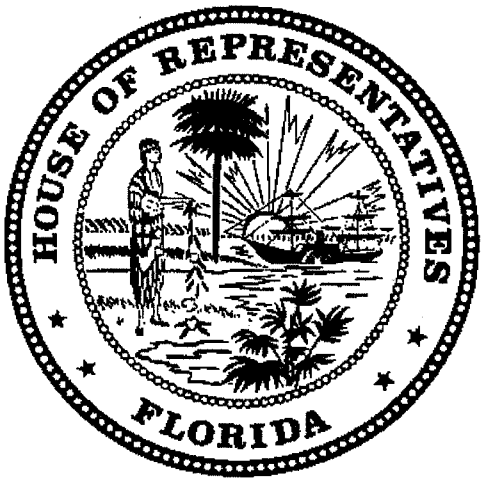

Government Efficiency & Accountability Council

Wednesday, March 19, 2008
9:45 AM – 11:15 AM
1:00 PM – 2:45 PM
Morris Hall (17 HOB)

Marco Rubio
Speaker

Frank Attkisson
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

Government Efficiency & Accountability Council

Start Date and Time:	Wednesday, March 19, 2008 09:45 am
End Date and Time:	Wednesday, March 19, 2008 02:45 pm
Location:	Morris Hall (17 HOB)
Duration:	5.00 hrs

Consideration of the following bill(s):

HB 129 Just Valuation of Property by Lopez-Cantera
HB 177 Proposed Property Tax Notices by Richter
HB 211 Special Districts by Machek
HB 399 Financial Management by Local Governments by Grant
HJR 421 Transfer of Save-Our-Homes Benefits; Additional Homestead Exemption by Simmons
HB 595 Property Appraisers by Nelson

Consideration of the following proposed council bill(s):

PCB GEAC 08-13 -- Administrative Procedures

Presentations regarding budget reductions for FY 2008-09 by the following agencies:
Department of Revenue
Department of the Lottery

The Government Efficiency & Accountability Council will be breaking at 11:15am for Session and the Council will recovene at 1:00pm-2:45pm to take up any unfinished business from the morning meeting in Morris Hall.

NOTICE FINALIZED on 03/17/2008 15:59 by MXE

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 129 Just Valuation of Property
SPONSOR(S): Lopez-Cantera and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 626

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on State Affairs	7 Y, 0 N	Levin	Williamson
2) Government Efficiency & Accountability Council		Levin/Dykes	Cooper
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

Article VII, s. 4 of the Florida Constitution requires that all property be assessed at just value (fair market value) for ad valorem tax purposes. Section 193.011, F.S., implements the just valuation requirement. It requires property appraisers to take into consideration eight specific factors in arriving at just valuation.

The bill modifies the factors used to determine the highest and best use of the property, the condition of the property, and the net proceeds of sale of the property. It also limits the factors property appraisers can consider in appraising income-producing residential rental property and certain commercial property.

The bill creates a new section of statute that provides limitations on the assessment of deed-restricted residential rental property, multi-unit commercial rental property, marinas, waterfront property used exclusively for commercial fishing purposes, and property rented for use by mobile homes.

The bill amends chapter 194, F.S., Administrative and Judicial Review of Property Taxes, to revise current review procedures to enhance the ability of taxpayers to challenge the assessed value of their property. It also revises the burden of proof in administrative challenges to an assessment and requires the property appraiser to prove the correctness of the assessment by clear and convincing evidence. The burden of proof in judicial challenges is placed on the party initiating the action.

While HB 129 has not been to a Revenue Estimating Impact Conference, HB 261 (2007), which was substantially similar, was considered by the conference last year. The Post Session 2007 Impact Conference results indicate that HB 261 did not have an impact on state revenues, although the Department of Revenue maintained it would need to hire additional employees. The award of interest in the bill was found to result in ($30.2 million) in FY 08-09. The waiver of filing fees at the value adjustment boards was found to result in ($0.4 million) in local revenues in FY 08-09. The impact of the presumption of correctness was found to be ($114.2 million) in local revenues in FY 08-09. All other sections of the bill were found to have an indeterminant impact on local government.

By reducing the assessed value of property subject to ad valorem taxation, the bill reduces the authority that cities and counties have to raise revenue. If local revenue impacts of the 2008 bill are determined to be similar to the impacts of the 2007 bill adopted by the Revenue Estimating Impact Conference, the bill will constitute a mandate pursuant to Article VII, section 18 of the Florida Constitution, and the bill will require a two-thirds vote of the membership of each house for passage.

The bill has an effective date of upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – By modifying the factors used in determining just valuation and requiring the consideration of certain deed restriction agreements when determining just valuation, the provisions of the bill would have the effect of decreasing the assessment of property for ad valorem taxes.

Safeguard individual liberty – The enhancement of taxpayer rights in chapter 194, F.S., should assist individuals in contesting property appraiser assessments of an individual's real property.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

JUST VALUATION

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

The Florida Constitution includes certain exceptions to the just value standard. Agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for noncommercial recreational purposes are exceptions that may be assessed solely based on their character or use.[2] Tangible personal property held for sale as stock in trade and livestock may be assessed at a specified percentage of its value or totally exempted.[3] In addition, the Save-Our-Homes amendment to the Florida Constitution provides a limitation to the amount that assessments for homesteads may be increased annually. Increases in assessment may not exceed the lower of three percent of the assessment for the prior year or the percent change in the Consumer Price Index.[4] Counties and municipalities also may authorize the assessment of historic properties solely based on character or use.[5] Counties may provide for a reduction in the assessed value of homestead property improvements made to accommodate parents or grandparents in an existing homestead.[6]

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

- Present cash value of the property, which is the amount a willing purchaser would pay a willing seller, exclusive of reasonable fees and costs of purchase, in cash or the immediate equivalent thereof in a transaction at arm's length;[7]
- Highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and considering any

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

executive order, ordinance, regulation, resolution, or proclamation or judicial limitation when it prohibits or restricts the development or improvement of property;[8]
- Location of the property;[9]
- Quantity or size of the property;[10]
- Cost of the property and the present replacement value of any improvements thereon;[11]
- Condition of the property;[12]
- Income from the property;[13] and
- Net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of sale.[14]

The Florida Supreme Court has held that "the appraisal of real estate is an art, not a science,"[15] and "the tax assessor is, of necessity, provided with great discretion due to the difficulty in fixing property values with certainty."[16] In *Lanier v. Walt Disney World Company*, the court held that property appraisers are not obliged, under the law, to give each factor equal weight, provided each factor is first carefully considered and such weight is given to a factor as the facts justify.[17]

FAIR MARKET VALUE

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

A common definition of highest and best use is "[t]he reasonably probable and legal use of property that is physically possible, appropriately supported, and financially feasible, and that results in the highest value."[18] A highest and best use analysis requires the appraiser to determine the use that the property "can be *expected* to be put in the *immediate* future [emphasis added]."[19] The Legislature has:

> . . . prohibited tax assessors from considering potential uses to which the property is reasonably susceptible and to which it might be put in some future tax year, or even, during the current tax year. To be considered, the use must be *expected*, not merely potential or a 'reasonably susceptible' type of use; it must be expected *immediately*, not at some vague uncertain time in the future.[20]

The explanation for this legislative policy was stated by Judge White in his dissenting opinion in *Lanier v. Tyson*[21] and quoted in the affirming decision of the Florida Supreme Court in *Lanier v. Overstreet*:

> Assessed valuations of land based on estimates of its highest and best potential, as distinguished from present bona fide use, are bound to be largely conjectural; and when an assessor, contrary to legislative intent and direction, determines that land despite its present value has a truly higher present value because of its potential for some other 'higher' purpose,

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[8] Fla. Stat. §193.011(2).
[9] Fla. Stat. §193.011(3).
[10] Fla. Stat. §193.011(4).
[11] Fla. Stat. §193.011(5).
[12] Fla. Stat. §193.011(6).
[13] Fla. Stat. §193.011(7).
[14] Fla. Stat. §193.011(8).
[15] *Powell v. Kelley*, 223 So.2d 305, 309 (Fla. 1969).
[16] *District School Board of Lee County v. Askew*, 278 So.2d 272, 276 (Fla. 1973).
[17] *Lanier v. Walt Disney World Company*, 316 So.2d 59, 62 (Fla. 4 DCA 1975); *certiorari denied* 330 So.2d 19 (Fla. Feb 03, 1976) (TABLE, NO. 47876)
[18] Appraisal Standards Board, *The Uniform Standards of Professional Appraisal Practice,* 2002 Edition (Washington D.C.: The Appraisal Foundation), at 218.
[19] *Lanier v. Overstreet,* 175 So.2d 521at 524 (Fla. 1965).
[20] *Id.*
[21] *Lanier v. Tyson*, 147 So.2d 365 (Fla. 2DCA 1962)

> he indulges in unwarranted speculation and does violence to the constitutional and statutory objective of just valuation. The assessor, like the courts, should operate within the record and not *de hors [French for "outside"; translation added]* it.[22]

Unless a change in the highest and best use is reasonably probable within the immediate future, the present use[23] frequently represents the highest and best use of the property.[24]

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

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

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

The cost approach to valuation simply adds together the value of the land (determined by the sales comparison approach) with the cost of the improvements to arrive at the fair market value of the property. For older properties, the appraiser makes adjustments to consider the age and condition of the property or any other appropriate factors. Land values are market-derived and what a buyer is willing to pay for new construction is always influenced by the amount the buyer might otherwise spend to buy an already existing similar property.

The income approach applies to properties where an income typically is derived from the real estate. The just valuation of the property is determined by studying how much revenue the property would generate if it were rented. The appraiser must consider operating expenses, taxes, insurance, maintenance costs, and the return or profit most people would expect for that type of property.[25] Purchasers of income-producing property typically base their offer to buy the property on the potential future income of the property, thus the income is the basis of the purchase price agreed upon between the willing buyer and willing seller.

LANDS SUBJECT TO CONSERVATION EASEMENTS

Section 704.06, F.S., creates "conservation easements." Conservation easements are a right or interest in real property in which it is appropriate to:

- Retain the land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition because these properties are suitable habitat for fish, plants, or wildlife;
- Retain the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or
- Maintain existing land uses.

Conservation easements are perpetual, undivided interests in property that may be acquired only by

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[22] *Lanier v. Overstreet* at 524.

[23] Present use means "the existing use of real property as of the date of appraisal." The Florida Real Property Appraisal Guidelines, prepared by the Florida Department of Revenue Property Tax Administration Program (adopted November 16, 2002).

[24] *Lanier v. Overstreet,* 175 So.2d 521 (Fla. 1965).

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

governmental bodies or agencies or by a charitable corporation or trust whose purposes include: protecting natural, scenic, or open space values of real property; assuring its availability for agricultural, forest, recreational, or open space use; protecting natural resources, maintaining, or enhancing air or water quality; or preserving sites or properties of historical, architectural, archaeological, or cultural significance. Conservation easements result in a reduction of the just valuation of the real property.

CONSTITUTIONAL BASIS FOR REDUCTION IN JUST VALUE FOR CONSERVATION EASEMENTS

The reduction in assessed value experienced by the owner of a property who has conveyed a conservation easement may be derived from two separate constitutional provisions.

The state and its political subdivisions and counties, are immune from taxation, since there is no power to tax them.[26] A municipality can be taxed, but its property may be exempt if it meets the statutory criteria for exemption. The Florida Supreme Court held in *Maxcy, Inc. v. Federal Land Bank of Columbia*:

> The principle has been more than once affirmed in this state that the Constitution must be construed as a limitation upon the power of the Legislature to provide for the exemption from taxation of any classes of property except those particularly mentioned classes specified in the organic law itself.[27]

Thus, if a conservation easement is conveyed to an immune government, there can be no ad valorem taxation of the value of the easement so conveyed. The value of the property in the hands of its owner is reduced by the value of the easement conveyed. If a conservation easement is conveyed to a municipality and used by it for public purposes, it is exempt from taxation pursuant to Article VII, s. 3(a) of the Florida Constitution. The value of the property in the hands of the owner is reduced by the value of the easement conveyed.

If the conservation easement is conveyed to a charitable corporation or trust, it is exempt from taxation as property used predominantly for educational, literary, scientific, religious, or charitable purposes pursuant to Article VII, s. 3(a) of the Florida Constitution. The value of the property in the hands of the owner is reduced by the value of the easement conveyed.

Pursuant to Article VII, s. 4(a) of the Florida Constitution, agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be assessed solely based on character or use. Some conservation easements permit the assessment of the underlying property based on character or use, and the assessment of these lands are reduced once the easement assuring use for only these purposes is conveyed.

RIGHTS OF TAXPAYERS IN ADMINISTRATIVE AND JUDICIAL REVIEW OF PROPERTY TAXES

Section 194.011(3), F.S., generally requires taxpayers to file with the value adjustment board their petition contesting valuation within 25 days following the mailing of the notice by the property appraiser. The taxpayer must provide to the property appraiser all documentation related to the valuation no later than 15 days before a hearing.[28] The taxpayer must receive a list of evidence from the property appraiser no later than seven days before the hearing, if the taxpayer has provided all the information to the property appraiser and the taxpayer has requested in writing similar information.[29]

Section 194.013, F.S., requires a filing fee of $15.00. Waiver of the fee is permitted for persons eligible

[26] Each of these Florida cases arose under a predecessor Florida Constitution. Nonetheless, they are controlling here since the principle of immunity is not constitutionally dependent. *Orlando Utilities Commission v. Milligan*, 229 So.2d 262 (Fla. 4DCA 1969); *Park-N-Shop, Inc. v. Sparkman*, 99 So.2d 571 (Fla.1957).
[27] *Maxcy, Inc. v. Federal Land Bank of Columbia*, 111 Fla. 116, 150 So. 248, and 151 So. 276 (1933).
[28] Fla. Stat. §194.011(4)(a).
[29] Fla. Stat. §194.011(4)(b).

for temporary assistance pursuant to Chapter 414, F.S.

The value adjustment boards are composed of three members of the county governing board and two members of the school board.[30]

Taxpayers are limited to a single rescheduling of the hearing. A taxpayer is required to wait four hours from the scheduled time, and if the taxpayer is not heard at that time, the taxpayer is deemed to have exhausted available administrative remedies.[31]

Section 194.034, F.S., has no provision concerning the reimbursement of the filing fee if the taxpayer prevails; however, s. 194.192, F.S., requires courts to assess all costs and requires taxpayers to pay 12 percent interest on any deficiency determined.

Section 194.301, F.S., provides a presumption of correctness to the assessed value determined by the property appraiser. The presumption of correctness is lost either if the taxpayer can show by a preponderance of the evidence that the appraiser failed to properly consider the criteria provided in s. 193.011, F.S., or if the appraiser's assessment is arbitrary.

EFFECT OF PROPOSED CHANGES

HIGHEST AND BEST USE

Section 193.011(2), F.S., requires the property appraiser to consider the highest and best use to which the property can be expected to be put in the immediate future. The bill requires the property appraiser to consider, in addition to other factors, any zoning changes and permits necessary to achieve highest and best use.

CONDITION OF THE PROPERTY

The bill requires property appraisers to consider physical deterioration, functional obsolescence, and external obsolescence when determining the condition of the property.

PROCEEDS OF SALE OF THE PROPERTY

The bill requires the property appraiser to deduct the costs of removing tangible personal property when considering the net proceeds of the sale of the property.

REQUIREMENT THAT ALL FACTORS BE CONSIDERED IN DETERMINING JUST VALUATION

The bill requires property appraisers to disregard seven of the factors outlined in s. 193.011, F.S., in determining just valuation of income-producing property that is either residential rental property or commercial property leased to more than one legal entity, each of which conducts a separate business activity. In these instances, the property appraiser would be permitted to consider only the "market rent" from these income-producing properties. "Market rent" is defined as the most likely rent that an income-producing property would command if offered for lease in the open market.

EFFECT OF DETERMINATION BY VALUE ADJUSTMENT BOARD

Section 193.016, F.S., currently provides that the property appraiser must consider the reduced value determined by the value adjustment board in the prior year for tangible personal property. The property appraiser is required to assert additional basic and underlying facts not properly considered by the value adjustment board in order to increase the assessment. The bill expands the provisions of this

[30] Fla. Stat. §194.015.
[31] Fla. Stat. §194.032(2).

section to apply to all property.

ASSESSMENT OF DEED-RESTRICTED PROPERTY

The bill creates s. 193.018, F.S., which provides that the owner of residential rental property, multiunit commercial rental property, property used as a marina, waterfront property used exclusively for commercial fishing purposes, or property rented for use by mobile homes may enter into a deed-restriction agreement with the county to maintain the property at its current use for a period of at least five years. Should the deed restriction agreement be terminated prior to its expiration, the property owner is required to pay the county the additional taxes that would have been paid in prior years, plus 12 percent interest. The bill mandates that the property appraiser consider the deed-restriction agreement in determining the value of the property.

CHAPTER 194, F.S.

Section 194.013(2), F.S., is amended to require waiver of the filing fee for the petition of a taxpayer who is eligible to receive one or more of the homestead exemptions under s. 6(c), (f), or (g), Article VII of the Florida Constitution.

Section 194.015(2)(a), F.S., is amended to change the makeup of the value adjustment board. Of the three members appointed by the county commission, one member must own a homestead property within the county and one must own a business that occupies commercial space located within the county. Of the two members appointed by the school board, one must own a business that occupies commercial space located within the school district and one member must be eligible to receive one or more of the homestead exemptions under s. 6(c), (f), or (g), Article VII of the Florida Constitution. No appointee may be either a member or an employee of any taxing authority.

Section 194.032(2), F.S., is amended to permit the taxpayer to reschedule the hearing if the property appraiser fails to comply with the requirements of s. 194.011(4)(b), F.S. The hearing cannot be rescheduled for sooner than 15 days after the property appraiser complies with the requirements of s. 194.011(4)(b), F.S. Additional rescheduling of the hearing may be granted to the taxpayer for medical reasons. The waiting time for a taxpayer to be heard is reduced from four hours to two, and the new remedy for failure to hear the taxpayer within that time is for the hearing to be rescheduled for a time reserved exclusively for the petitioner.

Section 194.034(2), F.S., is amended to require a refund of the taxpayer's filing fee if the determination of the property appraiser is overturned.

Section 194.192(3), F.S., is amended to require payment of interest to the taxpayer if the final assessment established by a court is lower than the amount paid by the taxpayer. If the assessed value determined by the property appraiser exceeds the value determined by the court by more than 10 percent, reasonable attorney fees must be awarded to the taxpayer.

Section 194.301, F.S., is amended to revise the burden of proof in administrative proceedings. The property appraiser is required to prove by clear and convincing evidence that the assessment is correct. For judicial actions, the bill places the burden of proof upon the party initiating the action.

C. SECTION DIRECTORY:

Section 1 amends s. 193.011, F.S., to modify factors for consideration in deriving just valuation.

Section 2 amends s. 193.016, F.S., to provide for consideration of decisions made by value adjustment boards.

Section 3 creates s. 193.018, F.S., to require consideration of deed-restricted agreements in determining just value.

Section 4 amends s. 194.011, F.S., to revise provisions relating to provision of evidence by petitioners and property appraisers.

Section 5 amends s. 194.013, F.S., to provide for the waiver of petition filing fees under certain circumstances.

Section 6 amends s. 194.015, F.S., to revise membership criteria for value adjustment boards.

Section 7 amends s. 194.032, F.S., to provide criteria for rescheduling hearings.

Section 8 amends s. 194.034, F.S., to require the refund of filing fees under certain circumstances.

Section 9 amends s. 194.192, F.S., to provide for judgments against property appraisers and for assessment and award of attorney fees, under certain circumstances.

Section 10 amends s. 194.301, F.S., to revise criteria for a presumption of correctness.

Section 11 amends s. 420.507, F.S., to correct a cross-reference.

Section 12 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Since the bill would require the performance of more appraisals and assessments, there would be a negative fiscal impact on the General Revenue Fund. The Department recommends hiring 34 FTE (appraiser positions) in the Property Tax Oversight Program in the Department in order to meet the performance demands required by the bill. The impact is estimated as follows for the next two years:[32]

	FY 2008-09	FY 2009-10
Recurring	$1,997,304	$1,997,304
Non-recurring	149,192	0
Totals	$2,146,496	$1,997,304

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

	FY 2008-09	FY 2009-10
Award of Interest	($ 30.2 million)	($ 32.5 million)
Highest & best use	($ 0.4 million)	($ 0.4 million)
Presumption of correctness	($114.2 million)	($122.8 million)
Totals	($144.8 million)	($155.7 million)

2. Expenditures:

   Counties likely will experience higher expenditures from the changes made by the bill to the value adjustment board process.

