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# **Government Efficiency & Accountability Council**

**Wednesday, March 19, 2008**

**9:45 AM – 11:15 AM**

**1:00 PM – 2:45 PM**

**Morris Hall (17 HOB)**

## **REVISED1**

**Marco Rubio  
Speaker**

**Frank Attkisson  
Chair**

# Council Meeting Notice

## HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

### Government Efficiency & Accountability Council

**Start Date and Time:** Wednesday, March 19, 2008 09:45 am

**End Date and Time:** Wednesday, March 19, 2008 02:45 pm

**Location:** Morris Hall (17 HOB)

**Duration:** 5.00 hrs

**Consideration of the following bill(s):**

HB 129 Just Valuation of Property by Lopez-Cantera

HB 177 Proposed Property Tax Notices by Richter

HB 211 Special Districts by Machek

HB 399 Financial Management by Local Governments by Grant

HJR 421 Transfer of Save-Our-Homes Benefits; Additional Homestead Exemption by Simmons

HB 595 Property Appraisers by Nelson

**Consideration of the following proposed council bill(s):**

PCB GEAC 08-13 -- Administrative Procedures

Presentations regarding budget reductions for FY 2008-09 by the following agencies:

Department of Revenue

Department of the Lottery

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

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



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

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

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

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**SUMMARY ANALYSIS**

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

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

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

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

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

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

The bill has an effective date of upon becoming law.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

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

#### B. EFFECT OF PROPOSED CHANGES:

##### PRESENT SITUATION

##### JUST VALUATION

Article VII, s. 4 of the Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes. Since 1965, it has been well settled that "just valuation" is synonymous with "fair market value" and is defined as what a willing buyer and willing seller would agree upon as a transaction price for the property.<sup>1</sup>

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

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

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

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<sup>1</sup> *Walter v. Schuler*, 176 So.2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So.2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So.2d 4 (Fla. 1973).

<sup>2</sup> Article VII, §4 (a), Florida Constitution.

<sup>3</sup> Article VII, §4 (b), Florida Constitution.

<sup>4</sup> Article VII, §4 (c), Florida Constitution.

<sup>5</sup> Article VII, §4 (d), Florida Constitution.

<sup>6</sup> Article VII, §4 (e), Florida Constitution.

<sup>7</sup> Fla. Stat. §193.011(1).

executive order, ordinance, regulation, resolution, or proclamation or judicial limitation when it prohibits or restricts the development or improvement of property;<sup>8</sup>

- Location of the property;<sup>9</sup>
- Quantity or size of the property;<sup>10</sup>
- Cost of the property and the present replacement value of any improvements thereon;<sup>11</sup>
- Condition of the property;<sup>12</sup>
- Income from the property;<sup>13</sup> and
- Net proceeds of the sale of the property, as received by the seller, after deduction of all of the usual and reasonable fees and costs of sale.<sup>14</sup>

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

### FAIR MARKET VALUE

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

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

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

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

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

<sup>8</sup> Fla. Stat. §193.011(2).

<sup>9</sup> Fla. Stat. §193.011(3).

<sup>10</sup> Fla. Stat. §193.011(4).

<sup>11</sup> Fla. Stat. §193.011(5).

<sup>12</sup> Fla. Stat. §193.011(6).

<sup>13</sup> Fla. Stat. §193.011(7).

<sup>14</sup> Fla. Stat. §193.011(8).

<sup>15</sup> *Powell v. Kelley*, 223 So.2d 305, 309 (Fla. 1969).

<sup>16</sup> *District School Board of Lee County v. Askew*, 278 So.2d 272, 276 (Fla. 1973).

<sup>17</sup> *Lanier v. Walt Disney World Company*, 316 So.2d 59, 62 ( Fla. 4 DCA 1975); *certiorari denied* 330 So.2d 19 (Fla. Feb 03, 1976) (TABLE, NO. 47876)

<sup>18</sup> Appraisal Standards Board, *The Uniform Standards of Professional Appraisal Practice*, 2002 Edition (Washington D.C.: The Appraisal Foundation), at 218.

<sup>19</sup> *Lanier v. Overstreet*, 175 So.2d 521 at 524 (Fla. 1965).

<sup>20</sup> *Id.*

<sup>21</sup> *Lanier v. Tyson*, 147 So.2d 365 (Fla. 2DCA 1962)

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

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

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

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

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

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

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

#### LANDS SUBJECT TO CONSERVATION EASEMENTS

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

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

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

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<sup>22</sup> *Lanier v. Overstreet* at 524.

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

<sup>24</sup> *Lanier v. Overstreet*, 175 So.2d 521 (Fla. 1965).

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

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

#### CONSTITUTIONAL BASIS FOR REDUCTION IN JUST VALUE FOR CONSERVATION EASEMENTS

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

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

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

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

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

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

#### RIGHTS OF TAXPAYERS IN ADMINISTRATIVE AND JUDICIAL REVIEW OF PROPERTY TAXES

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

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

<sup>26</sup> Each of these Florida cases arose under a predecessor Florida Constitution. Nonetheless, they are controlling here since the principle of immunity is not constitutionally dependent. *Orlando Utilities Commission v. Milligan*, 229 So.2d 262 (Fla. 4DCA 1969); *Park-N-Shop, Inc. v. Sparkman*, 99 So.2d 571 (Fla.1957).

<sup>27</sup> *Maxcy, Inc. v. Federal Land Bank of Columbia*, 111 Fla. 116, 150 So. 248, and 151 So. 276 (1933).

<sup>28</sup> Fla. Stat. §194.011(4)(a).

<sup>29</sup> Fla. Stat. §194.011(4)(b).

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

The value adjustment boards are composed of three members of the county governing board and two members of the school board.<sup>30</sup>

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

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

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

## **EFFECT OF PROPOSED CHANGES**

### HIGHEST AND BEST USE

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

### CONDITION OF THE PROPERTY

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

### PROCEEDS OF SALE OF THE PROPERTY

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

### REQUIREMENT THAT ALL FACTORS BE CONSIDERED IN DETERMINING JUST VALUATION

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

### EFFECT OF DETERMINATION BY VALUE ADJUSTMENT BOARD

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

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<sup>30</sup> Fla. Stat. §194.015.

<sup>31</sup> Fla. Stat. §194.032(2).

section to apply to all property.

#### ASSESSMENT OF DEED-RESTRICTED PROPERTY

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

#### CHAPTER 194, F.S.

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

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

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

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

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

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

#### C. SECTION DIRECTORY:

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

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

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

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

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

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

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

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

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

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

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

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

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

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

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

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

<sup>32</sup> Department of Revenue Fiscal Impact Analysis of HB 129 (revised February 13, 2008), September 28, 2007, at 1.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

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

**D. FISCAL COMMENTS:**

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

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

**1. Applicability of Municipality/County Mandates Provision:**

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

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

**2. Other:**

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

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

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**D. STATEMENT OF THE SPONSOR**

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

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



1                                   A bill to be entitled  
2           An act relating to just valuation of property; amending s.  
3           193.011, F.S.; providing for consideration of zoning  
4           changes and permits in determining the highest and best  
5           use; revising the just valuation factor relating to the  
6           condition of property; including cost of removal of  
7           tangible personal property as a consideration in the net  
8           sale proceeds factor; requiring property appraisers to use  
9           only market rent in arriving at just value of certain  
10          income-producing properties; providing a definition;  
11          providing applicability; amending s. 193.016, F.S.;  
12          providing for consideration of value adjustment board  
13          decisions for all properties; creating s. 193.018, F.S.;  
14          authorizing owners of certain properties to enter into  
15          deed-restriction agreements with counties for certain  
16          purposes; requiring property appraisers to consider deed-  
17          restriction agreements in determining just value;  
18          providing for payment of back taxes plus interest if the  
19          deed-restriction agreement is terminated early; amending  
20          s. 194.011, F.S.; revising provisions relating to  
21          provision of evidence by petitioners and property  
22          appraisers; amending s. 194.013, F.S.; requiring value  
23          adjustment boards to waive a petition filing fee for  
24          taxpayers eligible for certain constitutional exemptions;  
25          amending s. 194.015, F.S.; revising the membership of  
26          value adjustment boards, appointment criteria, and quorum  
27          requirements; amending s. 194.032, F.S.; providing for  
28          criteria for rescheduling certain hearings under certain

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

41 |

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

43 |

44 | Section 1. Effective upon this act becoming a law and  
 45 | applicable to assessments beginning January 1, 2009, section  
 46 | 193.011, Florida Statutes, is amended to read:

47 | 193.011 Factors to consider in deriving just valuation.--

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

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

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

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

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

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

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

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

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

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

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

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

106 193.016 Property appraiser's assessment; effect of  
 107 determinations by value adjustment board.--If the property  
 108 appraiser's assessment of the same ~~items of tangible personal~~  
 109 property in the previous year was adjusted by the value  
 110 adjustment board and the decision of the board to reduce the  
 111 assessment was not successfully appealed by the property

112 appraiser, the property appraiser shall consider the reduced  
 113 value ~~values~~ determined by the value adjustment board in  
 114 assessing ~~the these items of tangible personal~~ property. If the  
 115 property appraiser adjusts upward the reduced value ~~values~~  
 116 previously determined by the value adjustment board, the  
 117 property appraiser shall assert additional basic and underlying  
 118 facts not properly considered by the value adjustment board as  
 119 the basis for the increased valuation notwithstanding the prior  
 120 adjustment by the board.

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

123 193.018 Assessment of deed-restricted property.--

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

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

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

140 | not been in effect, plus 12 percent interest.

