miami Fusion (based in Ft. Lauderdale).

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.

Sales Tax on Admissions

Section 212.04, F.S. provides that every person who sells or receives anything of value by way of admissions is exercising a taxable privilege at the rate of 6%. The section exempts from this tax admission to specified sporting events, including:

- NFL's Pro Bowl or Super Bowl
- Semifinal or championship games for national collegiate tournaments
- All-Star games of the MLB, NBA, or NHL
- MLB's Home Run Derby (held in conjunction with the All-Star game)
- NBA's Rookie Challenge, Celebrity Game, 3-Point Shooting Contest, and Slam Dunk Challenge

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;

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

- 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.

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

Proposed changes

The bill adds the Major League Soccer All-Star game to the list of events exempted from the sales tax on admissions. It also replaces the list of NBA games exempted with all events associated with the NBA All-Star week so long as they are held in an arena, convention center, or municipal facility.

The bill further adds Major League Soccer to the list of leagues that may authorize locations as part of the certification process under section 288.1162, F.S. It specifies that applicants who have previously been certified and received funds pursuant to section 212.20, F.S. are only prohibited from receiving an

additional certification for the franchise or facility that served as the basis for the previous certification. The total number of facilities which may be certified as new or retained professional sports franchise facilities is increased from 8 to 9. The bill reserves the new certification slot for a Major League Soccer team.

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

B. SECTION DIRECTORY:

Section 1: Amends section 212.04, F.S. to exempt admission to a Major League Soccer All-Star game and certain NBA events from the sales tax.

Section 2: Amends section 288.1162, F.S. to allow Major League Soccer teams to seek certification and to increase the number of certifications allowable from 8 to 9.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) has not estimated the impact of the specific provisions of the bill relating to the distribution of funds under section 212.20, F.S. However, based on REC estimates of similar language, staff estimates that the bill would have a -\$0.8 million impact on General Revenue in fiscal year 2013-2014 (-\$2.0 million on a recurring basis).

The REC estimated that the language relating to the exemption on admissions to certain MLS and NBA events would have a negative indeterminate impact on state revenues. The indeterminate impact reflects the irregular and uncertain timing of All Star events in Florida. The REC noted, however, that if a qualifying MLS event were to occur, it would have a -\$0.1 million cash impact on general revenues. An NBA event qualifying as a result of this bill would also have a -\$0.1 million cash impact.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The REC estimated that the language relating to the exemption on admissions to certain MLS and NBA events would have a negative indeterminate impact on local government revenues. The indeterminate impact reflects the irregular and uncertain timing of All Star events in Florida. The REC noted, however, that if a qualifying MLS or NBA event were to occur, it would have an insignificant negative on local government revenues.

2. Expenditures:

None.

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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to professional sports; amending s.
 3 212.04, F.S.; exempting admission to Major League
 4 Soccer all-star games and National Basketball
 5 Association all-star week events from sales and use
 6 tax; amending s. 288.1162, F.S.; adding Major League
 7 Soccer to the meaning of the term "league"; providing
 8 that a previously certified applicant is not eligible
 9 for an additional certification under certain
 10 circumstances; requiring the Department of Economic
 11 Opportunity to reserve one new facility certification
 12 for a new Major League Soccer franchise; providing an
 13 effective date.

14
 15 Be It Enacted by the Legislature of the State of Florida:

16
 17 Section 1. Paragraph (a) of subsection (2) of section
 18 212.04, Florida Statutes, is amended to read:

19 212.04 Admissions tax; rate, procedure, enforcement.—

20 (2)(a)1. No tax shall be levied on admissions to athletic
 21 or other events sponsored by elementary schools, junior high
 22 schools, middle schools, high schools, community colleges,
 23 public or private colleges and universities, deaf and blind
 24 schools, facilities of the youth services programs of the
 25 Department of Children and Family Services, and state
 26 correctional institutions when only student, faculty, or inmate
 27 talent is used. However, this exemption shall not apply to
 28 admission to athletic events sponsored by a state university,

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29 and the proceeds of the tax collected on such admissions shall
30 be retained and used by each institution to support women's
31 athletics as provided in s. 1006.71(2)(c).

32 2.a. No tax shall be levied on dues, membership fees, and
33 admission charges imposed by not-for-profit sponsoring
34 organizations. To receive this exemption, the sponsoring
35 organization must qualify as a not-for-profit entity under the
36 provisions of s. 501(c)(3) of the Internal Revenue Code of 1954,
37 as amended.

38 b. No tax shall be levied on admission charges to an event
39 sponsored by a governmental entity, sports authority, or sports
40 commission when held in a convention hall, exhibition hall,
41 auditorium, stadium, theater, arena, civic center, performing
42 arts center, or publicly owned recreational facility and when
43 100 percent of the risk of success or failure lies with the
44 sponsor of the event and 100 percent of the funds at risk for
45 the event belong to the sponsor, and student or faculty talent
46 is not exclusively used. As used in this sub-subparagraph, the
47 terms "sports authority" and "sports commission" mean a
48 nonprofit organization that is exempt from federal income tax
49 under s. 501(c)(3) of the Internal Revenue Code and that
50 contracts with a county or municipal government for the purpose
51 of promoting and attracting sports-tourism events to the
52 community with which it contracts.

53 3. No tax shall be levied on an admission paid by a
54 student, or on the student's behalf, to any required place of
55 sport or recreation if the student's participation in the sport
56 or recreational activity is required as a part of a program or

57 activity sponsored by, and under the jurisdiction of, the
58 student's educational institution, provided his or her
59 attendance is as a participant and not as a spectator.

60 4. No tax shall be levied on admissions to the National
61 Football League championship game or Pro Bowl; on admissions to
62 any semifinal game or championship game of a national collegiate
63 tournament; on admissions to a Major League Baseball, Major
64 League Soccer, National Basketball Association, or National
65 Hockey League all-star game; on admissions to the Major League
66 Baseball Home Run Derby held before the Major League Baseball
67 All-Star Game; or on admissions to the National Basketball
68 Association All-Star week events, produced by the National
69 Basketball Association, which are held at an arena, convention
70 center, or municipal facility ~~Rookie Challenge, Celebrity Game,~~
71 ~~3-Point Shooting Contest, or Slam Dunk Challenge.~~

72 5. A participation fee or sponsorship fee imposed by a
73 governmental entity as described in s. 212.08(6) for an athletic
74 or recreational program is exempt when the governmental entity
75 by itself, or in conjunction with an organization exempt under
76 s. 501(c)(3) of the Internal Revenue Code of 1954, as amended,
77 sponsors, administers, plans, supervises, directs, and controls
78 the athletic or recreational program.

79 6. Also exempt from the tax imposed by this section to the
80 extent provided in this subparagraph are admissions to live
81 theater, live opera, or live ballet productions in this state
82 which are sponsored by an organization that has received a
83 determination from the Internal Revenue Service that the
84 organization is exempt from federal income tax under s.

85 501(c)(3) of the Internal Revenue Code of 1954, as amended, if
 86 the organization actively participates in planning and
 87 conducting the event, is responsible for the safety and success
 88 of the event, is organized for the purpose of sponsoring live
 89 theater, live opera, or live ballet productions in this state,
 90 has more than 10,000 subscribing members and has among the
 91 stated purposes in its charter the promotion of arts education
 92 in the communities which it serves, and will receive at least 20
 93 percent of the net profits, if any, of the events which the
 94 organization sponsors and will bear the risk of at least 20
 95 percent of the losses, if any, from the events which it sponsors
 96 if the organization employs other persons as agents to provide
 97 services in connection with a sponsored event. Prior to March 1
 98 of each year, such organization may apply to the department for
 99 a certificate of exemption for admissions to such events
 100 sponsored in this state by the organization during the
 101 immediately following state fiscal year. The application shall
 102 state the total dollar amount of admissions receipts collected
 103 by the organization or its agents from such events in this state
 104 sponsored by the organization or its agents in the year
 105 immediately preceding the year in which the organization applies
 106 for the exemption. Such organization shall receive the exemption
 107 only to the extent of \$1.5 million multiplied by the ratio that
 108 such receipts bear to the total of such receipts of all
 109 organizations applying for the exemption in such year; however,
 110 in no event shall such exemption granted to any organization
 111 exceed 6 percent of such admissions receipts collected by the
 112 organization or its agents in the year immediately preceding the

113 year in which the organization applies for the exemption. Each
 114 organization receiving the exemption shall report each month to
 115 the department the total admissions receipts collected from such
 116 events sponsored by the organization during the preceding month
 117 and shall remit to the department an amount equal to 6 percent
 118 of such receipts reduced by any amount remaining under the
 119 exemption. Tickets for such events sold by such organizations
 120 shall not reflect the tax otherwise imposed under this section.

121 7. Also exempt from the tax imposed by this section are
 122 entry fees for participation in freshwater fishing tournaments.

123 8. Also exempt from the tax imposed by this section are
 124 participation or entry fees charged to participants in a game,
 125 race, or other sport or recreational event if spectators are
 126 charged a taxable admission to such event.

127 9. No tax shall be levied on admissions to any postseason
 128 collegiate football game sanctioned by the National Collegiate
 129 Athletic Association.

130 Section 2. Paragraphs (c) and (h) of subsection (4) and
 131 subsection (6) of section 288.1162, Florida Statutes, are
 132 amended to read:

133 288.1162 Professional sports franchises; duties.—

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

137 (c) The applicant has a verified copy of the approval from
 138 the governing authority of the league in which the new
 139 professional sports franchise exists authorizing the location of
 140 the professional sports franchise in this state after April 1,

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141 1987, or in the case of a retained professional sports
142 franchise, verified evidence that it has had a league-authorized
143 location in this state on or before December 31, 1976. As used
144 in this section, the term "league" means the National League or
145 the American League of Major League Baseball, the National
146 Basketball Association, the National Football League, Major
147 League Soccer, or the National Hockey League.

148 (h) An applicant previously certified under any provision
149 of this section who has received funding under such
150 certification is not eligible for an additional certification
151 for a franchise or facility that has already served as the basis
152 for a previous certification.

153 (6) The department shall notify the Department of Revenue
154 of any facility certified as a facility for a new or retained
155 professional sports franchise. The department shall certify no
156 more than nine ~~eight~~ facilities as facilities for a new
157 professional sports franchise or as facilities for a retained
158 professional sports franchise, including in the total any
159 facilities certified by the former Department of Commerce before
160 July 1, 1996. The department shall reserve one facility
161 certification for a new professional sports franchise in Major
162 League Soccer. The department may make no more than one
163 certification for any facility.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 721 Professional Sports Franchise Facilities
SPONSOR(S): Finance & Tax Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee		Pewitt <i>JP</i>	Langston <i>BL</i>

SUMMARY ANALYSIS

The bill allows an applicant which has previously been certified as a new or retained professional sports franchise facility to receive a second certification under 288.1162, F.S. and receive a distribution from sales tax revenues of \$2 million per year. In order to qualify for this second certification, an applicant must meet certain standards, including that they must have projections showing that the facility will generate at least \$4 million per year in sales and use tax revenues. The money received pursuant to such certification must be used to acquire, construct, reconstruct, or renovate a facility. The second certification is limited to facilities located in a consolidated county, and only one facility may be certified under the new provisions.

The bill has an effective date of upon becoming law.

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).
STORAGE NAME: pcs0721.FTSC.DOCX
DATE: 3/18/2013

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

Proposed changes

The bill would allow any applicant which has previously received a certification as a new or retained professional sports franchise facility under section 288.1162 to receive an additional certification for the purpose of acquiring, constructing, reconstructing, or renovating a facility if:

- The cost of the renovation exceeds \$80 million,
- The franchise has existed for at least 15 years,
- The franchise has at least 15 years left in a signed agreement to use the facility,
- The applicant has an independent analysis projecting that the facility will generate at least \$4 million in sales tax revenues each year,
- The applicant has an independent study from an engineering company detailing the nature and projected costs of a renovation,
- The facility is located in a county that operates under a government consolidated with that of one or more municipalities in the county.

The Department of Economic Opportunity is authorized to certify no more than one applicant under the new subsection created in the bill.

The bill also amends section 220.12, F.S. to require the Department of Revenue to distribute \$166.667 monthly (\$2 million annually) to any applicant which has received a second certification pursuant to this bill. Such distribution would be in addition to any distribution received pursuant to the applicant's previous certification as a new or retained professional sports franchise facility.

B. SECTION DIRECTORY:

Section 1: Allows a team which has previously been certified under section 288.1162, F.S., to receive a second certification under certain conditions.

Section 2: Amends section 212.20, F.S., to specify that the Department of Revenue shall distribute money to an applicant certified under these provisions.

