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# **Committee on Military & Veterans' Affairs**

**Wednesday, March 21, 2007  
11:00 – 12:00 PM  
12 HOB**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

Speaker Marco Rubio

### Committee on Military & Veterans' Affairs

**Start Date and Time:** Wednesday, March 21, 2007 11:00 am

**End Date and Time:** Wednesday, March 21, 2007 12:00 pm

**Location:** 12 HOB

**Duration:** 1.00 hrs

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

HB 1159 Unauthorized Use of the Name or Image of a Member of the Armed Forces for Business Purposes by Grimsley

HM 931 Darfur by Gelber

HB 871 Display of United States Flags by Thompson, N.

#### Workshop on the following:

PCB GEAC 07-26 Implementing Ad Valorem Tax discount for disabled veterans

**NOTICE FINALIZED on 03/19/2007 16:14 by Villar.Melissa**



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 871 Display of United States Flags
SPONSOR(S): Thompson and others
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR. Row 1: 1) Committee on Military & Veterans' Affairs, Shaffer, Camechis.

SUMMARY ANALYSIS

This bill creates ss. 125.564 and 166.081, F.S., to prohibit counties and municipalities from enacting or enforcing any ordinance or regulation that would prohibit the display of a United States flag by a property owner or tenant in a respectful manner or require a permit or payment of any fee to authorize such display.

The bill does not appear to exempt property owners from compliance with the Florida Building Code, or exempt property owners from obtaining a building permit as required by the Florida Building Code. Therefore, if a property owner wishes to construct a flag pole that is considered a "structure" under the Florida Building Code, it appears the property owner will be required to obtain a building permit even if this bill passes.

This bill appears to reduce county or municipal authority to adopt and enforce land use ordinances regulating the construction of flag pole structures, including ordinances pertaining to set-back requirements, height restrictions, and historical preservation. The bill also appears to reduce county or municipal authority to enact building codes that are more stringent than the Florida Building code to address local conditions.

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

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: This bill prohibits counties and municipalities from enacting or enforcing any ordinance or regulation that prohibits the display of a United States flag by a property owner or tenant in a respectful manner, requires a permit, or requires payment of any fee to authorize such display.

#### B. EFFECT OF PROPOSED CHANGES:

##### **CURRENT SITUATION**

The statewide Florida Building Code ("Code"), which became effective March 1, 2001, supersedes all local codes and ordinances; however, when distinctive local conditions are not specifically addressed or a jurisdiction believes that code provisions need to be updated, local governments may adopt amendments if the amendments are more stringent than the Code.<sup>1</sup>

Building codes establish minimum safety standards for the design and construction of buildings and structures by addressing such issues as structural integrity, mechanical, plumbing, electrical, lighting, heating, air conditioning, ventilation, fireproofing, exit systems, safe materials, energy efficiency, and accessibility by persons with physical disabilities. The Code establishes minimum requirements to protect buildings and their occupants from wind, rain, flood and storm surge based on well-researched and continually-evolving engineering standards for buildings and the products that go into their construction.<sup>2</sup>

Section 553.72, F.S., declares that the legislative intent of the Florida Building Code is "to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single, unified state building code, to be called the Florida Building Code, which consists of a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state and to the enforcement of such requirements and which will allow effective and reasonable protection for public safety, health, and general welfare for all the people of Florida at the most reasonable cost to the consumer... The Florida Building Code shall be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction... The Florida Building Code shall establish minimum standards primarily for public health and lifesafety, and secondarily for protection of property as appropriate." It is also the intent of the Legislature that "local governments shall have the power to inspect all buildings, structures, and facilities within their jurisdictions in protection of the public health, safety, and welfare pursuant to chapters 125 and 166."

Section 553.73, F.S., requires the Florida Building Commission ("Commission") to adopt the Florida Building Code, by rule, which contains or incorporates by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules, except as otherwise provided in this section. The section vests responsibility for enforcement, interpretation, and regulation of the Florida Building Code in a specified local board or agency.

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<sup>1</sup> TOP TEN FLORIDA RESIDENTIAL BUILDING CODE VIOLATIONS, FINAL REPORT, Prepared By Robert F. Cox, Ph.D.; R. Raymond Issa, Ph.D., J.D., P.E.; Jessica Ligator, MSBC; M.E. Rinker, Sr. School of Building Construction, University of Florida, Gainesville, FL 32611-5703, June 2006.