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

143 | 194.011 Assessment notice; objections to assessments.--

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

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

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

162 | 194.013 Filing fees for petitions; disposition; waiver.--

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

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

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

176 194.015 Value adjustment board.--

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

229       194.032 Hearing purposes; timetable.--

230       (2) The clerk of the governing body of the county shall  
 231 prepare a schedule of appearances before the board based on  
 232 petitions timely filed with him or her. The clerk shall notify  
 233 each petitioner of the scheduled time of his or her appearance  
 234 no less than 25 calendar days prior to the day of such scheduled  
 235 appearance. Upon receipt of this notification, the petitioner  
 236 shall have the right to reschedule the hearing for the failure  
 237 of the property appraiser to comply with the requirements of s.  
 238 194.011(4)(b). The hearing shall be rescheduled no sooner than  
 239 15 days after the property appraiser complies with the  
 240 requirements of s. 194.011(4)(b). The petitioner shall also have  
 241 the right to reschedule the hearing a single time by submitting  
 242 to the clerk of the governing body of the county a written  
 243 request to reschedule, no less than 5 calendar days before the  
 244 day of the originally scheduled hearing. Additional rescheduling  
 245 of the hearing may be granted to the taxpayer upon receipt of an  
 246 affidavit from a physician that states a medical reason as to  
 247 why the petitioner needs to reschedule the hearing. A copy of  
 248 the property record card containing relevant information used in  
 249 computing the taxpayer's current assessment shall be included  
 250 with such notice, if said card was requested by the taxpayer.  
 251 Such request shall be made by checking an appropriate box on the

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

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

266 194.034 Hearing procedures; rules.--

267 (2) In each case, except when a complaint is withdrawn by  
 268 the petitioner or is acknowledged as correct by the property  
 269 appraiser, the value adjustment board shall render a written  
 270 decision. All such decisions shall be issued within 20 calendar  
 271 days of the last day the board is in session under s. 194.032.  
 272 The decision of the board shall contain findings of fact and  
 273 conclusions of law and shall include reasons for upholding or  
 274 overturning the determination of the property appraiser. If the  
 275 determination of the property appraiser is overturned, the board  
 276 shall order the refunding of the filing fee required by s.  
 277 194.013. When a special magistrate has been appointed, the  
 278 recommendations of the special magistrate shall be considered by  
 279 the board. The clerk, upon issuance of the decisions, shall, on

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

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

285 194.192 Costs; interest on unpaid taxes; penalty; attorney  
 286 fees.--

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

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

297 194.301 Presumption of correctness and burden of proof in  
 298 ad valorem tax assessment challenges.--In any administrative or  
 299 judicial ~~proceeding action~~ in which a ~~taxpayer~~ challenges an ad  
 300 valorem tax assessment of value is challenged, the burden of  
 301 proof shall be upon the party initiating the proceeding and such  
 302 party shall have the burden of proving by a preponderance of the  
 303 evidence that the assessment, as established by the property  
 304 appraiser or the Value Adjustment Board, is incorrect. The  
 305 property appraiser's assessment shall be presumed correct,  
 306 except that if the Value Adjustment Board has established a  
 307 different assessment, the assessment of the Value Adjustment

308 Board shall be presumed correct. This presumption of correctness  
 309 is lost if the taxpayer shows by a preponderance of the evidence  
 310 that either the property appraiser has failed to comply with  
 311 uniform standards of professional appraisal practice in his or  
 312 her consideration of ~~consider properly~~ the criteria in s.  
 313 193.011 or if the property appraiser's assessment is arbitrarily  
 314 based on appraisal practices which are different from the  
 315 appraisal practices generally applied by the property appraiser  
 316 to comparable property within the same class and within the same  
 317 county. ~~If the presumption of correctness is lost, the taxpayer~~  
 318 ~~shall have the burden of proving by a preponderance of the~~  
 319 ~~evidence that the appraiser's assessment is in excess of just~~  
 320 ~~value. If the presumption of correctness is retained, the~~  
 321 ~~taxpayer shall have the burden of proving by clear and~~  
 322 ~~convincing evidence that the appraiser's assessment is in excess~~  
 323 ~~of just value.~~ In no case shall the taxpayer have the burden of  
 324 proving that the property appraiser's assessment is not  
 325 supported by any reasonable hypothesis of a legal assessment. If  
 326 the property appraiser's assessment is determined to be  
 327 erroneous, the Value Adjustment Board or the court can establish  
 328 the assessment if there exists competent, substantial evidence  
 329 in the record, which cumulatively meets the requirements of s.  
 330 193.011. If the record lacks competent, substantial evidence  
 331 meeting the just value criteria of s. 193.011, the matter shall  
 332 be remanded to the property appraiser with appropriate  
 333 directions from the Value Adjustment Board or the court.

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

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2008

336           420.507 Powers of the corporation.--The corporation shall  
 337 have all the powers necessary or convenient to carry out and  
 338 effectuate the purposes and provisions of this part, including  
 339 the following powers which are in addition to all other powers  
 340 granted by other provisions of this part:

341           (46) To require, as a condition of financing a multifamily  
 342 rental project, that an agreement be recorded in the official  
 343 records of the county where the real property is located, which  
 344 requires that the project be used for housing defined as  
 345 affordable in s. 420.0004(3) by persons defined in s.  
 346 420.0004(8), (10), (11), and (15). Such an agreement is a state  
 347 land use regulation that limits the highest and best use of the  
 348 property within the meaning of s. 193.011 (1) (b) ~~(2)~~.

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

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. **HB 129**

COUNCIL/COMMITTEE ACTION

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

**THIS AMENDMENT IS  
TRAVELING WITH THE  
BILL. NO ACTION  
REQUIRED**

1 Council/Committee hearing bill: Government Efficiency &  
2 Accountability Council  
3 Committee on State Affairs offered the following:  
4

**Amendment**

6 Remove line(s) 96 and insert:

7 (1) in arriving at just valuation, property appraisers, upon  
8 request of the property owner, shall  
9

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. **HB 129**

COUNCIL/COMMITTEE ACTION

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

**THIS AMENDMENT IS  
TRAVELING WITH THE  
BILL. NO ACTION  
REQUIRED**

1 Council/Committee hearing bill: Government Efficiency &  
2 Accountability Council  
3 Committee on State Affairs offered the following:  
4

5 **Amendment (with title amendments)**

6 Remove line(s) 295-333:  
7

8 -----

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

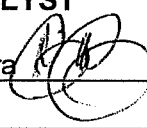
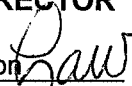
10 Remove line(s) 35-38 and insert:  
11 under certain circumstances; amending s. 420.507,  
12  
13





HOUSE OF REPRESENTATIVES STAFF ANALYSIS

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

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

SUMMARY ANALYSIS

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

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

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

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

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

#### B. EFFECT OF PROPOSED CHANGES:

##### PRESENT SITUATION

Property appraisers are responsible for preparing notices of proposed property taxes and non-ad valorem assessments on behalf of all taxing authorities and local governing boards levying ad valorem taxation and non-ad valorem assessments. Property appraisers must prepare and deliver these notices to each taxpayer listed on the current year's assessment roll.<sup>1</sup> This notice is called the Truth in Millage Notice (TRIM).

Section 200.069, F.S., provides the elements and format of the TRIM notice, which generally is the only acceptable means of providing notice to taxpayers. The Department of Revenue (Department) produces the forms. A county officer may use a different form provided that it is substantively similar to the one produced by the Department, his or her office pays the related expenses, and he or she obtains prior written permission from the executive director of the Department.

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

Section 200.069, F.S., specifies that the information on the TRIM notice must appear in columnar form:

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

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

- Taxing Authority – A brief commonly used name for the taxing authority or local governing body.
- Your Property Taxes Last Year – The gross amount of ad valorem taxes levied against the parcel in the previous year. If the parcel did not exist in the previous year, this column shall be blank.
- Your Taxes This Year IF PROPOSED BUDGET CHANGE IS MADE – The gross amount of ad valorem taxes proposed to be levied in the current year, which amount shall be based on the proposed millage rates provided to the property appraiser, or in the case of voted levies for debt service, the millage rate previously authorized by referendum, and the taxable value of the parcel as shown on the current year's assessment roll.
- A Public Hearing on the Proposed Taxes and Budget Will be Held – The date, time, and a brief description of the location of the required public hearing.

<sup>1</sup> Section 200.065(2)(b), F.S.

<sup>2</sup> Section 195.022, F.S.

- Your Taxes This Year IF NO Budget Change is Made – The gross amount of ad valorem taxes which would apply to the parcel in the current year if each taxing authority were to levy the rolled-back rate.<sup>3</sup>

**EFFECT OF PROPOSED CHANGES**

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

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

The changes would result in the following format:

TAXING AUTHORITY	Your Property Taxes Last Year	Millage Rate Last Year	Your Taxes This Year IF PROPOSED BUDGET CHANGE IS MADE	Millage Rate This Year IF PROPOSED BUDGET CHANGE IS MADE	A Public Hearing on the Proposed Taxes and Budget Will be Held:	Your Taxes This Year IF NO Budget Change is Made	Millage Rate IF NOT Budget Change is Made
------------------	-------------------------------	------------------------	--	--	---	--	---

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

**C. SECTION DIRECTORY:**

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

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

Section 3 provides an effective date of January 1, 2009.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.<sup>4</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

<sup>3</sup> Section 200.065(1), F.S., describes the “rolled-back rate” as the millage rate which, exclusive of new construction, additions to structures, deletions, increase in the value of improvements that have undergone substantial rehabilitation which increased the assessed value by at least 100 percent, and property added due to geographic boundary changes, will yield the same ad valorem tax revenue for each taxing authority as was levied during the prior year.

<sup>4</sup> Email from the Department of Revenue, January 28, 2008.

1. Revenues:

None.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

HB 177 amends the current requirements of 200.065 F.S. This statute requires the property appraisers pursuant to s. 206.065(2)(b) to prepare and deliver each taxpayer a notice of proposed taxes. This notice is commonly called the Truth in Millage Notice (TRIM). Presently the TRIM notice does not include the millage each taxing authority and local governing boards levy within their jurisdiction. This bill requires the Truth in Millage Notice to disclose the actual millage used to determine the actual tax.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

None.

1                                   A bill to be entitled  
 2           An act relating to proposed property tax notices; amending  
 3           s. 200.069, F.S.; revising the form of the notice of  
 4           proposed property taxes to include certain millage rates;  
 5           amending s. 200.065, F.S.; conforming a cross-reference;  
 6           providing an effective date.

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

9  
 10           Section 1. Subsections (2), (4), and (6) of section  
 11   200.069, Florida Statutes, are amended to read:

12           200.069 Notice of proposed property taxes and non-ad  
 13   valorem assessments.--Pursuant to s. 200.065(2)(b), the property  
 14   appraiser, in the name of the taxing authorities and local  
 15   governing boards levying non-ad valorem assessments within his  
 16   or her jurisdiction and at the expense of the county, shall  
 17   prepare and deliver by first-class mail to each taxpayer to be  
 18   listed on the current year's assessment roll a notice of  
 19   proposed property taxes, which notice shall contain the elements  
 20   and use the format provided in the following form.