Section 3: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) has not adopted an estimate of the impact of this bill. Based on REC estimates of similar bills, staff estimates that the bill can be expected to have a -\$2 million annual impact on state general revenues, possibly beginning in fiscal year 2013-2014.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions of the bill may encourage stadiums 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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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A bill to be entitled
 An act relating to professional sports franchise facilities; amending ss. 288.1162 and 212.20, F.S.; authorizing an applicant previously certified as a facility for a new or retained professional sports franchise to receive an additional certification under certain circumstances, and to receive a monthly distribution of a specified amount of sales tax revenues, to acquire, construct, reconstruct, or renovate a facility; providing an effective date.

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

Section 1. Subsections (1) and (5) are amended and subsection (9) is added to section 288.1162, Florida Statutes, 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 under subsection (9).

(5) An applicant certified as a facility for a new or retained professional sports franchise or under subsection (9) 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

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

29 funds, arbitrage rebate obligations, or other amounts payable
 30 with respect to, bonds issued for the acquisition, construction,
 31 reconstruction, or renovation of such facility or for the
 32 reimbursement of such costs or the refinancing of bonds issued
 33 for such purposes.

34 (9) (a) Notwithstanding subsections (4), (6), and (8), an
 35 applicant previously certified under this section as a facility
 36 for a new or retained professional sports franchise is eligible
 37 for an additional certification for the public purposes stated
 38 in subsection (5), if:

39 1. The cost of the planned improvements to the facility is
 40 at least \$80 million.

41 2. The professional sports franchise has been in existence
 42 for at least 15 years.

43 3. The signed agreement for use of the facility described
 44 in paragraph (4) (b) has at least 15 years remaining on the
 45 agreement's term.

46 4. The applicant has an independent analysis or study,
 47 verified by the department, which demonstrates that the amount
 48 of the revenues generated by the taxes imposed under chapter 212
 49 with respect to the use and operation of the professional sports
 50 franchise facility will equal or exceed \$4 million annually.

51 5. The applicant has an independent study produced by an
 52 engineering firm listing recommended renovations and the
 53 estimated cost of such renovations.

54 6. The facility is located in a county that operates under
 55 a government consolidated with that of one or more
 56 municipalities in the county.

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57 (b) The department may certify no more than one applicant
58 under this subsection.

59 (c) The department shall notify the Department of Revenue
60 of any facility certified under this subsection.

61 Section 2. Paragraph (d) of subsection (6) of section
62 212.20, Florida Statutes, is amended to read:

63 212.20 Funds collected, disposition; additional powers of
64 department; operational expense; refund of taxes adjudicated
65 unconstitutionally collected.—

66 (6) Distribution of all proceeds under this chapter and s.
67 202.18(1)(b) and (2)(b) shall be as follows:

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

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

77 2. After the distribution under subparagraph 1., 8.814
78 percent of the amount remitted by a sales tax dealer located
79 within a participating county pursuant to s. 218.61 shall be
80 transferred into the Local Government Half-cent Sales Tax
81 Clearing Trust Fund. Beginning July 1, 2003, the amount to be
82 transferred shall be reduced by 0.1 percent, and the department
83 shall distribute this amount to the Public Employees Relations
84 Commission Trust Fund less \$5,000 each month, which shall be

85 added to the amount calculated in subparagraph 3. and
 86 distributed accordingly.

87 3. After the distribution under subparagraphs 1. and 2.,
 88 0.095 percent shall be transferred to the Local Government Half-
 89 cent Sales Tax Clearing Trust Fund and distributed pursuant to
 90 s. 218.65.

91 4. After the distributions under subparagraphs 1., 2., and
 92 3., 2.0440 percent of the available proceeds shall be
 93 transferred monthly to the Revenue Sharing Trust Fund for
 94 Counties pursuant to s. 218.215.

95 5. After the distributions under subparagraphs 1., 2., and
 96 3., 1.3409 percent of the available proceeds shall be
 97 transferred monthly to the Revenue Sharing Trust Fund for
 98 Municipalities pursuant to s. 218.215. If the total revenue to
 99 be distributed pursuant to this subparagraph is at least as
 100 great as the amount due from the Revenue Sharing Trust Fund for
 101 Municipalities and the former Municipal Financial Assistance
 102 Trust Fund in state fiscal year 1999-2000, no municipality shall
 103 receive less than the amount due from the Revenue Sharing Trust
 104 Fund for Municipalities and the former Municipal Financial
 105 Assistance Trust Fund in state fiscal year 1999-2000. If the
 106 total proceeds to be distributed are less than the amount
 107 received in combination from the Revenue Sharing Trust Fund for
 108 Municipalities and the former Municipal Financial Assistance
 109 Trust Fund in state fiscal year 1999-2000, each municipality
 110 shall receive an amount proportionate to the amount it was due
 111 in state fiscal year 1999-2000.

112 6. Of the remaining proceeds:

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

135 b. The department shall distribute \$166,667 monthly
136 pursuant to s. 288.1162 to each applicant certified as a
137 facility for a new or retained professional sports franchise
138 pursuant to s. 288.1162, and \$166,667 monthly to any applicant
139 that receives an additional certification pursuant to s.
140 288.1162(9). Up to \$41,667 shall be distributed monthly by the

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141 department to each certified applicant as defined in s.
 142 288.11621 for a facility for a spring training franchise.
 143 However, not more than \$416,670 may be distributed monthly in
 144 the aggregate to all certified applicants for facilities for
 145 spring training franchises. Distributions begin 60 days after
 146 such certification and continue for not more than 30 years,
 147 except as otherwise provided in s. 288.11621. A certified
 148 applicant identified in this sub-subparagraph may not receive
 149 more in distributions than expended by the applicant for the
 150 public purposes provided for in s. 288.1162(5) or s.
 151 288.11621(3).

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

158 d. Beginning 30 days after notice by the Department of
 159 Economic Opportunity to the Department of Revenue that the
 160 applicant has been certified as the International Game Fish
 161 Association World Center facility pursuant to s. 288.1169, and
 162 the facility is open to the public, \$83,333 shall be distributed
 163 monthly, for up to 168 months, to the applicant. This
 164 distribution is subject to reduction pursuant to s. 288.1169. A
 165 lump sum payment of \$999,996 shall be made, after certification
 166 and before July 1, 2000.

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

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1049 Motorsports Entertainment Complexes
SPONSOR(S): Finance & Tax Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee		Pewitt <i>JP</i>	Langston <i>SL</i>

SUMMARY ANALYSIS

The bill amends section 288.1171, F.S. to create additional requirements for certification of a motorsports entertainment complex by the Department of Economic Opportunity. Specifically, it adds the following requirements:

- The applicant must have a study projecting paid annual attendance of at least 100,000,
- The applicant must have a study projecting that at least \$2 million per year in sales tax revenue will be generated,
- The applicant must provide at least 50% of the funding for the project, and
- The cost for the project must exceed \$250 million.

Additionally, the department is authorized to certify no more than 1 applicant under these provisions. Upon certification, the bill directs the Department of Revenue to distribute \$2 million per year to the certified applicant, to be used for construction, reconstruction, expansion, or renovation of a motorsports entertainment complex, paying debt service on bonds issued for that purpose, construction, reconstruction, expansion, or renovation of transportation or other infrastructure improvements necessary for the motorsports entertainment complex, and paying for advertising of the motorsports entertainment complex or of the county or municipality where the complex is located.

It also amends section 218.64, F.S., to provide that some of the restrictions under s. 288.1171 do not apply for applicants certified to receive local funding from the half-cent sales tax.

The Revenue Estimating Conference (REC) has not adopted an estimate of the impact of this bill. Based on REC estimates of similar bills, staff estimates that the bill can be expected to have a -\$2 million annual impact on state general revenues, possibly beginning in fiscal year 2013-2014.

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

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. The number of certified professional sports franchises, both new and retained, is limited to eight. 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:

¹ Department of Economic Opportunity, *Professional Sports Franchises* (January 8, 2013).
STORAGE NAME: pcs1049.FTSC.DOCX
DATE: 3/15/2013

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

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 and municipalities 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.² 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 a 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 16, 2013, no local governments have opted to provide funding under this section.

Motorsports Entertainment Complexes

Section 288.1171, F.S., details the process to receive certification as a motorsports entertainment complex. The Department of Economic Opportunity serves as the agency to screen applicants for this certification. In order to certify an applicant, the department must determine that:

- A unit of local government owns the complex or the land on which the complex sits, and
- The municipality or county in which the complex is located has certified by resolution after a public hearing that the applicant serves a public purpose.

A motorsport entertainment complex which has previously been certified under this section may not be certified again. Any funds received as a result of this certification may be spent on:

- Construction, reconstruction, expansion, or renovation of a motorsports entertainment complex
- Paying debt service on bonds issued for that purpose

² Section 218.64, F.S.

- Construction, reconstruction, expansion, or renovation of transportation or other infrastructure improvements necessary for the motorsports entertainment complex
- Paying for advertising of the motorsports entertainment complex or of the county or municipality where the complex is located

As of March 16, 2013, no complexes have been certified under this section.

Proposed Changes

The bill amends the provisions of section 288.1171, F.S., which deals with certification as a motorsports entertainment complex. It revises the definition of "motorsports entertainment complex" to require a minimum of 50,000 fixed seats in the facility. It also adds the following requirements as part of the certification process:

- The applicant must have a study projecting paid annual attendance of at least 100,000
- The applicant must have a study projecting that at least \$2 million per year in sales tax revenue will be generated
- The applicant must provide at least 50% of the funding for the project
- The cost for the project must exceed \$250 million

The bill authorizes the Department of Economic Opportunity to certify no more than one applicant pursuant to this section. It also changes the agency with auditing authority from the Department of Revenue to the Auditor General.

Upon certification, the bill directs the Department of Revenue to distribute \$166,667 monthly (\$2 million annually) to the certified applicant for a period of 30 years. Authorized uses of revenues under the current Half-Cent Sales Tax Rebate are retained for this new distribution.

The bill also amends the provisions of section 218.64, F.S., to provide that the restrictions on the number of certified facilities and the number of times a facility may be certified do not apply to certifications for local government funding from the half-cent sales tax.

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

B. SECTION DIRECTORY:

Section 1: Amends section 212.20, F.S., to provide for a monthly distribution to applicants certified as a motorsports entertainment complex.

Section 2: Amends section 218.64, F.S., to provide that certain restrictions in section 288.1171 do not apply under this chapter.

Section 3: Amends section 288.1171, F.S., to create additional certification requirements for a motorsports entertainment complex.

Section 4: Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) has not adopted an estimate of the impact of this bill. Based on REC estimates of similar bills, staff estimates that the bill can be expected to have a -\$2 million annual impact on state general revenues, possibly beginning in fiscal year 2013-2014.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions of the bill may encourage motorsports entertainment complexes 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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

29 collected pursuant to chapter 201, or 5.2 percent of all other
 30 taxes and fees imposed pursuant to this chapter or remitted
 31 pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in
 32 monthly installments into the General Revenue Fund.

33 2. After the distribution under subparagraph 1., 8.814
 34 percent of the amount remitted by a sales tax dealer located
 35 within a participating county pursuant to s. 218.61 shall be
 36 transferred into the Local Government Half-cent Sales Tax
 37 Clearing Trust Fund. Beginning July 1, 2003, the amount to be
 38 transferred shall be reduced by 0.1 percent, and the department
 39 shall distribute this amount to the Public Employees Relations
 40 Commission Trust Fund less \$5,000 each month, which shall be
 41 added to the amount calculated in subparagraph 3. and
 42 distributed accordingly.

43 3. After the distribution under subparagraphs 1. and 2.,
 44 0.095 percent shall be transferred to the Local Government Half-
 45 cent Sales Tax Clearing Trust Fund and distributed pursuant to
 46 s. 218.65.

47 4. After the distributions under subparagraphs 1., 2., and
 48 3., 2.0440 percent of the available proceeds shall be
 49 transferred monthly to the Revenue Sharing Trust Fund for
 50 Counties pursuant to s. 218.215.

51 5. After the distributions under subparagraphs 1., 2., and
 52 3., 1.3409 percent of the available proceeds shall be
 53 transferred monthly to the Revenue Sharing Trust Fund for
 54 Municipalities pursuant to s. 218.215. If the total revenue to
 55 be distributed pursuant to this subparagraph is at least as
 56 great as the amount due from the Revenue Sharing Trust Fund for

57 Municipalities and the former Municipal Financial Assistance
 58 Trust Fund in state fiscal year 1999-2000, no municipality shall
 59 receive less than the amount due from the Revenue Sharing Trust
 60 Fund for Municipalities and the former Municipal Financial
 61 Assistance Trust Fund in state fiscal year 1999-2000. If the
 62 total proceeds to be distributed are less than the amount
 63 received in combination from the Revenue Sharing Trust Fund for
 64 Municipalities and the former Municipal Financial Assistance
 65 Trust Fund in state fiscal year 1999-2000, each municipality
 66 shall receive an amount proportionate to the amount it was due
 67 in state fiscal year 1999-2000.

