



Government Efficiency & Accountability Council

**Thursday, March 20, 2008
3:00 PM – 5:00 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: Thursday, March 20, 2008 03:00 pm

End Date and Time: Thursday, March 20, 2008 05:00 pm

Location: Morris Hall (17 HOB)

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 1237 Corporate Income Tax by Gelber

Consideration of the following proposed council bill(s):

PCB GEAC 08-21 -- Distinguished Educator Retirement Option Program

Presentation by the Department of Management Services regarding the Capital Circle Office Complex development.

NOTICE FINALIZED on 03/18/2008 16:03 by MXE

HOUSE OF REPRESENTATIVES STAFF ANALYSIS


BILL #: HB 1237

Corporate Income Tax

SPONSOR(S): Gelber

TIED BILLS:

IDEN./SIM. BILLS: SB 2766

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Government Efficiency & Accountability Council		Levin/Dykes	Cooper 
2) Policy & Budget Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Corporations doing business in Florida must pay a corporate income tax of 5.5 percent on income earned in Florida. For those corporations that confine their business activity to one state, the traditional separate accounting methods can be relied upon to produce a sufficiently accurate measurement of income for state taxation purposes.

But when a corporate taxpayer is doing business both in and out of the taxing state, this income measurement becomes more difficult. As a result, most states have created some method to apportion multi-state income among the states. In Florida, net income is defined as the share of adjusted federal income apportioned to this state pursuant to s. 220.15, F.S. Apportionment is weighted by factors of sales (50 percent), property (25 percent) and payroll (25 percent). All business income is apportioned, and non-business income is allocated between states pursuant to s. 220.16, F.S., less the exemption allowed by s. 220.14, F.S. Currently, corporations may opt to file either separate tax returns for each legal entity doing business in Florida, or consolidated returns that include all the members of the affiliated group of corporations used in filing federal corporate income taxes.

HB 1237 would mandate "combined" reporting, which would require all corporations that are members of a newly defined "water's edge group" to file a tax return combining income from those entities and then apportioning the combined income to Florida based upon a statutory formula.

The changes would become effective in the first taxable year beginning on or after January 1, 2009.

This bill has not been to a Revenue Estimating Impact Conference.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

LOWER TAXES:

Corporations would be required to pay corporate income tax on a combined "water's edge" basis.

B. EFFECT OF PROPOSED CHANGES:

Current Situation:

Florida levies a corporate income tax at the rate of 5.5 percent. To calculate the base of this tax, Florida requires corporations to apportion earned income into Florida using a three factor formula. The factors and weights are: sales – 50 percent; payroll – 25 percent; and property – 25 percent. Thus, corporations operating solely in Florida pay tax on 100% of their net income. Corporations operating both in Florida and in other parts of the United States pay taxes depending on the portion of their total sales, payroll, and property located in Florida, as opposed to those portions located in all states. Corporations which are members of federally defined affiliated groups have the choice of filing as a separate entity or as a consolidated group.

Florida exempts "foreign source income" from its corporate income tax. Income, such as dividends, paid to a corporation operating in Florida by subsidiaries located in foreign countries is not included in the calculation of Florida income. Similarly, the sales, payroll and property of the foreign subsidiary are not a part of the apportionment factor. Florida law provides for the allocation of business and non-business income of a corporation. Business income is apportioned to the state in which it is earned. Non-business income is allocated between the states pursuant to s. 220.16, F.S. Non-business income includes, but is not limited to, interest, royalties, rents, and dividends from businesses unrelated to the activity being carried on in a particular state.

Some states require commonly controlled corporations engaged in a unitary business to compute their state taxable income on a combined basis.^[1] There are two basic approaches to dealing with unitary group members that are incorporated in a foreign country or conduct most of their business abroad. One approach is called worldwide combination, under which the combined report includes all members of the unitary business group, regardless of the country in which the group member is incorporated or the country in which the group member conducts business. A more common alternative is a water's edge combination, under which the combined report excludes group members that are incorporated in a foreign country or conduct most of their business abroad.² A common approach is to exclude 80/20 companies, which are corporations whose business activity outside the US is 80 percent or more of the corporation's total business activity.

^[1] The Supreme Court upheld the unitary method of taxation in *Container Corporation of America v. Franchise Tax Board*, 463 U.S. 159, 103 S. Ct. 2933, 77 L.Ed.2d 545 (1983)

² Generally, the term "water's edge" refers to the fact that this method of reporting does not extend beyond the water's edge, i.e., the geographic boundaries of the United States, in determining what activities a state will tax.

Proposed Changes:

Section 220.03, F.S., contains the definitions used in the Corporate Income Tax:

“Taxpayer” is redefined to eliminate the concept of taxpayers who file consolidated returns and replaces it with the requirement that the taxpayers include corporations that are members of a water’s edge group. “

“Tax haven” is defined as a jurisdiction which has been designated as a tax haven or as having a harmful preferential “tax regime.”

A “water’s edge group” is defined as a group of corporations related through common ownership and the business activities of which are integrated with, dependent upon, or contributing to a flow of value among members of the group. When 50 percent or more of the outstanding voting stock of a corporation is under direct or indirect ownership or control of the group, the corporation is considered to be part of a water’s edge group. Excluded from water’s edge groups are corporations which conduct business outside the United States and have 80 percent or more of their property and payroll assignable to locations outside the United States. All income of a water’s edge group is presumed to be apportionable business income, and the taxpayer has the burden of proof regarding the issues of whether the corporation is part of a water’s edge group and whether or not the income is apportionable income. Corporations meeting the ownership and control tests are presumed to be unitary and part of the group, unless facts and circumstances of the individual case demonstrate the contrary.

“Adjusted federal income” is redefined in s. 220.12, F.S., to include the taxable income of one or more taxpayers which constitute water’s edge groups. A deduction is denied to water’s edge groups for net operating losses, capital losses, or excess contribution deductions under ss. 170(d)(2), 172, 1212, or 404 of the Internal Revenue Code of 1986, as amended, for a member of a water’s edge group that is not a United States member. Dividends received by a member of a water’s edge group (for dividends paid by another member of the water’s edge group) are subtracted from taxable income to the extent they had been included in taxable income.

Section 220.136, F.S., water’s edge groups; special reporting requirements, is created, and it mandates the “water’s edge group reporting method” be used for a group of entities conducting a unitary business by adding combined net income and the additions and deductions provided by s. 220.13, F.S., for members of the group and apportioning the results as provided in ss. 220.15 and 220.151, F.S.

If members of a water’s edge group have different taxable years, they must all use the single designated “filing member’s” taxable year. The group is required to file a domestic disclosure spreadsheet, which discloses the income reported to each state, the state tax liability, the method used to apportion or allocate income to each state and “other information provided for by rule as may be necessary to determine the proper amount of tax due to each state and to identify the water’s edge group.”

Conforming amendments made by the bill include changes to:

- s. 220.14, F.S., which permits water's edge groups only one corporate exemption from adjusted federal income, when filing a combined water's edge group return;
- s. 220.15, F.S., to remove the entitlement of a member of an affiliated group to have amounts from another member of the group to be included in gross income only to the extent that the amount exceeds expenses of the recipient directly related thereto;
- s. 220.183, F.S., the community contribution tax credit, to remove the authorization for taxpayers who file a Florida consolidated return as a member of an affiliated group to be allowed the credit on a consolidated return basis;
- s. 220.1845, F.S., the contaminated site rehabilitation tax credit, to strike the authorization for taxpayers who file a consolidated return as a member of an affiliated group to receive the credit up to the amount of tax imposed on the consolidated group;
- s. 220.187, F.S., concerning credits for contributions to non-profit scholarship-funding organizations, to deny the credit for Florida consolidated returns as affiliated groups.;
- s. 220.19, F.S., authorizing the grant of child care tax credits is also amended to strike the language allowing taxpayers filing a consolidated return to claim the credit;
- s. 220.191, F.S., the capital investment tax credit, is amended so as to be unavailable for consolidated groups;
- ss. 220.192 and 220.193, F.S., on the renewable energy technologies investment tax credit, and the renewable energy production credit are also similarly limited;
- s. 220.15 (3), F.S., which permitted the DOR to promulgate regulations concerning consolidated reporting is eliminated;
- s. 220.64, F.S., relating to the franchise tax, is amended so that the franchise tax applies to water's edge group tax when not manifestly incompatible; and
- s. 376.30781, F.S., is amended to correct a reference.

Transition rules provide that for the first taxable year beginning on or after January 1, 2009, a taxpayer that previously filed a Florida return and is part of a water's edge group shall compute its income together with all members of the water's edge group and file a separate corporate tax return or may elect to combine it tax return with all members of the affiliated group. Corporations which previously filed Florida consolidated returns are prohibited from filing consolidated returns for taxable years beginning after January 1, 2009.

Section 220.131, F.S., adjusted federal income; affiliated groups is repealed.

Section 19 of the bill directs appropriation of the funds recaptured by enactment of this legislation. \$50 million is appropriated from General Revenue to the State University System for workforce education, \$50 million is appropriated from General Revenue to community colleges for workforce education, and the remainder of the funds shall be appropriated from General Revenue to the various school districts to reduce the required local effort.

The act takes effect January 1, 2009.

