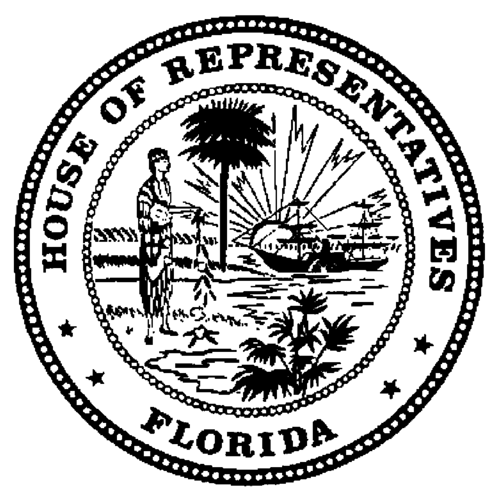

Government Efficiency & Accountability Council

Wednesday, March 21, 2007
8:00 AM
Morris Hall (17 HOB)

Marco Rubio
Speaker

Andy Gardiner
Chair

HB 99

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 99 Charitable Public Solicitations
SPONSOR(S): Hooper
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Urban & Local Affairs	6 Y, 0 N	Ligas	Kearney
2) Government Efficiency & Accountability Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Generally state law prohibits activities that obstruct or create a hazard to the free and normal use of public roadways or pose a safety risk to pedestrians and motorists. Sections 316.2045 and 337.406 provide a few exceptions and require state or local permission for those limited uses. It is largely prohibited for non-profit organizations, registered under chapter 496, F.S., to solicit contributions on state maintained roadways. Local governments have the authority to issue permits for solicitation activities on non-state maintained roadways.

HB 99 provides an exemption for non-profit or charitable organizations qualified under s. 501(c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, F.S., and persons or organizations acting on their behalf, from needing a permit from the local government for activities on non-state maintained roadways, as long as they meet certain requirements. The organization, persons or organizations acting on their behalf must provide the local government with:

- The names and addresses of those participating in the solicitation activity;
- A safety plan for the participants;
- A detailed description of the location of the solicitation;
- Proof of a minimum $1 million commercial general liability insurance policy against bodily injury and property damage arising from the solicitation activity; and
- Proof that the organization is registered with the state Department of Agriculture and Consumer Services pursuant to chapter 496 or is exempt from registration.

The bill also requires that:

- Eligible organizations are limited to 10 cumulative days of solicitation activities a year;
- All solicitation must occur during daylight hours;
- Solicitation activities must not interfere with the safe and efficient movement of traffic or cause danger to the participants or the public;
- No person engaging in solicitation shall persist in soliciting a contribution once it has been denied, nor may they act in a demeaning or harassing manner, or use any sound or voice-amplifying device;
- No one under the age of 18 may participate in the solicitation activity; and
- Signage providing notice of the solicitation shall be posted at least 500 feet before the site of the solicitation.

HB 99 may have a minimal fiscal impact on local governments and no impact on state governments. The bill does not appear to raise any constitutional issues.

The bill takes effect July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:
Safeguard Individual Liberty: HB 99 increases the options of private charitable or nonprofit organizations to conduct their solicitation activities without additional government interference.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 316.2045, F.S., generally prohibits any person or persons from willfully obstructing the free, convenient, and normal use of any public street, highway, or road and provides for penalties. There is also an exemption for commercial vehicles used solely for the purpose of collecting solid waste or recyclable materials.

This section:

- Designates as a pedestrian violation, punishable by a $15 fine plus court costs, when a person willfully obstructs the free, convenient, and normal use of any public street, highway, or road by impeding, hindering, stifling, retarding, or restraining traffic by standing or approaching motor vehicles, or by endangering the safe movement of vehicles.
- Requires permits for the use of any portion of a state-maintained road or right-of-way only for the purposes and in the manner set out in s. 337.406, F.S. Any portion of a state transportation facility may be used for an art festival, parade, fair or other special event, if permitted by the local government entity.
- Provides that the solicitation for charitable purposes, without authorization from the department or through permitting, is defined as a second degree misdemeanor. Under section 337.406, F.S., a violation of this provision is punishable by a fine of up to $500 or a term of imprisonment not to exceed 60 days.
- Organizations qualified under s. 501 (c)(3) of the Internal Revenue Code and registered pursuant to chapter 496, or persons or organizations acting on their behalf, are exempt from needing a state permit for activities on non-state maintained streets. Chapter 496 requires that non-profit organizations register with the Department of Agriculture and Consumer Services, provide various background and financial information, and pay a registration fee ranging from $10 to $400 depending on the contributions received in the last fiscal year.
- Local governments may require permits for the use of any street, road or right-of-way not maintained by that state.

Effect of Proposed Changes

HB 99 preempts local governments from requiring permits for the solicitation of charitable contributions on roadways by organizations that are qualified under 501(c)(3) of the Internal Revenue Code and registered under chapter 496, F.S., as long at the persons acting on behalf of these organizations meet specific conditions.

The organization, or the person or organization acting on behalf of the organization, must provide all of the following to the local government:

- The name and address of the person or organization that will perform the solicitation and the name and address of the organization that will receive funds from the solicitation, no fewer than 14 calendar days prior to the proposed solicitation.
- A plan for the safety of all persons participating in the event, as well as the motoring public, at the locations where the solicitation will take place.
- The specific details of the location or locations of the proposed solicitation and the hours during which the solicitation activities will occur.

- Proof of commercial general liability insurance against claims for bodily injury and property damage arising from the solicitor's activities must be filed with the local government no later than 72 hours before the date of solicitation. The insurance must have a limit of not less than $1 million per occurrence and the certificate of insurance must name the local government as an additional insured.
- Proof of registration with the Department of Agriculture and Consumer Services pursuant to s. 496.405 or proof that the soliciting organization is exempt from the registration requirement.

Additional requirements:

- Eligible charitable and non-profit organizations are limited to 10 cumulative days of solicitation activities a year.
- All solicitation must occur during daylight hours.
- Solicitation activities must not interfere with the safe and efficient movement of traffic and must not cause danger to the participants or the public.
- No person engaging in solicitation shall persist in soliciting a contribution once it has been denied, nor may they act in a demeaning or harassing manner, or use any sound or voice-amplifying device.
- No one under the age of 18 may participate in the solicitation activity.
- Signage providing notice of the solicitation shall be posted at least 500 feet before the site of the solicitation.

Local government may stop solicitation activities if any conditions or requirements are not met.

HB 99 takes effect on July 1, 2007.

C. SECTION DIRECTORY:

Section 1: Names the Act the "Iris Roberts Act."

Section2: Amends s. 316.2045, F.S., to exempt charitable organizations from local requirements for permitting if certain conditions are met.

Section 3: Specifies an effective date of July 1, 2007.

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:

   Indeterminate, but not likely above the significant fiscal impact threshold. Local governments could lose the revenue from charitable organizations that are required to pay a fee for permitting to solicit on non-state maintained roadways.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. HB 99 may increase the opportunities for various charitable and non-profit organizations that have never before participated in solicitation on roadways because of the permitting fees or a ban on the activity. This may result in more funding for these organizations that would benefit the local communities they serve.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities/counties to spend money or take action that requires expenditure of money, reduce authority of cities or counties to raise revenues in the aggregate, or reduce the percentage of state sales tax shared within cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

There is not a state agency that is affected by this bill and local governments are exempt from rulemaking requirements under chapter 120, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

On February 14, 2007, the Sponsor advised staff that no statement would be submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to charitable public solicitations;
3 providing a short title; amending s. 316.2045, F.S.;
4 exempting certain nonprofit organizations from permit
5 requirements related to obstructing streets or roads for
6 solicitation purposes; establishing conditions certain
7 nonprofit organizations must meet in order to solicit
8 charitable donations on certain streets, roads, and
9 rights-of-way; authorizing local governments to halt
10 solicitation activities if such conditions are not met;
11 providing an effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. This act may be cited as the "Iris Roberts
16 Act."
17 Section 2. Subsection (3) of section 316.2045, Florida
18 Statutes, is amended to read:
19 316.2045 Obstruction of public streets, highways, and
20 roads.--
21 (3) Permits for the use of any street, road, or right-of-
22 way not maintained by the state may be issued by the appropriate
23 local government. An organization that is qualified under s.
24 501(c)(3) of the Internal Revenue Code and registered under
25 chapter 496, or a person or organization acting on behalf of
26 that organization, is exempt from local requirements for a
27 permit issued under this subsection for charitable solicitation
28 activities on or along streets or roads that are not maintained