68 6. Of the remaining proceeds:

69 a. In each fiscal year, the sum of \$29,915,500 shall be
 70 divided into as many equal parts as there are counties in the
 71 state, and one part shall be distributed to each county. The
 72 distribution among the several counties must begin each fiscal
 73 year on or before January 5th and continue monthly for a total
 74 of 4 months. If a local or special law required that any moneys
 75 accruing to a county in fiscal year 1999-2000 under the then-
 76 existing provisions of s. 550.135 be paid directly to the
 77 district school board, special district, or a municipal
 78 government, such payment must continue until the local or
 79 special law is amended or repealed. The state covenants with
 80 holders of bonds or other instruments of indebtedness issued by
 81 local governments, special districts, or district school boards
 82 before July 1, 2000, that it is not the intent of this
 83 subparagraph to adversely affect the rights of those holders or
 84 relieve local governments, special districts, or district school

85 boards of the duty to meet their obligations as a result of
 86 previous pledges or assignments or trusts entered into which
 87 obligated funds received from the distribution to county
 88 governments under then-existing s. 550.135. This distribution
 89 specifically is in lieu of funds distributed under s. 550.135
 90 before July 1, 2000.

91 b. The department shall distribute \$166,667 monthly
 92 pursuant to s. 288.1162 to each applicant certified as a
 93 facility for a new or retained professional sports franchise
 94 pursuant to s. 288.1162. Up to \$41,667 shall be distributed
 95 monthly by the department to each certified applicant as defined
 96 in s. 288.11621 for a facility for a spring training franchise.
 97 However, not more than \$416,670 may be distributed monthly in
 98 the aggregate to all certified applicants for facilities for
 99 spring training franchises. The department shall distribute
 100 \$166,667 monthly pursuant to s. 288.1171 to an applicant
 101 certified as a motorsports entertainment complex pursuant to s.
 102 288.1171. Distributions begin 60 days after such certification
 103 and continue for not more than 30 years, except as otherwise
 104 provided in s. 288.11621. A certified applicant identified in
 105 this sub-subparagraph may not receive more in distributions than
 106 expended by the applicant for the public purposes provided for
 107 in s. 288.1162(5), ~~or~~ s. 288.11621(3), or s. 288.1171(6).

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

113 applicant.

114 d. Beginning 30 days after notice by the Department of
 115 Economic Opportunity to the Department of Revenue that the
 116 applicant has been certified as the International Game Fish
 117 Association World Center facility pursuant to s. 288.1169, and
 118 the facility is open to the public, \$83,333 shall be distributed
 119 monthly, for up to 168 months, to the applicant. This
 120 distribution is subject to reduction pursuant to s. 288.1169. A
 121 lump sum payment of \$999,996 shall be made, after certification
 122 and before July 1, 2000.

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

125 Section 2. Subsection (3) of section 218.64, Florida
 126 Statutes, is amended to read:

127 218.64 Local government half-cent sales tax; uses;
 128 limitations.—

129 (3) Subject to ordinances enacted by the majority of the
 130 members of the county governing authority and by the majority of
 131 the members of the governing authorities of municipalities
 132 representing at least 50 percent of the municipal population of
 133 such county, counties may use up to \$2 million annually of the
 134 local government half-cent sales tax allocated to that county
 135 for funding for any of the following applicants:

136 (a) A certified applicant as a facility for a new or
 137 retained professional sports franchise under s. 288.1162 or a
 138 certified applicant as defined in s. 288.11621 for a facility
 139 for a spring training franchise. It is the Legislature's intent
 140 that the provisions of s. 288.1162, including, but not limited

141 to, the evaluation process by the Department of Economic
 142 Opportunity except for the limitation on the number of certified
 143 applicants or facilities as provided in that section and the
 144 restrictions set forth in s. 288.1162(8), shall apply to an
 145 applicant's facility to be funded by local government as
 146 provided in this subsection.

147 (b) A certified applicant as a "motorsport entertainment
 148 complex," as provided for in s. 288.1171. Funding for each
 149 franchise or motorsport complex shall begin 60 days after
 150 certification and shall continue for not more than 30 years. The
 151 provisions of s. 288.1171(5) and s. 288.1171(7) shall not apply
 152 to an applicant's facility to be funded by local government as
 153 provided in this subsection.

154 Section 3. Section 288.1171, Florida Statutes, is amended
 155 to read:

156 288.1171 Motorsports entertainment complex; definitions;
 157 certification; duties.—

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

159 (a) "Applicant" means the owner of a motorsports
 160 entertainment complex.

161 (b) "Motorsports entertainment complex" means a closed-
 162 course racing facility with at least 50,000 fixed seats.

163 (c) "Motorsports event" means a motorsports race that has
 164 been sanctioned by a sanctioning body.

165 (d) "Owner" means a unit of local government which owns a
 166 motorsports entertainment complex ~~or~~ owns the land on which the
 167 motorsports entertainment complex is located.

168 (e) "Sanctioning body" means the American Motorcycle

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169 Association (AMA), Championship Auto Racing Teams (CART), Grand
170 American Road Racing Association (Grand Am), Indy Racing League
171 (IRL), National Association for Stock Car Auto Racing (NASCAR),
172 National Hot Rod Association (NHRA), Professional Sportscar
173 Racing (PSR), Sports Car Club of America (SCCA), United States
174 Auto Club (USAC), or any successor organization, or any other
175 nationally recognized governing body of motorsports which
176 establishes an annual schedule of motorsports events and grants
177 rights to conduct such events, has established and administers
178 rules and regulations governing all participants involved in
179 such events and all persons conducting such events, and requires
180 certain liability assurances, including insurance.

181 (f) "Unit of local government" has the meaning ascribed in
182 s. 218.369.

183 (2) The department shall serve as the state agency for
184 screening applicants for funding under s. 212.20 and local
185 option funding under s. 218.64(3) and for certifying an
186 applicant as a motorsports entertainment complex. The department
187 shall develop and adopt rules for the receipt and processing of
188 applications for funding under s. 212.20 and s. 218.64(3). The
189 department shall make a determination regarding any application
190 filed by an applicant not later than 120 days after the
191 application is filed.

192 (3) Before certifying an applicant as a motorsports
193 entertainment complex, the department must determine that:

194 (a) A unit of local government holds title to the land on
195 which the motorsports entertainment complex is located or holds
196 title to the motorsports entertainment complex.

197 (b) The municipality in which the motorsports
198 entertainment complex is located, or the county if the
199 motorsports entertainment complex is located in an
200 unincorporated area, has certified by resolution after a public
201 hearing that the application serves a public purpose.

202 (c) The applicant has a verified copy of the approval from
203 a sanctioning body stating that motorsport events are sanctioned
204 to occur at the applicant's complex.

205 (d) The applicant has projections, verified by the
206 department, which demonstrate that the motorsports entertainment
207 complex will attract paid attendance of more than 100,000
208 annually.

209 (e) The applicant has an independent analysis or study,
210 verified by the department, which demonstrates that the amount
211 of revenues generated by the taxes imposed under chapter 212
212 with respect to the use and operation of the motorsports
213 entertainment complex will equal or exceed \$2 million annually.

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

218 (g) The total cost of construction, reconstruction,
219 expansion, or renovation of the complex must exceed \$250
220 million.

221 (4) Upon determining that an applicant meets the
222 requirements of subsection (3), the department shall notify the
223 applicant and the executive director of the Department of
224 Revenue of such certification by means of an official letter

225 granting certification. If the applicant fails to meet the
226 certification requirements of subsection (3), the department
227 shall notify the applicant not later than 10 days following such
228 determination.

229 (5) A motorsports entertainment complex that has been
230 previously certified under this section and has received funding
231 under such certification is ineligible for any additional
232 certification.

233 (6) An applicant certified as a motorsports entertainment
234 complex may use funds provided pursuant to s. 218.64(3) or s.
235 212.20 only for the following public purposes:

236 (a) Paying for the construction, reconstruction,
237 expansion, or renovation of a motorsports entertainment complex.

238 (b) Paying debt service reserve funds, arbitrage rebate
239 obligations, or other amounts payable with respect to bonds
240 issued for the construction, reconstruction, expansion, or
241 renovation of the motorsports entertainment complex or for the
242 reimbursement of such costs or the refinancing of bonds issued
243 for such purposes.

244 (c) Paying for construction, reconstruction, expansion, or
245 renovation of transportation or other infrastructure
246 improvements related to, necessary for, or appurtenant to the
247 motorsports entertainment complex, including, without
248 limitation, paying debt service reserve funds, arbitrage rebate
249 obligations, or other amounts payable with respect to bonds
250 issued for the construction, reconstruction, expansion, or
251 renovation of such transportation or other infrastructure
252 improvements, and for the reimbursement of such costs or the

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253 refinancing of bonds issued for such purposes.

254 (d) Paying for programs of advertising and promotion of or
255 related to the motorsports entertainment complex or the
256 municipality in which the motorsports entertainment complex is
257 located, or the county if the motorsports entertainment complex
258 is located in an unincorporated area, if such programs of
259 advertising and promotion are designed to increase paid
260 attendance at the motorsports entertainment complex or increase
261 tourism in or promote the economic development of the community
262 in which the motorsports entertainment complex is located.


263 (7) The department shall certify no more than one
264 applicant as a motorsports entertainment complex.

265 (8) ~~(7)~~ The Auditor General ~~Department of Revenue~~ may
266 audit, as provided in s. 11.45 ~~213.34~~, to verify that the
267 distributions pursuant to this section have been expended as
268 required in this section. ~~Such information is subject to the~~
269 ~~confidentiality requirements of chapter 213.~~ If the Auditor
270 General ~~Department of Revenue~~ determines that the distributions
271 pursuant to certification under this section have not been
272 expended as required by this section, the Auditor General shall
273 notify the Department of Revenue, which ~~it~~ may pursue recovery
274 of such funds pursuant to the laws and rules governing the
275 assessment of taxes.

276 Section 4. This act shall take effect July 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1149 Business Entity Filing Fees
SPONSOR(S): Finance & Tax Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee		Pewitt JP	Langston 

SUMMARY ANALYSIS

This bill makes a number of changes to the filing fees paid by various business entities to the Division of Corporations within the Department of state. Currently, the fees for filing forms vary widely depending on the type of entity that is filing them. Entity types include corporations for profit, corporations not for profit, limited liability companies, limited partnerships, and general partnerships.

When first registering with the division, each entity (other than general partnerships) must file two forms – articles of incorporation (or similar), and designation of a registered agent. Fees for doing so vary from \$70 for corporations for profit to \$1,000 for limited partnerships. The bill combines the fees for these two documents into one fee and sets the fee at \$70 for all entity types.

Each year, businesses must file an annual report with the division. Corporation for profit, LLCs, and limited partnerships are also subject to a supplemental corporate fee which must be paid annually. Combined, these fees range from \$25 for general partnerships to \$500 for limited partnerships. The bill eliminates the supplemental corporate fee and sets the annual report fee at \$150 for all entity types.

The bill also makes various other fees uniform across entity types. Most fees are set at \$35. There is also a \$400 late fee for remitting the annual report fee late, and a \$400 reinstatement fee if the entity is administratively dissolved.

The Revenue Estimating Conference estimated that the bill would have no cash impact on state General Revenue in fiscal year 2013-14 because of the effective date, but a -\$1.1 million recurring impact. Local government revenues are not affected.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current situation

In order to do business under a fictitious name in Florida, a person must either register the fictitious name with the Division of Corporations (division) of the Department of State or be exempt from such requirement¹. In order to be exempt, a business must be organized by a person who is licensed to practice law in the state of Florida, a person who is licensed by the Department of Business & Professional Regulation or the Department of Health to practice his or her profession, or registered with the division as a corporation, partnership, or other commercial entity.

Florida statute requires that certain documents be filed with the division in order for a business to be organized as a corporation, partnership, or other commercial entity. Each registered business must submit an annual report to the division detailing updated contact information, identities of key persons related to the business, etc, along with a fee for filing the annual report. There are additional fees for other filings with the division which must be submitted in some circumstances (e.g. changing a designated agent, dissolving the entity, articles of merger).² There is a great deal of variation in the cost associated with filing these forms depending on the type of entity filing the form. For example, the cost to file a form changing a designated agent costs \$35 for a corporation and \$25 for an LLC. According to the division, there is no additional work or cost associated with processing this form if it comes from a corporation as compared to an LLC.

Corporations for Profit (Chapter 607)

In order to organize as a corporation for profit, the person wishing to organize must file articles of incorporation at a cost of \$35 and registration of a designated agent (recipient of service of process) at a cost of \$35 for a total of \$70 in startup costs. Each year the corporation must file an annual report by May 1. The annual report fee is \$61.25. In addition to the annual report fee, the corporation must annually remit a supplemental corporate fee in the amount of \$88.75.³ The annual fees total \$150. Most other corporation filings cost either \$35. In calendar year 2012, there were 109,107 filings to organize a new corporation, and 634,248 annual filings from existing corporations.⁴

Limited Liability Companies (Chapter 608)

In order to organize as a limited liability company (LLC), the person wishing to organize must file articles of organization at a cost of \$100 and registration of a designated agent at a cost of \$25, for a total of \$125 in startup costs. The cost for the annual report is \$50. The total annual fees, including the supplemental corporate fee, are \$138.75. Most other filings cost \$25. In calendar year 2012, there were 169,450 new LLCs, and 495,418 annual reports filed by existing LLCs.