21   Notwithstanding the provisions of s. 195.022, no county officer  
 22   shall use a form other than that provided herein. The Department  
 23   of Revenue may adjust the spacing and placement on the form of  
 24   the elements listed in this section as it considers necessary  
 25   based on changes in conditions necessitated by various taxing  
 26   authorities. If the elements are in the order listed, the  
 27   placement of the listed columns may be varied at the discretion  
 28   and expense of the property appraiser, and the property

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

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

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

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

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

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

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

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

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

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

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

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

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

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

97 |       (6) Following the entries for each taxing authority, a  
 98 | final entry shall show: in the first column, the words "Total  
 99 | Property Taxes:" and in the second, fourth ~~third~~, and seventh  
 100 | ~~fifth~~ columns, the sum of the entries for each of the individual  
 101 | taxing authorities. The second, fourth ~~third~~, and seventh ~~fifth~~  
 102 | columns shall, immediately below said entries, be labeled Column  
 103 | 1, Column 2, and Column 3, respectively. Below these labels  
 104 | shall appear, in boldfaced type, the statement: SEE REVERSE SIDE  
 105 | FOR EXPLANATION.

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

108 |       200.065 Method of fixing millage.--

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



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

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



# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 211  
**SPONSOR(S):** Machek  
**TIED BILLS:**

Special Districts

**IDEN./SIM. BILLS:**

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

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## SUMMARY ANALYSIS

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

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

This bill is effective upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

#### B. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

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

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

##### **Effect of Proposed Changes**

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

#### C. SECTION DIRECTORY:

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

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

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

<sup>1</sup> Section 189.403(1), F.S.

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

<sup>3</sup> Section 287.056(1), F.S.

1. Revenues:

None.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No sponsor statement received.

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

HB 211

2008

1                                   A bill to be entitled  
 2           An act relating to special districts; creating s.  
 3           189.4221, F.S.; authorizing special districts to purchase  
 4           commodities and contractual services from purchasing  
 5           agreements of other special districts, municipalities, or  
 6           counties; providing an effective date.

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

9  
 10           Section 1.   Section 189.4221, Florida Statutes, is created  
 11   to read:

12           189.4221 Purchases from purchasing agreements of special  
 13 districts, municipalities, or counties.--Special districts may  
 14 purchase commodities and contractual services from purchasing  
 15 agreements of other special districts, municipalities, or  
 16 counties procured pursuant to competitive bid, requests for  
 17 proposals, requests for qualifications, competitive selection,  
 18 or competitive negotiations, and otherwise in compliance with  
 19 general law.

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







## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

#### B. EFFECT OF PROPOSED CHANGES:

##### Current Situation

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

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

##### Effect of Proposed Changes

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

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

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

#### C. SECTION DIRECTORY:

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

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

<sup>3</sup> Auditor General response to Committee staff e-mail.

- Section 1: Amends section 116.07, F.S., requiring clerks to keep financial statements.
- Section 2: Amends section 136.05, F.S., designating the clerk of the circuit court as accountant to the board of county commissioners and prohibiting a check or warrant from being drawn in excess of the known balance of a fund.
- Section 3: Amends section 218.31, F.S., designating clerk as county auditor and renumbering section.
- Section 4: Amends section 218.32, F.S., requiring clerk as county auditor to prepare annual report and perform audits.
- Section 5: Amends cross-reference in section 75.04, F.S.
- Section 6: Amends cross-reference in section 215.555, F.S.
- Section 7: Amends cross-reference in section 380.0662, F.S.
- Section 8: Amends cross-reference in section 420.503, F.S.
- Section 9: Provides an effective date of July 1, 2008.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

##### **Drafting Issues**

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

##### **Other Comments**

The Florida Association of Court Clerks states:

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

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

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

The inclusion of "financial statements" in section 1 expands the clerk's pre-audit powers beyond what they are under current law and conflicts with the authority that is otherwise granted to counties for their independent auditing authority under section 125.01(1)(x).

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

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

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

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

#### STATEMENT OF THE SPONSOR

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

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

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

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

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

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

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

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

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

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

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

28 136.05 County board to keep set of books; overdrawing  
 29 prohibited.--The clerk of the circuit court, as accountant of  
 30 the board of county commissioners, shall keep an accurate and  
 31 complete set of books showing the amount on hand, amount  
 32 received, amount expended, and the balances thereof at the end  
 33 of each month for each ~~and every~~ fund carried by the said board.  
 34 ~~A, and no~~ check or warrant may not ~~shall ever~~ be drawn in excess  
 35 of the known balances to the credit of a ~~that~~ fund as kept by  
 36 the ~~said~~ board.

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

39 218.31 Definitions.--As used in this part, except where  
 40 the context clearly indicates a different meaning:

41 ~~(1)-(15)~~ "Auditor" means an independent certified public  
 42 accountant licensed pursuant to chapter 473 and retained by a  
 43 local governmental entity to perform a financial audit.

44 ~~(2)-(16)~~ "County agency" means a board of county  
 45 commissioners or other legislative and governing body of a  
 46 county, however styled, including that of a consolidated or  
 47 metropolitan government, a clerk of the circuit court, a  
 48 separate or ex officio clerk of the county court, a sheriff, a  
 49 property appraiser, a tax collector, a supervisor of elections,  
 50 or any other officer in whom any portion of the fiscal duties of  
 51 the above are under law separately placed.

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

53 ~~(4)-(8)~~ "County fee officers" means those county officials  
 54 who are assigned specialized functions within county government  
 55 and whose budgets are established independently of the local

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

60 (5)~~(4)~~ "Department" means the Department of Financial  
 61 Services.

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

64 (7)~~(17)~~ "Financial audit" means an examination of  
 65 financial statements in order to express an opinion on the  
 66 fairness with which they are presented in conformity with  
 67 generally accepted accounting principles and an examination to  
 68 determine whether operations are properly conducted in  
 69 accordance with legal and regulatory requirements. Financial  
 70 audits must be conducted in accordance with generally accepted  
 71 auditing standards and government auditing standards as adopted  
 72 by the Board of Accountancy and as prescribed by rules  
 73 promulgated by the Auditor General.

74 (8)~~(14)~~ "Generally accepted accounting principles" means  
 75 those accounting principles adopted by rule of the Board of  
 76 Accountancy under chapter 473.

77 (9)~~(7)~~ "Independent special district" means an independent  
 78 special district as defined in s. 189.403~~(3)~~.

79 (10)~~(13)~~ "Industrial development bond" means any  
 80 obligation the interest on which is exempt from income taxes  
 81 under the provisions of s. 103(b) of the United States Internal  
 82 Revenue Code and the payment of the principal or interest on

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

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

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

90 |       (11)~~(12)~~ "Limited revenue bonds" means any obligations  
 91 | issued by a unit to pay the cost of a project or improvement  
 92 | thereof, or combination of one or more projects or improvements  
 93 | thereof, and payable from funds, exclusive of ad valorem taxes,  
 94 | special assessments, or earnings from such projects or  
 95 | improvements.

96 |       (12)~~(3)~~ "Local governing authority" means the governing  
 97 | body of a unit of local general-purpose government.

98 |       (13)~~(1)~~ "Local governmental entity" means a county agency,  
 99 | a municipality, or a special district as defined in s. 189.403.  
 100 | For purposes of s. 218.32, the term also includes a housing  
 101 | authority created under chapter 421.

102 |       (14)~~(18)~~ "Management letter" means a statement of the  
 103 | auditor's comments and recommendations as prescribed by rules  
 104 | adopted by the Auditor General.

105 |       (15)~~(11)~~ "Revenue bonds" means any obligations issued by a  
 106 | unit to pay the cost of a project or improvement thereof, or  
 107 | combination of one or more projects or improvements thereof, and  
 108 | payable from the earnings of such project, and any other special  
 109 | funds authorized to be pledged as additional security therefor.



110        (16)~~(10)~~ "Short-term debt" means any debt with a maturity  
 111 of less than 1 year from the date of issuance.

112        (17)~~(5)~~ "Special district" means a special district as  
 113 defined in s. 189.403~~(1)~~.

114        (18)~~(2)~~ "Unit of local general-purpose government" means a  
 115 county or a municipality established by general or special law.

116        (19)~~(9)~~ "Verified report" means a report that has received  
 117 such test or tests by the department so as to accurately and  
 118 reliably present the data that have been submitted by the local  
 119 governmental entities for inclusion in the report.

120        Section 4. Paragraph (a) of subsection (1) of section  
 121 218.32, Florida Statutes, is amended to read:

122        218.32 Annual financial reports; local governmental  
 123 entities.--

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

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

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

144 75.04 Complaint.--

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

150 Section 6. Paragraph (j) of subsection (2) of section  
 151 215.555, Florida Statutes, is amended to read:

152 215.555 Florida Hurricane Catastrophe Fund.--

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

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

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

158 380.0662 Definitions.--As used in this act, unless the  
 159 context indicates a different meaning or intent:

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

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

164 420.503 Definitions.--As used in this part, the term:

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2008

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

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

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. 399

COUNCIL/COMMITTEE ACTION

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

**THIS AMENDMENT IS  
TRAVELING WITH THE  
BILL. NO ACTION  
REQUIRED**

1 Council/Committee hearing bill: Government Efficiency &  
2 Accountability Council  
3 Committee on Urban & Local Affairs offered the following:  
4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

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

9 116.07 Account books to be kept by sheriffs and clerks.--  
10 All sheriffs and clerks of the circuit court and ex officio  
11 clerks of the boards of county commissioners of this state shall  
12 prepare financial statements and keep books of account and of  
13 record in accordance with part III of chapter 219 s. 218.33.

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

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



COUNCIL/COMMITTEE ACTION

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

**THIS AMENDMENT IS  
TRAVELING WITH THE  
BILL. NO ACTION  
REQUIRED**

1 Council/Committee hearing bill: Government Efficiency &  
2 Accountability Council  
3 Committee on Urban & Local Affairs offered the following:  
4

5 **Amendment to Amendment (1) by Representative Grant (with**  
6 **title amendment)**

7 Between line(s) 30-31, insert:

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

10 190.006. Board of Supervisors; members and meetings. --  
11 (3)(c) Candidates seeking election to office by qualified  
12 electors under this subsection shall conduct their campaigns in  
13 accordance with the provisions of chapter 106 and shall file  
14 qualifying papers and qualify for individual seats in accordance  
15 with s. 99.061. Candidates shall pay a qualifying fee, which  
16 shall consist of a filing fee and an election assessment or, as  
17 an alternative, shall file a petition signed by not less than 1  
18 percent of the registered voters of the district, and take the  
19 oath required in s. 99.021, with the supervisor of elections in  
20 the county affected by such candidacy. The amount of the filing  
21 fee is 3 percent of ~~\$7,500~~<sup>4,800</sup>; however, if the electors have  
22 provided for compensation pursuant to subsection (8), the amount  
23 of the filing fee is 3 percent of the maximum annual

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

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

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

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

37  
38 -----  
39 **T I T L E A M E N D M E N T**

40 Remove line(s) 37-46 and insert:

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

53







## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

#### B. EFFECT OF PROPOSED CHANGES:

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

- Providing an additional \$25,000 homestead exemption for all tax levies, except school district tax levies, on the assessed valuation greater than \$50,000 up to \$75,000;
- Providing portability of the Save Our Homes differential for all tax levies, except school district tax levies;
- Limiting the assessment increases for certain specified non-homestead property to 10 percent each year; and
- Providing a \$25,000 exemption for tangible personal property.