C. SECTION DIRECTORY:

- Section 1 makes legislative findings and states legislative intent.
- Section 2 amends s. 220.03, F.S., relating to definitions.
- Section 3 amends s. 220.13, F.S., amending the definition of adjusted federal income.
- Section 4 creates s. 220.136, F.S., relating to water's edge groups special reporting requirements.
- Section 5 amends s. 220.14(3), F.S., concerning exemptions from the corporate income tax.
- Section 6 repeals a portion of s. 220.15 (5)(c), F.S., relating to apportionment of adjusted federal income.
- Section 7 repeals s. 220.183(1)(f), F.S., relating to the community contribution tax credit.
- Section 8 repeals s. 220.1845(1)(d), F.S., concerning authorization to grant community contribution tax credits.
- Section 9 repeals ss. 220.187 (5)(c) and (d), F.S., concerning credits for contributions to nonprofit scholarship funding organizations.
- Section 10 repeals s. 220.19 (1)(g), F.S., concerning child care credits.
- Section 11 repeals a portion of s. 220.191(3)(c), F.S., capital investment tax credits.
- Section 12 repeals a portion of s. 220.192(2), F.S., relating to renewable energy technologies investment tax credits.
- Section 13 repeals a portion of s.220.193 (3), F.S., relating to Florida renewable energy production credits.
- Section 14 repeals s. 220.51(3), F.S., relating to rules and regulations for consolidated reporting.
- Section 15 amends s. 220.64, F.S., relating to provisions applicable to franchise tax.
- Section 16 amends s. 376.30781(9), F.S., relating to partial tax credits for rehabilitation of drycleaning solvent- contaminated sites.
- Section 17 provides transition rules.
- Section 18 repeals s. 220.131, F.S., relating to adjusted federal income for affiliated groups.
- Section 19 appropriates funds.

Section 20 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has not reviewed this proposal. See FISCAL COMMENTS.

2. Expenditures:

The Department of Revenue may have additional expenditures to promulgate rules and train personnel. The Department has yet to provide an analysis of what will be required in order to implement the provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See FISCAL COMMENTS.

D. FISCAL COMMENTS:

The revenue impacts from this proposal are very uncertain at this time. The uncertainty arises from not knowing the composition of the groups of corporations that will have to file on a combined basis and the characteristics (income, sales, property and payroll) of each member of the group. For example, if a corporation that is not currently a taxpayer in Florida is included in a group filing a consolidated return, the inclusion of that corporation can result in more or less tax revenue to the state depending on the characteristics of the corporation. If the corporation has little income, and its property, payroll and sales are all outside Florida, the inclusion of the corporation may result in less taxes being paid to Florida, since the effects on the apportionment factors may outweigh the addition of a small amount of income to the apportionable income of the group. Conversely, if the corporation has high income, the inclusion of the corporation may result in more taxes being paid to Florida, again depending on the effect its property, payroll and sales have on the apportionment factor.

Existing informal estimates of the effects of this proposal come from two sources: (1) The 2007 Florida Tax Handbook listed a positive revenue impact of \$364.5 million if this proposal had been in effect in FY 2007-08³; (2) In 2003, the Multistate Tax Commission estimated that

³ Handbook estimates should be viewed as an indication of the approximate or relative value impact of a proposal and not as an accurate point estimate. See Note at p. ix, 2007 Florida Tax Handbook, for an explanation of the Handbook's limitations.

Florida could have received between \$170 million and \$365 million in FY 2000-01 from requiring combined reporting.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provisions contained within Article VII, section (18(a), (b), and (c), Florida Constitution, are inapplicable because: the bill does not require counties or municipalities to spend funds or take actions requiring the expenditure of funds; the bill does not reduce the authority cities and counties have to raise revenue in the aggregate; and the bill does not reduce the percentage of a state tax shared with counties and municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department will be required to enact rules to implement water's edge taxation.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

Simply put, this bill puts money in the pockets of hard-working Floridians as it lowers property taxes by making our corporate income tax more fair. It also invests \$100 million into workforce development to spur the economy.

This legislation addresses unfair corporate tax reporting practices used by multi-state corporations. By closing many of the loopholes that large corporations use but that Florida only businesses do not, we can give a little competitive advantage back to Florida only businesses.

This bill will also give us a head start in eliminating the required local effort that would be required by the property tax proposal about to pass the Taxation and Budget Reform Committee. That proposal would require the legislature to replace over \$9 billion in RLE. Replacing some now without raising a regressive tax like the sales tax is much better for the economy.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A

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A bill to be entitled
 An act relating to the corporate income tax; providing legislative findings and intent; amending s. 220.03, F.S.; revising definitions; providing additional definitions; amending s. 220.13, F.S.; revising the definition of the term "adjusted federal income"; prohibiting certain deductibles for certain water's edge group members; providing an additional subtraction from adjusted federal income; creating s. 220.136, F.S.; defining the term "water's edge group reporting method"; requiring water's edge group members to use a certain group income reporting method; providing methodology requirements; providing return filing requirements; requiring domestic disclosure spreadsheet filing requirements; providing a definition; authorizing the Department of Revenue to adopt rules and forms; amending ss. 220.14, 220.15, 220.183, 220.1845, 220.187, 220.19, 220.191, 220.192, 220.193, 220.51, and 220.64, F.S.; replacing or deleting provisions relating to consolidated returns for affiliated groups to conform to water's edge group requirements; amending s. 376.30781, F.S.; conforming a cross-reference; providing for transitional rules; repealing s. 220.131, F.S., relating to consolidated returns for affiliated groups; providing appropriations; providing an effective date.

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

HB 1237

2008

28 Section 1. Legislative finding; intent.--The Legislature
 29 finds that a separate accounting system for corporations is
 30 sometimes inadequate to accurately measure the income of
 31 multinational and multistate corporations doing business in this
 32 state and this may create tax disadvantages for corporations in
 33 this state in competition with those multinational and
 34 multistate corporations. Corporate business is increasingly
 35 conducted through groups of commonly owned corporations, it is
 36 the intent of the Legislature to adopt a combined system of
 37 income tax reporting for corporations to more accurately measure
 38 the business activities of corporations.

39 Section 2. Paragraphs (y) and (z) of subsection (1) of
 40 section 220.03, Florida Statutes, are amended, and paragraphs
 41 (gg) and (hh) are added to that subsection, to read:

42 220.03 Definitions.--

43 (1) SPECIFIC TERMS.--When used in this code, and when not
 44 otherwise distinctly expressed or manifestly incompatible with
 45 the intent thereof, the following terms shall have the following
 46 meanings:

47 (y) "Taxable year" or "tax year" means the calendar or
 48 fiscal year upon the basis of which net income is computed under
 49 this code, including, in the case of a return made for a
 50 fractional part of a year, the period for which such return is
 51 made.

52 (z) "Taxpayer" means any corporation subject to the tax
 53 imposed by this code, and includes all corporations that are
 54 members of a water's edge group ~~for which a consolidated return~~
 55 ~~is filed under s. 220.131.~~ However, "taxpayer" does not include

56 a corporation having no individuals (including individuals
 57 employed by an affiliate) receiving compensation in this state
 58 as defined in s. 220.15 when the only property owned or leased
 59 by said corporation (including an affiliate) in this state is
 60 located at the premises of a printer with which it has
 61 contracted for printing, if such property consists of the final
 62 printed product, property which becomes a part of the final
 63 printed product, or property from which the printed product is
 64 produced.

65 (gg) "Tax haven" means a jurisdiction that, for a
 66 particular tax year in question, is identified by the
 67 Organization for Economic Co-operation and Development as a tax
 68 haven or as having a harmful preferential tax regime or a
 69 jurisdiction that has no, or a nominal, effective tax on
 70 relevant income and:

71 1. Has laws or practices that prevent effective exchange
 72 of information for tax purposes with other governments regarding
 73 taxpayers subject to, or benefiting from, the tax regime;

74 2. Lacks transparency. For purposes of this subparagraph,
 75 a tax regime lacks transparency if the details of legislative,
 76 legal, or administrative provisions are not open to public
 77 scrutiny and apparent, or are not consistently applied among
 78 similarly situated taxpayers;

79 3. Facilitates the establishment of foreign-owned entities
 80 without the need for a local substantive presence or prohibits
 81 these entities from having any commercial impact on the local
 82 economy;

83 4. Explicitly or implicitly excludes the jurisdiction's
 84 resident taxpayers from taking advantage of the tax regime's
 85 benefits or prohibits enterprises that benefit from the regime
 86 from operating in the jurisdiction's domestic market; or

87 5. Has created a tax regime which is favorable for tax
 88 avoidance, based upon an overall assessment of relevant factors,
 89 including, but not limited to, whether the jurisdiction has a
 90 significant untaxed offshore financial or other services sector
 91 relative to its overall economy.

92
 93 For purposes of this paragraph, the term "tax regime" means a
 94 set or system of rules, laws, regulations, or practices by which
 95 taxes are imposed on any person, corporation, or entity or on
 96 any income, property, incident, indicia, or activity pursuant to
 97 governmental authority.

98 (hh) "Water's edge group" means a group of corporations
 99 related through common ownership the business activities of
 100 which are integrated with, dependent upon, or contribute to a
 101 flow of value among members of the group. When 50 percent or
 102 more of the outstanding voting stock of a corporation is under
 103 direct or indirect ownership or control of such a group, the
 104 corporation shall be considered to be part of a water's edge
 105 group. A corporation shall be considered unitary unless clearly
 106 shown by the facts and circumstances of the individual case to
 107 not be a member of a water's edge group. When direct or indirect
 108 ownership or control is less than 50 percent of the outstanding
 109 voting stock, all elements of the business activities shall be
 110 considered in determining whether a corporation qualifies as a

111 member of a water's edge group. A water's edge group shall not
 112 include the income of any corporation which conducts business
 113 outside the United States if 80 percent or more of the
 114 corporation's property and payroll, as determined by the
 115 apportionment factors described in ss. 220.15 and 220.151, is
 116 assignable to locations outside the United States. In
 117 determining whether voting stock is owned indirectly, the
 118 attribution rules of s. 318 of the Internal Revenue Code of
 119 1986, as amended, shall be used. For purposes of this paragraph,
 120 the term "United States" is restricted to the states of the
 121 United States, the District of Columbia, and the Commonwealth of
 122 Puerto Rico. All income of a water's edge group is presumed to
 123 be apportionable business income. A taxpayer has the burden of
 124 proof regarding the issue of whether or not a corporation is a
 125 member of a water's edge group and whether or not such income is
 126 apportionable business income.