Corporations Not for Profit (Chapter 617)

In order to organize as a corporation not for profit, the person wishing to organize must file articles of incorporation at a cost of \$35 and registration of a designated agent at a cost of \$35, for a total of \$70 in startup costs. The cost of the annual report is \$61.25. Corporations not for profit are not subject to the supplemental corporate fee. Most other filings cost \$35. In calendar year 2012, there were 12,538 new corporations not for profit, and 137,858 annual reports by existing corporations not for profit.

Limited Partnerships (Chapter 620, Part I)

In order to organize as a limited partnership, the people wishing to organize must file a certificate of limited partnership at a cost of \$965, and designation of a registered agent at a cost of \$35 for total

¹ Section 865.09, F.S.

² Sections 607.0122, 608.452, 617.0122, 620.81055, & 620.1109, F.S.

³ Section 607.193, F.S.

⁴ Figures from Division of Corporations email on file with House Finance & Tax Subcommittee

startup costs of \$1,000. The annual report fee is \$411.25. The total annual fee, including the supplemental corporate fee, is \$500. Most other filings cost \$52.50. In calendar year 2012, there were 1,312 new limited partnerships and 19,308 annual filings by existing limited partnerships.

General Partnerships (Chapter 620, Part II)

In order to organize as a general partnership, the people wishing to organize must file a partnership registration statement at a cost of \$50. They do not need to register a designated agent. In the event that it is organized as a limited liability partnership, it must file an annual report at a cost of \$25. General partnerships are not subject to the supplemental corporate fee. Most other fees are \$25. In calendar year 2012, there were 23 filings for new general partnerships and 3,034 annual filings by existing limited liability partnerships.

Supplemental Corporate Fee, Late Fees, and Disposition of Revenues

When originally created, all of the fees discussed in this analysis were deposited into the Corporations Trust Fund, which was used to fund the operations of the division along with some cultural programs. In 1990, the Legislature added the supplemental corporate fee for some entity types, which was deposited into general revenue. They also increased all filing fees at that time and directed a portion of the filing fees into general revenue. Late fees were also instituted (currently \$400), which were charged in the event that the supplemental corporate fee was not remitted by May 1. In 2003, the Corporations Trust Fund was eliminated, and since then all revenues collected pursuant to these chapters have been deposited into general revenue.

Proposed Changes

The bill makes the fees for various filings uniform across all entity types. It combines the required initial filings (e.g. articles of incorporation and designation of a registered agent) into one fee of \$70 for all entity types. It eliminates the supplemental corporate fee, and sets the annual report fee at \$150 for all entity types. The late fee, which previously only applied to corporations for profit, LLCs, and limited partnerships, would now apply to all entity types at a rate of \$400. The fee for seeking reinstatement after administrative dissolution is standardized at \$400. The fees for certified copies of documents and certificates of status are set at \$8.75, which mirrors the division's current practice (though not current statute, which authorizes higher fees for certified copies). Certificates of domestication for foreign corporations are set at \$50. All other fees are set to \$35.

The bill has an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1: Amends 607.1022, F.S. to change filing fees for corporations for profit.

Section 2: Repeals section 607.193, F.S., which authorizes the supplemental corporate fee.

Section 3: Amends 608.452, F.S., to change filing fees for limited liability companies.

Section 4: Amends 617.0122, F.S., to change filing fees for corporations not for profit.

Section 5: Amends 620.1109, F.S., to change filing fees for limited partnerships.

Section 6: Amends 620.81055, F.S., to change filing fees for general partnerships.

Section 7: Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference met on March 8, 2013, and estimated that the bill would have no cash impact on state General Revenue in fiscal year 2013-14 because of the effective date, but a -\$1.1 million recurring impact.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill changes fees which must be paid by many businesses in Florida. In some cases the fees are increased, while in other cases the fees are decreased.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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1 A bill to be entitled
 2 An act relating to business entity filing fees;
 3 amending ss. 607.0122, 608.452, 617.0122, 620.1109,
 4 F.S.; combining certain individual fees into one
 5 initial filing fee, revising fees, and requiring the
 6 imposition of a late charge under certain
 7 circumstances for a corporation for profit, a limited
 8 liability company, a corporation not for profit, a
 9 domestic limited partnership, and a foreign limited
 10 partnership, respectively; amending s. 620.81055,
 11 F.S.; revising fees and requiring the imposition of a
 12 late charge under certain circumstances for a limited
 13 liability partnership; repealing s. 607.193, F.S.,
 14 relating to supplemental corporate fees; providing an
 15 effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Section 607.0122, Florida Statutes, is amended
 20 to read:

21 607.0122 Fees for filing documents and issuing
 22 certificates.—The Department of State shall collect the
 23 following fees when the documents described in this section are
 24 delivered to the department for filing:

25 (1) Initial filing, \$70, including:

26 (a) Articles of incorporation or application for
 27 certificate of authority to transact business in this state by a
 28 foreign corporation, and

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- 29 (b) Designation of and acceptance by registered agent+
- 30 \$35.
- 31 (2) Application for registered name: \$35 ~~\$87.50~~.
- 32 (3) Application for renewal of registered name: \$35
- 33 ~~\$87.50~~.
- 34 (4) Corporation's statement of change of registered agent
- 35 or registered office or both if not included on the annual
- 36 report: \$35.
- 37 ~~(5) Designation of and acceptance by registered agent:~~
- 38 ~~\$35.~~
- 39 (5) ~~(6)~~ Agent's statement of resignation from active
- 40 corporation: \$85 ~~\$87.50~~.
- 41 (6) ~~(7)~~ Agent's statement of resignation from an inactive
- 42 corporation: \$35.
- 43 (7) ~~(8)~~ Amendment of articles of incorporation: \$35.
- 44 (8) ~~(9)~~ Restatement of articles of incorporation with
- 45 amendment of articles: \$35.
- 46 (9) ~~(10)~~ Articles of merger or share exchange for each
- 47 party thereto: \$35.
- 48 (10) ~~(11)~~ Articles of dissolution: \$35.
- 49 (11) ~~(12)~~ Articles of revocation of dissolution: \$35.
- 50 (12) ~~(13)~~ Application for reinstatement following
- 51 administrative dissolution: \$400 ~~\$600~~.
- 52 ~~(14) Application for certificate of authority to transact~~
- 53 ~~business in this state by a foreign corporation: \$35.~~
- 54 (13) ~~(15)~~ Application for amended certificate of authority:
- 55 \$35.
- 56 (14) ~~(16)~~ Application for certificate of withdrawal by a

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57 foreign corporation: \$35.
 58 ~~(15)~~~~(17)~~ Annual report: \$150 ~~\$61.25~~.
 59 ~~(16)~~~~(18)~~ Articles of correction: \$35.
 60 ~~(17)~~~~(19)~~ Application for certificate of status: \$8.75.
 61 ~~(18)~~~~(20)~~ Certificate of domestication of a foreign
 62 corporation: \$50.
 63 ~~(19)~~~~(21)~~ Certified copy of document: \$8.75 ~~\$52.50~~.
 64 ~~(20)~~~~(22)~~ Serving as agent for substitute service of
 65 process: \$35 ~~\$87.50~~.
 66 ~~(23)~~ ~~Supplemental corporate fee: \$88.75.~~
 67 ~~(21)~~~~(24)~~ Any other document required or permitted to be
 68 filed by this act: \$35.
 69 (22) A late charge of \$400 if the annual report fee is
 70 remitted after May 1 except in circumstances in which a business
 71 entity was administratively dissolved or its certificate of
 72 authority was revoked due to its failure to file an annual
 73 report and the entity subsequently applied for reinstatement and
 74 paid the applicable reinstatement fee.
 75 Section 2. Section 607.193, Florida Statutes, is repealed.
 76 Section 3. Section 608.452, Florida Statutes, is amended
 77 to read:
 78 608.452 Fees of the Department of State.—The fees of the
 79 Department of State under this chapter are as follows:
 80 (1) For furnishing a certified copy, \$8.75 ~~\$30~~.
 81 (2) For initial filing, \$70, including:
 82 (a) Original articles of organization or a foreign limited
 83 liability company's application for a certificate of authority
 84 to transact business, and

- 85 (b) A certificate designating a registered agent.
- 86 ~~(3)-(2) For filing original articles of organization,~~
- 87 ~~articles of revocation of dissolution, \$35 or a foreign limited~~
- 88 ~~liability company's application for a certificate of authority~~
- 89 ~~to transact business, \$100.~~
- 90 ~~(4)-(3) For filing a certificate of merger of limited~~
- 91 ~~liability companies or other business entities, \$35 \$25 per~~
- 92 ~~constituent party to the merger, unless a specific fee is~~
- 93 ~~required for a party in other applicable law.~~
- 94 ~~(5)-(4) For filing an annual report, \$150 \$50.~~
- 95 ~~(6)-(5) For filing an application for reinstatement after~~
- 96 ~~an administrative or judicial dissolution or a revocation of~~
- 97 ~~authority to transact business, \$400 \$100.~~
- 98 ~~(7)-(6) For filing a certificate designating a registered~~
- 99 ~~agent or changing a registered agent, \$35 \$25.~~
- 100 ~~(8)-(7) For filing a registered agent's statement of~~
- 101 ~~resignation from an active limited liability company, \$85.~~
- 102 ~~(9)-(8) For filing a registered agent's statement of~~
- 103 ~~resignation from a dissolved limited liability company, \$35 \$25.~~
- 104 ~~(10)-(9) For filing a certificate of conversion of a~~
- 105 ~~limited liability company, \$35 \$25.~~
- 106 ~~(11)-(10) For filing any other limited liability company~~
- 107 ~~document, \$35 \$25.~~
- 108 ~~(12)-(11) For furnishing a certificate of status, \$8.75 \$5.~~
- 109 ~~(13) A late charge of \$400 if the annual report fee is~~
- 110 ~~remitted after May 1 except in circumstances in which a business~~
- 111 ~~entity was administratively dissolved or its certificate of~~
- 112 ~~authority was revoked due to its failure to file an annual~~

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113 report and the entity subsequently applied for reinstatement and
 114 paid the applicable reinstatement fee.

115 Section 4. Section 617.0122, Florida Statutes, is amended
 116 to read:

117 617.0122 Fees for filing documents and issuing
 118 certificates.—The Department of State shall collect the
 119 following fees on documents delivered to the department for
 120 filing:

121 (1) Initial filing, \$70, including:

122 (a) Articles of incorporation or application for
 123 certificate of authority to transact business in this state by a
 124 foreign corporation, and

125 (b) Designation of and acceptance by registered agent+
 126 \$35.

127 (2) Application for registered name: \$35 ~~\$87.50.~~

128 (3) Application for renewal of registered name: \$35
 129 ~~\$87.50.~~

130 (4) Corporation's statement of change of registered agent
 131 or registered office or both if not included on the annual
 132 report: \$35.

133 ~~(5) Designation of and acceptance by registered agent:~~
 134 ~~\$35.~~

135 ~~(5)-(6)~~ Agent's statement of resignation from active
 136 corporation: \$85 ~~\$87.50.~~

137 ~~(6)-(7)~~ Agent's statement of resignation from inactive
 138 corporation: \$35.

139 ~~(7)-(8)~~ Amendment of articles of incorporation: \$35.

140 ~~(8)-(9)~~ Restatement of articles of incorporation with

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141 amendment of articles: \$35.
 142 ~~(9)-(10)~~ Articles of merger for each party thereto: \$35.
 143 ~~(10)-(11)~~ Articles of dissolution: \$35.
 144 ~~(11)-(12)~~ Articles of revocation of dissolution: \$35.
 145 ~~(12)-(13)~~ Application for reinstatement following
 146 administrative dissolution: \$400 ~~\$175~~.
 147 ~~(14)~~ ~~Application for certificate of authority to transact~~
 148 ~~business in this state by a foreign corporation: \$35.~~
 149 ~~(13)-(15)~~ Application for amended certificate of authority:
 150 \$35.
 151 ~~(14)-(16)~~ Application for certificate of withdrawal by a
 152 foreign corporation: \$35.
 153 ~~(15)-(17)~~ Annual report: \$150 ~~\$61.25~~.
 154 ~~(16)-(18)~~ Articles of correction: \$35.
 155 ~~(17)-(19)~~ Application for certificate of status: \$8.75.
 156 ~~(18)-(20)~~ Certified copy of document: \$8.75 ~~\$52.50~~.
 157 ~~(19)-(21)~~ Serving as agent for substitute service of
 158 process: \$35 ~~\$87.50~~.
 159 ~~(20)-(22)~~ Certificate of conversion of a limited
 160 agricultural association to a domestic corporation: \$35.
 161 ~~(21)-(23)~~ Any other document required or permitted to be
 162 filed by this chapter: \$35.
 163 (22) A late charge of \$400 if the annual report fee is
 164 remitted after May 1 except in circumstances in which a business
 165 entity was administratively dissolved or its certificate of
 166 authority was revoked due to its failure to file an annual
 167 report and the entity subsequently applied for reinstatement and
 168 paid the applicable reinstatement fee.