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

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

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

#### C. SECTION DIRECTORY:

Not applicable to a joint resolution.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

None.

##### 2. Expenditures:

##### **Non-Recurring FY 2008-09**

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

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

<sup>1</sup> The differential does not apply to school district tax levies.

<sup>2</sup> *Ibid.*

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

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

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision is not applicable to joint resolutions.

2. Other:

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

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

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

B. RULE-MAKING AUTHORITY:

None.

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<sup>3</sup> For example, one remedy could include taxing the previously favored class on a retroactive basis.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

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

**D. STATEMENT OF THE SPONSOR**

No statement submitted.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

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

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

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House Joint Resolution

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

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

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

ARTICLE VII

FINANCE AND TAXATION

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

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

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

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

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

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

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

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

45 |       (2) No assessment shall exceed just value.

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

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

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

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

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

67 (8)a. For all levies other than school district levies, a  
 68 person who establishes a new homestead as of January 1, 2009, or  
 69 January 1 of any subsequent year and who has received a  
 70 homestead exemption pursuant to Section 6 of this Article as of  
 71 January 1 of either of the two years immediately preceding the  
 72 establishment of the new homestead is entitled to have the new  
 73 homestead assessed at less than just value. A person who  
 74 establishes a new homestead as of January 1, 2009, is entitled  
 75 to have the new homestead assessed at less than just value only  
 76 if that person received a homestead exemption on January 1,  
 77 2008. The assessed value of the newly established homestead  
 78 shall be determined as follows:

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

83 the new homestead shall be the lesser of:

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

89 (B) Sixty percent (60%) of the just value of the new  
 90 homestead up to one million dollars and one hundred percent  
 91 (100%) of that portion of just value exceeding one million  
 92 dollars.

93

94 Thereafter, the homestead shall be assessed as provided herein.

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

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

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

106

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



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

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

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

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

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

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

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

142 SECTION 6. Homestead exemptions.--

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

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

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

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

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

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

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

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

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

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

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

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

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222 homestead property the veteran owns and resides in if the  
 223 disability was combat related, the veteran was a resident of  
 224 this state at the time of entering the military service of the  
 225 United States, and the veteran was honorably discharged upon  
 226 separation from military service. The discount shall be in a  
 227 percentage equal to the percentage of the veteran's permanent,  
 228 service-connected disability as determined by the United States  
 229 Department of Veterans Affairs. To qualify for the discount  
 230 granted by this subsection, an applicant must submit to the  
 231 county property appraiser, by March 1, proof of residency at the  
 232 time of entering military service, an official letter from the  
 233 United States Department of Veterans Affairs stating the  
 234 percentage of the veteran's service-connected disability and  
 235 such evidence that reasonably identifies the disability as  
 236 combat related, and a copy of the veteran's honorable discharge.  
 237 If the property appraiser denies the request for a discount, the  
 238 appraiser must notify the applicant in writing of the reasons  
 239 for the denial, and the veteran may reapply. The Legislature  
 240 may, by general law, waive the annual application requirement in  
 241 subsequent years. This subsection shall take effect December 7,  
 242 2006, is self-executing, and does not require implementing  
 243 legislation.

244 ARTICLE XII

245 SCHEDULE

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

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

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

260 CONSTITUTIONAL AMENDMENT

261 ARTICLE VII, SECTIONS 4 AND 6

262 ARTICLE XII, SECTION 27

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

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

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278 percent of the just value up to \$1 million in just value, and  
279 100 percent of that portion of just value over \$1 million, of  
280 the new homestead; if the new homestead has a lower just value,  
281 the amount of benefit transferred will be equal to the lesser of  
282 (c) the just value of the new homestead divided by the just  
283 value of the prior homestead and multiplied by the assessed  
284 value of the prior homestead, or (d) 60 percent of the just  
285 value up to \$1 million in just value, and 100 percent of that  
286 portion of the just value over \$1 million, of the new homestead.  
287 The transferred benefit may not exceed \$1 million. Authorizes  
288 the Legislature to decrease the percentages of the just value of  
289 the new homestead used in the calculations. This provision does  
290 not apply to school taxes.

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

COUNCIL/COMMITTEE ACTION

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

**THIS AMENDMENT IS  
TRAVELING WITH THE  
BILL. NO ACTION  
REQUIRED**

1 Council/Committee hearing bill: Government Efficiency &  
2 Accountability Council  
3 Committee on State Affairs offered the following:  
4

5 **Amendment (with directory, schedule, ballot, and title**  
6 **amendments)**

7 Remove line(s) 17-243 and insert:

8 ARTICLE VII

9 FINANCE AND TAXATION

10 SECTION 6 Homestead exemptions.--

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

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



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

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

39 (c) By general law and subject to conditions specified  
40 therein, each person who is entitled to receive the homestead  
41 exemption provided in subsection (a) is also entitled to an  
42 additional homestead exemption for 2009 in the amount equal to  
43 forty percent (40%) of the just value of the homestead and for  
44 2010 and each year thereafter in an amount equal to forty  
45 percent (40%) of the just value of the homestead. The additional  
46 exemption shall apply only after the first seventy five thousand  
47 dollars up to five hundred thousand dollars of just value of the  
48 homestead property. However, in any year, such person shall  
49 receive only the exemption provided in this subsection or the  
50 application of the cumulative assessment limitation calculated  
51 pursuant to subsection (c) of Section 4, whichever provides the  
52 lower taxable value. The exemption shall not apply with respect  
53 to any assesement roll until such roll is first determined to

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

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

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

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

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

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85 separation from military service. The discount shall be in a  
86 percentage equal to the percentage of the veteran's permanent,  
87 service-connected disability as determined by the United States  
88 Department of Veterans Affairs. To qualify for the discount  
89 granted by this subsection, an applicant must submit to the  
90 county property appraiser, by March 1, proof of residency at the  
91 time of entering military service, an official letter from the  
92 United States Department of Veterans Affairs stating the  
93 percentage of the veteran's service-connected disability and  
94 such evidence that reasonably identifies the disability as  
95 combat related, and a copy of the veteran's honorable discharge.  
96 If the property appraiser denies the request for a discount, the  
97 appraiser must notify the applicant in writing of the reasons  
98 for the denial, and the veteran may reapply. The Legislature  
99 may, by general law, waive the annual application requirement in  
100 subsequent years. This subsection shall take effect December 7,  
101 2006, is self-executing, and does not require implementing  
102 legislation.

-----  
104 **D I R E C T O R Y A M E N D M E N T**

105 Remove line(s) 12-16 and insert:

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

-----  
113 **S C H E D U L E A M E N D M E N T**

114 Remove line(s) 244-257 and insert:

115 ARTICLE XII

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES  
Amendment No. 1 (for drafter's use only)

SCHEDULE

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

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

Remove line(s) 260-294 and insert:

CONSTITUTIONAL AMENDMENT

ARTICLE VII, SECTION 6

ARTICLE XII, SECTION 28

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

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

Remove line(s) 1-8 and insert:

House Joint Resolution

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

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

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

150



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 595

Property Appraisers

**SPONSOR(S):** Nelson

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1548

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

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### SUMMARY ANALYSIS

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

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

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

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

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

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

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

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

##### **Effect of Bill**

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

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

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

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<sup>1</sup> Section 193.085(1), F.S.



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

**C. SECTION DIRECTORY:**

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

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

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

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

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

+/- Indeterminant.

2. Expenditures:

None.<sup>2</sup>

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

+/- Indeterminant.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

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

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

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<sup>2</sup> Department of Revenue 2008 Bill Analysis, HB 595, February 11, 2008, at 3.

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

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

#### **IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

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

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

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<sup>3</sup> Email from the office of Rep. Nelson, March 11, 2008.

A bill to be entitled

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

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

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

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

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

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

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

32 196.011 Annual application required for exemption.--

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

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

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

63 196.015 Permanent residency; factual determination by  
 64 property appraiser.--Intention to establish a permanent  
 65 residence in this state is a factual determination to be made,  
 66 in the first instance, by the property appraiser. Although any  
 67 one factor is not conclusive of the establishment or  
 68 nonestablishment of permanent residence, the following are  
 69 relevant factors that may be considered by the property  
 70 appraiser in making his or her determination as to the intent of  
 71 a person claiming a homestead exemption to establish a permanent  
 72 residence in this state:

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

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

79 (3) The place of employment of the applicant.

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

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

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

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

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

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

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

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

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. HB 595

COUNCIL/COMMITTEE ACTION

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

**THIS AMENDMENT IS  
TRAVELING WITH THE  
BILL. NO ACTION  
REQUIRED**

1 Council/Committee hearing bill: Government Efficiency &  
2 Accountability Council  
3 Committee on State Affairs offered the following:  
4

5 **Amendment (with title amendment)**

6 Remove lines 61-97  
7

8 -----  
9 **T I T L E A M E N D M E N T**

10 Remove lines 8-11 and insert:  
11 appraiser approval of such exemptions; providing an effective  
12 date.  
13

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. HB 595

COUNCIL/COMMITTEE ACTION

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

**THIS AMENDMENT IS  
TRAVELING WITH THE  
BILL. NO ACTION  
REQUIRED**

1 Council/Committee hearing bill: Government Efficiency &  
2 Accountability Council  
3 Committee on State Affairs offered the following:  
4

5 **Amendment (with title amendment)**

6 Between lines 97 and 98 insert:

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

9 196.031 Exemption of homesteads.--

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

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

16 196.061 Rental of homestead to constitute  
17 abandonment.--The rental of an entire dwelling previously  
18 claimed to be a homestead for tax purposes shall constitute the  
19 abandonment of said dwelling as a homestead, and said  
20 abandonment shall continue until such dwelling is physically  
21 occupied by the owner thereof. However, such abandonment of such



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

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

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

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

33  
34 -----  
35 **T I T L E A M E N D M E N T**

36 Remove line(s) 11 and insert:

37 homestead exemption purposes; amending s. 196.031, F.S.;  
38 providing for certain minors to be deemed permanent  
39 residents of homestead property for certain purposes;  
40 amending s. 196.061, F.S.; providing for nonapplication of  
41 certain homestead abandonment provisions to minors  
42 inheriting homestead property; providing an effective  
43 date.  
44  
45





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB GEAC 08-13 Administrative Procedures

**SPONSOR(S):** Government Efficiency & Accountability Council

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

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

**SUMMARY ANALYSIS**

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

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

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

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

The bill has a fiscal impact. See Fiscal Comments.