127 Section 3. Subsection (1) of section 220.13, Florida
 128 Statutes, is amended to read:

129 220.13 "Adjusted federal income" defined.--

130 (1) The term "adjusted federal income" means an amount
 131 equal to the taxpayer's taxable income as defined in subsection
 132 (2), or such taxable income of more than one taxpayer as
 133 provided in s. 220.136 ~~220.131~~, for the taxable year, adjusted
 134 as follows:

135 (a) Additions.--There shall be added to such taxable
 136 income:

137 1. The amount of any tax upon or measured by income,
 138 excluding taxes based on gross receipts or revenues, paid or

139 accrued as a liability to the District of Columbia or any state
 140 of the United States which is deductible from gross income in
 141 the computation of taxable income for the taxable year.

142 2. The amount of interest which is excluded from taxable
 143 income under s. 103(a) of the Internal Revenue Code or any other
 144 federal law, less the associated expenses disallowed in the
 145 computation of taxable income under s. 265 of the Internal
 146 Revenue Code or any other law, excluding 60 percent of any
 147 amounts included in alternative minimum taxable income, as
 148 defined in s. 55(b)(2) of the Internal Revenue Code, if the
 149 taxpayer pays tax under s. 220.11(3).

150 3. In the case of a regulated investment company or real
 151 estate investment trust, an amount equal to the excess of the
 152 net long-term capital gain for the taxable year over the amount
 153 of the capital gain dividends attributable to the taxable year.

154 4. That portion of the wages or salaries paid or incurred
 155 for the taxable year which is equal to the amount of the credit
 156 allowable for the taxable year under s. 220.181. This
 157 subparagraph shall expire on the date specified in s. 290.016
 158 for the expiration of the Florida Enterprise Zone Act.

159 5. That portion of the ad valorem school taxes paid or
 160 incurred for the taxable year which is equal to the amount of
 161 the credit allowable for the taxable year under s. 220.182. This
 162 subparagraph shall expire on the date specified in s. 290.016
 163 for the expiration of the Florida Enterprise Zone Act.

164 6. The amount of emergency excise tax paid or accrued as a
 165 liability to this state under chapter 221 which tax is

166 deductible from gross income in the computation of taxable
 167 income for the taxable year.

168 7. That portion of assessments to fund a guaranty
 169 association incurred for the taxable year which is equal to the
 170 amount of the credit allowable for the taxable year.

171 8. In the case of a nonprofit corporation which holds a
 172 pari-mutuel permit and which is exempt from federal income tax
 173 as a farmers' cooperative, an amount equal to the excess of the
 174 gross income attributable to the pari-mutuel operations over the
 175 attributable expenses for the taxable year.

176 9. The amount taken as a credit for the taxable year under
 177 s. 220.1895.

178 10. Up to nine percent of the eligible basis of any
 179 designated project which is equal to the credit allowable for
 180 the taxable year under s. 220.185.

181 11. The amount taken as a credit for the taxable year
 182 under s. 220.187.

183 12. The amount taken as a credit for the taxable year
 184 under s. 220.192.

185 13. The amount taken as a credit for the taxable year
 186 under s. 220.193.

187 (b) Subtractions.--

188 1. There shall be subtracted from such taxable income:

189 a. The net operating loss deduction allowable for federal
 190 income tax purposes under s. 172 of the Internal Revenue Code
 191 for the taxable year,

192 b. The net capital loss allowable for federal income tax
 193 purposes under s. 1212 of the Internal Revenue Code for the
 194 taxable year,

195 c. The excess charitable contribution deduction allowable
 196 for federal income tax purposes under s. 170(d)(2) of the
 197 Internal Revenue Code for the taxable year, and

198 d. The excess contributions deductions allowable for
 199 federal income tax purposes under s. 404 of the Internal Revenue
 200 Code for the taxable year.

201

202 However, a net operating loss and a capital loss shall never be
 203 carried back as a deduction to a prior taxable year, but all
 204 deductions attributable to such losses shall be deemed net
 205 operating loss carryovers and capital loss carryovers,
 206 respectively, and treated in the same manner, to the same
 207 extent, and for the same time periods as are prescribed for such
 208 carryovers in ss. 172 and 1212, respectively, of the Internal
 209 Revenue Code. A deductible may not be allowed for net operating
 210 losses, net capital losses, or excess contribution deductions
 211 under ss. 170(d)(2), 172, 1212, and 404 of the Internal Revenue
 212 Code of 1986, as amended, for a member of a water's edge group
 213 that is not United States member.

214 2. There shall be subtracted from such taxable income any
 215 amount to the extent included therein the following:

216 a. Dividends treated as received from sources without the
 217 United States, as determined under s. 862 of the Internal
 218 Revenue Code.

219 b. All amounts included in taxable income under s. 78 or
 220 s. 951 of the Internal Revenue Code.

221
 222 However, as to any amount subtracted under this subparagraph,
 223 there shall be added to such taxable income all expenses
 224 deducted on the taxpayer's return for the taxable year which are
 225 attributable, directly or indirectly, to such subtracted amount.
 226 Further, no amount shall be subtracted with respect to dividends
 227 paid or deemed paid by a Domestic International Sales
 228 Corporation.

229 3. In computing "adjusted federal income" for taxable
 230 years beginning after December 31, 1976, there shall be allowed
 231 as a deduction the amount of wages and salaries paid or incurred
 232 within this state for the taxable year for which no deduction is
 233 allowed pursuant to s. 280C(a) of the Internal Revenue Code
 234 (relating to credit for employment of certain new employees).

235 4. There shall be subtracted from such taxable income any
 236 amount of nonbusiness income included therein.

237 5. There shall be subtracted any amount of taxes of
 238 foreign countries allowable as credits for taxable years
 239 beginning on or after September 1, 1985, under s. 901 of the
 240 Internal Revenue Code to any corporation which derived less than
 241 20 percent of its gross income or loss for its taxable year
 242 ended in 1984 from sources within the United States, as
 243 described in s. 861(a)(2)(A) of the Internal Revenue Code, not
 244 including credits allowed under ss. 902 and 960 of the Internal
 245 Revenue Code, withholding taxes on dividends within the meaning

246 of sub-subparagraph 2.a., and withholding taxes on royalties,
 247 interest, technical service fees, and capital gains.

248 6. There shall be subtracted from such taxable income, to
 249 the extent included in such taxable income, amounts received by
 250 a member of a water's edge group that was a dividend paid by
 251 another member of the same water's edge group.

252 ~~7.6.~~ Notwithstanding any other provision of this code,
 253 except with respect to amounts subtracted pursuant to
 254 subparagraphs 1. and 3., any increment of any apportionment
 255 factor which is directly related to an increment of gross
 256 receipts or income which is deducted, subtracted, or otherwise
 257 excluded in determining adjusted federal income shall be
 258 excluded from both the numerator and denominator of such
 259 apportionment factor. Further, all valuations made for
 260 apportionment factor purposes shall be made on a basis
 261 consistent with the taxpayer's method of accounting for federal
 262 income tax purposes.

263 (c) Installment sales occurring after October 19, 1980.--

264 1. In the case of any disposition made after October 19,
 265 1980, the income from an installment sale shall be taken into
 266 account for the purposes of this code in the same manner that
 267 such income is taken into account for federal income tax
 268 purposes.

269 2. Any taxpayer who regularly sells or otherwise disposes
 270 of personal property on the installment plan and reports the
 271 income therefrom on the installment method for federal income
 272 tax purposes under s. 453(a) of the Internal Revenue Code shall
 273 report such income in the same manner under this code.

HB 1237

2008

274 (d) Nonallowable deductions.--A deduction for net
275 operating losses, net capital losses, or excess contributions
276 deductions under ss. 170(d)(2), 172, 1212, and 404 of the
277 Internal Revenue Code which has been allowed in a prior taxable
278 year for Florida tax purposes shall not be allowed for Florida
279 tax purposes, notwithstanding the fact that such deduction has
280 not been fully utilized for federal tax purposes.

281 Section 4. Section 220.136, Florida Statutes, is created
282 to read:

283 220.136 Water's edge groups; special reporting
284 requirements.--

285 (1) For purposes of this section, the term "water's edge
286 group reporting method" means the determination of taxable
287 business profits for a group of entities conducting a unitary
288 business by adding combined net income and the additions and
289 deductions provided in s. 220.13 for members of the group and
290 apportioning the results as provided in ss. 220.15 and 220.151.

291 (2) All members of a water's edge group shall use the
292 water's edge group reporting method. Under the water's edge
293 group reporting method:

294 (a) Adjusted federal income for purposes of s. 220.12
295 means the sum of adjusted federal income for all members of the
296 group determined for a concurrent taxable year.

297 (b) The denominators of the apportionment factors shall be
298 calculated for all members of the water's edge group combined.

299 (c) The statutory apportionment formula shall be used for
300 all members of the water's edge group, unless an alternate
301 method is determined to be more appropriate by the department.

302 (d) Intercompany sales transactions made between members
 303 of the water's edge group shall be eliminated in the computation
 304 of the sales factor pursuant to ss. 220.15 and 220.151. As used
 305 in this subsection, the term "sales" includes, but is not
 306 limited to, loans, payments for the use of intangibles,
 307 dividends, and management fees.

308 (e) Each taxpayer shall apportion adjusted federal income
 309 under s. 220.15 as a member of a water's edge group that files a
 310 water's edge group return under this section based upon the
 311 apportionment factors described in s. 220.15. For purposes of
 312 this subsection, each special industry member included in a
 313 water's edge group filing a water's edge group return under this
 314 section, which would otherwise be permitted to use a special
 315 method of apportionment under s. 220.151, shall construct the
 316 numerator of its sales, property, and payroll factors,
 317 respectively, by multiplying the denominator of each such factor
 318 by the premiums or revenue miles factor ratio otherwise
 319 applicable pursuant to s. 220.151 in the manner prescribed by
 320 the department by rule.

321 (f) For purposes of this subsection, each special industry
 322 member included in a water's edge group return, which member
 323 would otherwise be permitted to use a special method of
 324 apportionment under s. 220.151, shall construct the numerator of
 325 its sales, property, and payroll factors, respectively, by
 326 multiplying the denominator of each such factor by the premiums
 327 or revenue miles factor ratio otherwise applicable pursuant to
 328 s. 220.151 in the manner prescribed by the department by rule.