[32] Department of Revenue Fiscal Impact Analysis of HB 129 (revised February 13, 2008), September 28, 2007, at 1.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A significant number of properties will experience a decrease in assessed value, thus leading to reduced property tax payments by their owners.

D. FISCAL COMMENTS:

Public school funding is statutorily tied to property taxes through the required local effort (RLE). The Legislature sets the RLE that must be raised by school districts from property taxes. The provisions of this bill that lead to lower assessed values may limit the amount of RLE the Legislature may set in the future.

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, however, does provide for reduced assessments for deed-restricted properties and mandates the use of market rent to assess certain classes of income-producing property; thus, reducing the authority that cities and counties have to raise revenues. As such, the bill may be a mandate requiring a two-thirds vote of the membership of each house.

2. Other:

Article VII, s. 4 of the Florida Constitution requires that all property, except those explicitly mentioned in the constitution, be assessed at just value (fair market value). If the provisions of this bill mandating that the market rent of income-producing property be the sole method of determining the assessed value of certain properties results in assessed values that are less than fair market value, those provisions may be invalidated by the constitutional provision requiring just value assessments.

Similarly, the provisions of this bill mandating that market rent of income-producing properties is the sole method for determining value and the provisions dealing with certain deed-restricted properties may be considered an unauthorized classification of properties for purposes of taxation.

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

On February 20, 2008, the Committee on State Affairs adopted two amendments and reported the bill favorable with amendments. Amendment 1 clarifies that the exclusive use of market rent valuation for certain deed restricted properties is used only at the request of the taxpayer. Amendment 2 removes from the bill changes related to the presumption of correctness.

A bill to be entitled

An act relating to just valuation of property; amending s. 193.011, F.S.; providing for consideration of zoning changes and permits in determining the highest and best use; revising the just valuation factor relating to the condition of property; including cost of removal of tangible personal property as a consideration in the net sale proceeds factor; requiring property appraisers to use only market rent in arriving at just value of certain income-producing properties; providing a definition; providing applicability; amending s. 193.016, F.S.; providing for consideration of value adjustment board decisions for all properties; creating s. 193.018, F.S.; authorizing owners of certain properties to enter into deed-restriction agreements with counties for certain purposes; requiring property appraisers to consider deed-restriction agreements in determining just value; providing for payment of back taxes plus interest if the deed-restriction agreement is terminated early; amending s. 194.011, F.S.; revising provisions relating to provision of evidence by petitioners and property appraisers; amending s. 194.013, F.S.; requiring value adjustment boards to waive a petition filing fee for taxpayers eligible for certain constitutional exemptions; amending s. 194.015, F.S.; revising the membership of value adjustment boards, appointment criteria, and quorum requirements; amending s. 194.032, F.S.; providing for criteria for rescheduling certain hearings under certain

circumstances; amending s. 194.034, F.S.; requiring value adjustment boards to order refund of certain filing fees if a determination of a property appraiser is overturned; amending s. 194.192, F.S.; providing for judgments against property appraisers under certain circumstances; providing for assessment and award of attorney fees to taxpayers under certain circumstances; amending s. 194.301, F.S.; revising criteria for a presumption of correctness of ad valorem taxation assessments and the burden of proof in actions challenging such assessments; amending s. 420.507, F.S.; correcting a cross-reference; providing an effective date.

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

Section 1. Effective upon this act becoming a law and applicable to assessments beginning January 1, 2009, section 193.011, Florida Statutes, is amended to read:

193.011 Factors to consider in deriving just valuation.--

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

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

(b) ~~(2)~~ The highest and best use to which the property can be expected to be put in the immediate future and the present use of the property, taking into consideration any applicable judicial limitation, local or state land use regulation, or historic preservation ordinance, and any zoning changes and permits necessary to achieve the highest and best use, and considering any moratorium imposed by executive order, law, ordinance, regulation, resolution, or proclamation adopted by any governmental body or agency or the Governor when the moratorium or judicial limitation prohibits or restricts the development or improvement of property as otherwise authorized by applicable law. The applicable governmental body or agency or the Governor shall notify the property appraiser in writing of any executive order, ordinance, regulation, resolution, or proclamation it adopts imposing any such limitation, regulation, or moratorium;

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

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

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

(f) ~~(6)~~ The condition of said property. When determining the condition of the property, the property appraiser shall consider physical deterioration, functional obsolescence, and external obsolescence;

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

(h) ~~(8)~~ The net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of the sale, including the costs and

expenses of financing, and allowance for unconventional or atypical terms of financing arrangements, and including the costs of removal of tangible personal property. When the net proceeds of the sale of any property are utilized, directly or indirectly, in the determination of just valuation of realty of the sold parcel or any other parcel under the provisions of this section, the property appraiser, for the purposes of such determination, shall exclude any portion of such net proceeds attributable to payments for household furnishings or other items of personal property.

(2) Notwithstanding the requirement that property appraisers consider all of the factors enumerated in subsection (1) in arriving at just valuation, property appraisers shall consider only the market rent from income-producing property in the case of all residential rental property and all commercial property that is leased to more than one legal entity, each of which conducts a separate business activity on the property. For purposes of this subsection, the term "market rent" means the most likely rent that an income-producing property would command if offered for lease in the open market.

Section 2. Section 193.016, Florida Statutes, is amended to read:

193.016 Property appraiser's assessment; effect of determinations by value adjustment board.--If the property appraiser's assessment of the same ~~items of tangible personal~~ property in the previous year was adjusted by the value adjustment board and the decision of the board to reduce the assessment was not successfully appealed by the property

appraiser, the property appraiser shall consider the reduced value ~~values~~ determined by the value adjustment board in assessing the ~~those items of tangible personal~~ property. If the property appraiser adjusts upward the reduced value ~~values~~ previously determined by the value adjustment board, the property appraiser shall assert additional basic and underlying facts not properly considered by the value adjustment board as the basis for the increased valuation notwithstanding the prior adjustment by the board.

Section 3. Section 193.018, Florida Statutes, is created to read:

193.018 Assessment of deed-restricted property.--

(1) The owner of residential rental property, multiunit commercial rental property, property used as a marina, waterfront property used exclusively for commercial fishing purposes, or property rented for use by mobile homes may enter into a deed-restriction agreement with the county to maintain the property at its current use for a period of at least 5 years.

(2) The property appraiser shall consider the deed-restriction agreement in determining the just value of the property.

(3) If, prior to the expiration of the deed-restriction agreement, the property is not used for the purposes set forth in the deed-restriction agreement, the deed-restriction agreement shall be terminated and the property owner shall pay to the county an amount equal to the additional taxes that would have been paid in prior years had the deed-restriction agreement

not been in effect, plus 12 percent interest.

Section 4. Subsection (4) of section 194.011, Florida Statutes, is amended to read:

194.011 Assessment notice; objections to assessments.--

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

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

Section 5. Subsection (2) of section 194.013, Florida Statutes, is amended to read:

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

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

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

Section 6. Section 194.015, Florida Statutes, is amended to read:

194.015 Value adjustment board.--

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

(2)(a)1. Three members shall be appointed by ~~of~~ the governing body of the county, as follows:

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

b. One member must own a business that occupies commercial space located within the county.

c. An appointee may not be a member or an employee of any taxing authority.

2. ~~as elected from the membership of the board of said governing body,~~ One of such appointees ~~whom~~ shall be elected chairperson.

(b) ~~, and~~ Two members shall be appointed by ~~of~~ the school board, as follows:

1. One member must own a business that occupies commercial space located within the school district.

2. One member must be eligible to receive one or more of the exemptions under s. 6(c), (f), or (g), Art. VII of the State

Constitution, regardless of whether the taxpayer's local government grants the additional local homestead exemptions.

3. An appointee may not be a member or an employee of any taxing authority ~~as elected from the membership of the school board. The members of the board may be temporarily replaced by other members of the respective boards on appointment by their respective chairpersons~~.

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

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

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

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

(b) Meetings ~~No meeting~~ of the board may not ~~shall~~ take place unless counsel to the board is present. However, counsel for the property appraiser shall not be required when the county attorney represents only the board at the board hearings, even though the county attorney may represent the property appraiser in other matters or at a different time.

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

Section 7. Subsection (2) of section 194.032, Florida Statutes, is amended to read:

194.032 Hearing purposes; timetable.--

(2) The clerk of the governing body of the county shall prepare a schedule of appearances before the board based on petitions timely filed with him or her. The clerk shall notify each petitioner of the scheduled time of his or her appearance no less than 25 calendar days prior to the day of such scheduled appearance. Upon receipt of this notification, the petitioner shall have the right to reschedule the hearing for the failure of the property appraiser to comply with the requirements of s. 194.011(4)(b). The hearing shall be rescheduled no sooner than 15 days after the property appraiser complies with the requirements of s. 194.011(4)(b). The petitioner shall also have the right to reschedule the hearing a single time by submitting to the clerk of the governing body of the county a written request to reschedule, no less than 5 calendar days before the day of the originally scheduled hearing. Additional rescheduling of the hearing may be granted to the taxpayer upon receipt of an affidavit from a physician that states a medical reason as to why the petitioner needs to reschedule the hearing. A copy of the property record card containing relevant information used in computing the taxpayer's current assessment shall be included with such notice, if said card was requested by the taxpayer. Such request shall be made by checking an appropriate box on the

petition form. No petitioner shall be required to wait for more than 2 ~~4~~ hours from the scheduled time; and, if his or her petition is not heard in that time, the petitioner may, at his or her option, report to the chairperson of the meeting that he or she intends to leave; and, if he or she is not heard immediately, the petitioner's hearing shall be rescheduled for a time reserved exclusively for the petitioner ~~administrative remedies will be deemed to be exhausted, and he or she may seek further relief as he or she deems appropriate~~. Failure on three occasions with respect to any single tax year to convene at the scheduled time of meetings of the board shall constitute grounds for removal from office by the Governor for neglect of duties.

Section 8. Subsection (2) of section 194.034, Florida Statutes, is amended to read:

194.034 Hearing procedures; rules.--

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

a form provided by the Department of Revenue, notify by first-class mail each taxpayer, the property appraiser, and the department of the decision of the board.

Section 9. Subsection (3) is added to section 194.192, Florida Statutes, to read:

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

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

Section 10. Section 194.301, Florida Statutes, is amended to read:

194.301 Presumption of correctness and burden of proof in ad valorem tax assessment challenges.--In any administrative or judicial proceeding ~~action~~ in which ~~a taxpayer challenges~~ an ad valorem tax assessment of value is challenged, the burden of proof shall be upon the party initiating the proceeding and such party shall have the burden of proving by a preponderance of the evidence that the assessment, as established by the property appraiser or the Value Adjustment Board, is incorrect. The property appraiser's assessment shall be presumed correct, except that if the Value Adjustment Board has established a different assessment, the assessment of the Value Adjustment

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

Section 11. Subsection (46) of section 420.507, Florida Statutes, is amended to read:

420.507 Powers of the corporation.--The corporation shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including the following powers which are in addition to all other powers granted by other provisions of this part:

(46) To require, as a condition of financing a multifamily rental project, that an agreement be recorded in the official records of the county where the real property is located, which requires that the project be used for housing defined as affordable in s. 420.0004(3) by persons defined in s. 420.0004(8), (10), (11), and (15). Such an agreement is a state land use regulation that limits the highest and best use of the property within the meaning of s. 193.011(1)(b)~~(2)~~.

Section 12. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. **HB 129**

COUNCIL/COMMITTEE ACTION

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

THIS AMENDMENT IS TRAVELING WITH THE BILL. NO ACTION REQUIRED

Council/Committee hearing bill: Government Efficiency & Accountability Council

Committee on State Affairs offered the following:

Amendment

Remove line(s) 96 and insert:

(1) in arriving at just valuation, property appraisers, upon request of the property owner, shall

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.#2 (for drafter's use only)

Bill No. **HB 129**

COUNCIL/COMMITTEE ACTION

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

THIS AMENDMENT IS TRAVELING WITH THE BILL. NO ACTION REQUIRED

Council/Committee hearing bill: Government Efficiency & Accountability Council

Committee on State Affairs offered the following:

Amendment (with title amendments)

Remove line(s) 295-333:

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

Remove line(s) 35-38 and insert:

under certain circumstances; amending s. 420.507,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 177 Proposed Property Tax Notices
SPONSOR(S): Richter and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 664

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on State Affairs	7 Y, 0 N	Camara	Williamson
2) Government Efficiency & Accountability Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

Property appraisers are responsible for preparing and delivering to each taxpayer on the current year's assessment roll a notice of proposed property taxes and non-ad valorem assessments on behalf of taxing authorities and local governing boards levying both ad valorem taxes and non-ad valorem assessments. This notice is called the Truth in Millage notice (TRIM).

This bill revises the TRIM notice to include millage rates by adding three additional columns for the following factors used to calculate a taxpayer's actual tax:

- Last year's millage rate;
- Current year's millage rate if the proposed budget change is made; and
- Current year's millage rate if no budget change is made.

This bill does not appear to have a fiscal impact on state government; however, it could have a fiscal impact on certain local governments.

This bill has an effective date of January 1, 2009.

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 assist them in evaluating the fees and taxes local governments propose for the next fiscal year.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Property appraisers are responsible for preparing notices of proposed property taxes and non-ad valorem assessments on behalf of all taxing authorities and local governing boards levying ad valorem taxation and non-ad valorem assessments. Property appraisers must prepare and deliver these notices 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 generally is the only acceptable means of providing notice to taxpayers. The Department of Revenue (Department) produces the forms. A county officer may use a different form provided that it is substantively similar to the one produced by the Department, his or her office pays the related expenses, and he or she obtains prior written permission from the executive director of the Department.

For counties with populations of 100,000 or fewer, the Department provides the forms. For counties with a higher population, the responsible county officer reproduces the forms for distribution at the expense of their office.[2]

Section 200.069, F.S., specifies that the information on the TRIM notice must appear 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 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 provided to the property appraiser, or in the case of voted levies for debt service, the millage rate previously authorized by referendum, and the taxable value of the parcel as shown on the current year's assessment roll.
- 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.

[1] Section 200.065(2)(b), F.S.
[2] Section 195.022, F.S.

- 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]

EFFECT OF PROPOSED CHANGES

This bill amends s. 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:

- 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 NOT Budget Change is Made

With columns specifically enumerating changes in the millage rate from year to year, the TRIM notice may provide citizens with a better tool to use in scrutinizing rises in ad valorem taxation. As such, this change could encourage more taxpayers to participate in the budget process.

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, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.[4]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[3] Section 200.065(1), F.S., describes the "rolled-back rate" as the 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 added due to geographic boundary changes, will yield the same ad valorem tax revenue for each taxing authority as was levied during the prior year.

[4] Email from the Department of Revenue, January 28, 2008.

1. Revenues:

   None.

2. Expenditures:

   County officers who use a form other than the form provided by the Department of Revenue, after receiving the written permission of the Department, may incur additional expenses to redesign the form. In addition, counties with a population of 100,000 or more are required to print their own TRIM notices. As such, these counties may incur additional expenditures in the change from one form to another.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

   None.

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

   None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

   None.

D. STATEMENT OF THE SPONSOR

   HB 177 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

None.

A bill to be entitled

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 2. Subsection (11) of section 200.065, Florida Statutes, is amended to read:

200.065 Method of fixing millage.--

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

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

Section 3. This act shall take effect January 1, 2009.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 211 Special Districts
SPONSOR(S): Machek
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Urban & Local Affairs	7 Y, 0 N	Fudge	Kruse
2) Government Efficiency & Accountability Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

A special district has only those powers expressly provided by, or which can reasonably implied from, the authority provided in the district's charter. Upon creation, special districts are generally given purchasing authority usually with competitive procurement requirements. To share the cost savings of competitive bidding, the Department of Management Services has designated special districts as eligible users who "may purchase commodities and contractual services from purchasing agreements established and state term contracts procured, pursuant to s. 287.057, by the [DMS]."

This bill authorizes special districts to purchase commodities or contractual services from purchasing agreements of other special districts, municipalities, or counties that were competitively procured in compliance with general law. The bill would allow special districts to avoid the time and expense of a competitive bid process for goods and services previously procured by other local governments.

This bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – This bill may ensure lower taxes by reducing procurement costs for special districts.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

A special district is a "local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet."[1] A special district has only those powers expressly provided by, or which can reasonably implied from, the authority provided in the district's charter.

Upon creation, special districts are generally given purchasing authority usually with competitive procurement requirements. To share the cost savings of competitive bidding, the Department of Management Services ("DMS") has designated special districts as eligible users[2] who "may purchase commodities and contractual services from purchasing agreements established and state term contracts procured, pursuant to s. 287.057, by the [DMS]."[3]

Effect of Proposed Changes

The bill authorizes special districts to purchase commodities or contractual services from purchasing agreements of other special districts, municipalities, or counties that were competitively procured in compliance with general law. The bill would allow special districts to avoid the time and expense of a competitive bid process for goods and services previously procured by other local governments.

C. SECTION DIRECTORY:

Section 1: Creates section 189.4221, F.S. authorizing special districts to purchase commodities or contractual services from purchasing agreements of other special districts, municipalities, or counties that were competitively procured in compliance with general law.

Section 2: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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[1] Section 189.403(1), F.S.

[2] Rule 60A-1.005, F.A.C., defines "eligible users" as "all governmental agencies, as defined in Section 163.3164, F.S., which have a physical presence within the state of Florida.

[3] Section 287.056(1), F.S.

1. Revenues:

   None.

2. Expenditures:

   The bill may reduce the procurement costs for certain goods and services.

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 an action requiring 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:

None.

D. STATEMENT OF THE SPONSOR

No sponsor statement received.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to special districts; creating s. 189.4221, F.S.; authorizing special districts to purchase commodities and contractual services from purchasing agreements of other special districts, municipalities, or counties; providing an effective date.

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

Section 1. Section 189.4221, Florida Statutes, is created to read:

189.4221 Purchases from purchasing agreements of special districts, municipalities, or counties.--Special districts may purchase commodities and contractual services from purchasing agreements of other special districts, municipalities, or counties procured pursuant to competitive bid, requests for proposals, requests for qualifications, competitive selection, or competitive negotiations, and otherwise in compliance with general law.

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

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 399 Financial Management by Local Governments
SPONSOR(S): Grant and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 640

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on Urban & Local Affairs	8 Y, 0 N	Fudge	Kruse MK
2) Government Efficiency & Accountability Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

Article V, Section 16, of the Florida Constitution, provides that "the duties of the clerk of the circuit court may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."

House bill 399 designates the clerk as accountant to the board of county commissioners and county auditor. The bill also prohibits checks or warrants in excess of the fund balance. Additionally, the bill requires the clerk, as county auditor, to prepare an annual report and perform audits. The bill is effective July 1, 2008.

The bill does not appear to have a fiscal impact. The positions of the proponents and opponents of the bill are found in Section III.C.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes This bill may assist in ensuring proper accounting and auditing of county funds.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Article V, Section 16, of the Florida Constitution, provides that "the duties of the clerk of the circuit court may be divided by special or general law between two officers, one serving as clerk of court and one serving as ex officio clerk of the board of county commissioners, auditor, recorder, and custodian of all county funds."[1]

In late 2007, Collier County, the Clerk of the Circuit Court, as custodian of all county funds, attempted to audit a bank account maintained by the chief of a local volunteer fire department, which the clerk believed contained money that should have been deposited into county accounts. The Board of County Commissioners sued the clerk arguing that the Clerk did not have the authority to audit accounts without approval of the board. The trial court ruled that there was no specific constitutional or statutory authority for the "Clerk to audit any and all outside bank account 'whatsoever and wheresoever situated' into which the Clerk believes county funds may have been improperly deposited."[2]

Effect of Proposed Changes

House bill 399 requires the filing of financial statements by clerks of the circuit court. The bill designates the clerk of the circuit court as accountant to the board of county commissioners and as county auditor. The bill also prohibits checks or warrants from being drawn in excess of the known balance of a fund.

Section 4 of the bill requires the clerk, as county auditor, to prepare the annual report of the county, and to determine the adequacy of internal controls and compliance with contracts, applicable law, and rules. This provision appears to provide new authority to the clerk and may alter the relationship between a clerk and a county. The Auditor General states that the auditing functions are currently performed by the Auditor General or private independent CPAs as required by s. 218.39, F.S. In addition, a county may hire independent CPAs to perform audits under s. 125.01(1)(x), F.S. The Auditor General also notes that it is unusual to grant the same entity both pre- and post-audit authority.[3]

The portion of the bill assigning duties to the clerk would not affect those counties operating pursuant to a special law or county charter.