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

**STORAGE NAME:** pcb13.GEAC.doc

**DATE:** 3/3/2008

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

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

#### B. EFFECT OF PROPOSED CHANGES:

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

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

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

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

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

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

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<sup>1</sup> *Report on Unadopted Rules, JAPC, February 2006; Supplement to Report on Unadopted Rules, JAPC, February 2007.*

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

(15) "Rule" means each agency statement of general applicability that implements, interprets, or prescribes law or policy or describes the procedure or practice requirements of an agency and includes any form which imposes any requirement or solicits any information not specifically required by statute or by an existing rule. The term also includes the amendment or repeal of a rule. The term does not include:

(a) Internal management memoranda which do not affect either the private interests of any person or any plan or procedure important to the public and which have no application outside the agency issuing the memorandum.

(b) Legal memoranda or opinions issued to an agency by the Attorney General or agency legal opinions prior to their use in connection with an agency action.

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

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

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

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

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

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

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

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

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

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

### **Rule Challenges**

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

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

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

### **Agency Action Determining Substantial Interests of a Party**

<sup>4</sup> *Department of Administration, Division of Personnel, v. Harvey*, 356 So.2d 323 (Fla. 1<sup>st</sup> DCA 1977).

<sup>5</sup> *Supplement to Report on Unadopted Rules, JAPC*, February 2007, at 3.

<sup>6</sup> Section 120.56(4)(e)1-3, F.S.

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

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

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

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

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

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

### **Attorneys Fees**

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

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

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<sup>7</sup> See s. 120.57,(1)(e), F.S., for further detail with respect to each element listed.

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

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

### **Legislative Oversight of Agency Rulemaking**

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

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

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

### **Florida Administrative Code and Florida Administrative Weekly**

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



- Notice of adoption of, and an index to, all rules filed during the preceding week;
- All notices required by s. 120.54(3)(a), F.S., concerning agency rulemaking, showing the text of all rules proposed for consideration or a reference to the location in the Weekly where the text of the proposed rules is published;
- All notices of public meetings, hearings, and workshops, including a statement of the manner in which a copy of the agenda may be obtained;
- A notice of each request for authorization to amend or repeal an existing uniform rule or for the adoption of new uniform rules;
- Notice of petitions for declaratory statements or administrative determinations;
- A summary of each objection to any rule filed by JAPC during the preceding week; and
- Any other material required or authorized by law or deemed useful by DOS.

### **Publication**

During the 2006 Regular Session, the Legislature passed CS/SB 262, enacted as Ch. 226-82, Laws of Florida, which requires DOS to start publishing the Weekly on its Internet website with certain search capabilities, effective December 31, 2007.<sup>3</sup> The law requires DOS to continue to publish a printed version of the Weekly.

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

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

### **Material Incorporated by Reference**

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

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

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

### **Maintenance of Orders**

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

### **Hearings Before Regulatory Boards**

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

### **Definitions**

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

### **Disputed Issues of Material Fact**

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

#### **C. SECTION DIRECTORY:**

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

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

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

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

Section 5. Amending s. 120.54, F.S., relating to incorporating material by reference and publication thereof.

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

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

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

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

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

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

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

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

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

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

Sections 16 – 21. Amending ss. 120.74, F.S., 120.80, F.S., 120.81, F.S., 409.175, F.S., 420.9072, F.S., and 420.9075, F.S. making technical corrections and correcting cross-references.

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

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

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

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

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

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

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

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

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### D. STATEMENT OF THE SPONSOR

N/A

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

1 A bill to be entitled  
 2 An act relating to administrative procedures; providing a  
 3 short title; amending s. 120.52, F.S.; redefining the term  
 4 "invalid exercise of delegated legislative authority" to  
 5 remove a limitation on the construction of statutory  
 6 language granting rulemaking authority; defining the terms  
 7 "law implemented," "rulemaking authority," and "unadopted  
 8 rule"; amending s. 120.536, F.S.; revising guidelines for  
 9 the construction of statutory language granting rulemaking  
 10 authority; amending s. 120.54, F.S.; prescribing limits  
 11 and guidelines with respect to the incorporation of  
 12 material by reference; prescribing requirements for  
 13 material being incorporated by reference; prohibiting an  
 14 agency head from delegating or transferring certain  
 15 specified rulemaking responsibilities; revising the  
 16 information required in notices of proposed actions;  
 17 providing additional procedures for rule-adoption  
 18 hearings; revising requirements for filing rules;  
 19 requiring that material incorporated by reference be  
 20 published by the agency when adopting emergency rules;  
 21 revising provisions with respect to petitions to initiate  
 22 rulemaking; amending s. 120.545, F.S.; revising duties and  
 23 procedures of the Administrative Procedures Committee and  
 24 agencies with respect to review of agency rules; deleting  
 25 procedures for agency election to modify, withdraw, amend,  
 26 or repeal a proposed rule; providing for the effect of the  
 27 failure of an agency to respond to a committee objection  
 28 to a statement of estimated regulatory costs within the

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

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

V

57 reasonable costs and attorney's fees accrued by a  
 58 petitioner under certain circumstances; providing for an  
 59 award of fees and costs if the agency prevails and a party  
 60 participated for an improper purpose; amending s. 120.569,  
 61 F.S.; requiring that certain administrative proceedings be  
 62 terminated and subsequently reinstated under different  
 63 provisions of law if a disputed issue of material fact  
 64 arises during the proceeding; conforming a cross-  
 65 reference; amending s. 120.74, F.S.; revising reporting  
 66 requirement for agency heads; amending ss. 120.80, 120.81,  
 67 409.175, 420.9072, and 420.9075, F.S.; conforming cross-  
 68 references; providing an appropriation; providing  
 69 effective dates.

70  
 71 Be It Enacted by the Legislature of the State of Florida:

72  
 73 Section 1. This act may be cited as the "Open Government  
 74 Act."

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

82 120.52 Definitions.--As used in this act:

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



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

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

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

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

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

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

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

107  
 108 A grant of rulemaking authority is necessary but not sufficient  
 109 to allow an agency to adopt a rule; a specific law to be  
 110 implemented is also required. An agency may adopt only rules  
 111 that implement or interpret the specific powers and duties  
 112 granted by the enabling statute. No agency shall have authority

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

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

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

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

133 Section 3. Paragraph (a) of subsection (2) of section  
 134 120.53, Florida Statutes, is amended to read:

135 120.53 Maintenance of orders; indexing; listing;  
 136 organizational information.--

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

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

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

149 | 120.536 Rulemaking authority; repeal; challenge.--

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

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

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

170 120.54 Rulemaking.--

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

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

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

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

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

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

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

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

203 5.2. Notwithstanding any contrary provision in this  
 204 section, when an adopted rule of the Department of Environmental  
 205 Protection or a water management district is incorporated by  
 206 reference in the other agency's rule to implement a provision of  
 207 part IV of chapter 373, subsequent amendments to the rule are  
 208 not effective as to the incorporating rule unless the agency  
 209 incorporating by reference notifies the committee and the  
 210 Department of State of its intent to adopt the subsequent  
 211 amendment, publishes notice of such intent in the Florida  
 212 Administrative Weekly, and files with the Department of State a  
 213 copy of the amended rule incorporated by reference. Changes in  
 214 the rule incorporated by reference are effective as to the other  
 215 agency 20 days after the date of the published notice and filing  
 216 with the Department of State. The Department of State shall  
 217 amend the history note of the incorporating rule to show the  
 218 effective date of such change. Any substantially affected person  
 219 may, within 14 days after the date of publication of the notice  
 220 of intent in the Florida Administrative Weekly, file an  
 221 objection to rulemaking with the agency. The objection shall  
 222 specify the portions of the rule incorporated by reference to  
 223 which the person objects and the reasons for the objection. The

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

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

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

236 | (3) ADOPTION PROCEDURES.--

237 | (a) Notices.--

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

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

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

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

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

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

281 (c) Hearings.--

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

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



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

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

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

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

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

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

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

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

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

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

386  
387 For the purposes of this paragraph, the term "administrative  
388 determination" does not include subsequent judicial review.

389 (4) EMERGENCY RULES.--

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

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

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

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

413 (7) PETITION TO INITIATE RULEMAKING.--

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

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

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

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

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

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

457 120.54 Rulemaking.—

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

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

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

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

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

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

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

476 120.545 Committee review of agency rules.--

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

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

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

487 (c) The rule reiterates or paraphrases statutory material.

488 (d) The rule is in proper form.

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

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

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

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

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

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

508 (k) The rule will require additional appropriations.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

590 (4)(7) Failure of the agency to respond to a committee  
 591 objection to a proposed rule that is not yet in effect within  
 592 the time prescribed in subsection (3) constitutes ~~shall~~  
 593 ~~constitute~~ withdrawal of the rule in its entirety. In this  
 594 event, the committee shall notify the Department of State that  
 595 the agency, by its failure to respond to a committee objection,  
 596 has elected to withdraw the ~~proposed~~ rule. Upon receipt of the  
 597 committee's notice, the Department of State shall publish a  
 598 notice to that effect in the next available issue of the Florida  
 599 Administrative Weekly. Upon publication of the notice, the  
 600 ~~proposed~~ rule shall be stricken from the files of the Department  
 601 of State and the files of the agency.

602 (5)(8) Failure of the agency to respond to a committee  
 603 objection to a ~~an existing~~ rule that is in effect within the  
 604 time prescribed in subsection (3) constitutes ~~shall constitute~~ a  
 605 refusal to amend or repeal the rule.