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Any citizen support organization that is required by rule of the Department of Environmental Protection to be formed as a nonprofit organization and is under contract with the department is exempt from any fees required for incorporation as a nonprofit organization, and the Secretary of State may not assess any such fees if the citizen support organization is certified by the Department of Environmental Protection to the Secretary of State as being under contract with the Department of Environmental Protection.

Section 5. Section 620.1109, Florida Statutes, is amended to read:

620.1109 Department of State; fees. ~~In addition to the supplemental corporate fee of \$88.75 imposed pursuant to s. 607.193,~~ The fees of the Department of State under this act are as follows:

(1) For furnishing a certified copy, \$8.75 ~~\$52.50~~ for the first 15 pages plus ~~\$1.00~~ for each additional page.

(2) For initial filing, \$70, including:

(a) An original certificate of limited partnership or an original application for registration as a foreign limited partnership, and

(b) Designating a registered agent, \$965.

~~(3) For filing an original application for registration as a foreign limited partnership, \$965.~~

~~(3)~~ (4) For filing certificate of conversion, \$35 ~~\$52.50~~.

~~(4)~~ (5) For filing certificate of merger, \$35 ~~\$52.50~~ for each party thereto.

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197 | ~~(5)-(6)~~ For filing a reinstatement, \$400 ~~\$500~~ for each
 198 | calendar year or part thereof the limited partnership was
 199 | administratively dissolved or foreign limited partnership was
 200 | ~~revoked in the records of the Department of State.~~

201 | ~~(6)-(7)~~ For filing an annual report, \$150 ~~\$411.25~~.

202 | ~~(7)-(8)~~ For filing a certificate:

203 | ~~(a)~~ Designating a registered agent, ~~\$35~~;

204 | ~~(a)-(b)~~ Changing a registered agent or registered office
 205 | address, \$35;

206 | ~~(b)-(e)~~ Resigning as a registered agent from an active
 207 | limited partnership, \$85 ~~\$87.50~~; or

208 | ~~(c)~~ Resigning as a registered agent from an inactive
 209 | limited partnership, \$35; or

210 | ~~(d)~~ Of amendment or restatement of the certificate of
 211 | limited partnership, \$35 ~~\$52.50~~;

212 | ~~(8)-(9)~~ For filing a statement of termination, \$35 ~~\$52.50~~.

213 | ~~(9)-(10)~~ For filing a notice of cancellation for foreign
 214 | limited partnership, \$35 ~~\$52.50~~.

215 | ~~(10)-(11)~~ For furnishing a certificate of status or
 216 | authorization, \$8.75.

217 | ~~(11)-(12)~~ For filing a certificate of dissolution, \$35
 218 | ~~\$52.50~~.

219 | ~~(12)-(13)~~ For filing a certificate of revocation of
 220 | dissolution, \$35 ~~\$52.50~~.

221 | ~~(13)-(14)~~ For filing any other domestic or foreign limited
 222 | partnership document, \$35 ~~\$52.50~~.

223 | ~~(14)~~ A late charge of \$400 if the annual report fee is
 224 | remitted after May 1 except in circumstances in which a business

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225 entity was administratively dissolved or its certificate of
 226 authority was revoked due to its failure to file an annual
 227 report and the entity subsequently applied for reinstatement and
 228 paid the applicable reinstatement fee.

229 Section 6. Subsection (1) of section 620.81055, Florida
 230 Statutes, is amended to read:

231 620.81055 Fees for filing documents and issuing
 232 certificates; powers of the Department of State.—

233 (1) The Department of State shall collect the following
 234 fees when documents authorized by this act are delivered to the
 235 Department of State for filing:

- 236 (a) Partnership registration statement: \$70 ~~\$50~~.
- 237 (b) Statement of partnership authority: \$35 ~~\$25~~.
- 238 (c) Statement of denial: \$35 ~~\$25~~.
- 239 (d) Statement of dissociation: \$35 ~~\$25~~.
- 240 (e) Statement of dissolution: \$35 ~~\$25~~.
- 241 (f) Statement of qualification: \$35 ~~\$25~~.
- 242 (g) Statement of foreign qualification: \$35 ~~\$25~~.
- 243 (h) Limited liability partnership annual report: \$150 ~~\$25~~.
- 244 (i) Certificate of merger for each party thereto: \$35 ~~\$25~~.
- 245 (j) Amendment to any statement or registration: \$35 ~~\$25~~.
- 246 (k) Cancellation of any statement or registration: \$35
 247 ~~\$25~~.
- 248 (l) Certified copy of any recording or part thereof: \$8.75
 249 ~~\$52.50~~.
- 250 (m) Certificate of status: \$8.75.
- 251 (n) Certificate of conversion: \$35 ~~\$25~~.
- 252 (o) Any other document required or permitted to be filed

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YEAR


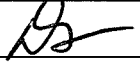
253 | by this act: ~~\$35~~ \$25.

254 | (p) A late charge of \$400 if the annual report fee is
255 | remitted after May 1 except in circumstances in which a limited
256 | liability partnership's statement of qualification was revoked
257 | due to its failure to file an annual report and the entity
258 | subsequently applied for reinstatement and paid the applicable
259 | reinstatement fee.

260 | Section 7. This act shall take effect July 1, 2014.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTSC 13-05 Relating to revising Local Business Tax
SPONSOR(S): Finance & Tax Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee		Aldridge 	Langston 

SUMMARY ANALYSIS

The bill embodies concepts with an overarching purpose to replace the current local business tax structure in ch. 205, F.S., with a simplified version of the tax that is more consistent across various business types and among taxing jurisdictions. This is accomplished by:

1. Establishing a uniform classification system.
2. Establishing a flexible rate structure.
3. Grandfathering certain local taxing jurisdictions to allow taxation under the current structure to continue under specified circumstances.
4. Eliminating "overlap" of city and county taxes.
5. Retaining current local administration of the tax.
6. Providing that the new structure becomes effective October 1, 2014, providing for a transition process from the current structure to the new structure, and allowing taxing jurisdictions to replace the revenues raised under the prior system.

Based on a Revenue Estimating Conference estimate of the provisions of substantially similar language, this bill is expected to have no impact in FY 2013-14, the potential for a positive or negative total impact in FY 2014-15 and zero to a small negative indeterminate impact beginning in FY 2015-16 and thereafter, compared to current law.

The bill becomes effective October 1, 2014, except for a section related to transition and two sections with grandfathering provisions, which take effect July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Under ch. 205, F.S., a city or county may levy a local business tax for the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. The tax proceeds are considered general revenue for the local government¹. This tax does not refer to any regulatory fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection².

Based upon the most recent information available, approximately 30-40 counties and 270-290 cities levy a local business tax. In fiscal year 2010-11, these taxes generated \$28.9 million for counties and \$136.7 million for cities.

Uniform Classification System

Current Law

Generally speaking, under current law, there are few restrictions upon the nature of the classification system that may be used by a city or a county currently levying a local business tax. The tax must be "based upon reasonable classifications and must be uniform throughout any class."³ However, cities and counties that are currently levying a local business tax are effectively restricted from reforming or altering their existing classification systems.⁴ A city or county that has not yet adopted a local business tax may adopt a business tax.⁵ In that circumstance, the classifications in the newly adopted ordinance must be reasonable and based upon the classifications prescribed in ordinances adopted by adjacent local governments that have implemented a local business tax. If no adjacent local government has implemented a local business tax, or if the governing body of the city or county finds that the classifications of adjacent local governments are unreasonable, then an alternative method is authorized. In such a case, the classifications prescribed in the ordinance of the local government seeking to impose the tax may be based upon those prescribed in ordinances adopted by local governments that have implemented a local business tax, in cities or counties that have a comparable population.

Proposed Changes

The bill contains a new classification system with three classifications based upon the square footage of the "business floor space" of the premises upon which a business operates⁶. Those are:

- Less than 2,500 square feet;
- Between 2,500 square feet and 10,000 square feet; and
- More than 10,000 square feet

The classification a business falls under is determined based upon that portion of the premises that the business has exclusive control over, either through ownership or by lease. The term "business floor space" is defined as meaning the:

¹ Sections 205.033 and 205.042, F.S.

² Section 205.022(5), F.S.

³ Sections 205.033 and 205.043, F.S.

⁴ Section 205.0535, F.S.

⁵ Section 205.0315, F.S.

⁶ Found in section 2 of the bill.

[S]quare feet of an office or place of business and includes the proportionate share of the building service areas such as lobbies, corridors and other common areas in a building. The square footage shall be computed by measuring to the inside finish of permanent outer building walls and shall include space used by columns and projections necessary to the building. Business floor space does not include vertical penetrations through the building such as stairs, elevators, or heating, ventilation, air conditioning, utility, or telephone systems.

This classification system will be used throughout the state under the new structure with no differences between jurisdictions (unless one of the grandfathering provisions discussed below applies).

The new structure will retain the exemptions contained in current law, except for repealing a grandfathering provision contained in an exemption added to current law in 2011⁷ related to employees. Under that exemption, an individual who engages in or manages a business, profession, or occupation as an employee of another person is not required to pay a local business tax.⁸ That exemption currently provides that cities or counties that before October 13, 2010, had a classification system that actually resulted in individual employees paying a business tax may continue to impose such a tax in that manner. The new structure will eliminate this exception to the exemption.⁹

Flexible Rate Structure

Current Law

Currently, cities and counties that underwent a reclassification and rate structure revision pursuant to s. 205.0535, F.S., prior to October 1, 1995, or during a window of time available from July 1, 2007, through October 1, 2008, for certain cities may, every other year, increase or decrease by ordinance the rates of business taxes by up to 5 percent. An increase may not be enacted by less than a majority plus one vote of the governing body. A city or county is not prohibited from decreasing or repealing any authorized local business tax.

As noted above, a city or county that has not yet adopted a local business tax currently may adopt a local business tax. The restrictions described above relating to a newly adopted classification system also apply to a newly adopted rate structure.¹⁰

Under current law, revenue increases attributed to the increases in the number of receipts issued are authorized.¹¹

Proposed Changes

The bill allows rates to be set in order to achieve revenue neutrality (this is described in more detail in the "transition" discussion below). However, the rates allowed between the three classifications described above must stay within certain levels relative to the other classes.¹² Specifically, the rate for the classification for businesses between 2,500 square feet and 10,000 square feet can be equal to, but no more than, three times the rate for the under 2,500 square feet classification. Likewise, the rate for the over 10,000 feet classification can be equal to, but no more than, three times the rate for the classification of businesses between 2,500 and 10,000 square feet.

⁷ Ch. 2011-78, L.O.F.

⁸ Section 205.066(1), F.S.

⁹ Found in section 14 of the bill.

¹⁰ Section 205.0315, F.S.

¹¹ Section 205.0535(3)(c), F.S.

¹² Found in section 3 of the bill.

The bill retains the authority for, cities and counties, beginning in fiscal year 2016-17 and every other year thereafter to be able to increase their local business tax rates by up to 5 percent in an ordinance approved by a two-thirds majority of their governing body.¹³

The bill also retains the authority for revenue increases attributed to the number of receipts issued. In other words, revenue increases that naturally result from normal growth of the number of businesses located within a city or county are authorized.¹⁴

Grandfathering

The bill contains two “grandfathering” provisions¹⁵ that allow a city or a county imposing a local business tax as of September 30, 2014, to retain that tax under the current structure:

- Outstanding Bonds

To meet all obligations to or for the benefit of holders of bonds or certificates that were authorized before March 1, 2013 and issued before March 15, 2013, and for which taxes levied pursuant to ch. 205, F.S., are expressly pledged or placed in trust by name; or

- Jurisdictions with Extraordinary Reliance on the Tax

Any city or county whose business tax receipts in its 2012-13 fiscal year comprised at least 20 percent of the city’s or county’s total revenue derived from local taxes levied by the city or county in that fiscal year may continue to levy such tax in the same manner and with the same rates and classifications as are in effect on February 1, 2013, until September 30, 2018.

However, any such county or municipality that in any local fiscal year through September 30, 2018, computes its proposed general county millage rate, general municipal millage rate, or any dependent special district millage rate above the level in effect for local fiscal year 2013-14, may not impose a local business tax after the September 30 following the computation of the proposed millage rate resulting in the increase unless either the local business tax has been approved and levied in accordance with the then current ch. 205, F.S., or a majority of the electors of the qualifying county or qualifying municipality voting in a general or special election has approved the continuation of the local business tax in the same manner and with the same rates and classifications as are were in effect on February 1, 2013. Such an election shall be held within the year immediately preceding the September 30 that follows the computation of the proposed millage increase and the ballot question and summary shall include a statement of the maximum amount of millage increase.