C. SECTION DIRECTORY:

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[1] Art. VIII, Section 1(d), Fla. Const. provides that "[w]hen not otherwise provided by charter or special law approved by vote of the electors, the clerk of the circuit court shall be ex office clerk of the board of county commissioners, auditor, recorder and custodian of all county funds." *See also Alachua County v. Powers*, 351 So.2d 32, 36 (Fla. 1977)(holding that absent an applicable general or special law approved by the electors, or a county charter, the clerk, under these constitutional provisions, is the ex officio clerk of the board of county commissioners, the auditor, recorder and custodian of all county funds.)

[2] *Brock v. Board of County Commissioners of Collier County*, Case No. 04-941-CA, consolidated with Case Nos. 05-953-CA and 05-1506-CA, 20th Cir. Ct. 2007). This case has been appealed.

[3] Auditor General response to Committee staff e-mail.

Section 1: Amends section 116.07, F.S., requiring clerks to keep financial statements.

Section 2: Amends section 136.05, F.S., designating the clerk of the circuit court as accountant to the board of county commissioners and prohibiting a check or warrant from being drawn in excess of the known balance of a fund.

Section 3: Amends section 218.31, F.S., designating clerk as county auditor and renumbering section.

Section 4: Amends section 218.32, F.S., requiring clerk as county auditor to prepare annual report and perform audits.

Section 5: Amends cross-reference in section 75.04, F.S.

Section 6: Amends cross-reference in section 215.555, F.S.

Section 7: Amends cross-reference in section 380.0662, F.S.

Section 8: Amends cross-reference in section 420.503, F.S.

Section 9: Provides an effective date of July 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.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:
None.

D. FISCAL COMMENTS:

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 an action 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:

Drafting Issues

The Auditor General suggests that the wording in section 1 "keep financial statements and books of account" should be changed to "prepare financial statements and keep books of account." In sections 3 and 4, the Auditor General suggests that the Clerk's auditing authority should be placed elsewhere because it does not fit within the purpose of s. 218.32, F.S. The Auditor General suggests that this additional authority should simply be granted to the clerk instead of referring to the clerk as "county auditor."

Other Comments

The Florida Association of Court Clerks states:

> There would be no fiscal impact. Clerks are already doing this in vast majority of counties. Where the clerk does not currently have the audit function due to charter or special act, the bill does not apply.

The Florida Association of Counties opposes this bill. The Association states:

> The bill seeks to overturn a trial court opinion that was issued in Collier County in August of last year. The Florida Association of Counties (FAC) supports the trial court's ruling in Brock v. Collier County Board of County Commissioners and must object to any legislation that seeks to overturn that ruling particularly when the trial court's decision is currently on appeal. Any legislative response should await the final outcome of the judicial process. In addition, the Collier County decision upheld many years of what counties believe to be the law in the state with respect to the relationship between boards of county commissioners and clerks and that is that the unilateral scope of a clerk's powers and duties are defined by the constitution, state law, or in delegations from the board of county commissioners. If a clerk wishes to perform duties that are outside the three sources, the clerk would not have the unilateral authority to do act.
>
> The inclusion of "financial statements" in section 1 expands the clerk's pre-audit powers beyond what they are under current law and conflicts with the authority that is otherwise granted to counties for their independent auditing authority under section 125.01(1)(x).

The alterations to section 2 of the bill require the clerk to be the accountant of the board of county commissioners whereas current law clearly authorizes that to be the case but makes no such mandate. Counties have been allowed to work out that duty on a county-by-county basis, reflecting local circumstances and conditions.

The definition change in section 3 may have some adverse impacts on charter counties in particular. FAC is investigating this issue.

The additional language in Section 4 eliminates the ability of the board of county commissioners to have an independent auditor as the entity used to prepare its annual reports, naming the "county auditor" which under section 3 is now the clerk. This section 4 also expands the authority of the clerk to include the exercise of discretion regarding compliance with contracts, applicable laws and rules.

Despite the current disagreement between the Collier County Board of County Commissioners and its clerk, many counties in the state have resolved any disputes that have existed locally between the board and clerk over the clerk's authority, function and duties. Even in the Collier County litigation, there are several basic principles on which the clerk and the board agree. FAC is deeply troubled by a state law cure to what may very well be a local situation and one that is currently making its way through the courts and will receive a final judicial decision in the future.

STATEMENT OF THE SPONSOR

The legislation provides clarification for what Clerks of the Circuit Court have been doing for well over a century in their duties as County Auditor.

The bill clearly spells out a clerk's authority to prepare financial statements and perform all audits of local spending which is current practice in a vast majority of counties.

The bill does not affect counties where the audit function is performed differently due to Special Act or Charter provisions.

Clerks are independently elected custodians of taxpayer dollars. It makes good fiscal sense that the local clerks provide oversight in how the county spends its public funds.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 6, 2008, the Committee on Urban and Local Affairs adopted a strike-all amendment and an amendment to the strike-all amendment. To address concerns raised by the Auditor General, the strike-all moved the duties of the clerk from s. 218.31, F.S., pertaining to financial matters of local governments, to s. 116.07, F.S., pertaining to powers and duties of officers. The amendment to the strike-all amendment increased election qualification filing fees and increased the compensation for Supervisors of Community Development Districts from $4800 to $7500.

A bill to be entitled

An act relating to financial management by local governments; amending s. 116.07, F.S.; revising a requirement that the sheriff and the clerk of the circuit court keep financial statements and books of accounts in accordance with part III of ch. 218, F.S.; amending s. 136.05, F.S.; providing that the clerk of the circuit court is the accountant to the board of county commissioners; amending s. 218.31, F.S.; revising definitions; amending s. 218.32, F.S.; requiring county auditors to prepare the annual financial report for the county; authorizing county auditors to perform certain audits and tests; amending ss. 75.04, 215.555, 380.0662, and 420.503, F.S.; correcting cross-references; providing an effective date.

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

Section 1. Section 116.07, Florida Statutes, is amended to read:

116.07 Account books to be kept by sheriffs and clerks.--All sheriffs and clerks of the circuit court and ex officio clerks of the boards of county commissioners of this state shall keep financial statements and books of account and of record in accordance with part III of chapter 218 ~~s. 218.33~~.

Section 2. Section 136.05, Florida Statutes, is amended to read:

136.05 County board to keep set of books; overdrawing prohibited.--The clerk of the circuit court, as accountant of the board of county commissioners, shall keep an accurate and complete set of books showing the amount on hand, amount received, amount expended, and the balances thereof at the end of each month for each ~~and every~~ fund carried by the ~~said~~ board. A~~, and no~~ check or warrant may not ~~shall ever~~ be drawn in excess of the known balances to the credit of a ~~that~~ fund as kept by the ~~said~~ board.

Section 3. Section 218.31, Florida Statutes, is amended to read:

218.31 Definitions.--As used in this part, except where the context clearly indicates a different meaning:

(1)~~(15)~~ "Auditor" means an independent certified public accountant licensed pursuant to chapter 473 and retained by a local governmental entity to perform a financial audit.

(2)~~(16)~~ "County agency" means a board of county commissioners or other legislative and governing body of a county, however styled, including that of a consolidated or metropolitan government, a clerk of the circuit court, a separate or ex officio clerk of the county court, a sheriff, a property appraiser, a tax collector, a supervisor of elections, or any other officer in whom any portion of the fiscal duties of the above are under law separately placed.

(3) "County auditor" means the clerk of the circuit court.

(4)~~(8)~~ "County fee officers" means those county officials who are assigned specialized functions within county government and whose budgets are established independently of the local

governing body, even though said budgets may be reported to the local governing body or may be composed of funds either generally or specially available to a local governing authority involved.

(5) ~~(4)~~ "Department" means the Department of Financial Services.

(6) "Dependent special district" means a dependent special district as defined in s. 189.403~~(2)~~.

(7) ~~(17)~~ "Financial audit" means an examination of financial statements in order to express an opinion on the fairness with which they are presented in conformity with generally accepted accounting principles and an examination to determine whether operations are properly conducted in accordance with legal and regulatory requirements. Financial audits must be conducted in accordance with generally accepted auditing standards and government auditing standards as adopted by the Board of Accountancy and as prescribed by rules promulgated by the Auditor General.

(8) ~~(14)~~ "Generally accepted accounting principles" means those accounting principles adopted by rule of the Board of Accountancy under chapter 473.

(9) ~~(7)~~ "Independent special district" means an independent special district as defined in s. 189.403~~(3)~~.

(10) ~~(13)~~ "Industrial development bond" means any obligation the interest on which is exempt from income taxes under the provisions of s. 103(b) of the United States Internal Revenue Code and the payment of the principal or interest on

which under the terms of such obligation or any underlying arrangement is, in whole or in major part:

(a) Secured by any interest in property used or to be used in a trade or business or in payments in respect of such property.

(b) To be derived from payments in respect of property, or borrowed money, used or to be used in a trade or business.

(11) ~~(12)~~ "Limited revenue bonds" means any obligations issued by a unit to pay the cost of a project or improvement thereof, or combination of one or more projects or improvements thereof, and payable from funds, exclusive of ad valorem taxes, special assessments, or earnings from such projects or improvements.

(12) ~~(3)~~ "Local governing authority" means the governing body of a unit of local general-purpose government.

(13) ~~(1)~~ "Local governmental entity" means a county agency, a municipality, or a special district as defined in s. 189.403. For purposes of s. 218.32, the term also includes a housing authority created under chapter 421.

(14) ~~(18)~~ "Management letter" means a statement of the auditor's comments and recommendations as prescribed by rules adopted by the Auditor General.

(15) ~~(11)~~ "Revenue bonds" means any obligations issued by a unit to pay the cost of a project or improvement thereof, or combination of one or more projects or improvements thereof, and payable from the earnings of such project and any other special funds authorized to be pledged as additional security therefor.

(16) ~~(10)~~ "Short-term debt" means any debt with a maturity of less than 1 year from the date of issuance.

(17) ~~(5)~~ "Special district" means a special district as defined in s. 189.403~~(1)~~.

(18) ~~(2)~~ "Unit of local general-purpose government" means a county or a municipality established by general or special law.

(19) ~~(9)~~ "Verified report" means a report that has received such test or tests by the department so as to accurately and reliably present the data that have been submitted by the local governmental entities for inclusion in the report.

Section 4. Paragraph (a) of subsection (1) of section 218.32, Florida Statutes, is amended to read:

218.32 Annual financial reports; local governmental entities.--

(1)(a) Each local governmental entity that is determined to be a reporting entity, as defined by generally accepted accounting principles, and each independent special district as defined in s. 189.403, shall submit to the department a copy of its annual financial report for the previous fiscal year in a format prescribed by the department. The annual financial report must include a list of each local governmental entity included in the report and each local governmental entity that failed to provide financial information as required by paragraph (b). The chair of the governing body and the chief financial officer of each local governmental entity shall sign the annual financial report submitted pursuant to this subsection attesting to the accuracy of the information included in the report. The county auditor shall prepare the annual report of the county and may

perform such audits and tests as necessary to determine the adequacy of internal controls and compliance with contracts, applicable laws, and rules. The county annual financial report must be a single document that covers each county agency.

Section 5. Subsection (2) of section 75.04, Florida Statutes, is amended to read:

75.04 Complaint.--

(2) In the case of an independent special district as defined in s. 218.31~~(7)~~, the complaint shall allege the creation of a trust indenture established by the petitioner for a bonded trustee acceptable to the court who shall certify the proper expenditure of the proceeds of the bonds.

Section 6. Paragraph (j) of subsection (2) of section 215.555, Florida Statutes, is amended to read:

215.555 Florida Hurricane Catastrophe Fund.--

(2) DEFINITIONS.--As used in this section:

(j) "Local government" means a unit of general purpose local government as defined in s. 218.31~~(2)~~.

Section 7. Subsection (4) of section 380.0662, Florida Statutes, is amended to read:

380.0662 Definitions.--As used in this act, unless the context indicates a different meaning or intent:

(4) "Local government" means a unit of local general-purpose government as defined in s. 218.31~~(2)~~.

Section 8. Subsection (22) of section 420.503, Florida Statutes, is amended to read:

420.503 Definitions.--As used in this part, the term:

(22) "Local government" means a unit of local general-purpose government as defined in s. 218.31~~(2)~~.

Section 9. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. **399**

COUNCIL/COMMITTEE ACTION

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

THIS AMENDMENT IS TRAVELING WITH THE BILL. NO ACTION REQUIRED

Council/Committee hearing bill: Government Efficiency & Accountability Council

Committee on Urban & Local Affairs offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 116.07, Florida Statutes, is amended to read:

116.07 Account books to be kept by sheriffs and clerks.-- All sheriffs and clerks of the circuit court and ex officio clerks of the boards of county commissioners of this state shall prepare financial statements and keep books of account and of record in accordance with part III of chapter 219 ~~s. 218.33~~.

Section 2. 116.075 The Clerk of the Circuit Court, as county auditor, shall prepare the annual report of the county as required by s. 218.32, F.S., and may perform such audits and tests as necessary to determine the adequacy of internal controls and compliance with contracts, applicable laws, and rules.

Section 3. Section 136.05, Florida Statutes, is amended to read:

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

136.05 County board to keep set of books; overdrawing prohibited.--The clerk of the circuit court, as accountant of the board of county commissioners, shall keep an accurate and complete set of books showing the amount on hand, amount received, amount expended, and the balances thereof at the end of each month for each ~~and every~~ fund carried by the ~~said~~ board. A ~~and no~~ check or warrant may not ~~shall ever~~ be drawn in excess of the known balances to the credit of a ~~that~~ fund as kept by the ~~said~~ board.

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

Remove lines 2-15, and insert:

An act relating to financial management by local governments; amending s. 116.07, F.S.; revising a requirement that the sheriff and the clerk of the circuit court keep financial statements and books of accounts; creates s. 116.075, F.S. to provide that the Clerk of the Circuit Court as county auditor must prepare the annual financial report for the county; authorizing the county auditor to perform certain audits and tests; amending 136.05, F.S.; providing that the clerk of the circuit court is the accountant to the board of county commissioners.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. **399**

COUNCIL/COMMITTEE ACTION

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

THIS AMENDMENT IS TRAVELING WITH THE BILL. NO ACTION REQUIRED

Council/Committee hearing bill: Government Efficiency & Accountability Council

Committee on Urban & Local Affairs offered the following:

Amendment to Amendment (1) by Representative Grant (with title amendment)

Between line(s) 30-31, insert:

Section 4. Paragraph (c) of subsection (3) and subsection (8) of section 190.006, Florida Statutes, is amended to read:

190.006. Board of Supervisors; members and meetings. --

(3)(c) Candidates seeking election to office by qualified electors under this subsection shall conduct their campaigns in accordance with the provisions of chapter 106 and shall file qualifying papers and qualify for individual seats in accordance with s. 99.061. Candidates shall pay a qualifying fee, which shall consist of a filing fee and an election assessment or, as an alternative, shall file a petition signed by not less than 1 percent of the registered voters of the district, and take the oath required in s. 99.021, with the supervisor of elections in the county affected by such candidacy. The amount of the filing fee is 3 percent of $7,500~~4,800~~; however, if the electors have provided for compensation pursuant to subsection (8), the amount of the filing fee is 3 percent of the maximum annual

compensation so provided. The amount of the election assessment is 1 percent of $7,500~~4,800~~; however, if the electors have provided for compensation pursuant to subsection (8), the amount of the election assessment is 1 percent of the maximum annual compensation so provided. The filing fee and election assessment shall be distributed as provided in s. 105.031(3).

(8) Each supervisor shall be entitled to receive for his or her services an amount not to exceed $200 per meeting of the board of supervisors, not to exceed $7500 ~~4,800~~ per year per supervisor, or an amount established by the electors at referendum. In addition, each supervisor shall receive travel and per diem expenses as set forth in s. 112.061.

Section 5. This act shall take effect July 1, 2008.

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

Remove line(s) 37-46 and insert:

An act relating to financial affairs of local governments; amending s. 116.07, F.S.; revising a requirement that the sheriff and the clerk of the circuit court keep financial statements and books of accounts; creates s. 116.075, F.S., to provide that the Clerk of the Circuit Court as county auditor must prepare the annual financial report for the county; authorizing the county auditor to perform certain audits and tests; amending 136.05, F.S.; providing that the clerk of the circuit court is the accountant to the board of county commissioners; amending 190.006, F.S.; increasing the filing fee for qualification of Supervisors; increasing the compensation of Supervisors; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 421 Transfer of Save-Our-Homes Benefits; Additional Homestead Exemption
SPONSOR(S): Simmons and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on State Affairs	7 Y, 0 N	Levin	Williamson
2) Government Efficiency & Accountability Council			
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

HJR 421 was drafted prior to the Florida electors approving Constitutional Amendment 1 on January 29, 2008. Some of the changes resulting from the passage of that Constitutional Amendment include:

- Providing an additional $25,000 homestead exemption for all tax levies, except school district tax levies, on the assessed valuation greater than $50,000 up to $75.000;
- Providing portability of the Save Our Homes differential for all tax levies, except school district tax levies;
- Limiting the assessment increases for certain specified non-homestead property to 10 percent each year; and
- Providing a $25,000 exemption for tangible personal property.

In addition to these voter approved constitutional changes, HJR 421 would:

- Amend Article VII, s. 4 of the Florida Constitution to provide alternative methods by which to compute the portability amount: (1) the enacted $1 million maximum limitation; or (2) 40 percent of just value up to $1 million, and 100 percent of the portion of just value in excess of $1 million.
- Amend Article VII, s. 6 of the Florida Constitution to provide a homestead exemption for first time homebuyers of 40 percent of just valuation greater than $25,000 up to $500,000.

The differentials do not apply to school district tax levies.

If approved by the electorate in the November 2008 general election, the House Joint Resolution would take effect January 1, 2009.

The joint resolution appears to have a fiscal impact on state government. It is estimated that it will create a non-recurring cost of approximately $60,000 for FY 2008-09. The cost is a result of placing the joint resolution on the ballot and publishing required notices.

HJR 421 has not been to a Revenue Estimating Impact Conference. As such, neither the total cost to local government nor the savings to taxpayers are known.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – HJR 421 would reduce the tax assessments against certain homesteads.

B. EFFECT OF PROPOSED CHANGES:

HJR 421 was drafted before the electors of Florida approved Constitutional Amendment 1 on January 29, 2008. Some of the changes resulting from the passage of that Constitutional Amendment include:

- Providing an additional $25,000 homestead exemption for all tax levies, except school district tax levies, on the assessed valuation greater than $50,000 up to $75.000;
- Providing portability of the Save Our Homes differential for all tax levies, except school district tax levies;
- Limiting the assessment increases for certain specified non-homestead property to 10 percent each year; and
- Providing a $25,000 exemption for tangible personal property.

In addition to these voter approved constitutional changes, HJR 421 would:

- Amend Article VII, s. 4 of the Florida Constitution to provide alternative methods by which to compute the portability amount: (1) the enacted $1 million maximum limitation; or (2) 40 percent of just value up to $1 million, and 100 percent of the portion of just value in excess of $1 million.[1]
- Amend Article VII, s. 6 of the Florida Constitution to provide a homestead exemption for first time homebuyers of 40 percent of just valuation greater than $25,000 up to $500,000.[2]

If approved by the electorate in the November 2008 general election, the House Joint Resolution would take effect January 1, 2009.

C. SECTION DIRECTORY:

Not applicable to a joint resolution.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   Non-Recurring FY 2008-09

   Department Of State, Division of Elections
   Publication Costs $60,000 (General Revenue)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[1] The differential does not apply to school district tax levies.
[2] *Ibid.*

1. Revenues:

   The ad valorem tax base would reduce if the constitutional changes proposed by the House Joint Resolution are approved by the voters. The Revenue Estimating Impact Conference has not considered these issues.

2. Expenditures:

   Property Appraisers may incur additional costs in order to implement the provisions of the House Joint Resolution.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers who pay taxes on their homesteads may experience lower taxes.

D. FISCAL COMMENTS:

The Florida Constitution requires publication of a proposed amendment or revision to the constitution in one newspaper of general circulation in each county in which a newspaper is published, once in the tenth week and once in the sixth week immediately preceding the week in which the election is held. The estimated non-recurring cost of compliance would be approximately $60,000.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandates provision is not applicable to joint resolutions.

2. Other:

   In 2006, the Office of Economic and Demographic Research (EDR) contracted with Walter Hellerstein, W. Scott Wright, and Charles C. Kearns of Sutherland Asbill & Brennan LLP for a legal analysis of the most commonly referenced legislative proposals regarding property taxes. The report focused primarily on the federal constitutional issues raised by the proposed alternatives to the Save Our Homes amendment, which limits property tax assessment increases on homestead property. The study did not examine specifically the portability proposal included in this House Joint Resolution.