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

610 (7)(9) If the committee objects to a ~~proposed or existing~~  
 611 rule and the agency refuses to modify, amend, withdraw, or  
 612 repeal the rule, the committee shall file with the Department of  
 613 State a notice of the objection, detailing with particularity

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

621 (8) ~~(10)~~ (a) If the committee objects to a ~~proposed or~~  
622 ~~existing~~ rule, or portion of a rule ~~thereof~~, and the agency  
623 fails to initiate administrative action to modify, amend,  
624 withdraw, or repeal the rule consistent with the objection  
625 within 60 days after the objection, or thereafter fails to  
626 proceed in good faith to complete such action, the committee may  
627 submit to the President of the Senate and the Speaker of the  
628 House of Representatives a recommendation that legislation be  
629 introduced to address the committee's objection ~~modify or~~  
630 ~~suspend the adoption of the proposed rule, or amend or repeal~~  
631 ~~the rule, or portion thereof.~~

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

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

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

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

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

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

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

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

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

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

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

698 120.55 Publication.--

699 (1) The Department of State shall:

700 (a)1. Through a continuous revision system, compile and  
 701 publish the "Florida Administrative Code." The Florida  
 702 Administrative Code shall contain all rules adopted by each  
 703 agency, citing the grant of specific rulemaking authority and  
 704 the specific law implemented pursuant to which each rule was  
 705 adopted, all history notes as authorized in s. 120.545(8) s.  
 706 120.545(9), and complete indexes to all rules contained in the  
 707 code. Supplementation shall be made as often as practicable, but  
 708 at least monthly. The department may contract with a publishing  
 709 firm for the publication, in a timely and useful form, of the  
 710 Florida Administrative Code; however, the department shall  
 711 retain responsibility for the code as provided in this section.  
 712 This publication shall be the official compilation of the  
 713 administrative rules of this state. The Department of State  
 714 shall retain the copyright over the Florida Administrative Code.

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

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

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

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

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



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

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

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

762 120.55 Publication.—

763 (1) The Department of State shall:

764 (a)1. Through a continuous revision system, compile and  
 765 publish electronically the "Florida Administrative Code-" on an  
 766 Internet website managed by the department. The Florida  
 767 Administrative Code shall contain all rules adopted by each  
 768 agency, citing the grant of rulemaking authority and the  
 769 specific law implemented pursuant to which each rule was  
 770 adopted, all history notes as authorized in s. 120.545(8) s-  
 771 120.545(9), and complete indexes to all rules contained in the  
 772 code, and any other material required or authorized by law or  
 773 deemed useful by the department. The electronic code shall  
 774 display each rule chapter currently in effect in browse mode and  
 775 allow full text search of the code and each rule chapter.  
 776 ~~Supplementation shall be made as often as practicable, but at~~  
 777 ~~least monthly.~~ The department shall publish a printed version of

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

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

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

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

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

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

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

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

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

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

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

842 (e) Comment on proposed rules.

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

845 120.56 Challenges to rules.--

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

847 (a) Any substantially affected person may seek an  
 848 administrative determination of the invalidity of any proposed  
 849 rule by filing a petition seeking such a determination with the  
 850 division within 21 days after the date of publication of the  
 851 notice required by s. 120.54(3)(a), within 10 days after the  
 852 final public hearing is held on the proposed rule as provided by  
 853 s. 120.54(3)(e)2. ~~s. 120.54(3)(e)~~, within 20 days after the  
 854 ~~preparation of a~~ statement of estimated regulatory costs  
 855 required pursuant to s. 120.541, if applicable, has been  
 856 provided to all persons who submitted a lower cost regulatory  
 857 alternative and made available to the public, or within 20 days  
 858 after the date of publication of the notice required by s.  
 859 120.54(3)(d). The petition shall state with particularity the  
 860 objections to the proposed rule and the reasons that the  
 861 proposed rule is an invalid exercise of delegated legislative

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

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

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

888 120.56 Challenges to rules.--

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

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

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

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

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

920 (d) ~~If~~ When an administrative law judge enters a final  
 921 order that all or part of an agency statement violates s.  
 922 120.54(1)(a), the agency shall immediately discontinue all  
 923 reliance upon the statement or any substantially similar  
 924 statement as a basis for agency action. This paragraph shall  
 925 not be construed to impair the obligation of contracts existing  
 926 at the time the final order is entered.

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

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

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

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

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

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



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

974 (f)~~(e)~~ All proceedings to determine a violation of s.  
 975 120.54(1)(a) shall be brought pursuant to this subsection. A  
 976 proceeding pursuant to this subsection may be consolidated with  
 977 a proceeding under subsection (3) or under any other section of  
 978 this chapter. ~~Nothing in~~ This paragraph does not shall be  
 979 ~~construed to~~ prevent a party whose substantial interests have  
 980 been determined by an agency action from bringing a proceeding  
 981 pursuant to s. 120.57(1)(e).

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

985 120.57 Additional procedures for particular cases.--

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

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

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

1000 the agency has initiated rulemaking and is proceeding  
 1001 expeditiously and in good faith to adopt the required rules,  
 1002 then the agency's action may be based upon those unadopted  
 1003 rules, subject to de novo review by the administrative law  
 1004 judge. The agency action shall not be presumed valid or  
 1005 invalid. The agency must demonstrate that the unadopted rule:  
 1006       a. Is within the powers, functions, and duties delegated  
 1007 by the Legislature or, if the agency is operating pursuant to  
 1008 authority derived from the State Constitution, is within that  
 1009 authority;  
 1010       b. Does not enlarge, modify, or contravene the specific  
 1011 provisions of law implemented;  
 1012       c. Is not vague, establishes adequate standards for agency  
 1013 decisions, or does not vest unbridled discretion in the agency;  
 1014       d. Is not arbitrary or capricious. A rule is arbitrary if  
 1015 it is not supported by logic or the necessary facts; a rule is  
 1016 capricious if it is adopted without thought or reason or is  
 1017 irrational;  
 1018       e. Is not being applied to the substantially affected  
 1019 party without due notice; and  
 1020       f. Does not impose excessive regulatory costs on the  
 1021 regulated person, county, or city.  
 1022       2-3. The recommended and final orders in any proceeding  
 1023 shall be governed by the provisions of paragraphs (k) and (l),  
 1024 except that the administrative law judge's determination  
 1025 regarding an ~~the~~ unadopted rule under subparagraph 1. or 2.  
 1026 shall not be rejected by the agency unless the agency first  
 1027 determines from a review of the complete record, and states with

1028 particularity in the order, that such determination is clearly  
 1029 erroneous or does not comply with essential requirements of law.  
 1030 In any proceeding for review under s. 120.68, if the court finds  
 1031 that the agency's rejection of the determination regarding the  
 1032 unadopted rule does not comport with the provisions of this  
 1033 subparagraph, the agency action shall be set aside and the court  
 1034 shall award to the prevailing party the reasonable costs and a  
 1035 reasonable attorney's fee for the initial proceeding and the  
 1036 proceeding for review.

1037 Section 14. Effective January 1, 2009, subsections (2),  
 1038 (3), and (4) of section 120.595, Florida Statutes, are amended  
 1039 to read:

1040 120.595 Attorney's fees.--

1041 (2) CHALLENGES TO PROPOSED AGENCY RULES PURSUANT TO  
 1042 SECTION 120.56(2).--If the appellate court or administrative law  
 1043 judge declares a proposed rule or portion of a proposed rule  
 1044 invalid pursuant to s. 120.56(2), a judgment or order shall be  
 1045 rendered against the agency for reasonable costs and reasonable  
 1046 attorney's fees, unless the agency demonstrates that its actions  
 1047 were substantially justified or special circumstances exist  
 1048 which would make the award unjust. An agency's actions are  
 1049 "substantially justified" if there was a reasonable basis in law  
 1050 and fact at the time the actions were taken by the agency. If  
 1051 the agency prevails in the proceedings, the appellate court or  
 1052 administrative law judge shall award reasonable costs and  
 1053 reasonable attorney's fees against a party if the appellate  
 1054 court or administrative law judge determines that a party  
 1055 participated in the proceedings for an improper purpose as

1056 defined by paragraph (1)(e). No award of attorney's fees as  
 1057 provided by this subsection shall exceed \$50,000 ~~\$15,000~~.

1058 (3) CHALLENGES TO EXISTING AGENCY RULES PURSUANT TO  
 1059 SECTION 120.56(3) AND (5).--If the appellate court or  
 1060 administrative law judge declares a rule or portion of a rule  
 1061 invalid pursuant to s. 120.56(3) or s. 120.56(5), a judgment or  
 1062 order shall be rendered against the agency for reasonable costs  
 1063 and reasonable attorney's fees, unless the agency demonstrates  
 1064 that its actions were substantially justified or special  
 1065 circumstances exist which would make the award unjust. An  
 1066 agency's actions are "substantially justified" if there was a  
 1067 reasonable basis in law and fact at the time the actions were  
 1068 taken by the agency. If the agency prevails in the proceedings,  
 1069 the appellate court or administrative law judge shall award  
 1070 reasonable costs and reasonable attorney's fees against a party  
 1071 if the appellate court or administrative law judge determines  
 1072 that a party participated in the proceedings for an improper  
 1073 purpose as defined by paragraph (1)(e). No award of attorney's  
 1074 fees as provided by this subsection shall exceed \$50,000  
 1075 ~~\$15,000~~.

1076 (4) CHALLENGES TO AGENCY ACTION PURSUANT TO SECTION  
 1077 120.56(4).--

1078 (a) If the appellate court or administrative law judge  
 1079 determines ~~Upon entry of a final order~~ that all or part of an  
 1080 agency statement violates s. 120.54(1)(a), or that the agency  
 1081 must immediately discontinue reliance on the statement and any  
 1082 substantially similar statement pursuant to s. 120.56(4)(e), a  
 1083 judgment or order shall be entered against the agency for the

1084 ~~administrative law judge shall award~~ reasonable costs and  
 1085 reasonable attorney's fees ~~to the petitioner~~, unless the agency  
 1086 demonstrates that the statement is required by the Federal  
 1087 Government to implement or retain a delegated or approved  
 1088 program or to meet a condition to receipt of federal funds.

1089 (b) Upon notification to the administrative law judge  
 1090 provided prior to the final hearing that the agency has  
 1091 published a notice of rulemaking under s. 120.54(3)(a), such  
 1092 notice shall automatically operate as a stay of proceedings  
 1093 pending rulemaking. The administrative law judge shall award  
 1094 reasonable costs and reasonable attorney's fees accrued by the  
 1095 petitioner prior to the date the notice was published, provided  
 1096 the agency adopts the statement as a rule. The administrative  
 1097 law judge may vacate the stay for good cause shown. A stay of  
 1098 proceedings under this paragraph remains in effect so long as  
 1099 the agency is proceeding expeditiously and in good faith to  
 1100 adopt the statement as a rule. Attorney's fees and costs under  
 1101 this paragraph shall be awarded only upon a finding that the  
 1102 agency received notice that the statement may constitute an  
 1103 unadopted rule at least 30 days before a petition under s.  
 1104 120.56(4) was filed and that the agency failed to publish the  
 1105 required notice of rulemaking pursuant to s. 120.54(3) that  
 1106 addresses the statement within that 30-day period. Notice to  
 1107 the agency may be satisfied by its receipt of a copy of the s.  
 1108 120.56(4) petition, a notice or other paper containing  
 1109 substantially the same information, or a petition filed pursuant  
 1110 to s. 120.54(7). No award of attorney's fees as provided by  
 1111 this paragraph shall exceed \$50,000.