“Overlap” of City and County Taxes

Under current law, county local business taxes generally apply to businesses located throughout the county, including both incorporated and unincorporated portions of the county. The result is that a business located in a city may be required to pay one local business tax to the city and another local business tax to the county. The bill eliminates this “overlap” by providing that the county local business tax may only apply in the unincorporated portions of the county.

¹³ Found in section 11 of the bill.

¹⁴ Found in section 11 of the bill.

¹⁵ Found in sections 16 and 17 of the bill.

Administrative Processes

Current Law

Under current law, in order to levy a business tax, the governing body of the city or county must first give at least 14 days of public notice between the first and last reading of the resolution or ordinance by publishing a notice in a newspaper of general circulation within its jurisdiction as defined by law.¹⁶ The public notice must contain the proposed classifications and rates applicable to the business tax. A number of other conditions for levy are imposed on cities and counties.¹⁷

The governing body of a city that levies the tax may request that the county in which the city is located issue the municipal receipt and collect the tax.¹⁸ The governing body of a county that levies the tax may request that cities within the county issue the county receipt and collect the tax. However, before any local government issues any business receipts on behalf of another local government, appropriate agreements must be entered into by the affected local governments. All business tax receipts are sold by the appropriate tax collector beginning July 1st of each year.¹⁹ The taxes are due and payable on or before September 30th of each year, and the receipts expire on September 30th of the succeeding year. In several situations, administrative penalties are also imposed.

Section 205.194, F.S., provides that any person applying for or renewing a local business tax receipt to practice any profession or engage in or manage any business or occupation regulated by the Department of Business and Professional Regulation, the Florida Supreme Court, or any other state regulatory agency, including any board or commission thereof, must exhibit an active state certificate, registration, or license, or proof of copy of the same, before such local receipt may be issued.

Sections 205.196, 205.1965, 205.1967, 205.1969, 205.1971, 205.1973 and 205.1975, F.S., provide similar requirements for production of evidence of appropriate licensure prior to issuance of a business tax receipt for pharmacies and pharmacists, assisted living facilities, pest control, health studios, sellers of travel and telemarketing businesses, respectively.

Proposed Changes

Under the bill, most of the administrative processes in current law are retained. Exceptions include a requirement under the new structure that the tax and any future rate increases be approved by a two-thirds majority of the governing body of the city or county in question.²⁰

Transition

The bill provides for a transition from the current structure in ch. 205, F.S., for local business taxes, to the new structure as described above beginning October 1, 2014. Cities and counties are allowed to continue levying local business taxes pursuant to the provisions of ch. 205, F.S., until September 30, 2014. Local business taxes in effect on September 30, 2014 are not authorized beyond that date. Beginning October 1, 2014, all local business taxes must be approved and levied pursuant to, and in accordance with, the provisions of ch. 205, F.S., as amended by the bill. Cities and counties wishing to continue levying a local business tax are expressly allowed to adopt the required ordinance at any time after July 1, 2013, and schedule it to become effective beginning October 1, 2014.²¹

¹⁶ Sections 205.033 and 205.042, F.S.

¹⁷ Sections 205.033 and 205.043, F.S.

¹⁸ Section 205.045, F.S.

¹⁹ Section 205.053, F.S.

²⁰ Found in sections 5 and 7 of the bill.

²¹ Primarily found in section 15 of the bill.

A mechanism is provided where cities and counties that transition from the old structure to the new structure must do so in a revenue neutral manner.²² The bill accomplishes this by providing that those cities and counties that make the transition must not, in local fiscal year 2014-15, generate more than 105% of the revenue generated in the prior fiscal year under the previous tax structure. If that revenue threshold is crossed, the city or county must:

- Adjust the rates of their local business tax to the extent necessary to reduce revenues to the threshold amounts described above as soon as reasonably practicable; and
- The city or county must refund the revenue generated in excess of the threshold amounts described above on a prorata basis to the businesses that paid the local business tax. Such refunds may be granted as a credit against tax due in the subsequent year. Refunds unable to be granted because the business in question no longer exists or the city or county cannot locate the business or deliver the refund to the business shall be treated as unclaimed property pursuant to ch. 717, F.S.

Effective Date

Most of the bill becomes effective October 1, 2014, except for a provision related to transition²³ and the grandfathering provisions, which take effect July 1, 2013.²⁴

B. SECTION DIRECTORY:

Section 1: Amends definitions in s. 205.022(3) and (5), F.S.

Section 2: Creates s. 205.025, F.S., providing classifications and a definition.

Section 3: Creates s. 205.027, F.S., providing a rate structure.

Section 4: Amends s. 205.0315, F.S., changing a date.

Section 5: Amends s. 205.032, F.S., changing the conditions by which the governing body of a county may levy a local business tax.

Section 6: Amends s. 205.033, F.S., changing the conditions by which the governing body of a county may levy a local business tax.

Section 7: Amends s. 205.042, F.S., changing the conditions by which the governing body of a municipality may levy a local business tax.

Section 8: Amends s. 205.043, F.S., changing the conditions by which the governing body of a municipality may levy a local business tax.

Section 9: Amends s. 205.045, F.S., rewording the provision that allows transfer of certain administrative duties between municipalities and counties by interlocal agreement.

Section 10: Amends s. 205.053, F.S., removing a reference to adoption of local business tax by resolution.

Section 11: Amends s. 205.0535, F.S., providing for reclassifications and rate structure revisions.

²² Found in section 11 of the bill.

²³ Found in section 15 of the bill.

²⁴ Found in sections 16 and 17 of the bill.

Section 12: Repeals s. 205.0536, F.S.

Section 13: Amends s. 205.054, F.S., removing references to adoption of local business tax by resolution and clarifying that an enterprise zone exemption authorized by the county only applies in the unincorporated portion of the county.

Section 14: Amends s. 205.066, F.S., removing and exception to an exemption.

Section 15: Creates a section of law that provides legislative intent; provides a transition process.

Section 16: Creates a section of law that grandfathers the local business tax of certain counties or municipalities that have pledged local business tax revenues for the benefit of holders of certain bonds or certificates.

Section 17: Creates a section of law that grandfathers the local business tax of certain counties and municipalities that have an extraordinary reliance on local business tax receipts for public finance.

Section 18: Amends s. 489.537, F.S., to correct a reference.

Section 19: Provides for effective dates.

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:

Based on a Revenue Estimating Conference estimate of the provisions of substantially similar language, this bill is expected to have no impact in FY 2013-14, the potential for a positive or negative total impact in FY 2014-15 and zero to a small negative indeterminate impact beginning in FY 2015-16 and thereafter, compared to current law.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The direct economic impact on specific businesses is unknown due to the wide variation in classification and rate structures currently in existence and uncertainty about the rate structures that individual counties and municipalities may have in the future. Many businesses will see their local business tax rate change, and the intent is for the overall transition to be revenue neutral, but the effect on individual businesses cannot be known at this time.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989; however, an exemption may apply because such a reduction in authority, if present, may have an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

29 by the act; amending s. 205.0535, F.S.; deleting
30 obsolete provisions relating to previous revisions of
31 the business tax classification method and rate
32 structure; revising provisions relating to the
33 business tax classification method and rate structure;
34 providing limitations and requirements with respect to
35 the amount of new revenue that a county or
36 municipality may realize as a result of the new
37 business tax rate structure authorized by the act;
38 requiring governing authorities of counties and
39 municipalities to adjust business tax rates to reduce
40 revenues under certain circumstances; requiring
41 counties and municipalities to refund business tax
42 revenues under certain circumstances; authorizing
43 municipalities and counties to periodically increase
44 or decrease business tax rates by ordinance beginning
45 at a specified time; requiring an increase in such
46 rates to be enacted by a specified vote of the
47 governing authority; repealing s. 205.0536, F.S.,
48 relating to distribution and apportionment of county
49 business tax revenues; amending s. 205.054, F.S.;
50 conforming provisions to changes made by the act;
51 providing applicability; amending s. 205.066, F.S.;
52 deleting an obsolete provision; providing legislative
53 intent and applicability; providing an exception to
54 requiring compliance with certain revisions of the act
55 for counties and municipalities whose business tax
56 revenues have been pledged or placed in trust as

57 security for bonds or certificates; providing for
 58 applicability; providing an exception to requiring
 59 compliance with certain revisions of the act for
 60 counties or municipalities whose business tax receipts
 61 comprise a specified amount of total revenue;
 62 prohibiting such counties or municipalities from
 63 imposing a business tax after a specified date, if
 64 those counties or municipalities compute specified
 65 millage rates above a certain level unless certain
 66 conditions with respect to imposition of a business
 67 tax are met; amending s. 489.537, F.S.; conforming a
 68 cross-reference; providing effective dates.

69
 70 Be It Enacted by the Legislature of the State of Florida:

71
 72 Section 1. Subsections (3) and (5) of section 205.022,
 73 Florida Statutes, are amended to read:

74 205.022 Definitions.—When used in this chapter, the
 75 following terms and phrases shall have the meanings ascribed to
 76 them in this section, except when the context clearly indicates
 77 a different meaning:

78 (3) "Classification" means the method by which a business
 79 or group of businesses is identified ~~by size or type, or both.~~

80 (5) "Local business tax" means the taxes ~~fees~~ charged and
 81 the method by which a local governing authority grants the
 82 privilege of engaging in or managing any business, profession,
 83 or occupation within its jurisdiction. It does not mean any fees
 84 or licenses paid to any board, commission, or officer for

85 permits, registration, examination, or inspection. Unless
 86 otherwise provided by law, these are deemed to be regulatory and
 87 in addition to, but not in lieu of, any local business tax
 88 imposed under the provisions of this chapter.

89 Section 2. Section 205.025, Florida Statutes, is created
 90 to read:

91 205.025 Classification.-

92 (1) For the purposes of this chapter, business
 93 classifications are based upon the business floor space of the
 94 premises upon which the business operates and are limited to the
 95 following three classifications:

96 (a) Less than 2,500 square feet.

97 (b) Between and inclusive of 2,500 square feet and 10,000
 98 square feet.

99 (c) More than 10,000 square feet.

100 (2) To determine which classification a business falls
 101 under:

102 (a) The business floor space of the premises upon which a
 103 business operates is determined based upon that portion of the
 104 premises that the business has exclusive control over, either
 105 through ownership or tenancy.

106 (b) "Business floor space" means the square footage of an
 107 office or place of business and includes a business's
 108 proportionate share of the building service areas such as
 109 lobbies, corridors, and other common areas in a building. The
 110 square footage is computed by measuring to the inside finish of
 111 permanent outer building walls and shall include space used by
 112 columns and projections necessary to the building. Business

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113 floor space does not include vertical penetrations through the
 114 building such as stairs, elevators, or heating, ventilation, air
 115 conditioning, utility, or telephone systems.

116 Section 3. Section 205.027, Florida Statutes, is created
 117 to read:

118 205.027 Rates.—Counties and municipalities levying a local
 119 business tax pursuant to this chapter must use a rate structure
 120 that applies a rate to businesses classified under s.
 121 205.025(1)(b), that is at least equal to, but no more than 300
 122 percent of the rate applied to businesses classified under s.
 123 205.025(1)(a), and applies a rate to businesses classified under
 124 s. 205.025(1)(c) that is at least equal to, but no more than 300
 125 percent of the rate applied to businesses classified under s.
 126 205.025(1)(b).

127 Section 4. Section 205.0315, Florida Statutes, is amended
 128 to read:

129 205.0315 Ordinance adoption on or after October 1, 2014
 130 ~~1995.~~—Beginning October 1, 2014 ~~1995~~, a county or municipality
 131 that has not adopted a business tax ordinance ~~or resolution~~ may
 132 adopt a business tax ordinance consistent with this chapter. The
 133 business tax rate structure ~~and classifications~~ in the adopted
 134 ordinance must be reasonable and based upon the rate structure
 135 ~~and classifications~~ prescribed in ordinances adopted by adjacent
 136 local governments ~~that have implemented s. 205.0535~~. If ~~no~~
 137 ~~adjacent local government has implemented s. 205.0535, or if the~~
 138 governing body of the county or municipality finds that the rate
 139 structures ~~or classifications~~ of adjacent local governments are
 140 unreasonable, the rate structure ~~or classifications~~ prescribed

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141 in its ordinance may be based upon those prescribed in
142 ordinances adopted by local governments ~~that have implemented s.~~
143 ~~205.0535~~ in counties or municipalities that have a comparable
144 population.