329 (g) The income attributable to the activities in this

HB 1237

2008

330 state of a corporation exempt from taxation because of Pub. L.
331 No. 86-272 is excluded from the sales factor numerator on a
332 water's edge group filing a combined water's edge group return
333 even though an affiliated corporation may have nexus with this
334 state and is subject to tax in this state.

335 (3) (a) The single water's edge group return must be filed
336 in the name and with the federal employer identification number
337 of the parent corporation if the parent is a member of a water's
338 edge group and has nexus with this state. If there is no parent
339 corporation, if the parent is not a water's edge group member,
340 or if the parent does not have nexus with this state, the
341 members of the water's edge group shall choose a Florida
342 taxpayer member to file the return. After such a filing member
343 has been selected, such member must remain the same in
344 subsequent years unless an ownership change occurs or the filing
345 member no longer has nexus with this state. The return must be
346 signed by a responsible officer of the filing member as the
347 agent of all members of the water's edge group subject to tax by
348 this state.

349 (b) If the taxable years of the members of the water's
350 edge group differ, the filing member's taxable year must be used
351 to determine the net income for this state of the water's edge
352 group. If the precise amount of a water's edge group member's
353 income can be readily determined from the books for the months
354 involved in the filing member's taxable year, those actual
355 amounts shall be used. In the absence of such a precise
356 determination, the income of a water's edge group member must be
357 converted to conform to the taxable year of the filing member on

358 the basis of the number of months falling within the applicable
 359 taxable year. This method may be used only if the return can be
 360 timely filed after the member's taxable year ends. As an
 361 alternative, the water's edge group may include in its taxable
 362 income all of the taxable income of a group member whose taxable
 363 year ends within the taxable year of the water's edge group.
 364 Once one of these methods is used for a water's edge group
 365 member, that member must continue to use that method for
 366 succeeding years for as long as the corporation remains a member
 367 of the water's edge group. After the combined taxable income of
 368 the water's edge group is determined based upon the filing
 369 member's taxable year, the apportionment factor must be computed
 370 on the basis of the same taxable year.

371 (4) A water's edge group shall file a domestic disclosure
 372 spreadsheet in the manner and form prescribed by rule by the
 373 department. The term "domestic disclosure spreadsheet" means a
 374 spreadsheet that fully discloses the income reported to each
 375 state, the state tax liability, the method used for apportioning
 376 or allocating income to the various states, and other
 377 information provided for by rule as may be necessary to
 378 determine the proper amount of tax due to each state and to
 379 identify the water's edge group.

380 (5) The department may adopt rules and forms by rule as
 381 may be necessary or appropriate to administer and implement this
 382 section. It is the intent of the Legislature, by this section,
 383 to grant the department extensive authority to adopt rules and
 384 forms describing and defining principles for determining the
 385 existence of a water's edge group business, definitions of

386 common control, and methods of reporting and related forms,
 387 principles, and definitions.

388 Section 5. Subsection (3) of section 220.14, Florida
 389 Statutes, is amended to read:

390 220.14 Exemption.--

391 (3) Only one exemption shall be allowed to taxpayers
 392 filing a combined water's edge group ~~consolidated~~ return under
 393 this code.

394 Section 6. Paragraph (c) of subsection (5) of section
 395 220.15, Florida Statutes, is amended to read:

396 220.15 Apportionment of adjusted federal income.--

397 (5) The sales factor is a fraction the numerator of which
 398 is the total sales of the taxpayer in this state during the
 399 taxable year or period and the denominator of which is the total
 400 sales of the taxpayer everywhere during the taxable year or
 401 period.

402 (c) Sales of a financial organization, including, but not
 403 limited to, banking and savings institutions, investment
 404 companies, real estate investment trusts, and brokerage
 405 companies, occur in this state if derived from:

406 1. Fees, commissions, or other compensation for financial
 407 services rendered within this state;

408 2. Gross profits from trading in stocks, bonds, or other
 409 securities managed within this state;

410 3. Interest received within this state, other than
 411 interest from loans secured by mortgages, deeds of trust, or
 412 other liens upon real or tangible personal property located
 413 without this state, and dividends received within this state;

414 4. Interest charged to customers at places of business
 415 maintained within this state for carrying debit balances of
 416 margin accounts, without deduction of any costs incurred in
 417 carrying such accounts;

418 5. Interest, fees, commissions, or other charges or gains
 419 from loans secured by mortgages, deeds of trust, or other liens
 420 upon real or tangible personal property located in this state or
 421 from installment sale agreements originally executed by a
 422 taxpayer or the taxpayer's agent to sell real or tangible
 423 personal property located in this state;

424 6. Rents from real or tangible personal property located
 425 in this state; or

426 7. Any other gross income, including other interest,
 427 resulting from the operation as a financial organization within
 428 this state.

429

430 ~~In computing the amounts under this paragraph, any amount~~
 431 ~~received by a member of an affiliated group (determined under s.~~
 432 ~~1504(a) of the Internal Revenue Code, but without reference to~~
 433 ~~whether any such corporation is an "includable corporation"~~
 434 ~~under s. 1504(b) of the Internal Revenue Code) from another~~
 435 ~~member of such group shall be included only to the extent such~~
 436 ~~amount exceeds expenses of the recipient directly related~~
 437 ~~thereto.~~

438 Section 7. Paragraphs (f) and (g) of subsection (1) of
 439 section 220.183, Florida Statutes, are amended to read:

440 220.183 Community contribution tax credit.--

441 (1) AUTHORIZATION TO GRANT COMMUNITY CONTRIBUTION TAX
 442 CREDITS; LIMITATIONS ON INDIVIDUAL CREDITS AND PROGRAM
 443 SPENDING.--

444 ~~(f) A taxpayer who files a Florida consolidated return as~~
 445 ~~a member of an affiliated group pursuant to s. 220.131(1) may be~~
 446 ~~allowed the credit on a consolidated return basis.~~

447 (f) ~~(g)~~ A taxpayer who is eligible to receive the credit
 448 provided for in s. 624.5105 is not eligible to receive the
 449 credit provided by this section.

450 Section 8. Subsection (1) of section 220.1845, Florida
 451 Statutes, is amended to read:

452 220.1845 Contaminated site rehabilitation tax credit.--

453 (1) AUTHORIZATION FOR TAX CREDIT; LIMITATIONS.--

454 (a) A credit in the amount of 50 percent of the costs of
 455 voluntary cleanup activity that is integral to site
 456 rehabilitation at the following sites is available against any
 457 tax due for a taxable year under this chapter:

458 1. A drycleaning-solvent-contaminated site eligible for
 459 state-funded site rehabilitation under s. 376.3078(3);

460 2. A drycleaning-solvent-contaminated site at which
 461 cleanup is undertaken by the real property owner pursuant to s.
 462 376.3078(11), if the real property owner is not also, and has
 463 never been, the owner or operator of the drycleaning facility
 464 where the contamination exists; or

465 3. A brownfield site in a designated brownfield area under
 466 s. 376.80.

467 (b) A tax credit applicant, or multiple tax credit
 468 applicants working jointly to clean up a single site, may not be

HB 1237

2008

469 granted more than \$500,000 per year in tax credits for each site
 470 voluntarily rehabilitated. Multiple tax credit applicants shall
 471 be granted tax credits in the same proportion as their
 472 contribution to payment of cleanup costs. Subject to the same
 473 conditions and limitations as provided in this section, a
 474 municipality, county, or other tax credit applicant which
 475 voluntarily rehabilitates a site may receive not more than
 476 \$500,000 per year in tax credits which it can subsequently
 477 transfer subject to the provisions in paragraph (f) ~~(g)~~.

478 (c) If the credit granted under this section is not fully
 479 used in any one year because of insufficient tax liability on
 480 the part of the corporation, the unused amount may be carried
 481 forward for a period not to exceed 5 years. The carryover credit
 482 may be used in a subsequent year when the tax imposed by this
 483 chapter for that year exceeds the credit for which the
 484 corporation is eligible in that year under this section after
 485 applying the other credits and unused carryovers in the order
 486 provided by s. 220.02(8). Five years after the date a credit is
 487 granted under this section, such credit expires and may not be
 488 used. However, if during the 5-year period the credit is
 489 transferred, in whole or in part, pursuant to paragraph (f) ~~(g)~~,
 490 each transferee has 5 years after the date of transfer to use
 491 its credit.

492 ~~(d) A taxpayer that files a consolidated return in this~~
 493 ~~state as a member of an affiliated group under s. 220.131(1) may~~
 494 ~~be allowed the credit on a consolidated return basis up to the~~
 495 ~~amount of tax imposed upon the consolidated group.~~

496 (d)~~(e)~~ A tax credit applicant that receives state-funded
 497 site rehabilitation under s. 376.3078(3) for rehabilitation of a
 498 drycleaning-solvent-contaminated site is ineligible to receive
 499 credit under this section for costs incurred by the tax credit
 500 applicant in conjunction with the rehabilitation of that site
 501 during the same time period that state-administered site
 502 rehabilitation was underway.

503 (e)~~(f)~~ The total amount of the tax credits which may be
 504 granted under this section is \$2 million annually.

505 (f)~~(g)~~1. Tax credits that may be available under this
 506 section to an entity eligible under s. 376.30781 may be
 507 transferred after a merger or acquisition to the surviving or
 508 acquiring entity and used in the same manner and with the same
 509 limitations.

510 2. The entity or its surviving or acquiring entity as
 511 described in subparagraph 1., may transfer any unused credit in
 512 whole or in units of no less than 25 percent of the remaining
 513 credit. The entity acquiring such credit may use it in the same
 514 manner and with the same limitation as described in this
 515 section. Such transferred credits may not be transferred again
 516 although they may succeed to a surviving or acquiring entity
 517 subject to the same conditions and limitations as described in
 518 this section.