   The key findings of the report were that portability might provide opportunities for legal challenge based on the Commerce Clause, the "Interstate" Privileges and Immunities Clause, and the Right to Travel. If portability is adopted and later held unconstitutional, the discrimination or burden it created would have to be eliminated on a prospective basis and remedied through meaningful backward-looking relief on a retrospective basis, which could entail either a refund or any other remedy that cures the discrimination.[3]

   The alternative assessment for the first-time Florida homeowner created by this House Joint Resolution may mitigate some or all of the issues identified in the legal analysis of portability.

B. RULE-MAKING AUTHORITY:

None.

[3] For example, one remedy could include taxing the previously favored class on a retroactive basis.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Due to the passage of Constitutional Amendment 1 on January 29, 2008, the Sponsor will offer a strike-all amendment that provides for alternative homestead assessments under Article VII, s. 6 of the Florida Constitution.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On February 20, 2008, the Committee on State Affairs adopted an amendment and reported the bill favorable with amendment. The amendment:

- Removes all changes to Article VII, section 4 of the Florida Constitution, other than those approved by the voters on January 29, 2007; and
- Provides all homestead owners with an additional homestead exemption equal to the greater of 40 percent of the homestead's just valuation from $75,000 to $500,000, or the accumulated benefit under the Save Our Homes assessment limitation of Article VII, section 4(c) of the Florida Constitution.

House Joint Resolution

A joint resolution proposing amendments to Section 4 and 6 of Article VII and the creation of Section 27 of Article XII of the State Constitution to provide for the transfer of the accrued benefit from the limitation on the assessed value of homestead property, to provide for an additional homestead exemption, and to provide an effective date if such amendments are adopted.

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

That the following amendments to Section 4 and 6 of Article VII and the creation of Section 27 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election:

ARTICLE VII

FINANCE AND TAXATION

SECTION 4. Taxation; assessments.--By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) Pursuant to general law tangible personal property held for sale as stock in trade and livestock may be valued for

taxation at a specified percentage of its value, may be classified for tax purposes, or may be exempted from taxation.

(c) All persons entitled to a homestead exemption under Section 6 of this Article shall have their homestead assessed at just value as of January 1 of the year following the effective date of this amendment. This assessment shall change only as provided herein.

(1) Assessments subject to this provision shall be changed annually on January 1st of each year; but those changes in assessments shall not exceed the lower of the following:

a. Three percent (3%) of the assessment for the prior year.

b. The percent change in the Consumer Price Index for all urban consumers, U.S. City Average, all items 1967=100, or successor reports for the preceding calendar year as initially reported by the United States Department of Labor, Bureau of Labor Statistics.

(2) No assessment shall exceed just value.

(3) After any change of ownership, as provided by general law, homestead property shall be assessed at just value as of January 1 of the following year, unless the provisions of paragraph (8) apply. Thereafter, the homestead shall be assessed as provided herein.

(4) New homestead property shall be assessed at just value as of January 1st of the year following the establishment of the homestead, unless the provisions of paragraph (8) apply. That assessment shall only change as provided herein.

(5) Changes, additions, reductions, or improvements to homestead property shall be assessed as provided for by general law; provided, however, after the adjustment for any change, addition, reduction, or improvement, the property shall be assessed as provided herein.

(6) In the event of a termination of homestead status, the property shall be assessed as provided by general law.

(7) The provisions of this amendment are severable. If any of the provisions of this amendment shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of this amendment.

(8)a. For all levies other than school district levies, a person who establishes a new homestead as of January 1, 2009, or January 1 of any subsequent year and who has received a homestead exemption pursuant to Section 6 of this Article as of January 1 of either of the two years immediately preceding the establishment of the new homestead is entitled to have the new homestead assessed at less than just value. A person who establishes a new homestead as of January 1, 2009, is entitled to have the new homestead assessed at less than just value only if that person received a homestead exemption on January 1, 2008. The assessed value of the newly established homestead shall be determined as follows:

1. If the just value of the new homestead is greater than or equal to the just value of the prior homestead of the person establishing the new homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of

the new homestead shall be the lesser of:

(A) The just value of the new homestead minus an amount equal to the difference between the just value and the assessed value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, not to exceed one million dollars; or

(B) Sixty percent (60%) of the just value of the new homestead up to one million dollars and one hundred percent (100%) of that portion of just value exceeding one million dollars.

Thereafter, the homestead shall be assessed as provided herein.

2. If the just value of the new homestead is less than the just value of the prior homestead of the person establishing the new homestead as of January 1 of the year in which the prior homestead was abandoned, the assessed value of the new homestead shall be equal to the lesser of:

(A) The just value of the new homestead divided by the just value of the prior homestead and multiplied by the assessed value of the prior homestead; or

(B) Sixty percent (60%) of the just value of the new homestead up to $1 million and one hundred percent (100%) of that portion of the just value exceeding one million dollars.

However, if the difference between the just value of the new homestead and the assessed value of the new homestead calculated pursuant to this sub-subparagraph is greater than one million dollars, the assessed value of the new homestead shall be

increased so that the difference between the just value and the assessed value equals one million dollars. Thereafter, the homestead shall be assessed as provided herein.

b. By general law and subject to conditions specified therein, the legislature shall provide for application of this paragraph to property owned by more than one person.

(9) By general law, the legislature may decrease the percentages specified in sub-sub-subparagraphs (8)a.1.(B) and 2.(B).

(d) The legislature may, by general law, for assessment purposes and subject to the provisions of this subsection, allow counties and municipalities to authorize by ordinance that historic property may be assessed solely on the basis of character or use. Such character or use assessment shall apply only to the jurisdiction adopting the ordinance. The requirements for eligible properties must be specified by general law.

(e) A county may, in the manner prescribed by general law, provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. Such a reduction may not exceed the lesser of the following:

(1) The increase in assessed value resulting from construction or reconstruction of the property.

(2) Twenty percent of the total assessed value of the property as improved.

SECTION 6. Homestead exemptions.--

(a)(1) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, upon establishment of right thereto in the manner prescribed by law, except assessments for special benefits, up to the assessed valuation of twenty-five ~~five~~ thousand dollars plus an amount equal to the greater of:

a. Forty percent (40%) of the just valuation of such property greater than twenty-five thousand dollars up to five hundred thousand dollars of just valuation; or

b. The accumulated benefit provided under subsection (c) of Section 4 of this Article~~, upon establishment of right thereto in the manner prescribed by law~~.

(2) The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. The exemption shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of Section 4 of this Article by a state agency designated by general law. This exemption is repealed on

the effective date of any amendment to Section 4 of this Article that provides for the assessment of homestead property at less than just value.

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

~~(c) By general law and subject to conditions specified therein, the exemption shall be increased to a total of twenty-five thousand dollars of the assessed value of the real estate for each school district levy. By general law and subject to conditions specified therein, the exemption for all other levies may be increased up to an amount not exceeding ten thousand dollars of the assessed value of the real estate if the owner has attained age sixty-five or is totally and permanently disabled and if the owner is not entitled to the exemption provided in subsection (d).~~

~~(d) By general law and subject to conditions specified therein, the exemption shall be increased to a total of the following amounts of assessed value of real estate for each levy other than those of school districts: fifteen thousand dollars with respect to 1980 assessments; twenty thousand dollars with respect to 1981 assessments; twenty-five thousand dollars with respect to assessments for 1982 and each year thereafter. However, such increase shall not apply with respect to any~~

~~assessment roll until such roll is first determined to be in compliance with the provisions of section 4 by a state agency designated by general law. This subsection shall stand repealed on the effective date of any amendment to section 4 which provides for the assessment of homestead property at a specified percentage of its just value.~~

(c) ~~(e)~~ By general law and subject to conditions specified therein, the Legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(d) ~~(f)~~ The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an additional homestead tax exemption not exceeding fifty thousand dollars to any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner and who has attained age sixty-five and whose household income, as defined by general law, does not exceed twenty thousand dollars. The general law must allow counties and municipalities to grant this additional exemption, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living.

(e) ~~(g)~~ Each veteran who is age 65 or older who is partially or totally permanently disabled shall receive a discount from the amount of the ad valorem tax otherwise owed on

homestead property the veteran owns and resides in if the disability was combat related, the veteran was a resident of this state at the time of entering the military service of the United States, and the veteran was honorably discharged upon separation from military service. The discount shall be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs. To qualify for the discount granted by this subsection, an applicant must submit to the county property appraiser, by March 1, proof of residency at the time of entering military service, an official letter from the United States Department of Veterans Affairs stating the percentage of the veteran's service-connected disability and such evidence that reasonably identifies the disability as combat related, and a copy of the veteran's honorable discharge. If the property appraiser denies the request for a discount, the appraiser must notify the applicant in writing of the reasons for the denial, and the veteran may reapply. The Legislature may, by general law, waive the annual application requirement in subsequent years. This subsection shall take effect December 7, 2006, is self-executing, and does not require implementing legislation.

ARTICLE XII

SCHEDULE

SECTION 27. Property tax exemptions and ad valorem tax limitations.--The amendments to Sections 4 and 6 of Article VII, authorizing the transfer of the accrued benefit from the limitation on annual increases in assessments of homestead

property and providing an additional homestead exemption equal to the greater of forty percent of the homestead's just valuation from twenty-five thousand dollars up to five hundred thousand dollars or the accumulated benefit from the limitation on annual increases in assessments of homestead property and this section, if submitted to the electors of this state for approval or rejection at the next general election, shall take effect January 1 of the year following such general election.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTIONS 4 AND 6

ARTICLE XII, SECTION 27

TRANSFER OF ACCUMULATED BENEFIT OF LIMITATIONS ON INCREASES IN HOMESTEAD PROPERTY ASSESSMENTS; ADDITIONAL HOMESTEAD EXEMPTION.--Proposing amendments to the State Constitution to:

(1) Provide for the transfer of accumulated Save-Our-Homes benefits. Homestead property owners will be able to transfer their Save-Our-Homes benefit to a new homestead within two years of relinquishing their previous homestead exemption; except, if the new homestead is established on January 1, 2008, the previous homestead must have been relinquished in 2007. If the new homestead has a higher just value than the old one, the benefit transferred shall be the lesser of (a) the just value of the new homestead minus an amount equal to the difference between the just value and the assessed value of the prior homestead as of January 1 of the year in which the prior homestead was abandoned, not to exceed $1 million, or (b) 60

percent of the just value up to $1 million in just value, and 100 percent of that portion of just value over $1 million, of the new homestead; if the new homestead has a lower just value, the amount of benefit transferred will be equal to the lesser of (c) the just value of the new homestead divided by the just value of the prior homestead and multiplied by the assessed value of the prior homestead, or (d) 60 percent of the just value up to $1 million in just value, and 100 percent of that portion of the just value over $1 million, of the new homestead. The transferred benefit may not exceed $1 million. Authorizes the Legislature to decrease the percentages of the just value of the new homestead used in the calculations. This provision does not apply to school taxes.

(2) Provide for an additional homestead exemption equal to the greater of 40 percent of the just value of the homestead property from $25,000 up to $500,000 or the accumulated benefit provided under Save Our Homes.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. **HJR 421**

COUNCIL/COMMITTEE ACTION

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

THIS AMENDMENT IS TRAVELING WITH THE BILL. NO ACTION REQUIRED

Council/Committee hearing bill: Government Efficiency & Accountability Council

Committee on State Affairs offered the following:

Amendment (with directory, schedule, ballot, and title amendments)

Remove line(s) 17-243 and insert:

ARTICLE VII

FINANCE AND TAXATION

SECTION 6 Homestead exemptions.--

(a)(1) Every person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner, or another legally or naturally dependent upon the owner, shall be exempt from taxation thereon, except assessments for special benefits, up to the assessed valuation of twenty-five thousand dollars. And, for all levies other than school district levies on the assessed valuation greater than fifty thousand dollars and up to seventy-five thousand dollars, upon establishment of right thereto in the manner prescribed by law.

(2) The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the

owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years. ~~The exemption shall not apply with respect to any assessment roll until such roll is first determined to be in compliance with the provisions of Section 4 of this Article by a state agency designated by general law. This exemption is repealed on the effective date of any amendment to Section 4 of this Article that provides for the assessment of homestead property at less than just value.~~

(b) Not more than one exemption shall be allowed any individual or family unit or with respect to any residential unit. No exemption shall exceed the value of the real estate assessable to the owner or, in case of ownership through stock or membership in a corporation, the value of the proportion which the interest in the corporation bears to the assessed value of the property.

(c) By general law and subject to conditions specified therein, each person who is entitled to receive the homestead exemption provided in subsection (a) is also entitled to an additional homestead exemption for 2009 in the amount equal to forty percent (40%) of the just value of the homestead and for 2010 and each year thereafter in an amount equal to forty percent (40%) of the just value of the homestead. The additional exemption shall apply only after the first seventy five thousand dollars up to five hundred thousand dollars of just value of the homestead property. However, in any year, such person shall receive only the exemption provided in this subsection or the application of the cumulative assessment limitation calculated pursuant to subsection (c) of Section 4, whichever provides the lower taxable value. The exemption shall not apply with respect to any assessement roll until such roll is first determined to

be in compliance with the provisions of Section 4 by the state agency designated by general law. This exemption is repealed on the effective date of any future amendment to this constitution which provides for the assessment of homestead property at less than just value.

(d) ~~(c)~~ By general law and subject to conditions specified therein, the Legislature may provide to renters, who are permanent residents, ad valorem tax relief on all ad valorem tax levies. Such ad valorem tax relief shall be in the form and amount established by general law.

(e) ~~(d)~~ The legislature may, by general law, allow counties or municipalities, for the purpose of their respective tax levies and subject to the provisions of general law, to grant an additional homestead tax exemption not exceeding fifty thousand dollars to any person who has the legal or equitable title to real estate and maintains thereon the permanent residence of the owner and who has attained age sixty-five and whose household income, as defined by general law, does not exceed twenty thousand dollars. The general law must allow counties and municipalities to grant this additional exemption, within the limits prescribed in this subsection, by ordinance adopted in the manner prescribed by general law, and must provide for the periodic adjustment of the income limitation prescribed in this subsection for changes in the cost of living.

(f) ~~(e)~~ Each veteran who is age 65 or older who is partially or totally permanently disabled shall receive a discount from the amount of the ad valorem tax otherwise owed on homestead property the veteran owns and resides in if the disability was combat related, the veteran was a resident of this state at the time of entering the military service of the United States, and the veteran was honorably discharged upon

separation from military service. The discount shall be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs. To qualify for the discount granted by this subsection, an applicant must submit to the county property appraiser, by March 1, proof of residency at the time of entering military service, an official letter from the United States Department of Veterans Affairs stating the percentage of the veteran's service-connected disability and such evidence that reasonably identifies the disability as combat related, and a copy of the veteran's honorable discharge. If the property appraiser denies the request for a discount, the appraiser must notify the applicant in writing of the reasons for the denial, and the veteran may reapply. The Legislature may, by general law, waive the annual application requirement in subsequent years. This subsection shall take effect December 7, 2006, is self-executing, and does not require implementing legislation.

D I R E C T O R Y A M E N D M E N T

Remove line(s) 12-16 and insert:

That the following amendment to Section 6 of Article VII and the creation of Section 28 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election:

S C H E D U L E A M E N D M E N T

Remove line(s) 244-257 and insert:

ARTICLE XII

SCHEDULE

SECTION 28. Property tax exemptions and ad valorem tax limitations.--The amendment to Section 6 of Article VII, providing an additional homestead exemption equal to the greater of forty percent of the homestead's just valuation from seventy-five thousand dollars up to five hundred thousand dollars or the accumulated benefit from the limitation on annual increases in assessments of homestead property and this section, if submitted to the electors of this state for approval or rejection at the next general election, shall take effect January 1 of the year following such general election.

B A L L O T A M E N D M E N T

Remove line(s) 260-294 and insert:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 6

ARTICLE XII, SECTION 28

IN HOMESTEAD PROPERTY ASSESSMENTS; ADDITIONAL HOMESTEAD EXEMPTION.--Proposing amendments to the State Constitution to provide for an additional homestead exemption equal to the greater of 40 percent of the just value of the homestead property from $75,000 up to $500,000 or the accumulated benefit provided under Save Our Homes.

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

Remove line(s) 1-8 and insert:

House Joint Resolution

A joint resolution proposing an amendment to Section 6 of Article VII and the creation of Section 28 of Article XII

of the State Constitution to provide for an additional homestead exemption, and to provide an effective date if such amendments are adopted.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 595 Property Appraisers
SPONSOR(S): Nelson
TIED BILLS: **IDEN./SIM. BILLS:** SB 1548

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Committee on State Affairs	9 Y, 0 N	Levin	Williamson
2) Government Efficiency & Accountability Council		Levin/Dykes	Cooper
3) Policy & Budget Council			
4)			
5)			

SUMMARY ANALYSIS

Section 193.023, F.S., requires the physical inspection of real property every five years for purposes of assessing the value of the property and ensuring that the tax roll meets all applicable requirements of law. The bill allows the property appraiser, at his or her discretion and where geographically suitable, to use image technology in lieu of physical inspection.

Section 196.011, F.S., requires persons with legal title to real or personal property, who are entitled to exemption from taxation, to make application for exemption on or before March 1 of each year. The bill permits applicants who demonstrate extenuating circumstances to the property appraiser within 25 days following the mailing of the assessment to receive an exemption after the March 1 deadline.

Current law provides eight factors a property appraiser may consider in determining whether a person is entitled to a homestead exemption as a permanent resident of Florida. The bill requires formal declarations of domicile to be recorded in the public records of the county in which exemption is sought. It replaces informal statements of the applicant with evidence of the location of the school where the applicant's dependent children are registered; place where the applicant is registered to vote with proof of voter registration; place of issuance of a driver's license with the requirement of a Florida driver license; and place of motor vehicle registration with the requirement of Florida vehicle registration. It adds location of bank statement and checking accounts to the factors that may be considered as well as proof of payment of utilities at the property for which permanent residency is claimed.

The bill was considered by the Revenue Estimating Impact Conference on February 15, 2008. The conference adopted an positive/negative indeterminant impact for both state and local funds in all applicable years.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates additional requirements an applicant must meet when establishing permanent residence in order to receive a homestead exemption.

Ensure lower taxes – The bill enables applicants for homestead exemption to demonstrate extenuating circumstances to the property appraiser in order to receive an exemption after the deadline for application.

B. EFFECT OF PROPOSED CHANGES:

Background

Article VII, s. 4 of the Florida Constitution, requires a just valuation of all property for ad valorem taxation, with certain exceptions. Florida property appraisers have the statutory responsibility to list and determine the just value of all real property in each county, each year, for purposes of ad valorem taxation.[1]

Section 193.023, F.S., requires property appraisers to complete an assessment of the value of all property no later than July 1 of each year, except that the Department of Revenue may, for good cause, extend the time for completion of assessment of all property. It also provides that in assessing the value of real property, the property appraiser must physically inspect each property every five years to ensure that the tax roll meets all the requirements of law. In addition, the property appraiser must physically inspect any parcel of taxable real property upon the request of the taxpayer or owner. In valuing property in accordance with constitutional and statutory requirements, the property appraiser may adjust the assessed value placed on any parcel or group of parcels based on mass data collected, on ratio studies prepared by an agency authorized by law, or pursuant to regulations of the Department of Revenue.

Effect of Bill

Section 193.023, F.S., requires the physical inspection of real property by the property appraiser every five years for purposes of assessing the value of the property and ensuring that the tax roll meets all applicable requirements of law. The bill allows the property appraiser, at his or her discretion and where geographically suitable, to use image technology in lieu of physical inspection to ensure the tax roll meets all requirements of law.

Section 196.011, F.S., requires persons with legal title to real or personal property, who are entitled to exemption from taxation, to make application for exemption on or before March 1 of each year. The bill permits applicants demonstrating extenuating circumstances to the property appraiser within 25 days following the mailing of the assessment to receive an exemption after the March 1 deadline.

Section 196.015, F.S., contains eight factors a property appraiser may consider in determining whether a person is entitled to a homestead exemption as a permanent resident of Florida. The bill requires formal declarations of domicile to be recorded in the public records of the county in which exemption is sought. It replaces informal statements of the applicant with evidence of the location of the school where the applicant's dependent children are registered; place where the applicant is registered to vote with proof of voter registration; place of issuance of a driver's license with the requirement of a Florida driver license; and place of motor vehicle registration with the requirement of Florida vehicle

[1] Section 193.085(1), F.S.

registration. It adds location of bank statement and checking accounts to the factors that may be considered as well as proof of payment of utilities at the property for which permanent residency is claimed.