145 Section 5. Section 205.032, Florida Statutes, is amended
146 to read:

147 205.032 Levy; counties.—The governing body of a county may
148 levy, by ~~appropriate resolution or ordinance~~ approved by at
149 least a two-thirds vote of the membership of the governing body
150 of the county, a business tax for the privilege of engaging in
151 or managing any business, profession, or occupation within the
152 unincorporated portions of its jurisdiction. However, the
153 governing body must first give at least 14 days' public notice
154 between the first and last reading of the ~~resolution or~~
155 ordinance by publishing a notice in a newspaper of general
156 circulation within its jurisdiction as defined by law. The
157 public notice must contain the proposed classifications and
158 rates applicable to the business tax.

159 Section 6. Section 205.033, Florida Statutes, is amended
160 to read:

161 205.033 Conditions for levy; counties.—

162 (1) The following conditions are imposed on the authority
163 of a county governing body to levy a business tax:

164 (a) The tax must be based upon the three reasonable
165 classifications provided in s. 205.025 and must be uniform
166 throughout any class.

167 ~~(b) Unless the county implements s. 205.0535 or adopts a~~
168 ~~new business tax ordinance under s. 205.0315, a business tax~~

169 ~~levied under this subsection may not exceed the rate provided by~~
 170 ~~this chapter in effect for the year beginning October 1, 1971,~~
 171 ~~however, beginning October 1, 1980, the county governing body~~
 172 ~~may increase business taxes authorized by this chapter. The~~
 173 ~~amount of the increase above the tax rate levied on October 1,~~
 174 ~~1971, for taxes levied at a flat rate may be up to 100 percent~~
 175 ~~for business taxes that are \$100 or less; 50 percent for~~
 176 ~~business taxes that are between \$101 and \$300; and 25 percent~~
 177 ~~for business taxes that are more than \$300. Beginning October 1,~~
 178 ~~1982, the increase may not exceed 25 percent for taxes levied at~~
 179 ~~graduated or per unit rates. Authority to increase business~~
 180 ~~taxes does not apply to licenses or receipts granted to any~~
 181 ~~utility franchised by the county for which a franchise fee is~~
 182 ~~paid.~~

183 (b) ~~(e)~~ A receipt is not valid for more than 1 year, and
 184 all receipts expire on September 30 of each year, except as
 185 otherwise provided by law.

186 (2) Any receipt may be transferred to a new owner, when
 187 there is a bona fide sale of the business, upon payment of a
 188 transfer fee of up to 10 percent of the annual business tax, but
 189 not less than \$3 nor more than \$25, and presentation of the
 190 original receipt and evidence of the sale.

191 (3) Upon written request and presentation of the original
 192 receipt, any receipt may be transferred from one location to
 193 another location in the same county upon payment of a transfer
 194 fee of up to 10 percent of the annual business tax, but not less
 195 than \$3 nor more than \$25.

196 ~~(4) The revenues derived from the business tax, exclusive~~

197 ~~of the costs of collection and any credit given for municipal~~
 198 ~~business taxes, shall be apportioned between the unincorporated~~
 199 ~~area of the county and the incorporated municipalities located~~
 200 ~~therein by a ratio derived by dividing their respective~~
 201 ~~populations by the population of the county. This subsection~~
 202 ~~does not apply to counties that have established a new rate~~
 203 ~~structure under s. 205.0535.~~

204 ~~(5) The revenues so apportioned shall be sent to the~~
 205 ~~governing authority of each municipality, according to its~~
 206 ~~ratio, and to the governing authority of the county, according~~
 207 ~~to the ratio of the unincorporated area, within 15 days~~
 208 ~~following the month of receipt. This subsection does not apply~~
 209 ~~to counties that have established a new rate structure under s.~~
 210 ~~205.0535.~~

211 (4)~~(6)~~(a) Each county, as defined in s. 125.011(1), or any
 212 county adjacent thereto may levy and collect, by an ordinance
 213 enacted by the governing body of the county, an additional
 214 business tax up to 50 percent of the appropriate business tax
 215 imposed under subsection (1).

216 (b) ~~Subsections (4) and (5) do not apply to any revenues~~
 217 ~~derived from the additional tax imposed under this subsection.~~
 218 Proceeds from the additional business tax must be placed in a
 219 separate interest-earning account, and the governing body of the
 220 county shall distribute this revenue, plus accrued interest,
 221 each fiscal year to an organization or agency designated by the
 222 governing body of the county to oversee and implement a
 223 comprehensive economic development strategy through advertising,
 224 promotional activities, and other sales and marketing

225 techniques.

226 (c) An ordinance that levies an additional business tax
227 under this subsection may not be adopted after January 1, 2015
228 ~~1995~~.

229 ~~(5)-(7)~~ Notwithstanding any other provisions of this
230 chapter, the revenue received from a county business tax may be
231 used for overseeing and implementing a comprehensive economic
232 development strategy through advertising, promotional
233 activities, and other sales and marketing techniques.

234 Section 7. Section 205.042, Florida Statutes, is amended
235 to read:

236 205.042 Levy; municipalities.—The governing body of an
237 incorporated municipality may levy, by ~~appropriate resolution or~~
238 ordinance approved by at least a two-thirds vote of the
239 membership of the governing body of the municipality, a business
240 tax for the privilege of engaging in or managing any business,
241 profession, or occupation within its jurisdiction. However, the
242 governing body must first give at least 14 days' public notice
243 between the first and last reading of the ~~resolution or~~
244 ordinance by publishing the notice in a newspaper of general
245 circulation within its jurisdiction as defined by law. The
246 notice must contain the proposed classifications and rates
247 applicable to the business tax. The business tax may be levied
248 on:

249 (1) Any person who maintains a permanent business location
250 or branch office within the municipality, for the privilege of
251 engaging in or managing any business within its jurisdiction.

252 (2) Any person who maintains a permanent business location

253 or branch office within the municipality, for the privilege of
 254 engaging in or managing any profession or occupation within its
 255 jurisdiction.

256 (3) Any person who does not qualify under subsection (1)
 257 or subsection (2) and who transacts any business or engages in
 258 any occupation or profession in interstate commerce, if the
 259 business tax is not prohibited by s. 8, Art. I of the United
 260 States Constitution.

261 Section 8. Subsection (1) of section 205.043, Florida
 262 Statutes, is amended to read:

263 205.043 Conditions for levy; municipalities.—

264 (1) The following conditions are imposed on the authority
 265 of a municipal governing body to levy a business tax:

266 (a) The tax must be based upon the three reasonable
 267 classifications provided in s. 205.025, and must be uniform
 268 throughout any class.

269 ~~(b) Unless the municipality implements s. 205.0535 or~~
 270 ~~adopts a new business tax ordinance under s. 205.0315, a~~
 271 ~~business tax levied under this subsection may not exceed the~~
 272 ~~rate in effect in the municipality for the year beginning~~
 273 ~~October 1, 1971; however, beginning October 1, 1980, the~~
 274 ~~municipal governing body may increase business taxes authorized~~
 275 ~~by this chapter. The amount of the increase above the tax rate~~
 276 ~~levied on October 1, 1971, for taxes levied at a flat rate may~~
 277 ~~be up to 100 percent for business taxes that are \$100 or less;~~
 278 ~~50 percent for business taxes that are between \$101 and \$300;~~
 279 ~~and 25 percent for business taxes that are more than \$300.~~
 280 ~~Beginning October 1, 1982, an increase may not exceed 25 percent~~

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281 ~~for taxes levied at graduated or per unit rates. Authority to~~
 282 ~~increase business taxes does not apply to receipts or licenses~~
 283 ~~granted to any utility franchised by the municipality for which~~
 284 ~~a franchise fee is paid.~~

285 (b)(e) A receipt is not valid for more than 1 year and all
 286 receipts expire on September 30 of each year, except as
 287 otherwise provided by law.

288 Section 9. Section 205.045, Florida Statutes, is amended
 289 to read:

290 205.045 Transfer of administrative duties. Any county and
 291 municipality sharing common territory may issue receipts on
 292 behalf of the other for businesses within that territory
 293 pursuant to an appropriate, recorded interlocal agreement
 294 authorized by part I of chapter 163 ~~The governing body of a~~
 295 ~~municipality that levies a business tax may request that the~~
 296 ~~county in which the municipality is located issue the municipal~~
 297 ~~receipt and collect the tax thereon. The governing body of a~~
 298 ~~county that levies a business tax may request that~~
 299 ~~municipalities within the county issue the county receipt and~~
 300 ~~collect the tax thereon. Before any local government may issue~~
 301 ~~receipts on behalf of another local government, appropriate~~
 302 ~~agreements must be entered into by the affected local~~
 303 ~~governments.~~

304 Section 10. Subsection (1) of section 205.053, Florida
 305 Statutes, is amended to read:

306 205.053 Business tax receipts; dates due and delinquent;
 307 penalties.-

308 (1) All business tax receipts shall be sold by the

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309 appropriate tax collector beginning July 1 of each year, are due
310 and payable on or before September 30 of each year, and expire
311 on September 30 of the succeeding year. If September 30 falls on
312 a weekend or holiday, the tax is due and payable on or before
313 the first working day following September 30. Provisions for
314 partial receipts may be made in the ~~resolution or~~ ordinance
315 authorizing such receipts. Receipts that are not renewed when
316 due and payable are delinquent and subject to a delinquency
317 penalty of 10 percent for the month of October, plus an
318 additional 5 percent penalty for each subsequent month of
319 delinquency until paid. However, the total delinquency penalty
320 may not exceed 25 percent of the business tax for the delinquent
321 establishment.

322 Section 11. Section 205.0535, Florida Statutes, is amended
323 to read:

324 205.0535 Reclassification and rate structure revisions.-

325 ~~(1) By October 1, 2008, any municipality that has adopted~~
326 ~~by ordinance a local business tax after October 1, 1995, may by~~
327 ~~ordinance reclassify businesses, professions, and occupations~~
328 ~~and may establish new rate structures, if the conditions~~
329 ~~specified in subsections (2) and (3) are met. A person who is~~
330 ~~engaged in the business of providing local exchange telephone~~
331 ~~service or a pay telephone service in a municipality or in the~~
332 ~~unincorporated area of a county and who pays the business tax~~
333 ~~under the category designated for telephone companies or a pay~~
334 ~~telephone service provider certified pursuant to s. 364.3375 is~~
335 ~~deemed to have but one place of business or business location in~~
336 ~~each municipality or unincorporated area of a county. Pay~~

337 ~~telephone service providers may not be assessed a business tax~~
338 ~~on a per instrument basis.~~

339 ~~(2) Before adopting a reclassification and revision~~
340 ~~ordinance, the municipality or county must establish an equity~~
341 ~~study commission and appoint its members. Each member of the~~
342 ~~study commission must be a representative of the business~~
343 ~~community within the local government's jurisdiction. Each~~
344 ~~equity study commission shall recommend to the appropriate local~~
345 ~~government a classification system and rate structure for~~
346 ~~business taxes.~~

347 ~~(3) (a) After the reclassification and rate structure~~
348 ~~revisions have been transmitted to and considered by the~~
349 ~~appropriate local governing body, it may adopt by majority vote~~
350 ~~a new business tax ordinance. Except that a minimum tax of up to~~
351 ~~\$25 is permitted, the reclassification may not increase the tax~~
352 ~~by more than the following: for receipts costing \$150 or less,~~
353 ~~200 percent; for receipts costing more than \$150 but not more~~
354 ~~than \$500, 100 percent; for receipts costing more than \$500 but~~
355 ~~not more than \$2,500, 75 percent; for receipts costing more than~~
356 ~~\$2,500 but not more than \$10,000, 50 percent; and for receipts~~
357 ~~costing more than \$10,000, 10 percent; however, in no case may~~
358 ~~the tax on any receipt be increased more than \$5,000.~~

359 ~~(1) (b) The total annual revenue generated by the new rate~~
360 ~~structure for the 2014-2015 local fiscal year following the~~
361 ~~fiscal year during which the rate structure is adopted may not~~
362 ~~exceed:~~

363 ~~(a) 1.~~ For municipalities, the sum of the revenue base and
364 5 ~~10~~ percent of that revenue base. The revenue base is the sum

365 of the business tax revenue generated by receipts issued for the
 366 ~~most recently completed 2013-2014~~ local fiscal year ~~or the~~
 367 ~~amount of revenue that would have been generated from the~~
 368 ~~authorized increases under s. 205.043(1)(b), whichever is~~
 369 ~~greater~~, plus any revenue received from the county under former
 370 s. 205.033(4).

371 (b)2. For counties, the sum of the revenue base and 5, 10
 372 percent of that revenue base, and the amount of revenue
 373 distributed by the county to the municipalities under s.
 374 205.033(4) during the most recently completed local fiscal year.
 375 The revenue base is the business tax revenue generated by
 376 receipts issued for the ~~most recently completed 2013-2014~~ local
 377 fiscal year ~~or the amount of revenue that would have been~~
 378 ~~generated from the authorized increases under s. 205.033(1)(b),~~
 379 ~~whichever is greater~~, but may not include any revenues
 380 distributed to municipalities under former s. 205.033(4).