519 3. In the event the credit provided for under this section
 520 is reduced either as a result of a determination by the
 521 Department of Environmental Protection or an examination or
 522 audit by the Department of Revenue, such tax deficiency shall be
 523 recovered from the first entity, or the surviving or acquiring

524 entity, to have claimed such credit up to the amount of credit
 525 taken. Any subsequent deficiencies shall be assessed against any
 526 entity acquiring and claiming such credit, or in the case of
 527 multiple succeeding entities in the order of credit succession.

528 (g)~~(h)~~ In order to encourage completion of site
 529 rehabilitation at contaminated sites being voluntarily cleaned
 530 up and eligible for a tax credit under this section, the tax
 531 credit applicant may claim an additional 25 percent of the total
 532 cleanup costs, not to exceed \$500,000, in the final year of
 533 cleanup as evidenced by the Department of Environmental
 534 Protection issuing a "No Further Action" order for that site.

535 Section 9. Paragraphs (c) and (d) of subsection (5) of
 536 section 220.187, Florida Statutes, are amended to read:

537 220.187 Credits for contributions to nonprofit
 538 scholarship-funding organizations.--

539 (5) AUTHORIZATION TO GRANT SCHOLARSHIP FUNDING TAX
 540 CREDITS; LIMITATIONS ON INDIVIDUAL AND TOTAL CREDITS.--

541 ~~(c) A taxpayer who files a Florida consolidated return as
 542 a member of an affiliated group pursuant to s. 220.131(1) may be
 543 allowed the credit on a consolidated return basis; however, the
 544 total credit taken by the affiliated group is subject to the
 545 limitation established under paragraph (a).~~

546 (c)~~(d)~~ Effective for tax years beginning January 1, 2006,
 547 a taxpayer may rescind all or part of its allocated tax credit
 548 under this section. The amount rescinded shall become available
 549 for purposes of the cap for that state fiscal year under this
 550 section to an eligible taxpayer as approved by the department if
 551 the taxpayer receives notice from the department that the

552 rescindment has been accepted by the department and the taxpayer
 553 has not previously rescinded any or all of its tax credit
 554 allocation under this section more than once in the previous 3
 555 tax years. Any amount rescinded under this paragraph shall
 556 become available to an eligible taxpayer on a first-come, first-
 557 served basis based on tax credit applications received after the
 558 date the rescindment is accepted by the department.

559 Section 10. Paragraphs (g) and (h) of subsection (1) of
 560 section 220.19, Florida Statutes, are amended to read:

561 220.19 Child care tax credits.--

562 (1) AUTHORIZATION TO GRANT TAX CREDITS; LIMITATIONS.--

563 ~~(g) A taxpayer that files a consolidated return in this~~
 564 ~~state as a member of an affiliated group under s. 220.131(1) may~~
 565 ~~be allowed the credit on a consolidated return basis.~~

566 (g) ~~(h)~~ A taxpayer that is eligible to receive credit under
 567 s. 624.5107 is ineligible to receive credit under this section.

568 Section 11. Paragraph (c) of subsection (3) of section
 569 220.191, Florida Statutes, is amended to read:

570 220.191 Capital investment tax credit.--

571 (3)

572 (c) The credit granted under this subsection may be used
 573 in whole or in part by the qualifying business ~~or any~~
 574 ~~corporation that is either a member of that qualifying~~
 575 ~~business's affiliated group of corporations, is a related entity~~
 576 ~~taxable as a cooperative under subchapter T of the Internal~~
 577 ~~Revenue Code, or, if the qualifying business is an entity~~
 578 ~~taxable as a cooperative under subchapter T of the Internal~~
 579 ~~Revenue Code, is related to the qualifying business. Any entity~~

HB 1237

2008

580 ~~related to the qualifying business may continue to file as a~~
 581 ~~member of a Florida nexus consolidated group pursuant to a prior~~
 582 ~~election made under s. 220.131(1), Florida Statutes (1985), even~~
 583 ~~if the parent of the group changes due to a direct or indirect~~
 584 ~~acquisition of the former common parent of the group. Any credit~~
 585 ~~can be used by any of the affiliated companies or related~~
 586 ~~entities referenced in this paragraph to the same extent as it~~
 587 ~~could have been used by the qualifying business. However, any~~
 588 ~~such use shall not operate to increase the amount of the credit~~
 589 ~~or extend the period within which the credit must be used.~~

590 Section 12. Subsection (2) of section 220.192, Florida
 591 Statutes, is amended to read:

592 220.192 Renewable energy technologies investment tax
 593 credit.--

594 (2) TAX CREDIT.--For tax years beginning on or after
 595 January 1, 2007, a credit against the tax imposed by this
 596 chapter shall be granted in an amount equal to the eligible
 597 costs. Credits may be used in tax years beginning January 1,
 598 2007, and ending December 31, 2010, after which the credit shall
 599 expire. If the credit is not fully used in any one tax year
 600 because of insufficient tax liability on the part of the
 601 corporation, the unused amount may be carried forward and used
 602 in tax years beginning January 1, 2007, and ending December 31,
 603 2012, after which the credit carryover expires and may not be
 604 used. ~~A taxpayer that files a consolidated return in this state~~
 605 ~~as a member of an affiliated group under s. 220.131(1) may be~~
 606 ~~allowed the credit on a consolidated return basis up to the~~
 607 ~~amount of tax imposed upon the consolidated group. Any eligible~~

608 cost for which a credit is claimed and which is deducted or
 609 otherwise reduces federal taxable income shall be added back in
 610 computing adjusted federal income under s. 220.13.

611 Section 13. Paragraphs (e), (f), (g), (h), and (i) of
 612 subsection (3) of section 220.193, Florida Statutes, are amended
 613 to read:

614 220.193 Florida renewable energy production credit.--

615 (3) An annual credit against the tax imposed by this
 616 section shall be allowed to a taxpayer, based on the taxpayer's
 617 production and sale of electricity from a new or expanded
 618 Florida renewable energy facility. For a new facility, the
 619 credit shall be based on the taxpayer's sale of the facility's
 620 entire electrical production. For an expanded facility, the
 621 credit shall be based on the increases in the facility's
 622 electrical production that are achieved after May 1, 2006.

623 ~~(e) A taxpayer that files a consolidated return in this~~
 624 ~~state as a member of an affiliated group under s. 220.131(1) may~~
 625 ~~be allowed the credit on a consolidated return basis up to the~~
 626 ~~amount of tax imposed upon the consolidated group.~~

627 (e)(f)-1. Tax credits that may be available under this
 628 section to an entity eligible under this section may be
 629 transferred after a merger or acquisition to the surviving or
 630 acquiring entity and used in the same manner with the same
 631 limitations.

632 2. The entity or its surviving or acquiring entity as
 633 described in subparagraph 1. may transfer any unused credit in
 634 whole or in units of no less than 25 percent of the remaining
 635 credit. The entity acquiring such credit may use it in the same

636 manner and with the same limitations under this section. Such
 637 transferred credits may not be transferred again although they
 638 may succeed to a surviving or acquiring entity subject to the
 639 same conditions and limitations as described in this section.

640 3. In the event the credit provided for under this section
 641 is reduced as a result of an examination or audit by the
 642 department, such tax deficiency shall be recovered from the
 643 first entity or the surviving or acquiring entity to have
 644 claimed such credit up to the amount of credit taken. Any
 645 subsequent deficiencies shall be assessed against any entity
 646 acquiring and claiming such credit, or in the case of multiple
 647 succeeding entities in the order of credit succession.

648 (f)~~(g)~~ Notwithstanding any other provision of this
 649 section, credits for the production and sale of electricity from
 650 a new or expanded Florida renewable energy facility may be
 651 earned between January 1, 2007 and June 30, 2010. The combined
 652 total amount of tax credits which may be granted for all
 653 taxpayers under this section is limited to \$5 million per state
 654 fiscal year.

655 (g)~~(h)~~ A taxpayer claiming a credit under this section
 656 shall be required to add back to net income that portion of its
 657 business deductions claimed on its federal return paid or
 658 incurred for the taxable year which is equal to the amount of
 659 the credit allowable for the taxable year under this section.

660 (h)~~(i)~~ A taxpayer claiming credit under this section may
 661 not claim a credit under s. 220.192. A taxpayer claiming credit
 662 under s. 220.192 may not claim a credit under this section.

663 Section 14. Section 220.51, Florida Statutes, is amended
 664 to read:

665 220.51 Promulgation of rules and regulations.--In
 666 accordance with the Administrative Procedure Act, chapter 120,
 667 the department is authorized to make, promulgate, and enforce
 668 such reasonable rules and regulations, and to prescribe such
 669 forms relating to the administration and enforcement of the
 670 provisions of this code, as it may deem appropriate, including:

671 (1) Rules for initial implementation of this code and for
 672 taxpayers' transitional taxable years commencing before and
 673 ending after January 1, 1972.+

674 (2) Rules or regulations to clarify whether certain
 675 groups, organizations, or associations formed under the laws of
 676 this state or any other state, country, or jurisdiction shall be
 677 deemed "taxpayers" for the purposes of this code, in accordance
 678 with the legislative declarations of intent in s. 220.02.+ and

679 ~~(3) Regulations relating to consolidated reporting for~~
 680 ~~affiliated groups of corporations, in order to provide for an~~
 681 ~~equitable and just administration of this code with respect to~~
 682 ~~multicorporate taxpayers.~~

683 Section 15. Section 220.64, Florida Statutes, is amended
 684 to read:

685 220.64 Other provisions applicable to franchise tax.--To
 686 the extent that they are not manifestly incompatible with the
 687 provisions of this part, parts I, III, IV, V, VI, VIII, IX, and
 688 X of this code and ss. 220.12, 220.13, 220.136, 220.15, and
 689 220.16 apply to the franchise tax imposed by this part. ~~Under~~
 690 ~~rules prescribed in s. 220.131, a consolidated return may be~~

691 ~~filed by any affiliated group of corporations composed of one or~~
 692 ~~more banks or savings associations, its or their Florida parent~~
 693 ~~corporation, and any nonbank or nonsavings subsidiaries of such~~
 694 ~~parent corporation.~~

695 Section 16. Subsection (9) of section 376.30781, Florida
 696 Statutes, is amended to read:

697 376.30781 Partial tax credits for rehabilitation of
 698 drycleaning-solvent-contaminated sites and brownfield sites in
 699 designated brownfield areas; application process; rulemaking
 700 authority; revocation authority.--

701 (9) On or before March 31, the Department of Environmental
 702 Protection shall inform each eligible tax credit applicant of
 703 the amount of its partial tax credit and provide each eligible
 704 tax credit applicant with a tax credit certificate that must be
 705 submitted with its tax return to the Department of Revenue to
 706 claim the tax credit or be transferred pursuant to s.
 707 220.1845(1) (g) ~~(h)~~. Credits will not result in the payment of
 708 refunds if total credits exceed the amount of tax owed.