1112        ~~(c)(b)~~ Notwithstanding the provisions of chapter 284, an  
 1113 award shall be paid from the budget entity of the secretary,  
 1114 executive director, or equivalent administrative officer of the  
 1115 agency, and the agency shall not be entitled to payment of an  
 1116 award or reimbursement for payment of an award under any  
 1117 provision of law.

1118        (d) If the agency prevails in the proceedings, the  
 1119 appellate court or administrative law judge shall award  
 1120 reasonable costs and attorney's fees against a party if the  
 1121 appellate court or administrative law judge determines that the  
 1122 party participated in the proceedings for an improper purpose as  
 1123 defined in paragraph (1)(e) or that the party or the party's  
 1124 attorney knew or should have known that a claim was not  
 1125 supported by the material facts necessary to establish the claim  
 1126 or would not be supported by the application of then-existing  
 1127 law to those material facts.

1128        Section 15. Subsection (1) and paragraph (c) of subsection  
 1129 (2) of section 120.569, Florida Statutes, are amended to read:

1130        120.569 Decisions which affect substantial interests.--

1131        (1) The provisions of this section apply in all  
 1132 proceedings in which the substantial interests of a party are  
 1133 determined by an agency, unless the parties are proceeding under  
 1134 s. 120.573 or s. 120.574. Unless waived by all parties, s.  
 1135 120.57(1) applies whenever the proceeding involves a disputed  
 1136 issue of material fact. Unless otherwise agreed, s. 120.57(2)  
 1137 applies in all other cases. If a disputed issue of material fact  
 1138 arises during a proceeding under s. 120.57(2), then, unless  
 1139 waived by all parties, the proceeding under s. 120.57(2) shall

1140 be terminated and a proceeding under s. 120.57(1) shall be  
 1141 conducted. Parties shall be notified of any order, including a  
 1142 final order. Unless waived, a copy of the order shall be  
 1143 delivered or mailed to each party or the party's attorney of  
 1144 record at the address of record. Each notice shall inform the  
 1145 recipient of any administrative hearing or judicial review that  
 1146 is available under this section, s. 120.57, or s. 120.68; shall  
 1147 indicate the procedure which must be followed to obtain the  
 1148 hearing or judicial review; and shall state the time limits  
 1149 which apply.

1150 (2)

1151 (c) Unless otherwise provided by law, a petition or  
 1152 request for hearing shall include those items required by the  
 1153 uniform rules adopted pursuant to s. 120.54(5)(b) ~~s.~~  
 1154 ~~120.54(5)(b)~~ 4. Upon the receipt of a petition or request for  
 1155 hearing, the agency shall carefully review the petition to  
 1156 determine if it contains all of the required information. A  
 1157 petition shall be dismissed if it is not in substantial  
 1158 compliance with these requirements or it has been untimely  
 1159 filed. Dismissal of a petition shall, at least once, be without  
 1160 prejudice to petitioner's filing a timely amended petition  
 1161 curing the defect, unless it conclusively appears from the face  
 1162 of the petition that the defect cannot be cured. The agency  
 1163 shall promptly give written notice to all parties of the action  
 1164 taken on the petition, shall state with particularity its  
 1165 reasons if the petition is not granted, and shall state the  
 1166 deadline for filing an amended petition if applicable. This

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1167 paragraph does not eliminate the availability of equitable  
 1168 tolling as a defense to the untimely filing of a petition.

1169 Section 16. Subsection (2) of section 120.74, Florida  
 1170 Statutes, is amended to read:

1171 120.74 Agency review, revision, and report.--

1172 (2) Beginning October 1, 1997, and by October 1 of every  
 1173 other year thereafter, the head of each agency shall file a  
 1174 report with the President of the Senate, the Speaker of the  
 1175 House of Representatives, and the committee, with a copy to each  
 1176 appropriate standing committee of the Legislature, which  
 1177 certifies that the agency has complied with the requirements of  
 1178 this section ~~subsection~~. The report must specify any changes  
 1179 made to its rules as a result of the review and, when  
 1180 appropriate, recommend statutory changes that will promote  
 1181 efficiency, reduce paperwork, or decrease costs to government  
 1182 and the private sector. The report must identify the types of  
 1183 cases or disputes in which the agency is involved which should  
 1184 be conducted under the summary hearing process described in s.  
 1185 120.574.

1186 Section 17. Subsection (11) of section 120.80, Florida  
 1187 Statutes, is amended to read:

1188 120.80 Exceptions and special requirements; agencies.--

1189 (11) NATIONAL GUARD.--Notwithstanding s. 120.52(16) ~~s.~~  
 1190 ~~120.52(15)~~, the enlistment, organization, administration,  
 1191 equipment, maintenance, training, and discipline of the militia,  
 1192 National Guard, organized militia, and unorganized militia, as  
 1193 provided by s. 2, Art. X of the State Constitution, are not  
 1194 rules as defined by this chapter.



1195 Section 18. Paragraph (c) of subsection (1) and paragraph  
 1196 (a) of subsection (3) of section 120.81, Florida Statutes, are  
 1197 amended to read:

1198 120.81 Exceptions and special requirements; general  
 1199 areas.--

1200 (1) EDUCATIONAL UNITS.--

1201 (c) Notwithstanding s. 120.52(16) ~~s. 120.52(15)~~, any  
 1202 tests, test scoring criteria, or testing procedures relating to  
 1203 student assessment which are developed or administered by the  
 1204 Department of Education pursuant to s. 1003.43, s. 1003.438, s.  
 1205 1008.22, or s. 1008.25, or any other statewide educational tests  
 1206 required by law, are not rules.

1207 (3) PRISONERS AND PAROLEES.--

1208 (a) Notwithstanding s. 120.52(13) ~~s. 120.52(12)~~,  
 1209 prisoners, as defined by s. 944.02, shall not be considered  
 1210 parties in any proceedings other than those under s.  
 1211 120.54(3)(c) or (7), and may not seek judicial review under s.  
 1212 120.68 of any other agency action. Prisoners are not eligible to  
 1213 seek an administrative determination of an agency statement  
 1214 under s. 120.56(4). Parolees shall not be considered parties for  
 1215 purposes of agency action or judicial review when the  
 1216 proceedings relate to the rescission or revocation of parole.

1217 Section 19. Paragraph (f) of subsection (2) of section  
 1218 409.175, Florida Statutes, is amended to read:

1219 409.175 Licensure of family foster homes, residential  
 1220 child-caring agencies, and child-placing agencies; public  
 1221 records exemption.--

1222 (2) As used in this section, the term:

1223 (f) "License" means "license" as defined in s. 120.52(10)  
 1224 ~~s. 120.52(9)~~. A license under this section is issued to a family  
 1225 foster home or other facility and is not a professional license  
 1226 of any individual. Receipt of a license under this section shall  
 1227 not create a property right in the recipient. A license under  
 1228 this act is a public trust and a privilege, and is not an  
 1229 entitlement. This privilege must guide the finder of fact or  
 1230 trier of law at any administrative proceeding or court action  
 1231 initiated by the department.

1232 Section 20. Paragraph (a) of subsection (1) of section  
 1233 420.9072, Florida Statutes, is amended to read:

1234 420.9072 State Housing Initiatives Partnership  
 1235 Program.--The State Housing Initiatives Partnership Program is  
 1236 created for the purpose of providing funds to counties and  
 1237 eligible municipalities as an incentive for the creation of  
 1238 local housing partnerships, to expand production of and preserve  
 1239 affordable housing, to further the housing element of the local  
 1240 government comprehensive plan specific to affordable housing,  
 1241 and to increase housing-related employment.

1242 (1)(a) In addition to the legislative findings set forth  
 1243 in s. 420.6015, the Legislature finds that affordable housing is  
 1244 most effectively provided by combining available public and  
 1245 private resources to conserve and improve existing housing and  
 1246 provide new housing for very-low-income households, low-income  
 1247 households, and moderate-income households. The Legislature  
 1248 intends to encourage partnerships in order to secure the  
 1249 benefits of cooperation by the public and private sectors and to  
 1250 reduce the cost of housing for the target group by effectively

1251 combining all available resources and cost-saving measures. The  
 1252 Legislature further intends that local governments achieve this  
 1253 combination of resources by encouraging active partnerships  
 1254 between government, lenders, builders and developers, real  
 1255 estate professionals, advocates for low-income persons, and  
 1256 community groups to produce affordable housing and provide  
 1257 related services. Extending the partnership concept to encompass  
 1258 cooperative efforts among small counties as defined in s.  
 1259 120.52(19) ~~s. 120.52(17)~~, and among counties and municipalities  
 1260 is specifically encouraged. Local governments are also intended  
 1261 to establish an affordable housing advisory committee to  
 1262 recommend monetary and nonmonetary incentives for affordable  
 1263 housing as provided in s. 420.9076.

1264 Section 21. Subsection (7) of section 420.9075, Florida  
 1265 Statutes, is amended to read:

1266 420.9075 Local housing assistance plans; partnerships.--

1267 (7) The moneys deposited in the local housing assistance  
 1268 trust fund shall be used to administer and implement the local  
 1269 housing assistance plan. The cost of administering the plan may  
 1270 not exceed 5 percent of the local housing distribution moneys  
 1271 and program income deposited into the trust fund. A county or an  
 1272 eligible municipality may not exceed the 5-percent limitation on  
 1273 administrative costs, unless its governing body finds, by  
 1274 resolution, that 5 percent of the local housing distribution  
 1275 plus 5 percent of program income is insufficient to adequately  
 1276 pay the necessary costs of administering the local housing  
 1277 assistance plan. The cost of administering the program may not  
 1278 exceed 10 percent of the local housing distribution plus 5

PCB GEAC 08-13

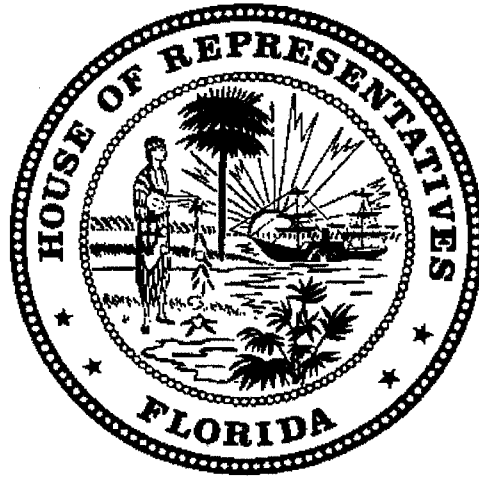
ORIGINAL

2008

1279 | percent of program income deposited into the trust fund, except  
 1280 | that small counties, as defined in s. 120.52(19) ~~s. 120.52(17)~~,  
 1281 | and eligible municipalities receiving a local housing  
 1282 | distribution of up to \$350,000 may use up to 10 percent of  
 1283 | program income for administrative costs.