381 (2) If, for the period October 1, 2014, through September
 382 30, 2015, the revenues received by a local government from the
 383 local business tax rate established under s. 205.027, exceed the
 384 thresholds established in subsection (1), the governing
 385 authority must adjust the rates of the local business tax to the
 386 extent necessary to reduce revenues to the threshold amounts
 387 established in subsection (1) by ordinance as soon as reasonably
 388 practicable.

389 (3) If a reduction in tax rates is required pursuant to
 390 subsection (2), the county or municipality must refund the
 391 revenue generated in excess of the threshold established in
 392 subsection (2) on a prorata basis to the businesses that paid

393 the local business tax. Such refunds may be granted as a credit
394 against tax due in the subsequent year.

395 (4) If the county or municipality is unable to grant a
396 refund pursuant to subsection (3) because a business no longer
397 exists, or the county or municipality is unable to locate the
398 business or deliver such refund after making reasonable efforts
399 to do so, then such refund shall be treated by the county or
400 municipality as unclaimed property pursuant to chapter 717.

401 (5) ~~(e)~~ In addition to the revenue increases authorized
402 under this section by paragraph ~~(b)~~, revenue increases
403 attributed to the increases in the number of receipts issued are
404 authorized.

405 (6) ~~(4)~~ After the conditions specified in subsections ~~(2)~~
406 and ~~(3)~~ are met, Municipalities and counties may, beginning in
407 local fiscal year 2016-2017 and every other year thereafter,
408 increase or decrease by ordinance the rates of business taxes by
409 up to 5 percent. An increase, however, may not be enacted by
410 less than a two-thirds majority plus one vote of the membership
411 of the governing body. Nothing in this chapter shall be
412 construed to prohibit a municipality or county from decreasing
413 or repealing any business tax authorized under this chapter.

414 (7) ~~(5)~~ A receipt may not be issued unless the federal
415 employer identification number or social security number is
416 obtained from the person to be taxed.

417 Section 12. Section 205.0536, Florida Statutes, is
418 repealed.

419 Section 13. Subsections (1) and (5) of section 205.054,
420 Florida Statutes, are amended, subsection (6) of that section is

421 renumbered as subsection (7), and a new subsection (6) is added
 422 to that section, to read:

423 205.054 Business tax; partial exemption for engaging in
 424 business or occupation in enterprise zone.—

425 (1) Notwithstanding the provisions of s. 205.033(1)(a) or
 426 s. 205.043(1)(a), the governing body of a county or municipality
 427 may authorize by appropriate ~~resolution or~~ ordinance, adopted
 428 pursuant to the procedure established in s. 205.032 or s.

429 205.042, the exemption of 50 percent of the business tax levied
 430 by the county or municipality for the privilege of engaging in
 431 or managing any business, profession, or occupation ~~in the~~
 432 ~~respective jurisdiction of the county or municipality~~ when such
 433 privilege is exercised at a permanent business location or
 434 branch office located in an enterprise zone.

435 (5) If an area nominated as an enterprise zone pursuant to
 436 s. 290.0055 has not yet been designated pursuant to s. 290.0065,
 437 the governing body of a county or municipality may enact the
 438 appropriate ordinance ~~or resolution~~ authorizing the exemption
 439 permitted in this section; however, such ordinance ~~or resolution~~
 440 will not be effective until such area is designated pursuant to
 441 s. 290.0065.

442 (6) Any exemption authorized by a county under this
 443 section applies only to businesses located within the
 444 unincorporated portion of the county.

445 Section 14. Section 205.066, Florida Statutes, is amended
 446 to read:

447 205.066 Exemptions; employees.—

448 (1) An individual who engages in or manages a business,

449 profession, or occupation as an employee of another person is
450 not required to apply for an exemption from a local business
451 tax, pay a local business tax, or obtain a local business tax
452 receipt. An individual acting in the capacity of an independent
453 contractor is not an employee.

454 (2) An employee may not be held liable by any local
455 governing authority for the failure of a principal or employer
456 to apply for an exemption from a local business tax, pay a local
457 business tax, or obtain a local business tax receipt. An
458 individual exempt under this section may not be required by any
459 local governing authority to apply for an exemption from a local
460 business tax, otherwise prove his or her exempt status, or pay
461 any tax or fee related to a local business tax.

462 (3) A principal or employer who is required to obtain a
463 local business tax receipt may not be required by a local
464 governing authority to provide personal or contact information
465 for individuals exempt under this section in order to obtain a
466 local business tax receipt.

467 ~~(4) The exemption provided in this section does not apply~~
468 ~~to a business tax imposed on individual employees by a~~
469 ~~municipality or county pursuant to a resolution or ordinance~~
470 ~~adopted before October 13, 2010. Municipalities or counties~~
471 ~~that, before October 13, 2010, had a classification system that~~
472 ~~was in compliance with the requirements of this chapter and that~~
473 ~~actually resulted in individual employees paying a business tax~~
474 ~~may continue to impose such a tax in that manner.~~

475 Section 15. Effective July 1, 2013, the Legislature
476 intends to revise and simplify local business taxes in this

477 state consistent with this act. In order to transition to the
478 new business classification method and tax rate structure that
479 takes effect October 1, 2014, counties and municipalities may
480 continue levying local business taxes pursuant to chapter 205,
481 Florida Statutes 2012, until September 30, 2014. Any local
482 business tax in effect on September 30, 2014, may not be imposed
483 beyond that date, except as otherwise provided in this act.
484 Beginning October 1, 2014, any local business tax must be
485 approved and levied in accordance with chapter 205, Florida
486 Statutes, as amended by this act, including the restrictions on
487 classifications and rates provided in ss. 205.025 and 205.027,
488 Florida Statutes, and the requirement that ordinances
489 authorizing local business taxes be adopted by a two-thirds vote
490 of the membership of the governing body of a county or
491 municipality that opts to continue levying local business taxes
492 after September 30, 2014. Such ordinances may be adopted at any
493 time after July 1, 2013 and may be scheduled to take effect on
494 or after October 1, 2014.

495 Section 16. Effective July 1, 2013, notwithstanding the
496 changes made by this act to chapter 205, Florida Statutes,
497 counties or municipalities imposing a local business tax as of
498 September 30, 2014, pursuant to chapter 205, Florida Statutes,
499 may continue to levy such tax in the same manner and with the
500 same classifications and rates as are in effect on March 1,
501 2013, during each fiscal year thereafter in which the proceeds
502 of the local business tax are expressly pledged or placed in
503 trust, by name, for the benefit of holders of bonds or
504 certificates that were authorized before March 1, 2013, and

505 issued before March 15, 2013. The fact that the proceeds of a
506 local business tax are pledged or placed in trust by a general
507 description of one or more revenue streams, such as the term
508 "non-ad-valorem revenue," shall not be considered an express
509 pledge or placement in trust.

510 Section 17. Effective July 1, 2013, notwithstanding the
511 revisions to chapter 205, Florida Statutes, made by this act,
512 any county or municipality whose business tax receipts in its
513 2012-2013 fiscal year comprised at least 20 percent of the
514 county's or municipality's total revenue derived from local
515 taxes levied by the county or municipality in that fiscal year
516 may continue to levy such tax in the same manner and with the
517 same rates and classifications as are in effect on February 1,
518 2013. However, any such county or municipality that in any local
519 fiscal year through September 30, 2018, computes its proposed
520 general county millage rate, general municipal millage rate, or
521 any dependent special district millage rate above the level in
522 effect for local fiscal year 2013-2014, may not impose a local
523 business tax after September 30 next following the date on which
524 the computation of the proposed millage rate resulting in the
525 increase became effective unless either the local business tax
526 has been approved and levied in accordance with the then current
527 chapter 205, Florida Statutes, or a majority of the electors of
528 the qualifying county or qualifying municipality voting in a
529 general or special election has approved the continuation of the
530 local business tax in the same manner and with the same rates
531 and classifications as were in effect on February 1, 2013. Such
532 an election shall be held within the year immediately preceding

533 September 30 next following the date on which the computation of
 534 the proposed millage increase became effective, and the ballot
 535 question and summary shall include a statement of the maximum
 536 amount of millage increase.

537 Section 18. Subsection (8) of section 489.537, Florida
 538 Statutes, is amended to read:

539 489.537 Application of this part.-

540 (8) Persons licensed under this part are subject to s. ss.
 541 ~~205.0535(1)~~ and 205.065, as applicable.

542 Section 19. Except as otherwise expressly provided in this
 543 act, this act shall take effect October 1, 2014.

PROPERTY TAX ISSUES 2013

1. **Date of Filing.**
 - a. **Present Situation:** For determining whether certain property tax documents have been timely filed, s. 192.047, F.S., provides that the date of the U.S. postal service postmark is used. If a taxpayer uses a commercial mail service, it is unclear that the postmark of the commercial mail carrier suffices for timing purposes.
 - b. **Proposed Change:** Insert a phrase clarifying that the postmark date of the U.S. postal service or a commercial mail delivery service is considered the date of filing.

2. **Electronic Transmission of Property Tax Documents.**
 - a. **Present Situation:** Florida law does not currently provide property appraisers with the authority to send documents to taxpayers electronically.
 - b. **Proposed Change:** Add a new section of law that provides an option to taxpayers to allow property appraisers to send specific documents electronically and establish a procedure for obtaining and verifying email addresses before using them to send documents.

3. **Publish Roll Certification Information on Property Appraiser Website.**
 - a. **Present Situation:** When property appraisers complete their tax rolls and certify them, they currently post a notice of such in a local periodical and in their physical offices.
 - b. **Proposed Change:** Amend s. 193.122, F.S., to also require the property appraiser to post notice on their website.

4. **Clarification of Homestead Exemption when a Person Transfers Title and the Person is a Lessee under a 98 year lease.**
 - a. **Present Situation:** There are certain estate planning techniques involving qualified personal residence trusts that involve the use of a 98 year (or longer) lease and the transfer of property from the lessee to the grantor at the expiration of the trust. The grantor and the lessee in this circumstance are the same person.
 - b. **Proposed Change:** Clarify that such a transfer does not constitute a change in ownership for purposes of the homestead property tax exemption (or the related "Save Our Homes" benefit).

5. **Automatic Renewal and Penalty for Granny Flats.**
 - a. **Present Situation:** Florida allows counties to provide a reduction in assessed value for the value of living quarters that were built for and are used by parents and grandparents. The reduction must be applied for annually.
 - b. **Proposed Change:** Allow counties to provide for automatic renewal of the assessment reduction and conform the penalty for fraudulent claims with the penalty for homestead claims, which is a 10 year look back, 50% penalty, 18% interest on any tax due and 30 days to pay assessment prior to lien.

6. **Garcia v. Andonie, 101 So.3d 339 (Fla. 2012).**
 - a. **Present Situation:** To qualify for a homestead exemption, s. 196.031, F.S., current statute includes a requirement that the owner reside on the property. In 2012, the Florida Supreme Court ruled this requirement unconstitutional because the constitution grants homestead

exemption to the owner if he or she resides on the property or if a dependent of the owner resides on the property.

- b. **Proposed change:** Remove the unconstitutional phrase within s. 196.031, F.S., that requires the property owner to reside on the property in order to receive homestead exemption.

7. Senior Homestead Exemptions “Up to” \$50,000.

- a. **Present Situation:** Florida allows local governments to provide additional homestead exemptions to owners who are 65 years or older and meet other requirements. In amending s. 196.075 due to a constitutional amendment adopted last year, a glitch was made in the implementing bill that could be interpreted to only permit exemptions of \$50,000, but not below that amount.
- b. **Proposed Change:** Clarify that an exemption of any amount up to \$50,000 is permitted.

8. Repeal of Recent Expansion of Affordable Housing Exemption. (Similar provision in HB 921)

- a. **Present Situation:** Florida provides a property tax exemption for affordable housing property. Until 2009, the property only qualified if the property was wholly-owned by a 501(c)(3) organization. In 2009, it was amended to allow the exemption to apply to property that was owned by a limited partnership if the sole general partner was a 501(c)(3) organization. This change led many private affordable housing developers to restructure to use the exemption, expanding it beyond what was initially intended. The REC estimates the impact of not adopting this fix to be in excess of \$100 million a year to local governments.
- b. **Proposed Change:** Amend the statute to repeal the statutory change in 2009 allowing limited partnerships to qualify for the exemption as long as their general partner was a 501(c)(3) organization.

9. St. Lucie / Martin County Tax Payment Calculation.

- a. **Present Situation:** In 2012, the Legislature modified the boundary between St. Lucie and Martin Counties to shift a subdivision from St. Lucie to Martin County. The legislation required Martin County to transfer part of its “new” tax receipts to St. Lucie for the next 10 years – in an apparent attempt to gradually shift the tax revenue to Martin County rather than have it happen all in one year.
- b. **Proposed Change:** In calculating the tax payment, the law would be amended to disregard school taxes.