709 Section 17. Transition rules.--

710 (1) For the first taxable year beginning on or after
 711 January 1, 2009, a taxpayer that filed a Florida return for the
 712 preceding taxable year and is a member of a water's edge group
 713 shall compute its income together with all members of the
 714 water's edge group and file a separate corporate income tax
 715 return or may elect to combine its tax return with all members
 716 of the water's edge group.

717 (2) An affiliated group of corporations that filed a
 718 Florida consolidated return pursuant to an election provided in

719 former s. 220.131, Florida Statutes, shall cease filing a
 720 Florida consolidated return for taxable years beginning on or
 721 after January 1, 2009, and shall file water's edge group returns
 722 or may elect to file a combined water's edge group return.

723 (3) An affiliated group of corporations that filed a
 724 Florida consolidated return pursuant to the election provided in
 725 s. 220.131(1), Florida Statutes (1985), that allowed the
 726 affiliated group to make an election with 90 days after December
 727 20, 1984, or upon filing the taxpayer's first return after
 728 December 20, 1984, whichever occurred later, shall cease filing
 729 a Florida consolidated return using that method for taxable
 730 years beginning on or after January 1, 2009, and shall file
 731 water's edge group returns or may elect to file a combined
 732 water's edge group return.

733 Section 18. Section 220.131, Florida Statutes, is
 734 repealed.

735 Section 19. Of the funds recaptured by this act, the sum
 736 of \$50 million is appropriated from the General Revenue Fund to
 737 the State University System for workforce education, to be
 738 allocated by the Board of Governors; the sum of \$50 million is
 739 appropriated from the General Revenue Fund to community colleges
 740 for workforce education, to be allocated by the State Board of
 741 Education; and the remainder of such funds, as determined by the
 742 Revenue Estimating Conference, shall be appropriated from the
 743 General Revenue Fund to the various school districts to reduce
 744 the required local effort, to be allocated as provided in the
 745 General Appropriations Act.

746 Section 20. This act shall take effect July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill requires school districts to provide a tax-sheltered annuity or custodial account available to eligible participants for the Distinguished Educator Retirement Option Program.

Safeguard individual liberty – The bill increases the retirement options for classroom teachers and instructional personnel by creating the Distinguished Educator Retirement Option Program.

B. EFFECT OF PROPOSED CHANGES:

Effect of Bill

The bill creates the Distinguished Educator Retirement Option Program (program). The program is a tax-sheltered annuity or custodial account established pursuant to s. 403(b) of the United States Internal Revenue Code. It is administered by the local school district and is funded by the Florida Education Finance Program.¹

The purpose of the program is to provide increased retirement contributions for qualified instructional personnel² and classroom teachers.³ The following are qualified participants for the program:

- Instructional personnel employed in Title I⁴ schools that have at least 75 percent of the students eligible for the statewide assessment in the school making learning gains in both reading and mathematics, based upon results on the statewide assessment.
- Classroom teachers teaching reading or mathematics and who have at least 75 percent of the students assigned to the teacher making learning gains in each subject taught by that teacher, based upon results on the statewide assessment.

The Department of Education (Department) must identify annually those instructional personnel and classroom teachers who qualify for participation in the program. If a person qualifies as both

¹ Florida school districts and developmental research schools receive State funding through the Florida Education Finance Program (FEFP), which was established by the Florida Legislature in 1973. To provide equalization of educational opportunity in Florida, the FEFP formula recognizes (1) varying local property tax bases, (2) varying program cost factors, (3) district cost differentials, and (4) differences in per student cost for equivalent educational programs due to sparsity and dispersion of student population. The funding provided by FEFP is based upon the numbers of individual students participating in particular educational programs. A numerical value is assigned to each student according to the student's hours and days of attendance in those programs. The individual student thus becomes equated to a numerical value known as an unweighted FTE (full-time equivalent student). For example, one student would be reported as one FTE if the student was enrolled in six classes per day at 50 minutes per class for the full 180-day school year (i.e., six classes at 50 minutes each per day is five hours of class a day or 25 hours per week, which equals one FTE). Summary of Florida Auditor General Report 2007-199, *FEFP-Alexander D. Henderson University School*, June 28, 2007, available at <http://www.myflorida.com/audgen/pages/summaries/2007-199.htm> (site last visited March 19, 2008).

² Section 1012.01(2), F.S., defines "instructional personnel" to mean "any K-12 staff member whose function includes the provision of direct instructional services to students. Instructional personnel also includes K-12 personnel whose functions provide direct support in the learning process of students." Included in the classification of instructional personnel are the following K-12 personnel: classroom teachers, student personnel services, librarians and media specialists, other instructional staff (e.g., primary specialists, learning resource specialists, and instructional trainers), education paraprofessionals.

³ Section 1012.01(2)(a), F.S., defines "classroom teachers" to mean "staff members assigned the professional activity of instructing students in courses in classroom situations, including basic instruction, exceptional student education, career education, and adult education, including substitute teachers."

⁴ Title I, Part A of the federal Elementary and Secondary Education Act of 1965, as amended and reauthorized under the No Child Left Behind Act of 2001, provides financial assistance to school districts and schools with high numbers or high percentages of disadvantaged children to help ensure that all children meet challenging state academic standards.

instructional personnel and a classroom teacher, then the Department only identifies that person for the category receiving the greater of the two benefits, which would be designation as a qualified classroom teacher. Beginning July 1, 2009, and each July 1 thereafter, the Department must certify to each school district those personnel and teachers eligible for participation in the program.

Each school district must provide a tax-sheltered annuity or custodial account for each instructional personnel and classroom teacher, within its district, who was certified by the Department for eligibility in the program. For each certified instructional personnel, the school district must pay an amount equal to 1.95 percent of that personnel's annual salary to:

- An insurance company licensed to do business in Florida;
- A credit union, bank, or savings and loan association qualified to do business in Florida; or
- A custodial account to be invested in regulated investment company stock to be held in such custodial account, as selected by the person, as premiums on an annuity contract issued in the name of such person or as payment into a qualified custodial account established pursuant to s. 403(b) of the United State Internal Revenue Code.⁵

For each certified classroom teacher, the school district must pay an amount equal to 4.40 percent of that teacher's annual salary to one of the aforementioned accounts.

Each certified instructional personnel and classroom teacher participating in the program may pay matching funds to the same account established by the school district.

The amount of any payments made to such account cannot exceed the amount excludable from income under the requirements of s. 403(b) of the United States Internal Revenue Code. In addition, the amount contributed is considered part of the employee's salary for all purposes other than federal income taxation.

The purchase of a tax-sheltered annuity or other qualified investment does not impose liability or responsibility on the employing agency.

The bill authorizes the State Board of Education (SBE) to adopt necessary rules to create a process for identifying eligible instructional personnel and classroom teachers. It also authorizes the SBE to adopt rules to create a process for certifying qualified participants to the appropriate school districts.

By October 1, 2008, the Department must request from the Internal Revenue Service a letter ruling whether the provisions of the bill are in compliance with the Internal Revenue Code.

Background

K-20 Education System

The State Board of Education (SBE) is the chief implementing and coordinating body of public education in Florida, except for the State University System.⁶ The SBE is responsible for approving the student performance standards known as the Sunshine State Standards.⁷ The Commissioner of Education is the chief educational officer and is responsible for assisting the SBE in enforcing compliance with the mission and goals of the K-20 education system.⁸

⁵ Section 403(b), IRC, covers educational employers and not-for-profit organizations. School boards already may provide a 403(b) plan for their employees' deferred compensation program. Creation of such a plan would allow for the deferment of taxation of benefits accrued under this program until the participant directly receives the benefit. *See* Email from the Division of Retirement of the Department of Management Services to staff, February 7, 2008 (on file with the Committee on State Affairs).

⁶ Section 1002.02(1), F.S.

⁷ Section 1001.03(1), F.S.

⁸ Section 1001.10(1), F.S.

Each county constitutes a school district. The school officials for each school district are responsible for the actual operation and administration of schools within their district.⁹

Accountability System

The Department maintains an accountability system that measures student progress toward the following goals:

- Highest student achievement, as indicated by evidence of student learning gains at all levels.
- Seamless articulation and maximum access, as measured by evidence of progression, readiness, and access by targeted groups of students identified by the Commissioner of Education.
- Skilled workforce and economic development, as measured by evidence of employment and earnings.
- Quality efficient services, as measured by evidence of return on investment.
- Other goals as identified by law or rule.¹⁰

The Commissioner of Education prepares annual reports of the results of the statewide assessment program. The reports describe student achievement in the state, each district, and each school.¹¹ It also provides the grade assigned to each school. School grades are based on certain criteria¹² and student assessment data.¹³

Learning Gains

An “annual learning gain” is an increase in a student’s learning from the prior year, as measured by the Florida Comprehensive Assessment Test (FCAT). A student makes a learning gain if one of the following three criteria are met:

- Improved FCAT achievement level from prior year (e.g., from level 1 to level 2);
- Maintained FCAT achievement levels 3, 4, or 5 from prior year; or
- Maintained FCAT achievement levels 1 or 2 and demonstrated more than 1 year’s growth according to FCAT developmental scale scores, which establish by grade level the anticipated increase in a student’s FCAT scale scores from the prior year. A retained student’s increase in developmental scale scores for repeated grade levels is not used to calculate learning gains.¹⁴

A student is not included in the calculation of learning gains if the student’s FCAT achievement level declines from the prior year, even if the lower score is at or above grade level.¹⁵

Florida Retirement System

⁹ Section 1001.30, F.S.