29 by the state under the following conditions:
30 (a) The organization, or the person or organization acting
31 on behalf of the organization, must provide all of the following
32 to the local government:
33 1. No fewer than 14 calendar days prior to the proposed
34 solicitation, the name and address of the person or organization
35 that will perform the solicitation and the name and address of
36 the organization that will receive funds from the solicitation.
37 2. For review and comment, a plan for the safety of all
38 persons participating in the solicitation, as well as the
39 motoring public, at the locations where the solicitation will
40 take place.
41 3. Specific details of the location or locations of the
42 proposed solicitation and the hours during which the
43 solicitation activities will occur.
44 4. Proof of commercial general liability insurance against
45 claims for bodily injury and property damage occurring on
46 streets, roads, or rights-of-way or arising from the solicitor's
47 activities or use of the streets, roads, or rights-of-way by the
48 solicitor or the solicitor's agents, contractors, or employees.
49 The insurance shall have a limit of not less than $1 million per
50 occurrence for the general aggregate. The certificate of
51 insurance shall name the local government as an additional
52 insured and shall be filed with the local government no later
53 than 72 hours before the date of the solicitation.
54 5. Proof of registration with the Department of
55 Agriculture and Consumer Services pursuant to s. 496.405 or
56 proof that the soliciting organization is exempt from the

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

57 registration requirement.
58 (b) Organizations or persons meeting the requirements of
59 subparagraphs (a)1.-5. may solicit for a period not to exceed 10
60 cumulative days within 1 calendar year.
61 (c) All solicitation shall occur during daylight hours
62 only.
63 (d) Solicitation activities shall not interfere with the
64 safe and efficient movement of traffic and shall not cause
65 danger to the participants or the public.
66 (e) No person engaging in solicitation activities shall
67 persist after solicitation has been denied, act in a demanding
68 or harassing manner, or use any sound or voice-amplifying
69 apparatus or device.
70 (f) All persons participating in the solicitation shall be
71 at least 18 years of age and shall possess picture
72 identification.
73 (g) Signage providing notice of the solicitation shall be
74 posted at least 500 feet before the site of the solicitation.
75 (h) The local government may stop solicitation activities
76 if any conditions or requirements of this subsection are not
77 met.
78 Section 3. This act shall take effect July 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 153 Ad Valorem Tax Data
SPONSOR(S): Seiler
TIED BILLS: **IDEN./SIM. BILLS:** SB 560

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Audit & Performance	6 Y, 0 N	Ferguson KF	De La Paz
2) Government Efficiency & Accountability Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

Currently, the Department of Revenue (DOR) is responsible for the research and tabulation of data and conditions existing as to ad valorem taxation. DOR must publish this data annually and make recommendations to the Legislature to ensure that property is valued according to its just value and is equitably taxed throughout the state.

HB 153 specifies that the data DOR is currently reporting must include:

- The annual percentage increase in total nonvoted ad valorem taxes levied by each city, county, and local taxing authority.
- Information on the distribution of ad valorem taxes levied among the various classifications of property.
- The previous year's adopted millage rate, the current year's millage rate, and the current percentage increase in taxes levied above the rolled-back rate.

HB 153 also requires this data to be published, at a minimum, on DOR's website and on the websites of all property appraisers if such technology is available since some property appraisers currently do not have website technology.

HB 153 has an effective date of July 1, 2007.

See fiscal comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government--HB 153 increases the Department of Revenue's responsibility to report specific data regarding ad valorem taxation that it is not currently required to report.

B. EFFECT OF PROPOSED CHANGES:

Current situation

Section 195.052, F.S., requires the Department of Revenue (DOR) to conduct constant research and maintain accurate tabulations of data and conditions existing as to ad valorem taxation and to annually publish the data and make recommendations to the Legislature as necessary to ensure that property is valued according to its just value and is equitably taxed throughout the state.

Currently, DOR receives annual tax roll information from all Florida property appraisers as part of its function of overseeing the valuation of property. There are records for approximately 9 million real property parcels reported to DOR. Included on each parcel record is coding describing the type of property, its value, and recent sales information. From this data, DOR is able to describe the types and value of property for each county as a whole.

In addition to the tax roll data, DOR also receives the following:

- As part of a summary information sheet, property appraisers submit to DOR a listing of all taxes being levied in their county, the millage rate levied, and the taxable value levied against. This data, however, contains no information on the composition of property within the taxing jurisdiction.
- DOR also oversees the Truth in Millage (TRIM) setting process for all taxing jurisdictions. In this role, DOR receives rolled back rates and adopted millages from each taxing jurisdiction. Again, there is no indication of the property types within these jurisdictions.

Proposed Change

HB 153 specifies that the data DOR is currently reporting must include:

- The annual percentage increase in total nonvoted ad valorem taxes levied by each city, county, and local taxing authority.
- Information on the distribution of ad valorem taxes levied among the various classifications of property, including homestead, nonhomestead residential, new construction, commercial, and industrial properties.
- The previous year's adopted millage rate, the current year's millage rate, and the current percentage increase in taxes levied above the rolled-back rate.

In order for DOR to describe the tax distribution by type of property for each taxing jurisdiction as required by HB 153, property appraisers would have to include in the data submitted to DOR an indication of each taxing jurisdiction in which each parcel is located. This would require reprogramming on the part of both DOR and the property appraisers.

HB 153 also requires this data to be published, at a minimum, on DOR's website and on the websites of all property appraisers if such technology is available since some property appraisers currently do not have website technology. The data currently required to be reported by DOR is published in the Florida Property Valuations and Tax Data Book.[1]

[1] http://dor.myflorida.com/dor/property/databk.html

C. SECTION DIRECTORY:

Section 1. Amends s. 195.052, F.S., to specify requirements for data to be published by the Department of Revenue.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

DOR estimates the fiscal impact of HB 153 will be $200,000 (non-recurring) assuming that there is no additional requirement for website development. There should be no additional fiscal impact if HB 153 did not require information on distributions of taxes by property type to extend below the county level to include this amount of required detail to the individual taxing authorities. In any event, DOR would publish the additional data in a form such as the current Data Book since this current information is currently published in this format.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Although HB 153 will require the slight expenditure of money since the bill requires all property appraisers to publish data on their website, the amendment adopted by the Audit and Performance Committee on March 7, 2007, will likely result in an insignificant impact since it requires only those property appraisers with website technology to post the data required by HB 153. If the fiscal impact is less than $1.9 million, the impact is insignificant, and the bill is exempt from the mandate provision.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

DOR has indicated the 60 day timeframe for publication is very short and that 120 day period would be easier to implement.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 7, 2007, HB 153 passed the Committee on Audit and Performance favorably with one amendment. The amendment requires all property appraisers to post the data required by HB 153 on their website if such technology exists since some property appraisers do not have website technology.

1 A bill to be entitled
2 An act relating to ad valorem tax data; amending s.
3 195.052, F.S.; specifying requirements for data to be
4 published by the Department of Revenue; providing an
5 effective date.
6
7 Be It Enacted by the Legislature of the State of Florida:
8
9 Section 1. Section 195.052, Florida Statutes, is amended
10 to read:
11 195.052 Research and tabulation of data.--The department
12 shall conduct constant research and maintain accurate
13 tabulations of data and conditions existing as to ad valorem
14 taxation, shall annually publish such data as may be appropriate
15 to facilitate fiscal policymaking, and shall annually make such
16 recommendations to the Legislature as are necessary to ensure
17 that property is valued according to its just value and is
18 equitably taxed throughout the state. <u>Such data shall include</u>
19 <u>the annual percentage increase in total nonvoted ad valorem</u>
20 <u>taxes levied by each city, county, and local taxing authority</u>
21 <u>and shall include information on the distribution of ad valorem</u>
22 <u>taxes levied among the various classifications of property,</u>
23 <u>including homestead, nonhomestead residential, new construction,</u>
24 <u>commercial, and industrial properties. Such data shall include</u>
25 <u>the previous year's adopted millage rate, the current year's</u>
26 <u>millage rate, and the current percentage increase in taxes</u>
27 <u>levied above the rolled-back rate. Such data shall be published,</u>
28 <u>at a minimum, on the department's website and on the websites of</u>

29 all property appraisers of this state. Publication shall occur
30 not later than 60 days after receipt of extended rolls for all
31 counties pursuant to s. 193.122(7).
32 Section 2. This act shall take effect July 1, 2007.