C. SECTION DIRECTORY:

Section 1 amends s. 193.023, F.S., to revise the authority of the property appraiser to inspect property for assessment purposes.

Section 2 amends s. 196.011, F.S., to revise required time limitations for filing applications for homestead exemptions and to revise procedural requirements for property appraiser approval of such exemptions.

Section 3 amends s. 196.015, F.S., to revise factors for consideration by property appraisers in determining permanent residency for homestead exemption purposes.

Section 4 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   +/- Indeterminant.

2. Expenditures:

   None.[2]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   +/- Indeterminant.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Individuals applying for homestead exemption may be required to obtain a Florida driver license or registration for motor vehicles, boats, or aircraft owned or operated in this state.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision is not applicable because the bill does not: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the percentage of a state

[2] Department of Revenue 2008 Bill Analysis, HB 595, February 11, 2008, at 3.

tax shared with counties or municipalities; or reduce the authority that counties and municipalities have to raise revenue in the aggregate.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

House Bill 595 equips appraisers with the tools they need to crack down on abuse of the Homestead Exemption by out-of-state residents. Additionally, HB 595 clears an unnecessarily difficult hurdle required of those who have filed applications for the Homestead Exemption late and will save appraisers millions of dollars by allowing them to utilize precision imaging technology in lieu of intrusive and time consuming physical inspections.[3]

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 12, 2008, the Committee on State Affairs adopted two amendments and reported the bill favorable with amendments.

The bill provides additional criteria to be considered in determining permanent resident status pursuant to s. 196.015, F.S. Amendment 1 removes those additional criteria. Amendment 2 permits orphans who are minors to be deemed to be permanent residents until they reach the age of majority, thereby permitting minors to receive the homestead exemption.

[3] Email from the office of Rep. Nelson, March 11, 2008.

A bill to be entitled

An act relating to property appraisers; amending s. 193.023, F.S.; revising authority of the property appraiser to inspect property for assessment purposes; amending s. 196.011, F.S.; revising required time limitations for filing applications for homestead exemptions; revising procedural requirements for property appraiser approval of such exemptions; amending s. 196.015, F.S.; revising factors for consideration by property appraisers in determining permanent residency for homestead exemption purposes; providing an effective date.

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

Section 1. Subsection (2) of section 193.023, Florida Statutes, is amended to read:

193.023 Duties of the property appraiser in making assessments.--

(2) In making his or her assessment of the value of real property, the property appraiser is required to physically inspect the property at least once every 5 years. Where geographically suitable, and at the discretion of the property appraiser, the property appraiser may use image technology in lieu of physical inspection to ensure that the tax roll meets all requirements of the law~~, and may review image technology, as the property appraiser deems necessary, to ensure that the tax roll meets all the requirements of law~~. However, the property

appraiser shall physically inspect any parcel of taxable real property upon the request of the taxpayer or owner.

Section 2. Subsection (8) of section 196.011, Florida Statutes, is amended to read:

196.011 Annual application required for exemption.--

(8) Any applicant who is qualified to receive any exemption under subsection (1) and who fails to file an application by March 1, must ~~may~~ file an application for the exemption with the property appraiser on or before the 25th day following the mailing by the property appraiser of the notices required under s. 194.011(1). Upon receipt of sufficient evidence, as determined by the property appraiser, demonstrating the applicant was unable to apply for the exemption in a timely manner or otherwise demonstrating extenuating circumstances judged by the property appraiser to warrant granting the exemption, the property appraiser may grant the exemption. If the applicant fails to produce sufficient evidence demonstrating the applicant was unable to apply for the exemption in a timely manner or otherwise demonstrating extenuating circumstances as judged by the property appraiser, the applicant ~~and~~ may file, pursuant to s. 194.011(3), a petition with the value adjustment board requesting that the exemption be granted. Such petition must ~~may~~ be filed ~~at any time~~ during the taxable year on or before the 25th day following the mailing of the notice by the property appraiser as provided in s. 194.011(1). Notwithstanding the provisions of s. 194.013, such person must pay a nonrefundable fee of $15 upon filing the petition. Upon reviewing the petition, if the person is qualified to receive

the exemption and demonstrates particular extenuating circumstances judged by ~~the property appraiser or~~ the value adjustment board to warrant granting the exemption, ~~the property appraiser or~~ the value adjustment board may grant the exemption for the current year.

Section 3. Section 196.015, Florida Statutes, is amended to read:

196.015 Permanent residency; factual determination by property appraiser.--Intention to establish a permanent residence in this state is a factual determination to be made, in the first instance, by the property appraiser. Although any one factor is not conclusive of the establishment or nonestablishment of permanent residence, the following are relevant factors that may be considered by the property appraiser in making his or her determination as to the intent of a person claiming a homestead exemption to establish a permanent residence in this state:

(1) A formal declaration ~~declarations~~ of domicile by the applicant recorded in the public records of the county in which the exemption is being sought.

(2) Evidence of the location where the applicant's dependent children are registered for school ~~Informal statements of the applicant~~.

(3) The place of employment of the applicant.

(4) The previous permanent residency by the applicant in a state other than Florida or in another country and the date non-Florida residency was terminated.

(5) Proof of voter registration in this state with the voter-identification-card address of the applicant matching the address of the physical location where the exemption is being sought ~~The place where the applicant is registered to vote~~.

(6) A valid Florida driver's license and evidence of relinquishment of driver's licenses from any other states ~~The place of issuance of a driver's license to the applicant~~.

(7) ~~The place of~~ Issuance of a Florida license tag on any motor vehicle owned by the applicant.

(8) The address as listed on federal income tax returns filed by the applicant.

(9) The location where the applicant's bank statements and checking accounts are registered.

(10) Proof of payment for utilities at the property for which permanent residency is being claimed.

Section 4. This act shall take effect July 1, 2008.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 595**

COUNCIL/COMMITTEE ACTION

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

THIS AMENDMENT IS TRAVELING WITH THE BILL. NO ACTION REQUIRED

Council/Committee hearing bill: Government Efficiency & Accountability Council

Committee on State Affairs offered the following:

Amendment (with title amendment)

Remove lines 61-97

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

Remove lines 8-11 and insert:

appraiser approval of such exemptions; providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. **HB 595**

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

THIS AMENDMENT IS TRAVELING WITH THE BILL. NO ACTION REQUIRED

Council/Committee hearing bill: Government Efficiency & Accountability Council

Committee on State Affairs offered the following:

Amendment (with title amendment)

Between lines 97 and 98 insert:

Section 4. Subsection (8) is added to section 196.031, Florida Statutes, to read:

196.031 Exemption of homesteads.--

(8) In the case of a minor who has inherited homestead property pursuant to s. 732.4015, the minor shall be deemed to be a permanent resident of the homestead property until such time as the minor reaches majority.

Section 5. Section 196.061, Florida Statutes, is amended to read:

196.061 Rental of homestead to constitute abandonment.--The rental of an entire dwelling previously claimed to be a homestead for tax purposes shall constitute the abandonment of said dwelling as a homestead, and said abandonment shall continue until such dwelling is physically occupied by the owner thereof. However, such abandonment of such

homestead after January 1 of any year shall not affect the homestead exemption for tax purposes for that particular year so long as this provision is not used for 2 consecutive years. The provisions of this section shall not apply to:

(1) A member of the Armed Forces of the United States whose service in such forces is the result of a mandatory obligation imposed by the federal Selective Service Act or who volunteers for service as a member of the Armed Forces of the United States; or

(2) A minor who has inherited homestead property pursuant to s. 732.4015.

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

Remove line(s) 11 and insert:
homestead exemption purposes; amending s. 196.031, F.S.; providing for certain minors to be deemed permanent residents of homestead property for certain purposes; amending s. 196.061, F.S.; providing for nonapplication of certain homestead abandonment provisions to minors inheriting homestead property; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GEAC 08-13 Administrative Procedures

SPONSOR(S): Government Efficiency & Accountability Council

TIED BILLS: **IDEN./SIM. BILLS:** SB 704

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

SUMMARY ANALYSIS

PCB GEAC 08-13 addresses issues uncovered by the Joint Administrative Procedures Committee (JAPC) in their review of state agency utilization of "unadopted" rules in carrying out agency responsibilities. An "unadopted rule" is an agency statement that meets the definition of "rule" but has not been adopted through the rulemaking process. Staff of the Joint Administrative Procedures Committee surveyed the web sites of approximately 28 agencies and documented over 130 instances of agency policy statements that appeared to meet the definition of rule that were not adopted pursuant to the requirements of the Administrative Procedure Act (APA).

PCB GEAC 08-13 amends the APA so that upon notification to the administrative law judge in a rule challenge proceeding that an agency, prior to the final hearing, has published a notice of rulemaking, the notice will operate as an automatic stay of the proceedings pending adoption of the statement as a rule. The PCB also amends s. 120.57(1)(e), F.S., to narrow the circumstances in which an agency may continue to base its action against an individual on unadopted rules.

Under current law, an agency may avoid the award of attorney's fees in the context of a challenge to an unadopted rule by simply initiating the rulemaking process any time prior to the entry of a final order. Under the bill, a petitioner seeking to challenge to an unadopted rule must give the agency notice that the agency statement at issue may constitute an unadopted rule at least 30 days before the petition is filed. If the agency within the 30-day time period publishes notice of rulemaking to address the statement, no attorney's fees will be assessed against the agency. In circumstances where the rule challenge is proceeding but before the final hearing the administrative law judge is notified that the agency has published notice of rulemaking, the notice shall operate as a stay of the proceedings pending rulemaking. In such instances, the administrative law judge shall award attorney's fees accrued by the petitioner prior to the date the notice was published, provided the agency adopts the statement as a rule. The PCB also increases the existing attorney fee cap from $15,000 to $50,000.

Under the PCB, effective July 1, 2010, the Department of State (DOS) will be required to electronically publish the Florida Administrative Code (FAC) on its website to allow for a full text search of the code.

The bill has a fiscal impact. See Fiscal Comments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard Individual Liberty - This bill creates incentives for agencies to rely on rules which have been promulgated through the procedures established in the APA. Under the bill agencies would be less likely to continue to rely on unadopted rules which can have the same force of law as rules which have been formally adopted through the APA.

B. EFFECT OF PROPOSED CHANGES:

Agency Administrative Rules and the Joint Administrative Procedures Committee Report on Unadopted Rules

Chapter 120 is the Administrative Procedure Act (APA) which sets forth the procedures by which executive branch agencies must adopt their respective agency administrative rules that are used to implement and carry out their statutory duties and responsibilities. The Joint Administrative Procedures Committee (JAPC) is created in s. 11.60, F.S., as a legislative check on statutorily created authority of agencies to adopt administrative rules. JAPC is a joint standing legislative committee composed of six members, with three members from each house. The committee is assigned the duty of maintaining a continuous review of administrative rules and the statutory authority on which they are based.

PCB GEAC 08-13 addresses issues uncovered by the Joint Administrative Procedures Committee (JAPC) in their review of state agency utilization of "unadopted" rules in carrying out agency responsibilities. For several months prior to the 2006 regular session, and on a continuing basis thereafter, JAPC has been tracking and evaluating the scope of state agency utilization of agency policy statements that meet the definition of and administrative *rule* given in s. 120.52 (15) F. S., but which have not been adopted through the rulemaking process required under the APA.

JAPC issued two reports on the subject of unadopted rules which led to the recommendations that served as goals for the statutory revisions in this PCB.[1] The first report (Initial JAPC Report) was issued in February 2006 and recommended no amendments for the 2006 session until further analysis was completed to ascertain the reasons behind agency action regarding unadopted rules. The second report, containing recommendations, was issued in February 2007 as a supplement to the initial report (Supplemental JAPC Report).

The Initial JAPC Report describes the purpose and objective of the APA as follows:

> Florida's 1974 Administrative Procedure Act (APA) was intended to combat the perception of "phantom government," the idea that agency policies were neither widely known nor consistently applied. Important goals of the new Act were to provide public notice of agency policy, encourage public participation in the formulation of that policy, and ensure legislative oversight of delegated authority. Agency policy was to be expressed through rules adopted pursuant to the rulemaking requirements of the Act.

[1] *Report on Unadopted Rules*, JAPC, February 2006; *Supplement to Report on Unadopted Rules*, JAPC, February 2007.

Florida Statute s. 120.52(15) of the APA defines a state agency rule as follows:

> (15) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. The term does not include:
>
> (a) Internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum.
>
> (b) Legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with an agency action.

Section 120.536(1) F.S., expresses the standard for exercising agency rulemaking authority.

> (1) A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

There have been some court decisions that have expanded the discretion of agencies to determine whether their own policy statements are in fact "rules" requiring adoption under the APA. [2] In contrast, s. 120.54 (1)(a), F.S., provides a clear indication of the Legislature's directive that agencies must utilize the APA's rulemaking process stating that "[r]ulemaking is not a matter of agency discretion. Each agency statement defined as a rule . . . shall be adopted by the rulemaking procedure provided by this section as soon as feasible and practicable." The statute also creates a presumption that rulemaking is feasible and practicable and sets forth express criteria for determining when it is neither. The burden to prove that rulemaking is not feasible or practicable rests with the agency, however, an agency can effectively negate the feasibility presumption by simply initiating rulemaking. [3] Section 120.54(1)(a)1 provides: Rulemaking shall be presumed feasible unless the agency proves that:

> a. The agency has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rulemaking;

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[2] *Department of Revenue v. Novoa*, 745 So.2d 378 (Fla. 1st DCA 1999); *Department of Highway Safety and Motor Vehicles v. Schluter*, 705 So.2d 81 (Fla. 1st DCA 1998); *McDonald v. Department of Banking and Finance*, 346 So.2d 569 (1st DCA 1977).

[3] S. 120.54(1)(a)2. provides: Rulemaking shall be presumed practicable to the extent necessary to provide fair notice to affected persons of relevant agency procedures and applicable principles, criteria, or standards for agency decisions unless the agency proves that: a. Detail or precision in the establishment of principles, criteria, or standards for agency decisions is not reasonable under the circumstances; or b. The particular questions addressed are of such a narrow scope that more specific resolution of the matter is impractical outside of an adjudication to determine the substantial interests of party based on individual circumstances.

b. Related matters are not sufficiently resolved to enable the agency to address a statement by rulemaking; or

c. The agency is currently using the rulemaking procedure expeditiously and in good faith to adopt rules which address the statement.

PCB GEAC 08-13 removes the logically inconsistent provision found in sub-subparagraph "c" above which would require a conclusion that rulemaking shall be presumed feasible *unless* the agency is currently using the rulemaking procedure expeditiously.

An "unadopted rule" is an agency statement that meets the definition of "rule" but has not been adopted through the rulemaking process. In determining whether an agency policy statement is actually a rule courts will evaluate the effect of the statement rather than the agency's own characterization of the statement.[4] In the period between the Initial JAPC Report and the Supplemental JAPC Report, joint committee staff surveyed the web sites of approximately 28 agencies and documented over 130 instances of agency policy statements that appeared to meet the definition of rule that were not adopted pursuant to the APA's rulemaking requirements.[5] PCB GEAC 08-13 codifies a definition of the term "unadopted rule."

Rule Challenges

Section 120.56(4), F.S., allows any person substantially affected by an agency statement to challenge the statement and seek an administrative determination of whether the statement violates the rulemaking requirements of s. 120.54(1)(a), F.S.

Current law provides a means for agencies to continue their reliance on a challenged unadopted rule until the administrative law judge enters a final order that the statement violates section 120.54(1),F.S.[6] Under s. 120.56(4)(e)1 & 3, F.S., if, either prior to a final hearing or following commencement of a final hearing but before entry of a final order, an agency publishes proposed rules that address the challenged agency statement and proceeds to adopt rules, the agency is allowed to continue to rely on the statement as long as it complies with the requirements of s. 120.57(1)(e), F.S. Essentially, once the agency initiates rulemaking in response to an unadopted rule challenge, it acts as a defense and the agency may avoid an adverse ruling and responsibility for a petitioner's attorney's fees simply by commencing belated rulemaking procedures. In short, even if the agency is enforcing an unadopted rule that clearly violates the rulemaking requirements of s.120.54, F.S., the agency is not penalized for its failure to initiate rulemaking prior to the statement's application to substantially affected persons.

PCB GEAC 08-13 amends the APA so that upon notification to the administrative law judge in a rule challenge proceeding that an agency, prior to the final hearing, has published a notice of rulemaking, the notice will operate as an automatic stay of the proceedings pending adoption of the statement as a rule. The PCB provides that the stay may be vacated on a showing of good cause, but otherwise will remain in effect as long as the agency is proceeding expeditiously and good faith to adopt the statement as a rule. The intended effect of this provision, along with revisions made regarding the award of attorney's fees in such circumstances, is to hold the agency liable for attorney's fees accrued up to the point the agency published notice of rulemaking and obtained the stay provided in this section. (See discussion of Attorney's Fees)

Agency Action Determining Substantial Interests of a Party

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[4] *Department of Administration, Division of Personnel, v. Harvey*, 356 So.2d 323 (Fla. 1st DCA 1977).

[5] *Supplement to Report on Unadopted Rules*, JAPC, February 2007, at 3.

[6] Section 120.56(4)(e)1-3, F.S.

Section 120.57(1)(e), F.S., is the provision of law which provides for persons who have individually had their substantial interests determined by agency action to challenge such action. The agency action being challenged is subject to de novo review by an administrative law judge, and no presumption is made prior to the hearing as to whether the action is valid or invalid. Subparagraph (1)(e)(2) of this section contains what is known as the "prove up" provision which requires that in order to prevail in hearings for such challenges the agency must demonstrate that the unadopted rule:

1. Is within its statutory or constitutional authority and responsibilities;
2. Does not enlarge, modify, or contravene the law implemented;
3. Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency;
4. Is not arbitrary or capricious.
5. Is not being applied without due notice; and
6. Does not impose excessive regulatory costs.[7]

The Supplemental JAPC Report explains the historical purpose of the "prove up" provision as follows:

> Early case law granted agencies the option of engaging in "policy by adjudication" but described such a "prove up" option as an incentive to rulemaking, as it was thought that development of policy through the adjudicatory process would be burdensome to agencies. However, when the precursor to section 120.57(1)(e) was enacted in 1991, instead of requiring an agency to prove up the facts at issue in the course of adjudication as an alternative to adopting policy statements by rule, the statute permitted an agency to prove up the agency policy contained in an unadopted statement.

PCB 08-13 amends s. 120.57(1)(e), F.S., to narrow the circumstances in which an agency may continue to base its action against an individual on unadopted rules. Under the PCB, an agency may continue its reliance on unadopted rules against an individual when the agency demonstrates: 1) that the statute being implemented directs it to adopt rules; 2) that the agency has not had time to adopt the statements as rules because the statute was recently enacted; and 3) that the agency has initiated rulemaking and is proceeding expeditiously and in good faith. In these narrow circumstances an agency would then be required to satisfy the "prove up" provision before being authorized to continue its reliance on an unadopted rule.

In all other circumstances not outlined above, the PCB provides that an agency or administrative law judge may not base agency action that determines the substantial interests of a party on an unadopted rule. An agency would still, however, have the ability to apply adopted rules and provisions of law to the facts in individual cases.

Attorneys Fees

In proceedings challenging existing rules and proposed rules attorney's fees are limited to $15,000. Under the PCB the cap is raised to $50,000.

Under current law, an agency may avoid the award of attorney's fees in the context of a challenge to an unadopted rule by simply initiating the rulemaking process when the challenge is filed or anytime thereafter prior to the final order of the administrative law judge. The approach taken in the PCB is to create an incentive for agencies to commence rulemaking early in the process. Under the bill, a petitioner seeking to challenge to an unadopted rule must give the agency notice that the agency statement at issue may constitute an unadopted rule at least 30 days before the petition is filed. If the agency within the 30-day time period publishes notice of rulemaking to address the statement, no attorney's fees will be assessed against the agency. In circumstances where the rule challenge is

[7] See s. 120.57,(1)(e), F.S., for further detail with respect to each element listed.

proceeding but before the final hearing the administrative law judge is notified that the agency has published notice of rulemaking, the notice shall operate as a stay of the proceedings pending rulemaking. In such instances, the administrative law judge shall award attorney's fees accrued by the petitioner prior to the date the notice was published, provided the agency adopts the statement as a rule. Under this provision, attorney's fees are capped at $50,000. The cap, however, does not apply when the agency does not initiate rulemaking in response to a rule challenge.