¹⁰ Section 1008.31(2)(c), F.S.

¹¹ Section 1008.34(1), F.S.

¹² The criteria consist of a combination of: Student achievement scores, including achievement scores for students seeking a special diploma. Student learning gains as measured by annual FCAT assessments in grades 3 through 10; learning gains for students seeking a special diploma, as measured by an alternate assessment tool, shall be included not later than the 2009-2010 school year.

Improvement of the lowest 25th percentile of students in the school in reading, math, or writing on the FCAT, unless these students are exhibiting satisfactory performance. Section 1008.34(3)(a), F.S.

¹³ Student assessment data used in determining grades includes: The aggregate scores of all eligible students enrolled in the school who have been assessed on the FCAT. The aggregate scores of all eligible students enrolled in the school who have been assessed on the FCAT, including Florida Writes, and who have scored at or in the lowest 25th percentile of students in the school in reading, math, or writing, unless these students are exhibiting satisfactory performance. Effective with the 2005-2006 school year, the achievement scores and learning gains of eligible students attending alternative schools that provide dropout prevention and academic intervention services pursuant to s. 1003.53, F.S. Section 1008.34(3)(b), F.S.

¹⁴ School Grades Fact Sheet by the Schools & Learning Council, January 2008, at question 3 (on file with the Committee on State Affairs).

¹⁵ *Id.*

Chapter 121, F.S., is the Florida Retirement System Act and it governs the Florida Retirement System (FRS). The secretary of the Department of Management Services (DMS) through the Division of Retirement (Division) administers the FRS.¹⁶

The FRS is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS offers a defined benefit plan that provides retirement, disability, and death benefits for over: 680,000 active members, 264,000 retirees and surviving beneficiaries, and 31,000 Deferred Retirement Option Program (DROP) participants.¹⁷

As of June 30, 2007, district school boards represent nearly half (48.70 percent) of the FRS membership.¹⁸

Currently, instructional personnel receive increased retirement benefits under DROP. Such personnel may indefinitely postpone the decision to join DROP. Other FRS participants must make the decision within 12 months from when the member first qualifies for normal retirement based on age or years of service.¹⁹ In addition, instructional personnel may participate in DROP for up to 96-months, whereas other FRS participants are authorized to participate for up to 60-months.²⁰

Section 403(b) of the United States Internal Revenue Code

Under a 403(b) qualified plan, there is an annual cap on the total contributions that can be contributed. Both employer and employee contributions count towards this cap. For instance, in 2007 the limit was the lesser of 100 percent of the employee's earnings or \$45,000. If an employee were to have multiple 403(b) plans, the total contributed between their various 403(b) plans could not exceed the maximum contribution limit for the calendar year.²¹

C. SECTION DIRECTORY:

Section 1 provides a declaration of important state interest.

Section 2 creates s. 1012.721, F.S., to create the Distinguished Educator Retirement Option Program.

Section 3 requires a letter ruling from the Internal Revenue Service.

Section 4 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:

¹⁶ Section 121.025, F.S.

¹⁷ Department of Management Services 2008 Substantive Bill Analysis for HB 67, September 16, 2007, at 1 (on file with the Committee on State Affairs).

¹⁸ Department of Management Services 2008 Substantive Bill Analysis for HB 67, September 16, 2007, at 2.

¹⁹ See s. 121.091(13), F.S.

²⁰ *Id.*

²¹ Email from the Division of Retirement of the Department of Management Services to staff, February 7, 2008 (on file with the Committee on State Affairs).

None.²²

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Businesses could see increased investments by local school districts on behalf of instructional personnel and classroom teachers who qualify for the Distinguished Educator Retirement Option Program.

D. FISCAL COMMENTS:

The provisions of the bill are funded by the Florida Education Finance Program (FEFP). Florida school districts and developmental research schools receive State funding through the FEFP. The funding provided by FEFP is based upon the numbers of individual students participating in particular educational programs. A numerical value is assigned to each student according to the student's hours and days of attendance in those programs.²³

The fiscal impact per school district is unknown; however, based on data from 2006 and 2007, the following instructional personnel and classroom teachers would have qualified for the program:

- Title I schools with 75 percent of students making gains in reading and math: 48 schools qualified, making the benefit applicable to 2039 instructional personnel.²⁴
- Teachers in Title I schools with 75 percent of students making gains in reading and math.²⁵ 468 schools qualified, making the benefit applicable to 901 teachers.²⁶

The following is the estimated annual contribution for each certified instructional personnel and classroom teacher whose annual salary ranges from \$40,000 to \$60,000.²⁷

SALARY	4.4% Contribution Rate (Qualified Classroom Teachers)	1.95% Contribution Rate (Qualified Instructional Personnel)
\$40,000	\$1,760	\$780
\$50,000	\$2,200	\$975

²² Per the Department of Education, the bill does not appear to create a fiscal impact on the department. Email from the Department of Education, March 19, 2008 (on file with the Committee on State Affairs).

²³ The individual student thus becomes equated to a numerical value known as an unweighted FTE (full-time equivalent student). For example, one student would be reported as one FTE if the student was enrolled in six classes per day at 50 minutes per class for the full 180-day school year (i.e., six classes at 50 minutes each per day is five hours of class a day or 25 hours per week, which equals one FTE). Summary of Florida Auditor General Report 2007-199, *FEFP-Alexander D. Henderson University School*, June 28, 2007, available at <http://www.myflorida.com/audgen/pages/summaries/2007-199.htm> (site last visited March 19, 2008).

²⁴ The data is based upon 2007 staff (number of instructional personnel) and school grades data. Email from Department of Education to Foundation for Florida's Future, February 28, 2008 (on file with the Committee on State Affairs).

²⁵ The numbers are based upon those teachers who teach both reading and math.

²⁶ The data is based upon 2006 student performance. Email from Department of Education to Foundation for Florida's Future, February 28, 2008 (on file with the Committee on State Affairs).

²⁷ Email from the Division of Retirement of the Department of Management Services to staff, February 7, 2008 (on file with the Committee on State Affairs).

\$60,000	\$2,640	\$1,170
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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. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the State Board of Education (Board) with rulemaking authority. It authorizes the Board to adopt rules necessary for creating a process for identifying instructional personnel and classroom teachers eligible for the program. The bill also authorizes the Board to adopt rules to create a process for certifying to the appropriate school districts those personnel and teachers who are qualified participants for the program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

Not applicable.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.

PCB GEAC 08-21

ORIGINAL

YEAR

1 A bill to be entitled
 2 An act relating to the Distinguished Educator Retirement
 3 Option Program; providing a declaration of important state
 4 interest; creating s. 1012.721, F.S.; creating the
 5 Distinguished Educator Retirement Option Program;
 6 providing definitions; creating reporting requirements for
 7 the Department of Education; requiring each school
 8 district to establish a Distinguished Educator Retirement
 9 Option Program that funds a tax-sheltered annuity or
 10 custodial account for certain qualified participants;
 11 providing for funding from the Florida Education Finance
 12 Program; authorizing the State Board of Education to adopt
 13 rules; requiring a letter ruling from the Internal Revenue
 14 Service; providing an effective date.

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

17
 18 Section 1. The Legislature finds that a proper and
 19 legitimate state purpose is served when employees and retirees
 20 of the state and its political subdivisions, and the dependents,
 21 survivors, and beneficiaries of such employees and retirees, are
 22 extended the basic protections afforded by governmental
 23 retirement systems. Therefore, the Legislature hereby determines
 24 and declares that this act fulfills an important state interest.

25 Section 2. Section 1012.721, Florida Statutes, is created
 26 to read:

27 1012.721 Distinguished Educator Retirement Option
 28 Program.—

PCB GEAC 08-21

ORIGINAL

YEAR

- 29 (1) As used in this section, the term:
- 30 (a) "Department" means the Department of Education.
- 31 (b) "Distinguished Educator Retirement Option Program" or
 32 "program" means a tax sheltered annuity or custodial account
 33 established pursuant to s. 403(b) of the United States Internal
 34 Revenue Code and administered by a local school district.
- 35 (c) "Learning gains" means learning gains as defined in
 36 State Board of Education rule 6A 1.09981(5), Florida
 37 Administrative Code.
- 38 (f) "Title I school" means a Title I school as defined by
 39 federal law.
- 40 (2) There is hereby created the Distinguished Educator
 41 Retirement Option Program that shall be funded by the Florida
 42 Education Finance Program.
- 43 (3) (a) For purposes of increased retirement contributions,
 44 the Department shall annually identify the following:
- 45 1. Instructional personnel who are employed in Title I
 46 schools that have at least 75 percent of the students eligible
 47 for the statewide assessment in the school making learning gains
 48 in both reading and mathematics, based upon results on the
 49 statewide assessment provided in s. 1008.22.
- 50 2. Classroom teachers who teach reading or mathematics and
 51 who have at least 75 percent of the students assigned to the
 52 teacher making learning gains in each subject taught by that
 53 classroom teacher, based upon results on the statewide
 54 assessment provided in s. 1008.22.
- 55 (b) For any person who qualifies as both instructional
 56 personnel and a classroom teacher, the Department shall identify

PCB GEAC 08-21

ORIGINAL

YEAR

57 that person for the category receiving the greater of the two
 58 benefits.

59 (4) Beginning July 1, 2009, and each July 1 thereafter,
 60 the Department shall certify to each school district those
 61 instructional personnel and classroom teachers who meet the
 62 requirements of subsection (3) and who are therefore eligible to
 63 participate in the Distinguished Educator Retirement Option
 64 Program.

65 (5) (a) Each school district shall provide a tax-sheltered
 66 annuity or custodial account for each certified instructional
 67 personnel and classroom teacher, within its district, who are
 68 eligible for the Distinguished Educator Retirement Option
 69 Program.