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

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0153**

COUNCIL/COMMITTEE ACTION

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

THIS AMENDMENT IS TRAVELING WITH THE BILL. NO ACTION REQUIRED

1 Council/Committee hearing bill: Government Efficiency &
2 Accountability Council
3 Committee on Audit & Performance offered the following:
4
5 **Amendment**
6 Remove line 29 and insert:
7 all property appraisers of this state, if available. Publication
8 shall occur

HB 209

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on State Affairs	6 Y, 0 N	Ligas	Williamson
2) Government Efficiency & Accountability Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

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

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

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

B. EFFECT OF PROPOSED CHANGES:

Present Situation: Indian Gaming Regulatory Act

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

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

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

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

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

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

Present Situation: Slot Machines

Chapter 551, F.S., is the result of the passage of Amendment 4 to the State Constitution[9] (codified at s. 23, Art. X, Florida Constitution), which authorized slot machines at existing pari-mutuel facilities in

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

Miami-Dade and Broward Counties upon an affirmative vote of the electors in those counties. Both Miami-Dade and Broward Counties held referenda elections on March 8, 2005.

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

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

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

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

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

Present Situation: Compacts

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

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

The U.S. Supreme Court held in part in *Seminole Tribe v. State of Florida* that the Eleventh Amendment prohibits an Indian tribe from suing a state in Federal court for an alleged failure of the

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

state to negotiate a compact in good faith.[21] The Department of Interior subsequently responded to the *Seminole* decision by publishing a regulation[22] to address this issue. [23] The U.S. Supreme Court also noted in its decision that the duty imposed by the IGRA to negotiate in good faith "is not likely to be performed by an individual state executive officer or even a group of officers."[24]

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

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

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

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

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[21] 517 U.S. 44 (1996).

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

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

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

[25] 25 CFR 291.3.

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

[27] *Id.*

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

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

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

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

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

Effect of Proposed Changes

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

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

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

C. SECTION DIRECTORY:

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

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

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

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

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

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

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

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.

A bill to be entitled

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

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

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

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

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

29 compact to the Secretary of State pending receipt of an act
30 ratifying the tribal-state compact under the provisions of this
31 section.
32 (4) Upon receipt of an act ratifying the tribal-state
33 compact, the Secretary of State shall forward a copy of the
34 executed tribal-state compact and the ratifying act to the
35 United States Secretary of the Interior for his or her review
36 and approval, in accordance with 25 U.S.C. s. 2710(8)(d).
37 Section 2. This act shall take effect upon becoming a law.

HB 389

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on State Affairs	6 Y, 0 N	Ligas	Williamson
2) Government Efficiency & Accountability Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

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

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

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

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

This bill will take effect on January 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

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

B. EFFECT OF PROPOSED CHANGES:

Present Situation

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

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

The information in the TRIM notice is in columnar form:

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

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

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

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[1] "Non-ad valorem assessment roll" means a roll prepared by a local government and certified to the tax collector for collection. Fla. Stat. §197.102 (2006).
[2] Section 195.022, F.S.
[3] "Rolled-back rate" is a millage rate which, exclusive of new construction, additions to structures, deletions, increase in the value of improvements that have undergone substantial rehabilitation which increased the assessed value by at least 100 percent, and property

Effect of Proposed Changes

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

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

The changes would result in the following format:

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

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

C. SECTION DIRECTORY:

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

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

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

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

D. STATEMENT OF THE SPONSOR

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

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 14, 2007 the Committee on State Affairs adopted a technical amendment to correct a bill drafting error discussed in the analysis. The committee reported the bill favorably with amendment.

1 A bill to be entitled
2 An act relating to proposed property tax notices; amending
3 s. 200.069, F.S.; revising the form of the notice of
4 proposed property taxes to include certain millage rates;
5 amending s. 200.065, F.S.; conforming a cross-reference;
6 providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Subsections (2), (4), and (6) of section
11 200.069, Florida Statutes, are amended to read:
12 200.069 Notice of proposed property taxes and non-ad
13 valorem assessments.--Pursuant to s. 200.065(2)(b), the property
14 appraiser, in the name of the taxing authorities and local
15 governing boards levying non-ad valorem assessments within his
16 or her jurisdiction and at the expense of the county, shall
17 prepare and deliver by first-class mail to each taxpayer to be
18 listed on the current year's assessment roll a notice of
19 proposed property taxes, which notice shall contain the elements
20 and use the format provided in the following form.
21 Notwithstanding the provisions of s. 195.022, no county officer
22 shall use a form other than that provided herein. The Department
23 of Revenue may adjust the spacing and placement on the form of
24 the elements listed in this section as it considers necessary
25 based on changes in conditions necessitated by various taxing
26 authorities. If the elements are in the order listed, the
27 placement of the listed columns may be varied at the discretion
28 and expense of the property appraiser, and the property

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

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

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

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

57 district levies shall be "By Local Board." Both school levy
58 entries shall be indented and preceded by the notation "Public
59 Schools:". For each voted levy for debt service, the entry shall
60 be "Voter Approved Debt Payments."
61 (b) In the second column, the gross amount of ad valorem
62 taxes levied against the parcel in the previous year. If the
63 parcel did not exist in the previous year, the second column
64 shall be blank.
65 (c) In the third column, the millage rate for ad valorem
66 taxes levied against the parcel in the previous year. If the
67 parcel did not exist in the previous year, the second column
68 shall be blank.
69 (d) ~~(c)~~ In the fourth ~~third~~ column, the gross amount of ad
70 valorem taxes proposed to be levied in the current year, which
71 amount shall be based on the proposed millage rates provided to
72 the property appraiser pursuant to s. 200.065(2)(b) or, in the
73 case of voted levies for debt service, the millage rate
74 previously authorized by referendum, and the taxable value of
75 the parcel as shown on the current year's assessment roll.
76 (e) In the fifth column, the proposed millage rate for ad
77 valorem taxes to be levied against the parcel in the current
78 year as provided in paragraph (d).
79 (f) ~~(d)~~ In the sixth ~~fourth~~ column, the date, the time, and
80 a brief description of the location of the public hearing
81 required pursuant to s. 200.065(2)(c).
82 (g) ~~(e)~~ In the seventh ~~fifth~~ column, the gross amount of ad
83 valorem taxes which would apply to the parcel in the current
84 year if each taxing authority were to levy the rolled-back rate

85 computed pursuant to s. 200.065(1) or, in the case of voted
86 levies for debt service, the amount previously authorized by
87 referendum.
88 (h) In the eighth column, the millage rate for ad valorem
89 taxes to be levied against the parcel if no budget change is
90 made.
91 (i) ~~(f)~~ For special assessments collected utilizing the ad
92 valorem method pursuant to s. 197.363, the previous year's
93 assessment amount shall be added to the ad valorem taxes shown
94 in the second and seventh ~~fifth~~ columns, and the amount proposed
95 to be imposed for the current year shall be added to the ad
96 valorem taxes shown in the fourth ~~third~~ column.
97 (6) Following the entries for each taxing authority, a
98 final entry shall show: in the first column, the words "Total
99 Property Taxes:" and in the second, fourth ~~third~~, and seventh
100 ~~fifth~~ columns, the sum of the entries for each of the individual
101 taxing authorities. The second, fourth ~~third~~, and seventh ~~fifth~~
102 columns shall, immediately below said entries, be labeled Column
103 1, Column 2, and Column 3, respectively. Below these labels
104 shall appear, in boldfaced type, the statement: SEE REVERSE SIDE
105 FOR EXPLANATION.
106 Section 2. Subsection (10) of section 200.065, Florida
107 Statutes, is amended to read:
108 200.065 Method of fixing millage.--
109 (10) Notwithstanding the provisions of paragraph (2)(b)
110 and s. 200.069(4)(d) ~~(c)~~ to the contrary, the proposed millage
111 rates provided to the property appraiser by the taxing
112 authority, except for millage rates adopted by referendum, for

113 rates authorized by s. 1011.71, and for rates required by law to
114 be in a specified millage amount, shall be adjusted in the event
115 that a review notice is issued pursuant to s. 193.1142(4) and
116 the taxable value on the approved roll is at variance with the
117 taxable value certified pursuant to subsection (1). The
118 adjustment shall be made by the property appraiser, who shall
119 notify the taxing authorities affected by the adjustment within
120 5 days of the date the roll is approved pursuant to s.
121 193.1142(4). The adjustment shall be such as to provide for no
122 change in the dollar amount of taxes levied from that initially
123 proposed by the taxing authority.
124 Section 3. This act shall take effect January 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **0389**

COUNCIL/COMMITTEE ACTION

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

THIS AMENDMENT IS TRAVELING WITH THE BILL. NO ACTION REQUIRED

1 Council/Committee hearing bill: Government Efficiency &
2 Accountability Council
3 Committee on State Affairs offered the following:
4
5 **Amendment**
6 Remove line 67 and insert:
7 parcel did not exist in the previous year, the third column

HB 435

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 435 Child Custody
SPONSOR(S): Harrell and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Military & Veterans' Affairs	6 Y, 0 N	Camechis	Camechis
2) Government Efficiency & Accountability Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill creates a new section of law to govern modifications of child custody orders while a parent is deployed on active military service.