With respect to attorney fee recovery by the state, current law does not provide for attorney's fees to be awarded to the state in proceedings challenging unadopted rules. The PCB provides that attorney's fees shall be awarded to the state when it is determined that the party participated in the proceedings for an improper purpose or the party or the party's attorney knew or should have known that the claim was not supported by the facts or the existing law.

Legislative Oversight of Agency Rulemaking

In keeping with the role JAPC serves as a check on agency rulemaking, s. 120.54(3)(a)4., F.S., requires an agency to furnish the following documents to JAPC at least 21 days prior to rule adoption: a copy of the proposed rule; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of the economic impact statement, if required; a statement of the extent to which the proposed rule establishes standards more restrictive than federal rules, or that a federal rule on the same subject does not exist; and a copy of the notice of intent to adopt, amend, or repeal a rule. Section. 120.545, F.S., sets forth specific guidelines for the committee's review of agencies adopted rules to ensure they are in compliance with the requirements of the APA and that their implementation will not require an additional appropriation. If JAPC objects to a rule, it must certify its objection to the agency within five days. The committee also must notify the President of the Senate and the Speaker of the House of Representatives of any objection concurrent with certification to the agency.

When an agency receives a certified objection from JAPC about a rule it must notify the committee that it will (a) amend the rule, (b) repeal the rule or (c) refuse to amend or repeal the rule. Essentially the same options apply to proposed rules. The agency must provide notification in the Florida Administrative Weekly (Weekly) if an agency seeks to pursue either of the first two options. If the agency notifies JAPC that it refuses to amend or repeal the rule or a proposed rule, JAPC must file a detailed notice of its objection with the Department of State (DOS) and the DOS must publish the notice in the Weekly and include notice of the objection in the Florida Administrative Code (FAC). JAPC may not require the agency to meet its objection. JAPC, however, may seek an administrative or judicial determination that a rule to which it has filed an objection is an invalid exercise of delegated legislative authority. Current provisions of s. 120.545, F.S., however, do not specify procedures to be used when JAPC objects to statements of estimated regulatory costs.

PCB 08-13 amends s. 120.545, F.S., to clarify the existing procedures to be used when addressing rules that are currently in effect and rules that are not yet in effect. In addition, the bill amends the statutory guidelines for JAPC's review of rules to include a determination of whether the rule's statement of estimated regulatory cost complies with current statutory requirements under s. 120.541, F.S.

Florida Administrative Code and Florida Administrative Weekly

Pursuant to s. 120.55(1), F.S., DOS is required to compile and publish the FAC, which contains all rules adopted by each agency, citing specific rulemaking authority, all history notes, and complete indexes. Pursuant to s. 120.55(1)(b), F.S., DOS is required to publish notices and various other materials filed by the state's administrative agencies in the Weekly which must contain:

- Notice of adoption of, and an index to, all rules filed during the preceding week;

- All notices required by s. 120.54(3)(a), F.S., concerning agency rulemaking, showing the text of all rules proposed for consideration or a reference to the location in the Weekly where the text of the proposed rules is published;

- All notices of public meetings, hearings, and workshops, including a statement of the manner in which a copy of the agenda may be obtained;

- A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules;

- Notice of petitions for declaratory statements or administrative determinations;

- A summary of each objection to any rule filed by JAPC during the preceding week; and

- Any other material required or authorized by law or deemed useful by DOS.

Publication

During the 2006 Regular Session, the Legislature passed CS/SB 262, enacted as Ch. 226-82, Laws of Florida, which requires DOS to start publishing the Weekly on its Internet website with certain search capabilities, effective December 31, 2007.3 The law requires DOS to continue to publish a printed version of the Weekly.

Currently, DOS is authorized to prescribe by rule the style and form for rules submitted for filing. The bill expands DOS authority to prescribe style and form requirements for notices and other materials submitted for filing. Currently, users of the Florida Administrative Weekly Internet Website subscription service are able to receive an automated email notification. The bill requires those email notifications to be sent prior to or at the same time as publication of the printed and electronic Weekly, and the email notification must include a summary of the content of the notice.

Currently, DOS is required to publish a printed version of the FAC. Effective July 1, 2010, the bill requires DOS also to electronically publish the FAC on its website to allow for a full text search and any material incorporated by reference must have a hyperlink to the material incorporated by reference.

Material Incorporated by Reference

Currently, a rule may incorporate material by reference but only as the material exists on the date the rule is adopted. The PCB provides that an agency rule that incorporates by specific reference another rule of the same agency automatically incorporates subsequent amendments to the referenced rule, unless a contrary intent is clearly indicated in the referencing rule. Also, any notice of amendments must explain the amendment's effect.

Currently an adopting agency is required to file with JAPC a copy of each rule it proposes to adopt, a detailed written statement of the facts and circumstances justifying the proposed rule, a copy of any statement of estimated regulatory costs that has been prepared, a statement of the extent to which the proposed rule relates to federal standards or rules on the same subject, and notice of its intent. The bill clarifies that a copy of any material incorporated by reference also be filed and if the agency is required to publish its rules in the FAC, it is required to file a copy of any material incorporated by reference with the DOS. Also, a copy of any material incorporated by reference is to be provided to JAPC when an agency adopts emergency rules. For rules adopted after December 31, 2010, material incorporated by

reference must be submitted in electronic format to DOS in such a way as to make it available for free public access through an electronic hyperlink unless the agency promulgating the rule determines that the posting of the material online would violate federal copyright law. If the agency determines that the posting of the material would constitute a violation of federal copyright law, a statement to that effect, along with the address of locations at DOS and the agency at which the material is available for public inspection and examination shall be included in the notice of rulemaking.

Maintenance of Orders

Current law requires agencies to maintain all final agency orders along with a subject-matter index of such orders for public inspection. In lieu of this requirement, agencies may maintain and make available to the public a searchable electronic database of its orders. The PCB provides an additional way for agencies to comply with this requirement by allowing the agencies to electronically transmit to the Division of Administrative Hearings (DOAH) a copy of their respective orders for positing on DOAH's website.

Hearings Before Regulatory Boards

PCB 08-113 amends s. 120.54, F.S., relating to rulemaking hearings to expressly provide that when the proceeding is one which is to come before a regulatory board, other than a board comprised of the Governor and Cabinet, the board itself must conduct at least one public hearing and may not delegate that responsibility to staff unless those who requested the public hearing give their consent.

Definitions

The PCB also provides a definition of "rulemaking authority" to mean statutory language that explicitly authorizes or requires an agency to adopt, develop, establish, or otherwise create any statement coming within the definition of the term "rule." The bill provides that rulemaking responsibilities of an agency head to give notice prior to adopting, amending, or repealing a rule other than emergency rule; or filing requirements for final adoption, may not be delegated or transferred. The bill also provides a definition of "law implemented" to expressly provide that the term refers to language of the enabling statute being carried out or interpreted by an agency through rulemaking.

Disputed Issues of Material Fact

The bill clarifies that if a disputed issue of material fact arises during a hearing not involving disputed issues of material fact that hearing must be terminated and a hearing involving disputed issues of material fact must be conducted unless waived by all parties.

C. SECTION DIRECTORY:

Section 1. Names the bill the "Open Government Act."

Section 2. Amending s. 120.52, F.S., to provide definitions.

Section 3. Amending s. 120.53, F.S., to provide for electronic submission of agency orders to the Division of Administrative Hearings.

Section 4. Amending s. 120.536,F.S., to clarify a reference to the "enabling statute."

Section 5. Amending s. 120. 54, F.S., relating to incorporating material by reference and publication thereof.

Section 6. Amending s. 120.54, F.S., effective January 1, 2009, relating to when agency rulemaking is presumed feasible.

Section 7. Amending s. 120.545, F.S., relating to committee review of agency rules and statements of regulatory costs.

Section 8. Amending s. 120.55, F.S., relating to requirements for publication.

Section 9. Providing for an increase in the amount that may be retained in the Records Management Trust Fund.

Section 10. Amending s. 120.55, F.S., effective July 1, 2010, relating to requirements for publication.

Section 11. Amending s. 120.56, F.S., relating to notice requirements for rules challenge proceedings.

Section 12. Amending s. 120.56, F.S., effective January 1, 2009, making revisions to rule challenge proceedings and providing for the issuance of an automatic stay pending notice of rulemaking.

Section 13. Amending s. 120.57, F.S., effective January 1, 2009, relating to challenges to agency action based on unadopted rules and review thereof.

Section 14. Amending s. 120.595, F.S., effective January 1, 2009, relating to attorneys fees for chapter 120 proceedings.

Section 15. Amending s. 120.569, F.S., clarifying procedures for hearings concerning disputed issues of material fact.

Sections16 – 21. Amending ss. 120.74, F.S., 120.80, F.S., 120.81, F.S., 409.175, F.S., 420.9072,F.S., and 420.9075, F.S. making technical corrections and correcting cross-references.

Section 22. Providing an appropriation for the 2009-10 fiscal year.

Section 23. Providing an effective date except as otherwise provided.

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:

The bill appears to provide incentives for people to challenge unadopted rules by eliminating those provisions that currently allow an agency to initiate the rulemaking process and avoid any sanctions. Additionally, the bill provides for the award of costs and attorney's fees against the agency in circumstances not provided for under the current law.

D. FISCAL COMMENTS:

Agencies that have not adopted as rules those agency statements that should be adopted pursuant to ch. 120, F.S., may incur administrative costs associated with the rulemaking process. Those costs are indeterminate but may be minimized by agency decisions concerning continued reliance on unadopted rules once notified of a pending rule challenge. Agencies that lose in a proceeding challenging an agency statement not adopted as a rule may be liable for costs and attorney's fees. Some costs can be avoided by complying with the new provisions concerning unadopted rules, and may be partially offset among various agencies by the effect of the provision providing an additional basis for the award of attorney's fees for the state.

At least one agency has claimed that it will incur costs associated with the requirements to: 1) electronically supply materials referenced in rules, and 2) terminate a s. 120.57(2), F.S., proceeding and initiate a s. 120.57(1), F.S., proceeding if a disputed issue of material fact arises in the former. First, though there may be costs associated with scanning documents to be submitted electronically, those costs may be less than the costs associated with providing hard copies of incorporated materials, as is currently required. The second concern appears misplaced, since the Uniform Rules of Procedure, for 10 years and until recently, required exactly what the bill would require.

The bill provides that for the 2009-2010 fiscal year the nonrecurring sum of $451,000 is appropriated from the Records Management Trust Fund within the Department of State for the purpose of carrying out its duties. The Department of State has indicated with respect to the provisions they will implement that since all trust funds are used for other purposes, it will need to increase the per line cost to agencies for advertising in the Florida Administrative Weekly. The delayed implementation date, however, would allow more time for the accumulation of funds within the trust fund to build for two years prior to implementation of the bill's requirements. For this reason, the bill also increases the maximum amount of funds which may be held in the trust fund to $500,000.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action 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:

The DOS is given rule making authority for the requirements of the bill with respect to incorporating material by reference.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

N/A

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

A bill to be entitled

An act relating to administrative procedures; providing a short title; amending s. 120.52, F.S.; redefining the term "invalid exercise of delegated legislative authority" to remove a limitation on the construction of statutory language granting rulemaking authority; defining the terms "law implemented," "rulemaking authority," and "unadopted rule"; amending s. 120.536, F.S.; revising guidelines for the construction of statutory language granting rulemaking authority; amending s. 120.54, F.S.; prescribing limits and guidelines with respect to the incorporation of material by reference; prescribing requirements for material being incorporated by reference; prohibiting an agency head from delegating or transferring certain specified rulemaking responsibilities; revising the information required in notices of proposed actions; providing additional procedures for rule-adoption hearings; revising requirements for filing rules; requiring that material incorporated by reference be published by the agency when adopting emergency rules; revising provisions with respect to petitions to initiate rulemaking; amending s. 120.545, F.S.; revising duties and procedures of the Administrative Procedures Committee and agencies with respect to review of agency rules; deleting procedures for agency election to modify, withdraw, amend, or repeal a proposed rule; providing for the effect of the failure of an agency to respond to a committee objection to a statement of estimated regulatory costs within the

time prescribed; deleting a requirement that the Department of State publish final legislative action; amending s. 120.55, F.S.; requiring the department to prescribe by rule the content requirements for rules, notices, and other materials; revising for a specified period the limit for the unencumbered balance in the Records Management Trust Fund at the beginning of the fiscal year for fees collected under ch. 120, F.S.; providing for the transfer of excess funds; requiring electronic publication of the Florida Administrative Code; prescribing requirements with respect to the content of such electronic publication; providing for filing information incorporated by reference in electronic form; providing requirements for the Florida Administrative Weekly Internet website; amending s. 120.56, F.S., relating to challenges to rules; conforming a cross-reference; revising procedures for administrative determinations of the invalidity of rules; requiring an agency to discontinue reliance on a statement under certain circumstances; providing an exception; deleting certain provisions relating to actions before a final hearing is held; amending s. 120.57, F.S.; revising procedures applicable to hearings involving disputed issues of material fact; prohibiting enforcement of unadopted agency rules under certain circumstances; amending s. 120.595, F.S.; increasing the limitation on attorney's fees in challenges to proposed agency rules or existing agency rules; providing for an award of

reasonable costs and attorney's fees accrued by a petitioner under certain circumstances; providing for an award of fees and costs if the agency prevails and a party participated for an improper purpose; amending s. 120.569, F.S.; requiring that certain administrative proceedings be terminated and subsequently reinstated under different provisions of law if a disputed issue of material fact arises during the proceeding; conforming a cross-reference; amending s. 120.74, F.S.; revising reporting requirement for agency heads; amending ss. 120.80, 120.81, 409.175, 420.9072, and 420.9075, F.S.; conforming cross-references; providing an appropriation; providing effective dates.

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

Section 1. This act may be cited as the "Open Government Act."

Section 2. Subsection (8) of section 120.52, Florida Statutes, is amended, present subsections (9) through (15) of that section are renumbered as subsections (10) through (16), respectively, present subsections (16), (17), (18), and (19) of that section are redesignated as subsections (18), (19), (21), and (22), respectively, and new subsections (9), (17), and (20) are added to that section, to read:

120.52 Definitions.--As used in this act:

(8) "Invalid exercise of delegated legislative authority" means action that ~~which~~ goes beyond the powers, functions, and

duties delegated by the Legislature. A proposed or existing rule is an invalid exercise of delegated legislative authority if any one of the following applies:

(a) The agency has materially failed to follow the applicable rulemaking procedures or requirements set forth in this chapter;

(b) The agency has exceeded its grant of rulemaking authority, citation to which is required by s. 120.54(3)(a)1.;

(c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by s. 120.54(3)(a)1.;

(d) The rule is vague, fails to establish adequate standards for agency decisions, or vests unbridled discretion in the agency;

(e) The rule is arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational; or

(f) The rule imposes regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority

to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute ~~by the same statute~~.

(9) "Law implemented" means the language of the enabling statute being carried out or interpreted by an agency through rulemaking.

(17) "Rulemaking authority" means statutory language that explicitly authorizes or requires an agency to adopt, develop, establish, or otherwise create any statement coming within the definition of the term "rule."

(20) "Unadopted rule" means an agency statement that meets the definition of the term "rule," but that has not been adopted pursuant to the requirements of s. 120.54.

Section 3. Paragraph (a) of subsection (2) of section 120.53, Florida Statutes, is amended to read:

120.53 Maintenance of orders; indexing; listing; organizational information.--

(2)(a) An agency may comply with subparagraphs (1)(a)1. and 2. by designating an official reporter to publish and index by subject matter each agency order that must be indexed and made available to the public, or by electronically transmitting

to the division a copy of such orders for posting on the division's website. An agency is in compliance with subparagraph (1)(a)3. if it publishes in its designated reporter a list of each agency final order that must be listed and preserves each listed order and makes it available for public inspection and copying.

Section 4. Subsection (1) of section 120.536, Florida Statutes, is amended to read:

120.536 Rulemaking authority; repeal; challenge.--

(1) A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the enabling statute ~~by the same statute~~.

Section 5. Paragraph (i) of subsection (1), paragraphs (a), (c), and (e) of subsection (3), paragraph (a) of subsection (4), subsection (7) of section 120.54, Florida Statutes, are

amended, and paragraph (k) is added to subsection (1) of that section, to read:

120.54 Rulemaking.--

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.--

(i)1. A rule may incorporate material by reference but only as the material exists on the date the rule is adopted. For purposes of the rule, changes in the material are not effective unless the rule is amended to incorporate the changes.

2. An agency rule that incorporates by specific reference another rule of that agency automatically incorporates subsequent amendments to the referenced rule unless a contrary intent is clearly indicated in the referencing rule. A notice of amendments to a rule that has been incorporated by specific reference in other rules of that agency must explain the effect of those amendments on the referencing rules.

3. In rules adopted after December 31, 2010, material may not be incorporated by reference unless:

a. The material has been submitted in the prescribed electronic format to the Department of State and the full text of the material can be made available for free public access through an electronic hyperlink from the rule making the reference in the Florida Administrative Code; or

b. The agency has determined that posting the material on the Internet for purposes of public examination and inspection would constitute a violation of federal copyright law, in which case a statement to that effect, along with the address of locations at the Department of State and the agency at which the

material is available for public inspection and examination, must be included in the notice required by subparagraph (3)(a)1.

4. A rule may not be amended by reference only. Amendments must set out the amended rule in full in the same manner as required by the State Constitution for laws. ~~The Department of State may prescribe by rule requirements for incorporating materials by reference pursuant to this paragraph.~~

5.~~2.~~ Notwithstanding any contrary provision in this section, when an adopted rule of the Department of Environmental Protection or a water management district is incorporated by reference in the other agency's rule to implement a provision of part IV of chapter 373, subsequent amendments to the rule are not effective as to the incorporating rule unless the agency incorporating by reference notifies the committee and the Department of State of its intent to adopt the subsequent amendment, publishes notice of such intent in the Florida Administrative Weekly, and files with the Department of State a copy of the amended rule incorporated by reference. Changes in the rule incorporated by reference are effective as to the other agency 20 days after the date of the published notice and filing with the Department of State. The Department of State shall amend the history note of the incorporating rule to show the effective date of such change. Any substantially affected person may, within 14 days after the date of publication of the notice of intent in the Florida Administrative Weekly, file an objection to rulemaking with the agency. The objection shall specify the portions of the rule incorporated by reference to which the person objects and the reasons for the objection. The

agency shall not have the authority under this subparagraph to adopt those portions of the rule specified in such objection. The agency shall publish notice of the objection and of its action in response in the next available issue of the Florida Administrative Weekly.

6. The Department of State may adopt by rule requirements for incorporating materials pursuant to this paragraph.

(k) An agency head may delegate the authority to initiate rule development under subsection (2); however, rulemaking responsibilities of an agency head under subparagraph (3)(a)1., subparagraph (3)(e)1., or subparagraph (3)(e)6. may not be delegated or transferred.

(3) ADOPTION PROCEDURES.--

(a) Notices.--

1. Prior to the adoption, amendment, or repeal of any rule other than an emergency rule, an agency, upon approval of the agency head, shall give notice of its intended action, setting forth a short, plain explanation of the purpose and effect of the proposed action; the full text of the proposed rule or amendment and a summary thereof; a reference to the grant of ~~specific~~ rulemaking authority pursuant to which the rule is adopted; and a reference to the section or subsection of the Florida Statutes or the Laws of Florida being implemented or~~,~~ interpreted~~, or made specific~~. The notice must ~~shall~~ include a summary of the agency's statement of the estimated regulatory costs, if one has been prepared, based on the factors set forth in s. 120.541(2), and a statement that any person who wishes to provide the agency with information regarding the statement of

estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided by s. 120.541(1), must do so in writing within 21 days after publication of the notice. The notice must state the procedure for requesting a public hearing on the proposed rule. Except when the intended action is the repeal of a rule, the notice shall include a reference both to the date on which and to the place where the notice of rule development that is required by subsection (2) appeared.

2. The notice shall be published in the Florida Administrative Weekly not less than 28 days prior to the intended action. The proposed rule shall be available for inspection and copying by the public at the time of the publication of notice.

3. The notice shall be mailed to all persons named in the proposed rule and to all persons who, at least 14 days prior to such mailing, have made requests of the agency for advance notice of its proceedings. The agency shall also give such notice as is prescribed by rule to those particular classes of persons to whom the intended action is directed.

4. The adopting agency shall file with the committee, at least 21 days prior to the proposed adoption date, a copy of each rule it proposes to adopt; a copy of any material incorporated by reference in the rule; a detailed written statement of the facts and circumstances justifying the proposed rule; a copy of any statement of estimated regulatory costs that has been prepared pursuant to s. 120.541; a statement of the extent to which the proposed rule relates to federal standards

or rules on the same subject; and the notice required by subparagraph 1.