70 (b) For each instructional personnel who is certified by
 71 the Department as eligible for participation in the program, the
 72 school district shall pay an amount equal to 1.95 percent of
 73 that person's annual salary to an insurance company licensed to
 74 do business in Florida; to a credit union, bank, or savings and
 75 loan association qualified to do business in Florida; or to a
 76 custodial account to be invested in regulated investment company
 77 stock to be held in such custodial account, as selected by the
 78 person, notwithstanding any other provision of law, as premiums
 79 on an annuity contract issued in the name of such person or as
 80 payment into a qualified custodial account established pursuant
 81 to s. 403(b) of the United States Internal Revenue Code.

82 (c) For each classroom teacher who is certified by the
 83 Department as eligible for participation in the program, the
 84 school district shall pay an amount equal to 4.40 percent of

PCB GEAC 08-21

ORIGINAL

YEAR

85 that person's annual salary to an insurance company licensed to
 86 do business in Florida; to a credit union, bank, or savings and
 87 loan association qualified to do business in Florida; or to a
 88 custodial account to be invested in regulated investment company
 89 stock to be held in such custodial account, as selected by the
 90 person, notwithstanding any other provision of law, as premiums
 91 on an annuity contract issued in the name of such person or as
 92 payment into a qualified custodial account established pursuant
 93 to s. 403(b) of the United States Internal Revenue Code.

94 (d) Each instructional personnel and classroom teacher who
 95 participates in the program may pay matching funds to the same
 96 account established by the school district.

97 (e) The amount of such payments shall not exceed the
 98 amount excludable from income under s. 403(b) of the United
 99 States Internal Revenue Code and shall be considered a part of
 100 the employee's salary for all purposes other than federal income
 101 taxation.

102 (6) The purchase of such tax-sheltered annuity or other
 103 investment qualified under the United States Internal Revenue
 104 Code and not prohibited under the laws of this state for an
 105 employee shall impose no liability or responsibility whatsoever
 106 on the employing agency except to show that the payments have
 107 been remitted for the purposes for which deducted.

108 (7) The State Board of Education may adopt rules pursuant
 109 to ss. 120.536 and 120.54 as necessary to administer the
 110 provisions of creating a process for identifying instructional
 111 personnel and classroom teachers eligible for the Distinguished

PCB GEAC 08-21

ORIGINAL

YEAR

112 | Educator Retirement Option Program and for certifying to the
113 | appropriate school districts those qualified participants.

114 | Section 3. The Department of Education shall request from
115 | the Internal Revenue Service, by October 1, 2008, a letter
116 | ruling regarding the provisions of this act.

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

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. **PCB GEAC 08-21**

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	_____	

1 Council/Committee hearing bill: Government Efficiency &
 2 Accountability Council
 3 Representative(s) Gibbons offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:

7 Section 1. Subsection (63) is added to section 121.021,
 8 Florida Statutes, to read:

9 121.021 Definitions.--The following words and phrases as
 10 used in this chapter have the respective meanings set forth
 11 unless a different meaning is plainly required by the context:

12 (63) "Public school member" means a member of the Florida
 13 Retirement System Regular Class who is employed by a district
 14 school system, a public charter school, or the Florida School
 15 for the Deaf and the Blind.

16 Section 2. Subsection (1) of section 121.091, Florida
 17 Statutes, is amended to read:

18 121.091 Benefits payable under the system.--Benefits may
 19 not be paid under this section unless the member has terminated
 20 employment as provided in s. 121.021(39) (a) or begun
 21 participation in the Deferred Retirement Option Program as
 22 provided in subsection (13), and a proper application has been

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

23 filed in the manner prescribed by the department. The department
24 may cancel an application for retirement benefits when the
25 member or beneficiary fails to timely provide the information
26 and documents required by this chapter and the department's
27 rules. The department shall adopt rules establishing procedures
28 for application for retirement benefits and for the cancellation
29 of such application when the required information or documents
30 are not received.

31 (1) NORMAL RETIREMENT BENEFIT.--Upon attaining his or her
32 normal retirement date, the member, upon application to the
33 administrator, shall receive a monthly benefit which shall begin
34 to accrue on the first day of the month of retirement and be
35 payable on the last day of that month and each month thereafter
36 during his or her lifetime. The normal retirement benefit,
37 including any past or additional retirement credit, may not
38 exceed 100 percent of the average final compensation. The amount
39 of monthly benefit shall be calculated as the product of A and
40 B, subject to the adjustment of C, if applicable, as set forth
41 below:

42 (a) 1.a. For creditable years of Regular Class service, A
43 is 1.60 percent of the member's average final compensation, up
44 to the member's normal retirement date. Upon completion of the
45 first year after the normal retirement date, A is 1.63 percent
46 of the member's average final compensation. Following the second
47 year after the normal retirement date, A is 1.65 percent of the
48 member's average final compensation. Following the third year
49 after the normal retirement date, and for subsequent years, A is
50 1.68 percent of the member's average final compensation.

51 b. For creditable years of Regular Class service, A is
52 1.80 percent for public school members.

53 2. For creditable years of special risk service, A is:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

- 54 a. Two percent of the member's average final compensation
55 for all creditable years prior to October 1, 1974;
- 56 b. Three percent of the member's average final
57 compensation for all creditable years after September 30, 1974,
58 and before October 1, 1978;
- 59 c. Two percent of the member's average final compensation
60 for all creditable years after September 30, 1978, and before
61 January 1, 1989;
- 62 d. Two and two-tenths percent of the member's final
63 monthly compensation for all creditable years after December 31,
64 1988, and before January 1, 1990;
- 65 e. Two and four-tenths percent of the member's average
66 final compensation for all creditable years after December 31,
67 1989, and before January 1, 1991;
- 68 f. Two and six-tenths percent of the member's average
69 final compensation for all creditable years after December 31,
70 1990, and before January 1, 1992;
- 71 g. Two and eight-tenths percent of the member's average
72 final compensation for all creditable years after December 31,
73 1991, and before January 1, 1993;
- 74 h. Three percent of the member's average final
75 compensation for all creditable years after December 31, 1992;
76 and
- 77 i. Three percent of the member's average final
78 compensation for all creditable years of service after September
79 30, 1978, and before January 1, 1993, for any special risk
80 member who retires after July 1, 2000, or any member of the
81 Special Risk Administrative Support Class entitled to retain the
82 special risk normal retirement date who was a member of the
83 Special Risk Class during the time period and who retires after
84 July 1, 2000.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

85 3. For creditable years of Senior Management Service Class
86 service after January 31, 1987, A is 2 percent;

87 4. For creditable years of Elected Officers' Class service
88 as a Supreme Court Justice, district court of appeal judge,
89 circuit judge, or county court judge, A is $3\frac{1}{3}$ percent of the
90 member's average final compensation, and for all other
91 creditable service in such class, A is 3 percent of average
92 final compensation;

93 (b) B is the number of the member's years and any
94 fractional part of a year of creditable service earned
95 subsequent to November 30, 1970; and

96 (c) C is the normal retirement benefit credit brought
97 forward as of November 30, 1970, by a former member of an
98 existing system. Such normal retirement benefit credit shall be
99 determined as the product of X and Y when X is the percentage of
100 average final compensation which the member would have been
101 eligible to receive if the member had attained his or her normal
102 retirement date as of November 30, 1970, all in accordance with
103 the existing system under which the member is covered on
104 November 30, 1970, and Y is average final compensation as
105 defined in s. 121.021(25). However, any member of an existing
106 retirement system who is eligible to retire and who does retire,
107 become disabled, or die prior to April 15, 1971, may have his or
108 her retirement benefits calculated on the basis of the best 5 of
109 the last 10 years of service.

110 (d) A member's average final compensation shall be
111 determined by formula to obtain the coverage for the 5 highest
112 fiscal years' salaries, calculated as provided by rule.

113 Section 3. It is the intent of the Legislature that costs
114 attributable to benefit increases for regular class public
115 school members shall be funded by recognition of lump sums from

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

116 the excess actuarial assets of the Florida Retirement System
117 Trust Fund as follows:

118 (1) For fiscal year 2008-2009, the lump sum to be
119 recognized shall be the lesser of:

120 (a) The amount available under the rate stabilization
121 mechanism described in section 121.031, Florida Statutes; or

122 (b) The amount needed to pay the annual cost attributable
123 to the increased benefit accrual rate for public school members.
124 The annual cost shall consist of the increase in normal cost for
125 public school members plus payment of the 30-year amortization
126 amount of the increase in the actuarial accrued liability
127 attributable to the increase, equal to 2.07 percent of the
128 public school member payroll.

129
130 If, after the recognition of excess actuarial assets pursuant to
131 this subsection, there remains an unfunded cost, the
132 contribution rate applicable to public school members shall be
133 increased by the difference between the annual cost and the
134 amount provided by the excess actuarial assets, unless the
135 Legislature provides an alternate funding mechanism.

136 (2) For fiscal years starting 2009-2010 and thereafter,
137 the Legislature shall, as provided in subsection (1), continue
138 to fund on an ongoing basis the annual cost attributable to the
139 formula improvements.

140 Section 4. The Legislature finds that a proper and
141 legitimate state purpose is served when employees and retirees
142 of the state and of its political subdivisions, and the
143 dependents, survivors, and beneficiaries of such employees and
144 retirees, are extended the basic protections afforded by
145 governmental retirement systems that provide fair and adequate
146 benefits that are managed, administered, and funded in an

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

147 actuarially sound manner, as required by Section 14, Article X
148 of the State Constitution and part VII of chapter 112, Florida
149 Statutes. Therefore, the Legislature determines and declares
150 that this act fulfills an important state interest.

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

152

153

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

155 Remove the entire title and insert:

156 An act relating to the Florida Retirement System; amending s.
157 121.021, F.S.; defining the term "public school member" for
158 purposes of the system; amending s. 121.091, F.S.; providing
159 retirement benefits payable to public school members; providing
160 for funding of the revision of the Florida Retirement System by
161 this act; providing a finding of important state interest;
162 providing an effective date.

163