1284 |       Section 22. For the 2009-2010 fiscal year, the  
 1285 | nonrecurring sum of \$451,000 is appropriated from the Records  
 1286 | Management Trust Fund to the Department of State for the  
 1287 | purposes of carrying out the provisions of this act.

1288 |       Section 23. Except as otherwise expressly provided in this  
 1289 | act, this act shall take effect July 1, 2008.



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# **Government Efficiency & Accountability Council**

## **Addendum A**

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



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

23 districts of the municipality. This subsection does not  
24 authorize a municipality to use bond proceeds to fund ongoing  
25 operations of these districts. Any municipality may determine  
26 in its resolution required to declare special assessments,  
27 pursuant to s. 170.03, that the vote of affected property owners  
28 shall be conducted either: by voting by tax folio numbers of  
29 affected properties; or by voting by total square footage of the  
30 affected properties.

31 Section 2. Subsection (1) of section 189.403, Florida  
32 Statutes, is amended to read:

33 189.403 Definitions.--As used in this chapter, the term:

34 (1) "Special district" means a local unit of special  
35 purpose, as opposed to general-purpose, government within a  
36 limited boundary, created by general law, special act, local  
37 ordinance, or by rule of the Governor and Cabinet. The special  
38 purpose or purposes of special districts are implemented by  
39 specialized functions and related prescribed powers. For the  
40 purpose of ss. 196.199(1) and 282.104, special districts shall  
41 be treated as municipalities. The term does not include a school  
42 district, a community college district, a special improvement  
43 district created pursuant to s. 285.17, a municipal service  
44 taxing or benefit unit as specified in s. 125.01, or a board  
45 which provides electrical service and which is a political  
46 subdivision of a municipality or is part of a municipality.

47 Section 3. Section 189.4221, Florida Statutes, is created  
48 to read:

49 189.4221 .-- Purchases from purchasing agreements of  
50 special districts, municipalities, or counties.--Special  
51 districts may purchase commodities and contractual services from  
52 purchasing agreements of other special districts,  
53 municipalities, or counties procured pursuant to competitive

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

54 bid, requests for proposals, requests for qualifications,  
55 competitive selection, or competitive negotiations, and  
56 otherwise in compliance with general law.

57 Section 4. Subsection (2) of section 191.009, Florida  
58 Statutes, is amended to read:

59 191.009 Taxes; non-ad valorem assessments; impact fees and  
60 user charges.--

61 (2) NON-AD VALOREM ASSESSMENTS.--A district may levy non-  
62 ad valorem assessments as defined in s. 197.3632 to construct,  
63 operate, and maintain district facilities and services. The rate  
64 of such assessments must be fixed by resolution of the board  
65 pursuant to the procedures contained in s. 191.011. Non-ad  
66 valorem assessment rates set by the board may exceed the maximum  
67 rates established by special act, county ordinance, or the  
68 previous year's resolution, or referendum in an amount not to  
69 exceed the average annual growth rate in Florida personal income  
70 over the previous 5 years. Non-ad valorem assessment rate  
71 increases within the personal income threshold are deemed to be  
72 within the maximum rate authorized by law at the time of initial  
73 imposition. Proposed non-ad valorem assessment increases which  
74 exceed the rate set the previous fiscal year or the rate  
75 previously set by special act or county ordinance, whichever is  
76 more recent, by more than the average annual growth rate in  
77 Florida personal income over the last 5 years, or the first-time  
78 levy of non-ad valorem assessments in a district, must be  
79 approved by a supermajority vote of the board.~~referendum of the~~  
80 ~~electors of the district.~~ The referendum on the first-time levy  
81 of an assessment shall include a notice of the future non-ad  
82 valorem assessment rate increases permitted by this act without  
83 a referendum. Non-ad valorem assessments shall be imposed,  
84 collected, and enforced pursuant to s. 191.011.



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

85 Section 5. Severability. If any provision of this act is  
86 held invalid such invalidity shall not affect the other  
87 provisions or applications hereof that can be given effect  
88 without causing the invalid provision or application and to this  
89 end provisions of this act are severable.

90 Section 6. This act shall take effect July 1, 2008.

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

Remove the entire title and insert:

An act relating to municipal and special districts; amending s.  
170.01(3), F.S.; authorizing approval of assessment by majority  
of those voting; authorizing vote by tax folio numbers or total  
square footage of affected properties; amending s. 189.403(1),  
F.S.,; authorizing use of SUNCOM by special districts; creating  
s. 189.4221, F.S.; authorizing special districts to purchase  
commodities and contractual services from purchasing agreements  
of other special districts, municipalities, or counties;  
amending s. 191.009, F.S.; revising non-ad valorem voting  
requirements for certain special districts; providing  
severability; providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 211

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                                    \_\_\_\_\_

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1 Council/Committee hearing bill: Government Efficiency and  
2 Accountability Council

3 Representative(s) Machek offered the following:  
4

5           **Amendment (with title amendment)**

6           Between line(s) 9-10 insert:

7           Section 1. Subsection (1) of section 189.403, Florida  
8 Statutes, is amended to read:

9           189.403 Definitions.--As used in this chapter, the term:

10           (1) "Special district" means a local unit of special  
11 purpose, as opposed to general-purpose, government within a  
12 limited boundary, created by general law, special act, local  
13 ordinance, or by rule of the Governor and Cabinet. The special  
14 purpose or purposes of special districts are implemented by  
15 specialized functions and related prescribed powers. For the  
16 purpose of ss. 196.199(1) and 282.104, special districts shall  
17 be treated as municipalities. The term does not include a school  
18 district, a community college district, a special improvement  
19 district created pursuant to s. 285.17, a municipal service  
20 taxing or benefit unit as specified in s. 125.01, or a board

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

21 | which provides electrical service and which is a political  
22 | subdivision of a municipality or is part of a municipality.

23 |

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**T I T L E   A M E N D M E N T**

27 |

Remove line 2 and insert:

28 |

An act relating to special districts; amending s. 189.403, F.S.;

29 |

authorizing use of SUNCOM by special districts; creating s.

30 |

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

Bill No. 211

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	_____	

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1 Council/Committee hearing bill: Government Efficiency and  
 2 Accountability Council

3 Representative Machek offered the following:

4  
 5 **Amendment (title amendment)**

6 Between line(s) 19-20 insert:

7 Section 2. Subsection (2) of section 191.009, Florida  
 8 Statutes, is amended to read:

9 191.009 Taxes; non-ad valorem assessments; impact fees and  
 10 user charges.--

11 (2) NON-AD VALOREM ASSESSMENTS.--A district may levy non-  
 12 ad valorem assessments as defined in s. 197.3632 to construct,  
 13 operate, and maintain district facilities and services. The rate  
 14 of such assessments must be fixed by resolution of the board  
 15 pursuant to the procedures contained in s. 191.011. Non-ad  
 16 valorem assessment rates set by the board may exceed the maximum  
 17 rates established by special act, county ordinance, or the  
 18 previous year's resolution, or referendum in an amount not to  
 19 exceed the average annual growth rate in Florida personal income  
 20 over the previous 5 years. Non-ad valorem assessment rate  
 21 increases within the personal income threshold are deemed to be

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

22 within the maximum rate authorized by law at the time of initial  
23 imposition. Proposed non-ad valorem assessment increases which  
24 exceed the rate set the previous fiscal year or the rate  
25 previously set by special act or county ordinance, whichever is  
26 more recent, by more than the average annual growth rate in  
27 Florida personal income over the last 5 years, or the first-time  
28 levy of non-ad valorem assessments in a district, must be  
29 approved by a supermajority vote of the board. ~~referendum of the~~  
30 ~~electors of the district. The referendum on the first-time levy~~  
31 ~~of an assessment shall include a notice of the future non-ad~~  
32 ~~valorem assessment rate increases permitted by this act without~~  
33 ~~a referendum.~~ Non-ad valorem assessments shall be imposed,  
34 collected, and enforced pursuant to s. 191.011.

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36  
37 **T I T L E A M E N D M E N T**

38 Remove line(s) 6-6 and insert:  
39 counties; amending s. 191.009, F.S.; revising non-ad valorem  
40 voting requirements for certain special districts; providing an  
41 effective date.  
42

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 Grant offered the following:

**Amendment to Amendment (1) by Representative Grant**

Remove line(s) 14-19 and insert:

6 Section 2. Section 116.075, Florida Statutes, is created  
7 to read:

8 116.075 Clerk as county auditor.--When not otherwise  
9 provided by county charter or special law approved by vote of  
10 the electors, the Clerk of the Circuit Court, as county auditor,  
11 shall prepare the annual financial report of the county as  
12 required by s. 218.32, F.S., and may perform such reviews and  
13 tests as necessary to determine the adequacy of internal  
14 controls and compliance with contracts, applicable laws, and  
15 rules.

16 -----  
17 **T I T L E A M E N D M E N T**

18 Remove line 43 and insert:  
19 authorizing the county auditor to perform certain reviews and  
20

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) Simmons offered the following:

4  
5 **Amendment to Amendment(with schedule and ballot amendments)**

6 Remove line(s) 42-47 and insert:

7 additional homestead exemption in an amount equal to forty  
8 percent (40%) of the homestead's just value between seventy-five  
9 thousand dollars and five hundred thousand dollars. The  
10 additional exemption shall apply only after the first seventy  
11 five thousand dollars of just value of the

12  
13  
14 -----  
15 **SCHEDULE AMENDMENT**

16 Remove line(s) 119-121 and insert:

17 providing an additional homestead exemption in an amount equal  
18 to forty percent (40%) of the homestead's just value between  
19 seventy-five thousand dollars and five hundred thousand dollars.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (for drafter's use only)

20 The additional exemption shall apply only after the first  
21 seventy five thousand dollars of just value of the  
22

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

27

Remove line(s) 136-138 and insert:

28

provide for an additional homestead exemption in an amount equal

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to 40 percent of the homestead's just value between \$75,000 and

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\$500,000 or the accumulated benefit

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