(c) Hearings.--

1. If the intended action concerns any rule other than one relating exclusively to procedure or practice, the agency shall, on the request of any affected person received within 21 days after the date of publication of the notice of intended agency action, give affected persons an opportunity to present evidence and argument on all issues under consideration. The agency may schedule a public hearing on the rule and, if requested by any affected person, shall schedule a public hearing on the rule. If the agency head is a board or other collegial body created under s. 20.165(4) or s. 20.43(3)(g), and one or more requested public hearings is scheduled, the board or other collegial body shall conduct at least one of the public hearings itself and may not delegate this responsibility without the consent of those persons requesting the public hearing. Any material pertinent to the issues under consideration submitted to the agency within 21 days after the date of publication of the notice or submitted at a public hearing shall be considered by the agency and made a part of the record of the rulemaking proceeding.

2. Rulemaking proceedings shall be governed solely by the provisions of this section unless a person timely asserts that the person's substantial interests will be affected in the proceeding and affirmatively demonstrates to the agency that the proceeding does not provide adequate opportunity to protect those interests. If the agency determines that the rulemaking proceeding is not adequate to protect the person's interests, it

shall suspend the rulemaking proceeding and convene a separate proceeding under the provisions of ss. 120.569 and 120.57. Similarly situated persons may be requested to join and participate in the separate proceeding. Upon conclusion of the separate proceeding, the rulemaking proceeding shall be resumed.

(e) Filing for final adoption; effective date.--

1. If the adopting agency is required to publish its rules in the Florida Administrative Code, the agency, upon approval of the agency head, ~~it~~ shall file with the Department of State three certified copies of the rule it proposes to adopt; one copy of any material incorporated by reference in the rule, certified by the agency; ~~,~~ a summary of the rule; ~~,~~ a summary of any hearings held on the rule; ~~,~~ and a detailed written statement of the facts and circumstances justifying the rule. Agencies not required to publish their rules in the Florida Administrative Code shall file one certified copy of the proposed rule, and the other material required by this subparagraph, in the office of the agency head, and such rules shall be open to the public.

2. A rule may not be filed for adoption less than 28 days or more than 90 days after the notice required by paragraph (a), until 21 days after the notice of change required by paragraph (d), until 14 days after the final public hearing, until 21 days after ~~preparation of~~ a statement of estimated regulatory costs required under s. 120.541 has been provided to all persons who submitted a lower cost regulatory alternative and made available to the public, or until the administrative law judge has rendered a decision under s. 120.56(2), whichever applies. When a required notice of change is published prior to the expiration

of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after the date of publication. If notice of a public hearing is published prior to the expiration of the time to file the rule for adoption, the period during which a rule must be filed for adoption is extended to 45 days after adjournment of the final hearing on the rule, 21 days after receipt of all material authorized to be submitted at the hearing, or 21 days after receipt of the transcript, if one is made, whichever is latest. The term "public hearing" includes any public meeting held by any agency at which the rule is considered. If a petition for an administrative determination under s. 120.56(2) is filed, the period during which a rule must be filed for adoption is extended to 60 days after the administrative law judge files the final order with the clerk or until 60 days after subsequent judicial review is complete.

3. At the time a rule is filed, the agency shall certify that the time limitations prescribed by this paragraph have been complied with, that all statutory rulemaking requirements have been met, and that there is no administrative determination pending on the rule.

4. At the time a rule is filed, the committee shall certify whether the agency has responded in writing to all material and timely written comments or written inquiries made on behalf of the committee. The department shall reject any rule that is not filed within the prescribed time limits; that does not comply with ~~satisfy~~ all statutory rulemaking requirements and rules of the department; upon which an agency has not

responded in writing to all material and timely written inquiries or written comments; upon which an administrative determination is pending; or which does not include a statement of estimated regulatory costs, if required.

5. If a rule has not been adopted within the time limits imposed by this paragraph or has not been adopted in compliance with all statutory rulemaking requirements, the agency proposing the rule shall withdraw the rule and give notice of its action in the next available issue of the Florida Administrative Weekly.

6. The proposed rule shall be adopted on being filed with the Department of State and become effective 20 days after being filed, on a later date specified in the rule, or on a date required by statute. Rules not required to be filed with the Department of State shall become effective when adopted by the agency head or on a later date specified by rule or statute. If the committee notifies an agency that an objection to a rule is being considered, the agency may postpone the adoption of the rule to accommodate review of the rule by the committee. When an agency postpones adoption of a rule to accommodate review by the committee, the 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule.

For the purposes of this paragraph, the term "administrative determination" does not include subsequent judicial review.

(4) EMERGENCY RULES.--

(a) If an agency finds that an immediate danger to the public health, safety, or welfare requires emergency action, the agency may adopt any rule necessitated by the immediate danger. The agency may adopt a rule by any procedure which is fair under the circumstances if:

1. The procedure provides at least the procedural protection given by other statutes, the State Constitution, or the United States Constitution.

2. The agency takes only that action necessary to protect the public interest under the emergency procedure.

3. The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. In any event, notice of emergency rules, other than those of educational units or units of government with jurisdiction in only one or a part of one county, including the full text of the rules, shall be published in the first available issue of the Florida Administrative Weekly and provided to the committee <u>along with any material incorporated by reference in the rules</u>. The agency's findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.

(7) PETITION TO INITIATE RULEMAKING.--

(a) Any person regulated by an agency or having substantial interest in an agency rule may petition an agency to adopt, amend, or repeal a rule or to provide the minimum public information required by this chapter. The petition shall specify

the proposed rule and action requested. Not later than 30 calendar days following the date of filing a petition, the agency shall initiate rulemaking proceedings under this chapter, otherwise comply with the requested action, or deny the petition with a written statement of its reasons for the denial.

(b) If the petition filed under this subsection is directed to an unadopted ~~existing~~ rule, ~~which the agency has not adopted by the rulemaking procedures or requirements set forth in this chapter,~~ the agency shall, not later than 30 days following the date of filing a petition, initiate rulemaking, or provide notice in the Florida Administrative Weekly that the agency will hold a public hearing on the petition within 30 days after publication of the notice. The purpose of the public hearing is to consider the comments of the public directed to the agency rule which has not been adopted by the rulemaking procedures or requirements of this chapter, its scope and application, and to consider whether the public interest is served adequately by the application of the rule on a case-by-case basis, as contrasted with its adoption by the rulemaking procedures or requirements set forth in this chapter.

(c) Within 30 days following the public hearing provided for by paragraph (b), if the agency does not initiate rulemaking or otherwise comply with the requested action, the agency shall publish in the Florida Administrative Weekly a statement of its reasons for not initiating rulemaking or otherwise complying with the requested action, and of any changes it will make in the scope or application of the unadopted rule. The agency shall file the statement with the committee. The committee shall

forward a copy of the statement to the substantive committee with primary oversight jurisdiction of the agency in each house of the Legislature. The committee or the committee with primary oversight jurisdiction may hold a hearing directed to the statement of the agency. The committee holding the hearing may recommend to the Legislature the introduction of legislation making the rule a statutory standard or limiting or otherwise modifying the authority of the agency.

Section 6. Effective January 1, 2009, paragraph (a) of subsection (1) of s. 120.54, Florida Statutes, is amended to read:

120.54 Rulemaking.—

(1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN EMERGENCY RULES.—

(a) Rulemaking is not a matter of agency discretion. Each agency statement defined as a rule by s. 120.52 shall be adopted by the rulemaking procedure provided by this section as soon as feasible and practicable.

1. Rulemaking shall be presumed feasible unless the agency proves that:

a. The agency has not had sufficient time to acquire the knowledge and experience reasonably necessary to address a statement by rulemaking; or

b. Related matters are not sufficiently resolved to enable the agency to address a statement by rulemaking~~; or~~

~~c. The agency is currently using the rulemaking procedure expeditiously and in good faith to adopt rules which address the statement~~.

Section 7. Section 120.545, Florida Statutes, is amended to read:

120.545 Committee review of agency rules.--

(1) As a legislative check on legislatively created authority, the committee shall examine each proposed rule, except for those proposed rules exempted by s. 120.81(1)(e) and (2), and its accompanying material, and each emergency rule, and may examine any existing rule, for the purpose of determining whether:

(a) The rule is an invalid exercise of delegated legislative authority.

(b) The statutory authority for the rule has been repealed.

(c) The rule reiterates or paraphrases statutory material.

(d) The rule is in proper form.

(e) The notice given prior to its adoption was sufficient to give adequate notice of the purpose and effect of the rule.

(f) The rule is consistent with expressed legislative intent pertaining to the specific provisions of law which the rule implements.

(g) The rule is necessary to accomplish the apparent or expressed objectives of the specific provision of law which the rule implements.

(h) The rule is a reasonable implementation of the law as it affects the convenience of the general public or persons particularly affected by the rule.

(i) The rule could be made less complex or more easily comprehensible to the general public.

(j) The rule's statement of estimated regulatory costs complies with the requirements of s. 120.541 and whether the rule does not impose regulatory costs on the regulated person, county, or city which could be reduced by the adoption of less costly alternatives that substantially accomplish the statutory objectives.

(k) The rule will require additional appropriations.

(l) If the rule is an emergency rule, there exists an emergency justifying the adoption ~~promulgation~~ of such rule, the agency is within ~~has exceeded the scope of~~ its statutory authority, and the rule was adopted ~~promulgated~~ in compliance with the requirements and limitations of s. 120.54(4).

(2) The committee may request from an agency such information as is reasonably necessary for examination of a rule as required by subsection (1). The committee shall consult with legislative standing committees having ~~with~~ jurisdiction over the subject areas. If the committee objects to ~~an emergency rule or~~ a ~~proposed or existing~~ rule, the committee ~~it~~ shall, within 5 days after ~~of~~ the objection, certify that fact to the agency whose rule has been examined and include with the certification a statement detailing its objections with particularity. The committee shall notify the Speaker of the House of Representatives and the President of the Senate of any objection to an agency rule concurrent with certification of that fact to the agency. Such notice shall include a copy of the rule and the statement detailing the committee's objections to the rule.

(3) Within 30 days after ~~of~~ receipt of the objection, if the agency is headed by an individual, or within 45 days after

~~of~~ receipt of the objection, if the agency is headed by a collegial body, the agency shall:

(a) If the rule is not yet in effect ~~a proposed rule~~:

1. File notice pursuant to s. 120.54(3)(d) of only such modifications as are necessary to address ~~Modify the rule to meet~~ the committee's objection;

2. File notice pursuant to s. 120.54(3)(d) of withdrawal of ~~withdraw~~ the rule ~~in its entirety~~; or

3. Notify the committee in writing that it refuses ~~Refuse~~ to modify or withdraw the rule.

(b) If the rule is in effect ~~an existing rule~~:

1. File notice pursuant to s. 120.54(3)(a), without prior notice of rule development, ~~Notify the committee that it has elected~~ to amend the rule to address ~~meet~~ the committee's objection ~~and initiate the amendment procedure~~;

2. File notice pursuant to s. 120.54(3)(a) ~~Notify the committee that it has elected~~ to repeal the rule ~~and initiate the repeal procedure~~; or

3. Notify the committee in writing that the agency ~~it~~ refuses to amend or repeal the rule.

(c) If ~~the rule is either an existing or a proposed rule and~~ the objection is to the statement of estimated regulatory costs:

1. Prepare a corrected statement of estimated regulatory costs, give notice of the availability of the corrected statement in the first available issue of the Florida Administrative Weekly, and file a copy of the corrected statement with the committee; or

2. Notify the committee that it refuses to prepare a corrected statement of estimated regulatory costs.

~~(4) If the agency elects to modify a proposed rule to meet the committee's objection, it shall make only such modifications as are necessary to meet the objection and shall resubmit the rule to the committee. The agency shall give notice of its election to modify a proposed rule to meet the committee's objection by publishing a notice of change in the first available issue of the Florida Administrative Weekly, but shall not be required to conduct a public hearing. If the agency elects to amend an existing rule to meet the committee's objection, it shall notify the committee in writing and shall initiate the amendment procedure by giving notice in the next available issue of the Florida Administrative Weekly. The committee shall give priority to rules so modified or amended when setting its agenda.~~

~~(5) If the agency elects to withdraw a proposed rule as a result of a committee objection, it shall notify the committee, in writing, of its election and shall give notice of the withdrawal in the next available issue of the Florida Administrative Weekly. The rule shall be withdrawn without a public hearing, effective upon publication of the notice in the Florida Administrative Weekly. If the agency elects to repeal an existing rule as a result of a committee objection, it shall notify the committee, in writing, of its election and shall initiate rulemaking procedures for that purpose by giving notice in the next available issue of the Florida Administrative Weekly.~~

~~(6) If an agency elects to amend or repeal an existing rule as a result of a committee objection, it shall complete the process within 90 days after giving notice in the Florida Administrative Weekly.~~

(4)~~(7)~~ Failure of the agency to respond to a committee objection to a ~~proposed~~ rule that is not yet in effect within the time prescribed in subsection (3) constitutes ~~shall constitute~~ withdrawal of the rule in its entirety. In this event, the committee shall notify the Department of State that the agency, by its failure to respond to a committee objection, has elected to withdraw the ~~proposed~~ rule. Upon receipt of the committee's notice, the Department of State shall publish a notice to that effect in the next available issue of the Florida Administrative Weekly. Upon publication of the notice, the ~~proposed~~ rule shall be stricken from the files of the Department of State and the files of the agency.

(5)~~(8)~~ Failure of the agency to respond to a committee objection to a ~~an existing~~ rule that is in effect within the time prescribed in subsection (3) constitutes ~~shall constitute~~ a refusal to amend or repeal the rule.

(6) Failure of the agency to respond to a committee objection to a statement of estimated regulatory costs within the time prescribed in subsection (3) constitutes a refusal to prepare a corrected statement of estimated regulatory costs.

(7)~~(9)~~ If the committee objects to a ~~proposed or existing~~ rule and the agency refuses to modify, amend, withdraw, or repeal the rule, the committee shall file with the Department of State a notice of the objection, detailing with particularity

the committee's ~~its~~ objection to the rule. The Department of State shall publish this notice in the Florida Administrative Weekly. If the rule is published ~~and shall publish, as a history note to the rule~~ in the Florida Administrative Code, a reference to the committee's objection and to the issue of the Florida Administrative Weekly in which the full text thereof appears shall be recorded in a history note.

(8) ~~(10)~~(a) If the committee objects to a ~~proposed or existing~~ rule, or portion of a rule ~~thereof~~, and the agency fails to initiate administrative action to modify, amend, withdraw, or repeal the rule consistent with the objection within 60 days after the objection, or thereafter fails to proceed in good faith to complete such action, the committee may submit to the President of the Senate and the Speaker of the House of Representatives a recommendation that legislation be introduced to address the committee's objection ~~modify or suspend the adoption of the proposed rule, or amend or repeal the rule, or portion thereof~~.

(b)1. If the committee votes to recommend the introduction of legislation to address the committee's objection ~~modify or suspend the adoption of a proposed rule, or amend or repeal a rule~~, the committee shall, within 5 days after this determination, certify that fact to the agency whose rule or proposed rule has been examined. The committee may request that the agency temporarily suspend the rule or suspend the adoption of the proposed rule, pending consideration of proposed legislation during the next regular session of the Legislature.

2. Within 30 days after receipt of the certification, if the agency is headed by an individual, or within 45 days after receipt of the certification, if the agency is headed by a collegial body, the agency shall ~~either~~:

a. Temporarily suspend the rule or suspend the adoption of the proposed rule; or

b. Notify the committee in writing that the agency ~~it~~ refuses to temporarily suspend the rule or suspend the adoption of the proposed rule.

3. If the agency elects to temporarily suspend the rule or suspend the adoption of the proposed rule, the agency ~~it~~ shall give notice of the suspension in the Florida Administrative Weekly. The rule or the rule adoption process shall be suspended upon publication of the notice. An agency may ~~shall~~ not base any agency action on a suspended rule or suspended proposed rule, or portion of such rule ~~thereof~~, prior to expiration of the suspension. A suspended rule or suspended proposed rule, or portion of such rule ~~thereof~~, continues to be subject to administrative determination and judicial review as provided by law.

4. Failure of an agency to respond to committee certification within the time prescribed by subparagraph 2. constitutes a refusal to suspend the rule or to suspend the adoption of the proposed rule.

(c) The committee shall prepare proposed legislation ~~bills~~ to address the committee's objection ~~modify or suspend the adoption of the proposed rule or amend or repeal the rule, or portion thereof,~~ in accordance with the rules of the Senate and

the House of Representatives for prefiling and introduction in the next regular session of the Legislature. The proposed legislation ~~bill~~ shall be presented to the President of the Senate and the Speaker of the House of Representatives with the committee recommendation.

(d) If proposed legislation addressing the committee's objection ~~a bill to suspend the adoption of a proposed rule is enacted into law, the proposed rule is suspended until specific delegated legislative authority for the proposed rule has been enacted. If a bill to suspend the adoption of a proposed rule~~ fails to become law, any temporary agency suspension ~~of the rule~~ shall expire. ~~If a bill to modify a proposed rule or amend a rule is enacted into law, the suspension shall expire upon publication of notice of modification or amendment in the Florida Administrative Weekly. If a bill to repeal a rule is enacted into law, the suspension shall remain in effect until notification of repeal of the rule is published in the Florida Administrative Weekly.~~

~~(e) The Department of State shall publish in the next available issue of the Florida Administrative Weekly the final legislative action taken. If a bill to modify or suspend the adoption of the proposed rule or amend or repeal the rule, or portion thereof, is enacted into law, the Department of State shall conform the rule or portion of the rule to the provisions of the law in the Florida Administrative Code and publish a reference to the law as a history note to the rule.~~

Section 8. Paragraphs (a) and (d) of subsection (1) and subsection (5) of section 120.55, Florida Statutes, are amended to read:

120.55 Publication.--

(1) The Department of State shall:

(a)1. Through a continuous revision system, compile and publish the "Florida Administrative Code." The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of ~~specific~~ rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(8) ~~s. 120.545(9)~~, and complete indexes to all rules contained in the code. Supplementation shall be made as often as practicable, but at least monthly. The department may contract with a publishing firm for the publication, in a timely and useful form, of the Florida Administrative Code; however, the department shall retain responsibility for the code as provided in this section. This publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of "rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

(d) Prescribe by rule the style and form required for rules, notices, and other materials submitted for filing ~~and establish the form for their certification~~.

(5) Any publication of a proposed rule promulgated by an agency, whether published in the Florida Administrative Code or elsewhere, shall include, along with the rule, the name of the

person or persons originating such rule, the name of the agency head ~~supervisor or person~~ who approved the rule, and the date upon which the rule was approved.

Section 9 For the 2009-2010 fiscal year only and notwithstanding s. 120.55(8)(b), Florida Statutes, the unencumbered balance in the Records Management Trust Fund for fees collected pursuant to chapter 120, Florida Statutes, may not exceed $500,000 at the beginning of the fiscal year, and any excess shall be transferred to the General Revenue Fund.

Section 10. Effective July 1, 2010, paragraph (a) of subsection (1) and subsection (2) of section 120.55, Florida Statutes, are amended to read:

120.55 Publication.—

(1) The Department of State shall:

(a)1. Through a continuous revision system, compile and publish electronically the "Florida Administrative Code~~.~~" on an Internet website managed by the department. The Florida Administrative Code shall contain all rules adopted by each agency, citing the grant of rulemaking authority and the specific law implemented pursuant to which each rule was adopted, all history notes as authorized in s. 120.545(8) ~~s. 120.545(9)~~, ~~and~~ complete indexes to all rules contained in the code, and any other material required or authorized by law or deemed useful by the department. The electronic code shall display each rule chapter currently in effect in browse mode and allow full text search of the code and each rule chapter. ~~Supplementation shall be made as often as practicable, but at least monthly.~~ The department shall publish a printed version of

the Florida Administrative Code and may contract with a publishing firm for such printed ~~the~~ publication~~, in a timely and useful form, of the Florida Administrative Code~~; however, the department shall retain responsibility for the code as provided in this section. Supplementation of the printed code shall be made as often as practicable, but at least monthly. The printed ~~This~~ publication shall be the official compilation of the administrative rules of this state. The Department of State shall retain the copyright over the Florida Administrative Code.

2. Rules general in form but applicable to only one school district, community college district, or county, or a part thereof, or state university rules relating to internal personnel or business and finance shall not be published in the Florida Administrative Code. Exclusion from publication in the Florida Administrative Code shall not affect the validity or effectiveness of such rules.