Currently, child custody orders may be modified by the courts only if the party seeking modification shows (1) that the circumstances have substantially and materially changed since the original custody determination and (2) that the child's best interests justify changing custody. Further, the substantial change must be one that was not reasonably contemplated at the time of the original judgment. In a child custody modification proceeding, there is a presumption in favor of the custodial parent and the non-custodial parent seeking modification bears an extraordinary burden. Paramount in modification of custody is the best interest of the child, rather than the best interest of any particular parent or relative.

The new section created by this bill provides that if a supplemental petition to modify or a motion for change of child custody and parental responsibility is filed during the time a parent is activated to military service, deployed, or temporarily assigned as part of the parent's military service, and the parent's ability to continue as the primary caretaker of a minor child is materially effected, the court may not issue an order or modify or amend a previous judgment or order that changes custody as it existed on the date the parent was activated to military service, deployed, or temporarily assigned as part of the parent's military service, except that a court may enter a temporary order to modify or amend custody if there is clear and convincing evidence that the temporary modification or amendment is in the best interests of the child. Under current Florida case law, "clear and convincing" evidence is an intermediate standard that requires the evidence to be credible, clear, and lacking in confusion such that the trier of fact is convinced of the matter's truthfulness without hesitancy. In other words, the quantum of proof necessary must be more than a "preponderance of the evidence" but the proof need not be "beyond and to the exclusion of a reasonable doubt".

The new section further provides that when entering a temporary order, the court must consider and provide for, if feasible, contact between the military service member and his or her child including, but not limited to, electronic communication by webcam, telephone, or other available means. The court must also permit liberal time-sharing during periods of leave from military service as it is in the child's best interests to maintain the parent-child bond during the parent's military service. If a temporary order is issued, the court must reinstate the custody judgment or order previously in effect upon the parent's return from active military service, deployment, or temporary assignment.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provides for limited government: This bill prohibits modification of a child custody order while a parent is activated to military service unless there is clear and convincing evidence that modification is in the best interest of the child, and provides further limitation on the courts' ability to modify custody orders related to military personnel.

B. EFFECT OF PROPOSED CHANGES:

CURRENT LAW

I. Current Law Regarding the Custody of Minor Children

a. Rights of Parents

The "parent and child relationship" is the legal relationship existing between a child and his or her natural or adoptive parents, and includes the mother and child relationship and the father and child relationship. The word "father" does not ordinarily apply in a legal sense to a stepfather.[1]

Like the law of other domestic relations, state law rather than federal law governs the law of parent and child.[2] Custody embraces the sum of parental rights with respect to the rearing of a child, including its care. Parents have a natural and a legal right to the custody of their children, but this right is subject to the power of the state and may be restricted by appropriate legislative or judicial action.[3]

The Florida courts have consistently ruled that a parent's desire and right to the companionship, care, custody, and management of his or her children is an important interest that warrants deference and, absent a powerful countervailing interest, protection. A child's welfare is presumed to be best served by the care and custody of the natural parent except in cases of clear, convincing, and compelling reasons to the contrary. Although the right to the integrity of the family is among the most fundamental rights, the parent's rights are subject to overriding concern for the ultimate welfare or best interest of the child.[4] Conditions that might justify relieving a parent temporarily of the custody of a child would not necessarily support absolute and permanent transfer of the child to a stranger or even other near-kin.[5]

b. Determining Custody of Children

The trial court determines the initial custody of children in dissolution of marriage proceedings pursuant to the guidelines in s. 61.13, F.S., which requires all matters related to the custody of a minor child to be determined in accordance with the best interest of the child.[6] In determining the best interest of a child, the court must consider all factors affecting the welfare and interests of the child.[7] The prime and controlling consideration in awarding custody is the best interest and welfare of the child, not the rights of the parents.

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[1] 25 Fla. Jur 2d, Family Law, s. 87; 59 Am. Jur. 2d, Parent and Child, s. 2.
[2] 25 Fla. Jur 2d, Family Law, s. 87.
[3] 25 Fla. Jur 2d, Family Law, s. 91.
[4] 25 Fla. Jur 2d, Family Law, s. 94.
[5] 25 Fla. Jur 2d, Family Law, s. 94.
[6] s. 61.13(2)(b)(1), F.S.
[7] s. 61.13(3), F.S.

The Legislature has declared "[i]t is the public policy of this state to assure that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. After considering all relevant facts, the father of the child shall be given the same consideration as the mother in determining the primary residence of a child irrespective of the age or sex of the child."[8] The statutes require parental responsibility for a minor child to be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child.[9] The inherent rights of parents to enjoy the society and association of their children, with reasonable opportunity to impress upon them a parent's love and affection in their upbringing, must be regarded as an important consideration in determining custody.[10]

c. Modification of Custody Award

Section 61.13(2)(c), F.S., grants continuing authority to the courts to modify a previous custody order, including orders pertaining to the children of military personnel. The statutes do not, however, specify the circumstances that justify modification of custody orders or provide specific standards for review. Therefore, modifications are governed by tests developed by the courts in case law. Under the current case law, "[a] trial court's authority and discretion in a modification proceeding are more restricted than at the time of the initial custody determination," and the party seeking modification has an "extraordinary burden" to show that there has been a substantial change in circumstances and that modification is in the child's best interest.[11]

In 2005, the Florida Supreme Court articulated the following two-part "substantial change test" that applies in all modification proceedings: A final divorce decree providing for the custody of a child may be materially modified only if (1) there are facts concerning the welfare of the child that the court did not at the time the original decree was entered and (2) there has been a change in circumstances shown to have arisen since the original decree was issued.[12]

The court concluded that the party seeking modification is not required to prove that the changed circumstances are a "detriment" to the child; rather, the party must show that a change of custody would promote the child's best interest.[13] The best interest of the child, rather than the best interest of a parent or relative, is paramount in modification of custody.[14]

Therefore, in seeking modification of custody, the party seeking modification must show both that the circumstances have substantially and materially changed since the original custody determination and that the child's best interest justify changing custody.[15] Further, the substantial change must be one that was not reasonably contemplated at the time of the original determination.[16] In a modification proceeding, there is a presumption in favor of the custodial parent, and the non-custodial parent seeking modification bears an extraordinary burden.[17]

d. Rights as Between Parent and Third Person

In a custody dispute between a parent and a third person, the rights of the parent are paramount unless there is a showing the parent is unfit, or that the parent's custody will be detrimental to the child's

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[8] s. 61.13(2)(b)(1), F.S.
[9] s. 61.13(2)(b)(2), F.S.
[10] 25A Fla. Jur 2d, Family Law, s. 797.
[11] Wade v. Hirschman, 903 So.2d 928 (Fla. 2005).
[12] Id.
[13] Id at 934.
[14] Bazan v. Gambone, 902 So.2d 174 (Fla. 3rd DCA 2005).
[15] Cooper v. Gress, 854 So.2d 262 (Fla. 1st DCA 2003).
[16] Id.
[17] McKinnon v. Staats, 899 So.2d 357 (Fla. 1st DCA 2005).

welfare. The foregoing rule giving preference to the parents holds true even though the third parties are able and willing to provide greater love and affection or better financial and social prospects.[18]

The rule that in a custody dispute between a parent and a third person, the rights of the parent are paramount unless there is a showing the parent is unfit, or that the parent's custody will be detrimental to the child's welfare, has been applied where the custody contest is between the parent(s) and either the grandparent(s), stepparent, uncle and aunt, or adult sister of the child.[19] Awarding sole parental custody to a stepparent to the exclusion of the natural parent is unusual, if not drastic relief, and a judgment that makes that ruling should contain findings to support this extreme action.[20]

II. Clear and Convincing Evidence Standard of Proof

Under current Florida case law, "clear and convincing" evidence is an intermediate standard which requires the evidence be credible, clear, and lacking in confusion such that the trier of fact is convinced of the matter's truthfulness without hesitancy.[21] "[C]lear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established."[22]

In other words, the quantum of proof necessary must be more than a "preponderance of the evidence," but the proof need not be "beyond and to the exclusion of a reasonable doubt."[23]

III. Servicemembers' Civil Relief Act

The Servicemembers' Civil Relief Act[24] ("Act") protects the civil rights of persons in the military service of the United States by providing for a suspension of civil proceedings against such persons in state and federal court. The Act supersedes state law and is binding on state courts even if state law does not contain a similar provision.[25]

The Act vests discretion in trial courts to grant or deny a stay of the proceedings, depending upon whether the service member's ability to prosecute or defend the action is "materially affected" by reason of military service. In determining whether a service member will be prejudiced by denial of a stay, the courts have considered and weighed the nature of the case, the issues involved, the extent to which the service member's rights may be "materially affected" by absence, availability at trial, and the diligence with which the service member takes advantage of the opportunities to preserve rights that might have been afforded during the course of the litigation.[26] The burden is on the party who opposes postponement of a trial to show that the service member's ability to conduct a defense is not materially affected.[27]

Postponement is mandatory unless the trial court expressly finds that the service member is not prejudiced by his or her absence, and the court's findings are supported by the record.[28]

[18] 25 Fla. Jur 2d, Family Law, s. 95
[19] 25 Fla. Jur 2d, Family Law, s. 96
[20] Plantilla v. Plantilla, 777 So.2d 978 (Fla. 2nd DCA 2000).
[21] W.R. v. Department of Children and Family Services, 896 So.2d 911 (Fla. 4th DCA 2005), citing In re Davey, 645 So.2d 398, 404 (Fla.1994).
[22] Slomowitz v. Walker, 429 So.2d 797, 800 (Fla. 4th DCA 1983).
[23] In re Davey, 645 So.2d 398, 404 (Fla.1994).
[24] Servicemembers Civil Relief Act, Title 50, Appendix 39 U.S.C. ss. 501 et seq.
[25] 36 Fla. Jur 2d, Military Affairs, s. 11
[26] King-Coleman v. Geathers, 795 So.2d 1092 (Fla. 4h DCA 2001) quoting Robbins v. Robbins, 193 So.2d 471, 473 (Fla. 2d DCA 1967) (italics and footnotes omitted). See Cadieux v. Cadieux, 75 So.2d 700 (Fla.1954); Boone v. Lightner, 319 U.S. 561, 63 S.Ct. 1223, 87 L.Ed. 1587 (1943).
[27] Coburn v. Coburn, 412 So. 2d 947 (Fla. 3rd DCA 1982).
[28] Id.

EFFECT OF PROPOSED CHANGES

This bill creates s. 61.13002, F.S., which provides that when a supplemental petition to modify or a motion for change of child custody and parental responsibility is filed during the time a parent is activated to military service, deployed, or temporarily assigned as part of the parent's military service, and the parent's ability to continue as the primary caretaker of a minor child is materially effected, the court may not issue an order or modify or amend a previous judgment or order that changes custody as it existed on the date the parent was activated to military service, deployed, or temporarily assigned as part of the parent's military service, except that a court may enter a temporary order to modify or amend custody if there is clear and convincing evidence that the temporary modification or amendment is in the best interests of the child. Under current Florida case law, "clear and convincing" evidence is an intermediate standard that requires the evidence to be credible, clear, and lacking in confusion such that the trier of fact is convinced of the matter's truthfulness without hesitancy. In other words, the quantum of proof necessary must be more than a "preponderance of the evidence" but the proof need not be "beyond and to the exclusion of a reasonable doubt".

The new section further provides that when entering a temporary order, the court must consider and provide for, if feasible, contact between the military service member and his or her child including, but not limited to, electronic communication by webcam, telephone, or other available means. The court must also permit liberal time-sharing during periods of leave from military service as it is in the child's best interests to maintain the parent-child bond during the parent's military service. If a temporary order is issued, the court must reinstate the custody judgment or order previously in effect upon the parent's return from active military service, deployment, or temporary assignment.

The new section specifies that s. 61.13001, F.S., governs permanent change of station moves by military personnel.

The extent to which this bill alters or supersedes the current tests applied by the Florida courts in modification proceedings is unclear. (Please see previous discussion of modification proceedings.)

C. SECTION DIRECTORY:

Section 1. Creates s. 61.13002, F.S., related to temporary modification of child custody when custodial parent is called to military duty.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

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 affect municipal or county government.

2. Other: None.

B. RULE-MAKING AUTHORITY: This bill does not affect any agency required to adopt rules under ch. 120., F.S., the Florida Administrative Procedure Act.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

D. STATEMENT OF THE SPONSOR: The sponsor did not submit a statement.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 14, 2007, Representative Harrell offered a strike-all amendment in the Committee on Military & Veterans' Affairs to revise the bill in accordance with revisions provided by the Family Law Section of The Florida Bar. The amendment: moved the new section of law created by the bill into ch. 61, F.S., the chapter that generally governs family law issues; clarified the circumstances under which the prohibition applies; requires a court that enters a temporary order to provide for communication between the deployed parent and child; requires a court to provide liberal visitation during the military parent's periods of leave; and clarifies that the new section does not apply to permanent change of stations of military personnel, which are governed by another section of law. The committee adopted the amendment without objection.

1 A bill to be entitled
2 An act relating to rights of military personnel; amending
3 ss. 61.076, 63.032, 250.01, 250.82, 250.83, and
4 250.84,F.S.; conforming provisions to the redesignation of
5 the Soldiers' and Sailors' Civil Relief Act as the
6 Servicemembers Civil Relief Act; amending s. 250.80, F.S.,
7 conforming provisions to the creation of s. 250.85, F.S.;
8 creating s. 250.85, F.S.; prohibiting modification of
9 child custody of a parent activated to military service;
10 providing exceptions; providing for effect on specified
11 proceedings of a parent's failure to comply with certain
12 orders due to activation to military service and
13 deployment out of state; providing an effective date.
14
15 Be It Enacted by the Legislature of the State of Florida:
16
17 Section 1. Paragraph (b) of subsection (2) of section
18 61.076, Florida Statutes, is amended to read:
19 61.076 Distribution of retirement plans upon dissolution
20 of marriage.--
21 (2) If the parties were married for at least 10 years,
22 during which at least one of the parties who was a member of the
23 federal uniformed services performed at least 10 years of
24 creditable service, and if the division of marital property
25 includes a division of uniformed services retired or retainer
26 pay, the final judgment shall include the following:
27 (b) Certification that the Servicemembers ~~Soldiers' and~~
28 ~~Sailors'~~ Civil Relief Act, Title 50, Appendix U.S.C. ss. 501 et

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

29 seq. ~~of 1940~~ was observed if the decree was issued while the
30 member was on active duty and was not represented in court;
31 Section 2. Subsection (17) of section 63.032, Florida
32 Statutes, is amended to read:
33 63.032 Definitions.--As used in this chapter, the term:
34 (17) "Primarily lives and works outside Florida" means a
35 person who lives and works outside this state at least 6 months
36 of the year, military personnel who designate Florida as their
37 place of residence in accordance with the Servicemembers
38 ~~Soldiers' and Sailors'~~ Civil Relief Act, Title 50, Appendix
39 U.S.C. ss. 501 et seq. ~~of 1940~~, or employees of the United
40 States Department of State living in a foreign country who
41 designate a state other than Florida as their place of
42 residence.
43 Section 3. Subsection (20) of section 250.01, Florida
44 Statutes, is amended to read:
45 250.01 Definitions.--As used in this chapter, the term:
46 (20) "SCRA" ~~"SSCRA"~~ means the Servicemembers ~~Soldiers' and~~
47 ~~Sailors'~~ Civil Relief Act, Title 50, Appendix U.S.C. ss. 501 et
48 seq.
49 Section 4. Section 250.80, Florida Statutes, is amended to
50 read:
51 250.80 Short title ~~Popular name~~.--This part ~~Sections~~
52 ~~250.80-250.84~~ may be cited as ~~known by the popular name~~ the
53 "Florida Uniformed Servicemembers Protection Act."
54 Section 5. Subsection (1) of section 250.82, Florida
55 Statutes, is amended to read:
56 250.82 Applicability of federal law.--