3. At the beginning of the section of the code dealing with an agency that files copies of its rules with the department, the department shall publish the address and telephone number of the executive offices of each agency, the manner by which the agency indexes its rules, a listing of all rules of that agency excluded from publication in the code, and a statement as to where those rules may be inspected.

4. Forms shall not be published in the Florida Administrative Code; but any form which an agency uses in its dealings with the public, along with any accompanying instructions, shall be filed with the committee before it is used. Any form or instruction which meets the definition of

"rule" provided in s. 120.52 shall be incorporated by reference into the appropriate rule. The reference shall specifically state that the form is being incorporated by reference and shall include the number, title, and effective date of the form and an explanation of how the form may be obtained. Each form created by an agency which is incorporated by reference in a rule notice of which is given under s. 120.54(3)(a) after December 31, 2007, must clearly display the number, title, and effective date of the form and the number of the rule in which the form is incorporated.

5. The department shall allow material incorporated by reference to be filed in electronic form as prescribed by department rule. When a rule is filed for adoption with incorporated material in electronic form, the department's publication of the Florida Administrative Code on its Internet website must contain a hyperlink from the incorporating reference in the rule directly to that material. The department may not allow hyperlinks from rules in the Florida Administrative Code to any material other than that filed with and maintained by the department, but it may allow hyperlinks to incorporated material maintained by the department from the adopting agency's website or other sites.

(2) The Florida Administrative Weekly Internet website must allow users to:

(a) Search for notices by type, publication date, rule number, word, subject, and agency;

(b) Search a database that makes available all notices published on the website for a period of at least 5 years;

(c) Subscribe to an automated e-mail notification of selected notices to be sent out before or concurrently with weekly publication of the printed and electronic Florida Administrative Weekly. Such notification must include in the text of the e-mail a summary of the content of each notice;

(d) View agency forms and other materials that have been submitted to the department in electronic form and that are being incorporated by reference in proposed rules; and

(e) Comment on proposed rules.

Section 11. Paragraphs (a) and (b) of subsection (2) of section 120.56, Florida Statutes, are amended to read:

120.56 Challenges to rules.--

(2) CHALLENGING PROPOSED RULES; SPECIAL PROVISIONS.--

(a) Any substantially affected person may seek an administrative determination of the invalidity of any proposed rule by filing a petition seeking such a determination with the division within 21 days after the date of publication of the notice required by s. 120.54(3)(a), within 10 days after the final public hearing is held on the proposed rule as provided by s. 120.54(3)(e)2. ~~s. 120.54(3)(c)~~, within 20 days after the ~~preparation of a~~ statement of estimated regulatory costs required pursuant to s. 120.541, if applicable, has been provided to all persons who submitted a lower cost regulatory alternative and made available to the public, or within 20 days after the date of publication of the notice required by s. 120.54(3)(d). The petition shall state with particularity the objections to the proposed rule and the reasons that the proposed rule is an invalid exercise of delegated legislative

authority. The petitioner has the burden of going forward. The agency then has the burden to prove by a preponderance of the evidence that the proposed rule is not an invalid exercise of delegated legislative authority as to the objections raised. Any person who is substantially affected by a change in the proposed rule may seek a determination of the validity of such change. Any person not substantially affected by the proposed rule as initially noticed, but who is substantially affected by the rule as a result of a change, may challenge any provision of the rule and is not limited to challenging the change to the proposed rule.

(b) The administrative law judge may declare the proposed rule wholly or partly invalid. Unless the decision of the administrative law judge is reversed on appeal, the proposed rule or provision of a proposed rule declared invalid shall not be adopted. After a petition for administrative determination has been filed ~~However~~, the agency may proceed with all other steps in the rulemaking process, including the holding of a factfinding hearing. In the event part of a proposed rule is declared invalid, the adopting agency may, in its sole discretion, withdraw the proposed rule in its entirety. The agency whose proposed rule has been declared invalid in whole or part shall give notice of the decision in the first available issue of the Florida Administrative Weekly.

Section 12. Effective January 1, 2009, subsection (4) of section 120.56, Florida Statutes, is amended to read:

120.56 Challenges to rules.--

(4) CHALLENGING AGENCY STATEMENTS DEFINED AS RULES; SPECIAL PROVISIONS.--

(a) Any person substantially affected by an agency statement may seek an administrative determination that the statement violates s. 120.54(1)(a). The petition shall include the text of the statement or a description of the statement and shall state with particularity facts sufficient to show that the statement constitutes a rule under s. 120.52 and that the agency has not adopted the statement by the rulemaking procedure provided by s. 120.54.

(b) The administrative law judge may extend the hearing date beyond 30 days after assignment of the case for good cause. Upon notification to the administrative law judge provided prior to the final hearing that the agency has published a notice of rulemaking under s. 120.54(3), such notice shall automatically operate as a stay of proceedings pending adoption of the statement as a rule. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings pending rulemaking shall remain in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. If a hearing is held and the petitioner proves the allegations of the petition, the agency shall have the burden of proving that rulemaking is not feasible or not ~~and~~ practicable under s. 120.54(1)(a).

(c) The administrative law judge may determine whether all or part of a statement violates s. 120.54(1)(a). The decision of the administrative law judge shall constitute a final order. The division shall transmit a copy of the final order to the

Department of State and the committee. The Department of State shall publish notice of the final order in the first available issue of the Florida Administrative Weekly.

(d) If ~~When~~ an administrative law judge enters a final order that all or part of an agency statement violates s. 120.54(1)(a), the agency shall immediately discontinue all reliance upon the statement or any substantially similar statement as a basis for agency action. This paragraph shall not be construed to impair the obligation of contracts existing at the time the final order is entered.

~~(e)1. If, prior to a final hearing to determine whether all or part of any agency statement violates s. 120.54(1)(a), an agency publishes, pursuant to s. 120.54(3)(a), proposed rules that address the statement, then for purposes of this section, a presumption is created that the agency is acting expeditiously and in good faith to adopt rules that address the statement, and the agency shall be permitted to rely upon the statement or a substantially similar statement as a basis for agency action if the statement meets the requirements of s. 120.57(1)(e).~~

~~2. If, prior to the final hearing to determine whether all or part of an agency statement violates s. 120.54(1)(a), an agency publishes a notice of rule development which addresses the statement pursuant to s. 120.54(2), or certifies that such a notice has been transmitted to the Florida Administrative Weekly for publication, then such publication shall constitute good cause for the granting of a stay of the proceedings and a continuance of the final hearing for 30 days. If the agency publishes proposed rules within this 30-day period or any~~

~~extension of that period granted by an administrative law judge upon showing of good cause, then the administrative law judge shall place the case in abeyance pending the outcome of rulemaking and any proceedings involving challenges to proposed rules pursuant to subsection (2).~~

~~3. If, following the commencement of the final hearing and prior to entry of a final order that all or part of an agency statement violates s. 120.54(1)(a), an agency publishes, pursuant to s. 120.54(3)(a), proposed rules that address the statement and proceeds expeditiously and in good faith to adopt rules that address the statement, the agency shall be permitted to rely upon the statement or a substantially similar statement as a basis for agency action if the statement meets the requirements of s. 120.57(1)(e).~~

~~4. If an agency fails to adopt rules that address the statement within 180 days after publishing proposed rules, for purposes of this subsection, a presumption is created that the agency is not acting expeditiously and in good faith to adopt rules. If the agency's proposed rules are challenged pursuant to subsection (2), the 180-day period for adoption of rules is tolled until a final order is entered in that proceeding.~~

(e)~~5.~~ If ~~the~~ proposed rules addressing the challenged statement are determined to be an invalid exercise of delegated legislative authority as defined in s. 120.52(8)(b)-(f), the agency must immediately discontinue reliance on the statement and any substantially similar statement until ~~the~~ rules addressing the subject are properly adopted, and the

administrative law judge shall enter a final order to that effect.

(f) ~~(e)~~ All proceedings to determine a violation of s. 120.54(1)(a) shall be brought pursuant to this subsection. A proceeding pursuant to this subsection may be consolidated with a proceeding under subsection (3) or under any other section of this chapter. ~~Nothing in~~ This paragraph does not ~~shall be construed to~~ prevent a party whose substantial interests have been determined by an agency action from bringing a proceeding pursuant to s. 120.57(1)(e).

Section 13. Effective January 1, 2009, paragraph (e) of subsection (1) of section 120.57, Florida Statutes, is amended to read:

120.57 Additional procedures for particular cases.--

(1) ADDITIONAL PROCEDURES APPLICABLE TO HEARINGS INVOLVING DISPUTED ISSUES OF MATERIAL FACT.--

(e)1. An agency or an administrative law judge may not base ~~Any~~ agency action that determines the substantial interests of a party ~~and that is~~ on an unadopted rule. The administrative law judge shall determine whether an agency statement constitutes an unadopted rule. This subparagraph does not preclude application of adopted rules and applicable provisions of law to the facts. ~~unadopted rule is subject to de novo review by an administrative law judge~~.

2. Notwithstanding subparagraph 1., if an agency demonstrates that the statute being implemented directs it to adopt rules, that the agency has not had time to adopt those rules because the requirement was so recently enacted, and that

the agency has initiated rulemaking and is proceeding expeditiously and in good faith to adopt the required rules, then the agency's action may be based upon those unadopted rules, subject to de novo review by the administrative law judge. The agency action shall not be presumed valid or invalid. The agency must demonstrate that the unadopted rule:

a. Is within the powers, functions, and duties delegated by the Legislature or, if the agency is operating pursuant to authority derived from the State Constitution, is within that authority;

b. Does not enlarge, modify, or contravene the specific provisions of law implemented;

c. Is not vague, establishes adequate standards for agency decisions, or does not vest unbridled discretion in the agency;

d. Is not arbitrary or capricious. A rule is arbitrary if it is not supported by logic or the necessary facts; a rule is capricious if it is adopted without thought or reason or is irrational;

e. Is not being applied to the substantially affected party without due notice; and

f. Does not impose excessive regulatory costs on the regulated person, county, or city.

~~2.~~3. The recommended and final orders in any proceeding shall be governed by the provisions of paragraphs (k) and (l), except that the administrative law judge's determination regarding an ~~the~~ unadopted rule under subparagraph 1. or 2. shall not be rejected by the agency unless the agency first determines from a review of the complete record, and states with

particularity in the order, that such determination is clearly erroneous or does not comply with essential requirements of law. In any proceeding for review under s. 120.68, if the court finds that the agency's rejection of the determination regarding the unadopted rule does not comport with the provisions of this subparagraph, the agency action shall be set aside and the court shall award to the prevailing party the reasonable costs and a reasonable attorney's fee for the initial proceeding and the proceeding for review.

Section 14. Effective January 1, 2009, subsections (2), (3), and (4) of section 120.595, Florida Statutes, are amended to read:

120.595 Attorney's fees.--

(2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO SECTION 120.56(2).--If the appellate court or administrative law judge declares a proposed rule or portion of a proposed rule invalid pursuant to s. 120.56(2), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that its actions were substantially justified or special circumstances exist which would make the award unjust. An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency. If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney's fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as

defined by paragraph (1)(e). No award of attorney's fees as provided by this subsection shall exceed $50,000 ~~$15,000~~.

(3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO SECTION 120.56(3) AND (5).--If the appellate court or administrative law judge declares a rule or portion of a rule invalid pursuant to s. 120.56(3) or s. 120.56(5), a judgment or order shall be rendered against the agency for reasonable costs and reasonable attorney's fees, unless the agency demonstrates that its actions were substantially justified or special circumstances exist which would make the award unjust. An agency's actions are "substantially justified" if there was a reasonable basis in law and fact at the time the actions were taken by the agency. If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and reasonable attorney's fees against a party if the appellate court or administrative law judge determines that a party participated in the proceedings for an improper purpose as defined by paragraph (1)(e). No award of attorney's fees as provided by this subsection shall exceed $50,000 ~~$15,000~~.

(4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION 120.56(4).--

(a) If the appellate court or administrative law judge determines ~~Upon entry of a final order~~ that all or part of an agency statement violates s. 120.54(1)(a), or that the agency must immediately discontinue reliance on the statement and any substantially similar statement pursuant to s. 120.56(4)(e), a judgment or order shall be entered against the agency for ~~the~~

~~administrative law judge shall award~~ reasonable costs and reasonable attorney's fees ~~to the petitioner~~, unless the agency demonstrates that the statement is required by the Federal Government to implement or retain a delegated or approved program or to meet a condition to receipt of federal funds.

(b) Upon notification to the administrative law judge provided prior to the final hearing that the agency has published a notice of rulemaking under s. 120.54(3)(a), such notice shall automatically operate as a stay of proceedings pending rulemaking. The administrative law judge shall award reasonable costs and reasonable attorney's fees accrued by the petitioner prior to the date the notice was published, provided the agency adopts the statement as a rule. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings under this paragraph remains in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule. Attorney's fees and costs under this paragraph shall be awarded only upon a finding that the agency received notice that the statement may constitute an unadopted rule at least 30 days before a petition under s. 120.56(4) was filed and that the agency failed to publish the required notice of rulemaking pursuant to s. 120.54(3) that addresses the statement within that 30-day period. Notice to the agency may be satisfied by its receipt of a copy of the s. 120.56(4) petition, a notice or other paper containing substantially the same information, or a petition filed pursuant to s. 120.54(7). No award of attorney's fees as provided by this paragraph shall exceed $50,000.

(c) ~~(b)~~ Notwithstanding the provisions of chapter 284, an award shall be paid from the budget entity of the secretary, executive director, or equivalent administrative officer of the agency, and the agency shall not be entitled to payment of an award or reimbursement for payment of an award under any provision of law.

(d) If the agency prevails in the proceedings, the appellate court or administrative law judge shall award reasonable costs and attorney's fees against a party if the appellate court or administrative law judge determines that the party participated in the proceedings for an improper purpose as defined in paragraph (1)(e) or that the party or the party's attorney knew or should have known that a claim was not supported by the material facts necessary to establish the claim or would not be supported by the application of then-existing law to those material facts.

Section 15. Subsection (1) and paragraph (c) of subsection (2) of section 120.569, Florida Statutes, are amended to read:

120.569 Decisions which affect substantial interests.--

(1) The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under s. 120.573 or s. 120.574. Unless waived by all parties, s. 120.57(1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, s. 120.57(2) applies in all other cases. If a disputed issue of material fact arises during a proceeding under s. 120.57(2), then, unless waived by all parties, the proceeding under s. 120.57(2) shall

be terminated and a proceeding under s. 120.57(1) shall be conducted. Parties shall be notified of any order, including a final order. Unless waived, a copy of the order shall be delivered or mailed to each party or the party's attorney of record at the address of record. Each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s. 120.57, or s. 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review; and shall state the time limits which apply.

(2)

(c) Unless otherwise provided by law, a petition or request for hearing shall include those items required by the uniform rules adopted pursuant to s. 120.54(5)(b) ~~s. 120.54(5)(b)4~~. Upon the receipt of a petition or request for hearing, the agency shall carefully review the petition to determine if it contains all of the required information. A petition shall be dismissed if it is not in substantial compliance with these requirements or it has been untimely filed. Dismissal of a petition shall, at least once, be without prejudice to petitioner's filing a timely amended petition curing the defect, unless it conclusively appears from the face of the petition that the defect cannot be cured. The agency shall promptly give written notice to all parties of the action taken on the petition, shall state with particularity its reasons if the petition is not granted, and shall state the deadline for filing an amended petition if applicable. This

paragraph does not eliminate the availability of equitable tolling as a defense to the untimely filing of a petition.

Section 16. Subsection (2) of section 120.74, Florida Statutes, is amended to read:

120.74 Agency review, revision, and report.--

(2) Beginning October 1, 1997, and by October 1 of every other year thereafter, the head of each agency shall file a report with the President of the Senate, the Speaker of the House of Representatives, and the committee, with a copy to each appropriate standing committee of the Legislature, which certifies that the agency has complied with the requirements of this section ~~subsection~~. The report must specify any changes made to its rules as a result of the review and, when appropriate, recommend statutory changes that will promote efficiency, reduce paperwork, or decrease costs to government and the private sector. The report must identify the types of cases or disputes in which the agency is involved which should be conducted under the summary hearing process described in s. 120.574.

Section 17. Subsection (11) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.--

(11) NATIONAL GUARD.--Notwithstanding s. 120.52(16) ~~s. 120.52(15)~~, the enlistment, organization, administration, equipment, maintenance, training, and discipline of the militia, National Guard, organized militia, and unorganized militia, as provided by s. 2, Art. X of the State Constitution, are not rules as defined by this chapter.

Section 18. Paragraph (c) of subsection (1) and paragraph (a) of subsection (3) of section 120.81, Florida Statutes, are amended to read:

120.81 Exceptions and special requirements; general areas.--

(1) EDUCATIONAL UNITS.--

(c) Notwithstanding s. 120.52(16) ~~s. 120.52(15)~~, any tests, test scoring criteria, or testing procedures relating to student assessment which are developed or administered by the Department of Education pursuant to s. 1003.43, s. 1003.438, s. 1008.22, or s. 1008.25, or any other statewide educational tests required by law, are not rules.

(3) PRISONERS AND PAROLEES.--

(a) Notwithstanding s. 120.52(13) ~~s. 120.52(12)~~, prisoners, as defined by s. 944.02, shall not be considered parties in any proceedings other than those under s. 120.54(3)(c) or (7), and may not seek judicial review under s. 120.68 of any other agency action. Prisoners are not eligible to seek an administrative determination of an agency statement under s. 120.56(4). Parolees shall not be considered parties for purposes of agency action or judicial review when the proceedings relate to the rescission or revocation of parole.

Section 19. Paragraph (f) of subsection (2) of section 409.175, Florida Statutes, is amended to read:

409.175 Licensure of family foster homes, residential child-caring agencies, and child-placing agencies; public records exemption.--

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

(f) "License" means "license" as defined in s. 120.52(10) ~~s. 120.52(9)~~. A license under this section is issued to a family foster home or other facility and is not a professional license of any individual. Receipt of a license under this section shall not create a property right in the recipient. A license under this act is a public trust and a privilege, and is not an entitlement. This privilege must guide the finder of fact or trier of law at any administrative proceeding or court action initiated by the department.

Section 20. Paragraph (a) of subsection (1) of section 420.9072, Florida Statutes, is amended to read:

420.9072 State Housing Initiatives Partnership Program.--The State Housing Initiatives Partnership Program is created for the purpose of providing funds to counties and eligible municipalities as an incentive for the creation of local housing partnerships, to expand production of and preserve affordable housing, to further the housing element of the local government comprehensive plan specific to affordable housing, and to increase housing-related employment.

(1)(a) In addition to the legislative findings set forth in s. 420.6015, the Legislature finds that affordable housing is most effectively provided by combining available public and private resources to conserve and improve existing housing and provide new housing for very-low-income households, low-income households, and moderate-income households. The Legislature intends to encourage partnerships in order to secure the benefits of cooperation by the public and private sectors and to reduce the cost of housing for the target group by effectively

combining all available resources and cost-saving measures. The Legislature further intends that local governments achieve this combination of resources by encouraging active partnerships between government, lenders, builders and developers, real estate professionals, advocates for low-income persons, and community groups to produce affordable housing and provide related services. Extending the partnership concept to encompass cooperative efforts among small counties as defined in s. 120.52(19) ~~s. 120.52(17)~~, and among counties and municipalities is specifically encouraged. Local governments are also intended to establish an affordable housing advisory committee to recommend monetary and nonmonetary incentives for affordable housing as provided in s. 420.9076.

Section 21. Subsection (7) of section 420.9075, Florida Statutes, is amended to read:

420.9075 Local housing assistance plans; partnerships.--

(7) The moneys deposited in the local housing assistance trust fund shall be used to administer and implement the local housing assistance plan. The cost of administering the plan may not exceed 5 percent of the local housing distribution moneys and program income deposited into the trust fund. A county or an eligible municipality may not exceed the 5-percent limitation on administrative costs, unless its governing body finds, by resolution, that 5 percent of the local housing distribution plus 5 percent of program income is insufficient to adequately pay the necessary costs of administering the local housing assistance plan. The cost of administering the program may not exceed 10 percent of the local housing distribution plus 5

percent of program income deposited into the trust fund, except that small counties, as defined in s. 120.52(19) ~~s. 120.52(17)~~, and eligible municipalities receiving a local housing distribution of up to $350,000 may use up to 10 percent of program income for administrative costs.

Section 22. For the 2009-2010 fiscal year, the nonrecurring sum of $451,000 is appropriated from the Records Management Trust Fund to the Department of State for the purposes of carrying out the provisions of this act.

Section 23. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2008.