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

57 (1) Florida law provides certain protections to members of
58 the United States Armed Forces, the United States Reserve
59 Forces, and the Florida National Guard in various legal
60 proceedings and contractual relationships. In addition to these
61 state provisions, federal law also contains protections, such as
62 those provided in the Servicemembers ~~Soldiers' and Sailors'~~
63 Civil Relief Act (SCRA) ~~(SSCRA)~~, Title 50, Appendix U.S.C. ss.
64 501 et seq., and the Uniformed Services Employment and
65 Reemployment Rights Act (USERRA), Title 38 United States Code,
66 chapter 43, that are applicable to members in every state even
67 though such provisions are not specifically identified under
68 state law.
69 Section 6. Section 250.83, Florida Statutes, is amended to
70 read:
71 250.83 Construction of part.--In the event that any other
72 provision of law conflicts with SCRA ~~SSCRA~~, USERRA, or the
73 provisions of this chapter, the provisions of SCRA ~~SSCRA~~,
74 USERRA, or the provisions of this chapter, whichever is
75 applicable, shall control. Nothing in this part shall construe
76 rights or responsibilities not provided under the SCRA ~~SSCRA~~,
77 USERRA, or this chapter.
78 Section 7. Paragraph (b) of subsection (3) of section
79 250.84, Florida Statutes, is amended to read:
80 250.84 Florida Uniformed Servicemembers Protection Act;
81 rights of servicemembers; incorporation by reference.--
82 (3) Such documents containing the rights and
83 responsibilities of servicemembers set forth in this act shall

84 include an enumeration of all rights and responsibilities under
85 state and federal law, including, but not limited to:
86 (b) The rights and responsibilities provided by the
87 Servicemembers ~~Soldiers' and Sailors'~~ Civil Relief Act.
88 Section 8. Section 250.85, Florida Statutes, is created to
89 read:
90 250.85 Child custody modification.--
91 (1) If a motion for change of child custody is filed
92 during the time a parent is activated to military service, the
93 court shall not issue an order or modify or amend a previous
94 judgment or order that changes a child's placement that existed
95 on the date the parent was activated to military service, except
96 that a court may enter a temporary order to modify or amend such
97 custody if there is clear and convincing evidence that the
98 modification or amendment is in the best interest of the child.
99 If such a temporary order is issued, the court shall reinstate
100 the custody order in effect immediately preceding that period of
101 active military service upon the parent's return from active
102 military service.
103 (2) A parent's absence, relocation, or failure to comply
104 with custody and visitation orders shall not, by itself, be
105 sufficient to justify a modification of a custody or visitation
106 order if the reason for the absence, relocation, or failure to
107 comply is the parent's activation to military service and
108 deployment out of state.
109 Section 9. This act shall take effect July 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 435**

COUNCIL/COMMITTEE ACTION

ADOPTED (Y/N)

ADOPTED AS AMENDED __ (Y/N)

ADOPTED W/O OBJECTION X (Y/N)

FAILED TO ADOPT __ (Y/N)

WITHDRAWN __ (Y/N)

OTHER ____

THIS AMENDMENT IS TRAVELING WITH THE BILL. NO ACTION REQUIRED

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1 Council/Committee hearing bill: Government Efficiency &
2 Accountability Council
3 Military & Veterans' Affairs offered the following:
4
5 **Amendment (with title amendment)**
6 Strike everything after the enacting clause and insert:
7 Section 1. Section 61.13002, Florida Statutes, is created
8 to read:
9 61.13002 Temporary modification of child custody when
10 custodial parent is called to military duty.--
11 (1) If a supplemental petition to modify or a motion for
12 change of child custody and parental responsibility is filed
13 during the time a parent is activated to military service,
14 deployed, or temporarily assigned as part of the parent's
15 military service, and the parent's ability to continue as the
16 primary caretaker of a minor child is materially effected, the
17 court shall not issue an order or modify or amend a previous
18 judgment or order that changes custody as it existed on the date
19 the parent was activated to military service, deployed, or
20 temporarily assigned as part of the parent's military service,
21 except that a court may enter a temporary order to modify or

22 amend custody if there is clear and convincing evidence that the
23 temporary modification or amendment is in the best interests of
24 the child. When entering a temporary order under this section,
25 the court shall consider and provide for, if feasible, contact
26 between the military service member and his or her child
27 including, but not limited to, electronic communication by
28 webcam, telephone, or other available means. The court shall
29 also permit liberal time-sharing during periods of leave from
30 military service as it is in the child's best interests to
31 maintain the parent-child bond during the parent's military
32 service.
33 (2) If a temporary order is issued under this section, the
34 court shall reinstate the custody judgment or order previously
35 in effect upon the parent's return from active military service,
36 deployment, or temporary assignment.
37 (3) This section shall not apply to permanent change of
38 station moves by military personnel, which shall be governed by
39 s. 61.13001.
40 Section 2. This act shall take effect July 1, 2007.
41
42 ================= T I T L E A M E N D M E N T =================
43 Remove the entire title and insert:
44 A bill to be entitled
45 An act relating to child custody; creating s. 61.13002, F.S.;
46 prohibiting a court from modifying child custody during the time
47 a parent is activated to military service, deployed, or
48 temporarily assigned as part of the parent's military service;
49 providing a limited exception; requiring reinstatement upon
50 parent's return from military service; limiting application of
51 prohibition; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1119 Assistance for Dependents of Service Members on Active Duty
SPONSOR(S): Kreegel
TIED BILLS: **IDEN./SIM. BILLS:** SB 1448

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Military & Veterans' Affairs	6 Y, 0 N	Shaffer	Camechis
2) Government Efficiency & Accountability Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

Currently, s. 295.5206, F.S., establishes the Family Readiness Program within the Department of Military Affairs (DMA) and authorizes the DMA to provide need-based emergency financial assistance to beneficiaries and dependents of service members of the Florida National Guard and United States Reserve Forces, including the Coast Guard Reserves, while the service members are on active duty serving in the Global War on Terrorism and federally deployed or are participating in state operations for homeland defense. Financial assistance may be provided to family members to purchase critically needed services, including, but not limited to, reasonable living expenses, housing, vehicles, equipment or renovations necessary to meet disability needs, and health care. Service members who are unmarried and do not have dependents are not eligible for financial assistance under the program. Since the program's inception in 2005, the DMA has awarded approximately $517,000 to eligible family members under the Family Readiness Program.

While current law authorizes financial assistance to the family of a service member who is deployed on active duty or participating in state operations for homeland security, this bill authorizes financial assistance to beneficiaries and dependents of a service member for up to 120 days after the service member is released from active duty and returned to his or her home of record.

Currently, s. 295.5206(6), F.S., requires the inspector general of the DMA to conduct a monthly audit review of the program. This bill removes the requirement for a monthly audit review but requires the inspector general to conduct a semiannual review and an annual audit of the program.

This bill appears to have an insignificant fiscal impact on state government and no fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families – The bill provides need-based financial assistance to families of Florida National Guardsmen and Reservists for up to 120 days after the service members are released from active duty and return to their home of record. Assistance may be provided in emergency situations to purchase critically needed services, including, but not limited to, reasonable living expenses, housing, vehicles, equipment or renovations necessary to meet disability needs, and health care.

B. EFFECT OF PROPOSED CHANGES:

CURRENT SITUATION

Family Readiness Program Generally

In 2005, the Legislature established the Family Readiness Program ("program") within the Department of Military Affairs (DMA) and appropriated $5 million to fund the program.[1] The purpose of the program is to provide need-based financial assistance to beneficiaries and dependents of service members of the Florida National Guard (FNG) and United States Reserve Forces, including the Coast Guard Reserves, who are on active duty serving in the Global War on Terrorism and who are federally deployed or participating in state operations for homeland defense.[2] Currently, approximately 1,200 members of the Florida National Guard and reservists are deployed abroad in the Global War on Terrorism.

Pursuant to s. 250.5206, F.S., Florida residents designated as beneficiaries of an eligible service member on the United States Department of Defense (DOD) Form 93[3], or who are otherwise dependents of eligible service members, are eligible for financial assistance under the program.[4] Assistance may be provided in emergency situations to purchase critically needed services, including, but not limited to, reasonable living expenses, housing, vehicles, equipment or renovations necessary to meet disability needs, and health care.[5] Service members who are unmarried and do not have dependents are not eligible for financial assistance under the program.

Requests for assistance are reviewed and validated at the local level by a federal Family Center Support Specialist stationed at a state armory or a reserve facility. Recommendations from the Support Specialist are forwarded to the DMA's Program Director for review and validation of documents. The Adjutant General or a designee receives the recommendations and is authorized by statute grant requests for assistance.[6] Assistance may not be approved unless the applicant satisfies the statutory requirements.

Currently, the inspector general of DMA is required to conduct a monthly audit of the program and the DMA must maintain sufficient data to provide an annual report to the Governor and the Legislature on the families served under the program, the types of services provided, and the allocation of funds spent.[7]

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[1] Ch. 2005-51, L.O.F.
[2] s. 250.5206(1), F.S.
[3] Beneficiaries are listed on the form by the service member as a record of emergency data. Beneficiaries listed on form 93 include anyone the service member may designate, including persons who are not family members.
[4] s. 250.5206(4), F.S.
[5] s. 250.5206(3), F.S.
[6] s. 250.5206(5), F.S.
[7] s. 250.5206(6) & (7), F.S.

Florida National Guard Pamphlet 930-4 – Guidelines for Program Implementation

On July 1, 2006, the DMA issued Florida National Guard Pamphlet 930-4 (the "Pamphlet"), which establishes guidelines for implementing the Florida Family Readiness Program. According to the Pamphlet, the Adjutant General designated the Deputy Chief of Staff for Personnel to review recommendations regarding applications for assistance. The Deputy Chief of Staff for Personnel is authorized to determine approval of applications for assistance up to $5,000; the Chief of Staff of the FNG must review and approve applications for assistance that exceed $5,000.[8]

The Pamphlet requires the Office of the Staff Judge Advocate to review all applications for assistance prior to the payment of funds, and requires the FNG State Quartermaster to process applications for payment.[9]

The Pamphlet provides application forms for use by persons seeking assistance through the program. The application for assistance requires the following information[10]: contact information for the service member; applicant information; the military point of contact for verification; a listing of services needed and the service provider; and the amount of funds being requested. Applicants are also required to provide a financial affidavit listing assets and liabilities, proof of Florida residency, military orders, and proof of dependency on a service member.[11]

The Pamphlet also requires applicants who have been awarded funds to provide final invoices when work has been completed.[12]

Eligible Services as Defined in FNG Pamphlet 930-40

Section 250.5206(3), F.S., specifically authorizes the use of program funds "in emergency situations to purchase critically needed services, including, but not limited to, reasonable living expenses, housing, vehicles, equipment or renovations necessary to meet disability needs, and health care." The Pamphlet provides the following definitions of the categories of "eligible services" listed in statute[13]:

- Reasonable living expenses – where critically needed to prevent termination of utilities, to provide food, or furnish similar basic necessities.
- Housing – includes emergency repairs to the Servicemember's primary residence that are critically needed to address health or safety issues, and assistance with mortgage and rent expenses where need-based and determined to be appropriate after review by the Area Family Center Support Specialist.
- Vehicles – repairs essential to maintain one vehicle per family in sage operating condition.
- Disability – equipment or renovations necessary to meet disability needs [medical documentation required].
- Health care – documented by medical authority as essential for the health and welfare of the individual, not elective, and not covered by other medical/dental insurance.

Inspector General Review of the Family Readiness Program

From July 1, 2005 through June 30, 2006, the DMA's Inspector General reviewed application files on a monthly basis to determine whether transactions were conducted in accordance with policy and

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[8] FLNG Pamphlet 930-4, 1-3.
[9] FLNG Pamphlet 930-4, p.2.
[10] FLNG Pamphlet 930-4, Appendix 2.
[11] FLNG Pamphlet 930-4, Appendix 2.
[12] FLNG Pamphlet 930-4, p. 6.
[13] FLNG Pamphlet 930-4, p. 5.

procedures. At the end of the review period, the Inspector General issued a report that raised several points regarding implementation of the program:[14]

- The report noted that s. 295.5206, F.S., requires funds to be used for "need-based assistance"; however, the review found that 59 applicants did not provide adequate documentation regarding financial need. The report recommended that the DMA establish guidelines to request the necessary financial information from the applicant.

- The report also noted that 30 applicant files did not include receipts or invoices to determine that funds were used as intended. The report recommended that applicant files remain open after a disbursement of funds and that DMA personnel follow-up with applicants within an appropriate time frame to ensure that funds are spent as intended.

- In addition, the report noted that s. 250.5206(4), F.S., states that eligible recipients include Florida residents who are designated as beneficiaries on the United States Department of Defense Form 93 or who are otherwise dependents of eligible service members. A review of DoD Form 93 disclosed that any individual residing in Florida who is listed on DoD form 93 is eligible for financial assistance through the program. The report recommended revision of the statutes so that only family members who are dependents of the deployed service member are eligible for financial assistance.

EFFECT OF PROPOSED CHANGES

Currently, s. 295.5206, F.S., establishes the Family Readiness Program within the Department of Military Affairs (DMA) and authorizes the DMA to provide need-based emergency financial assistance to dependents of service members of the Florida National Guard and United States Reserve Forces, including the Coast Guard Reserves, *while the service members are on active duty* serving in the Global War on Terrorism and federally deployed or are participating in state operations for homeland defense. This bill allows the DMA to provide emergency financial assistance to those eligible dependents for up to 120 days after service members are released from active duty.

Pursuant to s. 250.5206(6), F.S., the inspector general of the department must conduct a monthly audit review of the program. This bill removes the requirement for a monthly audit review but requires a semiannual review and an annual audit.

C. SECTION DIRECTORY:

Section 1. Amends s. 250.5206, F.S., relating to Family Readiness Program.
Section 2. Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: This bill has an insignificant impact on state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

[14] Inspector General's Review of the Family Readiness Program, July 1, 2005 through June 30, 2006.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: Currently, s. 295.5206, F.S., establishes the Family Readiness Program within the Department of Military Affairs (DMA) and authorizes the DMA to provide need-based emergency financial assistance to dependents of service members of the Florida National Guard and United States Reserve Forces, including the Coast Guard Reserves, while the service members are on active duty serving in the Global War on Terrorism and federally deployed or are participating in state operations for homeland defense. This bill allows the DMA to provide emergency financial assistance to those eligible dependents for up to 120 days after service members are released from active duty.

D. FISCAL COMMENTS: This bill appears to have an insignificant impact on state government. The extension of the eligibility period for assistance may result in an increase in dispersal of funds; however, the funds are in amounts that do not rise to the level of significant impact on state government.

Chapter 2005-51, L.O.F., appropriated $5 million for FY2005-06 from the General Revenue Fund to the Department of Military Affairs for the Family Readiness Program to provide need-based assistance to family members eligible under s. 250.5206, F.S. From July 1, 2005 through June 30, 2006, $305,406 was disbursed to eligible members.[15]

Chapter 2006-25, Section 48, L.O.F., the General Appropriations Act for FY2006-07, reverted and appropriated to the program the unexpended balance of the non-recurring funds appropriated in ch. 2005-51, L.O.F. The re-appropriated balance was $4,564,585. From July 1, 2006 through March 6, 2007, $211,462 was disbursed to eligible members.[16]

For FY2007-08, the Governor recommended a reappropriation of $1 million for the Family Readiness Program. The remaining balance of approximately $3.35 million will revert back to General Revenue.[17]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: Not applicable. This bill does not appear to affect municipal or county government.

2. Other: None.

B. RULE-MAKING AUTHORITY: By letter dated February 13, 2007, staff of the Joint Administrative Procedures Committee (JAPC) asked the DMA to advise whether statements in the pamphlet meet the statutory definition of a rule and whether the statements are exempt from the rulemaking requirements in ch. 120, F.S., the Florida Administrative Procedure Act.[18] The JAPC letter explained that:

> The Department has promulgated a document entitled Florida National Guard Pamphlet 930-4, July 1, 2006, which implements s. 250.5206, Florida Statutes, the Family Readiness Program. Upon initial review, statements contained in this pamphlet appear to meet the definition of a rule pursuant to section 120.52(15), Florida Statutes. Each agency statement defined as a rule must be adopted by

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[15] 2005-2006 Appropriation Ledger, Detail Report by Fund Category, Legislative Appropriation System/Planning and Budgeting Subsystem (LAS/PBS), Special Category "Military Family Readiness Program."

[16] 2006-2007 Appropriation Ledger, Detail Report by Fund Category, Legislative Appropriation System/Planning and Budgeting Subsystem (LAS/PBS), Special Category "Military Family Readiness Program."

[17] Fiscal year 2007-2008 Governor's Recommended General Appropriations Act, page 330, Section 15.

[18] Letter to General Burnett regarding unadopted policy from Susan Stafford with the Joint Administrative Procedures Committee, dated February 13, 2007.

the rulemaking procedure set forth in section 120.54, Florida Statutes, unless expressly exempted. Although s. 120.80(11), Florida Statutes, exempts specific subject areas under the National Guard from rulemaking, the exemptions do not appear to include the subject covered by this pamphlet."[19]

On March 2, 2007, the DMA responded to the JAPC's inquiry, explaining that two considerations led the DMA to conclude that adoption of the Pamphlet by the DMA did not circumvent rulemaking requirements in the Florida Administrative Procedure Act.[20] First, the DMA asserts that administration of the program is exempt from rulemaking by s. 120.80(11), F.S., which provides a broad rulemaking exemption for the DMA. Secondly, the DMA asserts that the pamphlet established federal procedures for federal employees, not DMA procedures for state employees; therefore, the DMA concluded that rulemaking requirements were not triggered.

Staff of the JAPC is currently reviewing the DMA's response.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

D. STATEMENT OF THE SPONSOR: No statement was provided by the sponsor.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.

[19] Letter to General Burnett regarding unadopted policy from Susan Stafford with the Joint Administrative Procedures Committee; dated February 13, 2007.

[20] Letter to Susan Stafford with the Joint Administrative Procedures Committee with DMA response, dated March 2, 2007.

1 A bill to be entitled
2 An act relating to assistance for dependents of service
3 members on active duty; amending s. 250.5206, F.S.;
4 providing that eligibility for the Family Readiness
5 Program continues for a specified period following
6 termination of a service member's orders and his or her
7 return home; requiring the Inspector General of the
8 Department of Military Affairs to conduct semiannual
9 reviews and annual audits of the program;; providing an
10 effective date.
11
12 Be It Enacted by the Legislature of the State of Florida:
13
14 Section 1. Subsections (4) and (6) of section 250.5206,
15 Florida Statutes, are amended to read:
16 250.5206 Family Readiness Program.--The Department of
17 Military Affairs shall establish a state Family Readiness
18 Program headed by a program director and based on the United
19 States Department of Defense National Guard and Reserve Family
20 Readiness Strategic Plan 2004-2005 initiative.
21 (4) ELIGIBILITY.--Eligible recipients shall include
22 persons designated as beneficiaries on the United States
23 Department of Defense Form 93, or who are otherwise dependents
24 of eligible service members, and who are residents of the State
25 of Florida. The period of eligibility to request assistance from
26 the fund continues for 120 days following termination of the
27 service member's military orders for qualifying service and
28 return to his or her home of record.

29 (6) AUDITS.--The inspector general of the department shall
30 conduct a semiannual review and an annual ~~monthly~~ audit ~~review~~
31 of the program.
32 Section 2. This act shall take effect July 1, 2007.

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

hb1119-00

PCB GEAC 07-27

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GEAC 07-27 Retirement
SPONSOR(S): Government Efficiency & Accountability Council
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council		Belcher	Cooper
1)			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

Section 121.031, F.S., provides for an annual actuarial study of the Florida Retirement System and for a report of the results to the Legislature by December 31 each year. Thereafter, the Legislature establishes uniform contribution rates in law annually. Participating employers in the Florida Retirement System must make monthly contributions to fund the system.

The bill establishes the required employer payroll contribution rates for each membership class and subclass of the defined benefit plan of the Florida Retirement System retirement plan for the fiscal year beginning July 1, 2007.

The bill amends s.121.71, Florida Statutes.

The bill provides an effective date of July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Not applicable.

B. EFFECT OF PROPOSED CHANGES:

The bill amends s. 121.71, F.S., to set the employer payroll contribution rates for the defined benefit plan of the Florida Retirement System and continues in Fiscal Year 2007-08 the current rates in place for Fiscal Year 2006-07.

C. SECTION DIRECTORY:

Section 1. Amends s. 121.71, F.S., to set the employer payroll contribution rates for the defined benefit plan of the Florida Retirement System and continues in Fiscal Year 2007-08 the current rates in place for Fiscal Year 2006-2007.

FRS Actual and Proposed Contribution Rates For Fiscal Years 2007 and 2008

Retirement Class	PCB/GEAC07-27 FY 07-08 (%)	Normal Cost Rates FY 07-08 Based on 2006 Valuation	Actual Rate in Effect FY 06-07 (%)
Regular	8.69	9.55	8.69
Special Risk	19.76	21.92	19.76
Special Risk, Admin.	11.39	11.86	11.39
Elected State Officers	13.32	14.66	13.32
Elected, Judges	18.40	20.42	18.40
Elected, County Off.	15.37	17.03	15.37
Senior Management	11.96	12.95	11.96
DROP	9.80	10.89	9.80

Section 2. Provides that the bill takes effect July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

3. Other:

   Article X, Section 14, State Constitution, and Part VII of ch. 112, F.S., separately require all public sector pension plans to prefund all promised pension benefits in a sound actuarial manner to avoid the intergenerational transfer of unfunded risk.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to retirement; amending s. 121.71,F.S.;
3 revising the payroll contribution rates for the membership
4 classes of the Florida Retirement System for the state
5 fiscal years effective July 1, 2007, and July 1, 2008;
6 providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Section 121.71, Florida Statutes, is amended to
11 read:
12 121.71 Uniform rates; process; calculations; levy.--
13 (1) In conducting the system actuarial study required under
14 s. 121.031, the actuary shall follow all requirements specified
15 thereunder to determine, by Florida Retirement System employee
16 membership class, the dollar contribution amounts necessary for
17 the forthcoming fiscal year for the defined benefit program. In
18 addition, the actuary shall determine, by Florida Retirement
19 System membership class, based on an estimate for the forthcoming
20 fiscal year of the gross compensation of employees participating
21 in the optional retirement program, the dollar contribution
22 amounts necessary to make the allocations required under ss.
23 121.72 and 121.73. For each employee membership class and
24 subclass, the actuarial study shall establish a uniform rate
25 necessary to fund the benefit obligations under both Florida
26 Retirement System retirement plans, by dividing the sum of total
27 dollars required by the estimated gross compensation of members
28 in both plans.

(2) Based on the uniform rates set forth in subsection (3), employers shall make monthly contributions to the Division of Retirement, which shall initially deposit the funds into the Florida Retirement System Contributions Clearing Trust Fund. A change in a contribution rate is effective the first day of the month for which a full month's employer contribution may be made on or after the beginning date of the change.

(3) Required employer retirement contribution rates for each membership class and subclass of the Florida Retirement System for both retirement plans are as follows:

Membership Class	Percentage of Gross Compensation, Effective July 1, 2007~~2006~~	Percentage of Gross Compensation, Effective July 1, 2008~~2007~~
Regular Class	8.69%	9.55%
Special Risk Class	19.76%	21.92~~21.96~~%
Special Risk Administrative Support Class	11.39%	11.86~~12.65~~%

V

Elected Officers' Class - Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	13.32%	14.66~~14.80~~%
Elected Officers' Class - Justices, Judges	18.40%	20.42~~20.44~~%
Elected Officers' Class - County Elected Officers	15.37%	17.03~~17.08~~%
Senior Management Class	11.96%	12.95~~13.29~~%
DROP	9.80%	10.89%

(4) The state actuary shall recognize and use an appropriate level of available excess assets of the Florida Retirement System Trust Fund to offset the difference between the normal costs of the Florida Retirement System and the statutorily prescribed contribution rates.

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