<sup>2</sup> The Florida Building Commission Report to the 2007 Legislature, p.27

## **Local Amendments to the Florida Building Code**

Section 553.73(4)(b), F.S., authorizes a local government to adopt amendments to the technical provisions of the Florida Building Code once every 6 months that apply solely within that local government's jurisdiction and provide more stringent requirements than those specified in the Florida Building Code. A local government may adopt technical amendments that address local needs if:

The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

A local amendment to the Florida Building Code is effective only until the adoption by the Commission of the new edition of the Florida Building Code every third year. At such time, the Commission reviews each amendment for consistency with the criteria for amendments having statewide or regional application. The Commission may adopt or rescind the local amendment. After receiving notice of a rescission, the local government may readopt the rescinded amendment.

## **Local Government Enforcement of the Florida Building Code**

The Florida Building Code is administered and enforced by local government building and fire officials.<sup>3</sup> Section 125.01(1)(cc), F.S., grants the governing body of a county the power to enforce the Florida Building Code, as provided in s. 553.80, F.S., and adopt and enforce local technical amendments to the Florida Building Code, pursuant to ss. 553.73(4)(b) and (c), F.S.

Section 553.79(2), F.S., prohibits the construction, erection, alteration, modification, repair, or demolition of any structure until the local building code administrator or inspector has reviewed the plans and specifications required by the Florida Building Code.

Section 553.80(1), F.S., authorizes local governments to assess fees to fund the enforcement of the code. However, such fees "shall be used solely for carrying out the local government's responsibilities in enforcing the code."

## **EFFECT OF PROPOSED CHANGES**

This bill creates ss. 125.564 and 166.081, F.S., to prohibit counties and municipalities from enacting or enforcing any ordinance or regulation that would prohibit the display of a United States flag by a property owner or tenant in a respectful manner or require a permit or payment of any fee to authorize such display.

The bill does not appear to exempt property owners from compliance with the Florida Building Code, or exempt property owners from obtaining a building permit as required by the Florida Building Code. Therefore, if a property owner wishes to construct a flag pole that is considered a "structure" under the Florida Building Code, it appears the property owner will be required to obtain a building permit even if this bill passes.

This bill appears to reduce county and municipal authority to adopt and enforce land use ordinances regulating the construction of flag pole structures, including ordinances pertaining to set-back

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<sup>3</sup> s. 553.80, F.S.

requirements, height restrictions, and historical preservation. The bill also appears to reduce county and municipal authority to enact stringent building codes that are more stringent than the Florida Building code to address local conditions.

**C. SECTION DIRECTORY:**

Section 1. Designates the act as the "Florida Flies the Flag Act".

Section 2. Creates s. 125.564, F.S., prohibiting a county from enacting or enforcing an ordinance or regulation that would prohibit the display of a United States flag by certain persons in a respectful manner or require a permit or payment of any fee to authorize such display.

Section 3. Creates s. 166.0481, F.S., prohibiting a municipality from enacting or enforcing an ordinance or regulation that would prohibit the display of a United States flag by certain persons in a respectful manner or require a permit or payment of any fee to authorize such display

Section 4. Provides an effective date of July 1, 2007.

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

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

1. Revenues: None.

2. Expenditures: None.

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

1. Revenues: See Fiscal Comments.

2. Expenditures: See Fiscal Comments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:** This bill may exempt certain property owners from local ordinances requiring permits for flag displays.

**D. FISCAL COMMENTS:** This bill may reduce the amount of revenues collected by counties and municipalities through the issuance of permits for construction of flag structures; however, the reduction in the cost of issuing permits appears to offset any reduction in revenues.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision: The mandates provision may apply because the bill may reduce revenues of certain municipalities and counties by prohibiting local ordinances that require permits and fees for flag displays; however, the bill appears to be exempt from the mandates provision because the fiscal impact of the bill on cities and counties appears to be insignificant and the reduction in the number of permits issued may reduce costs associated that were funded through permit fees.

2. Other: None.

- B. **RULE-MAKING AUTHORITY:** This bill does not grant any agency a specific power, impose a duty to be implemented by an agency, or require an agency to adopt rules to facilitate implementation.
  
- C. **DRAFTING ISSUES OR OTHER COMMENTS:** None.
  
- D. **STATEMENT OF THE SPONSOR:** The sponsor did not submit a statement.

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**

Not applicable.



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A bill to be entitled  
An act relating to display of United States flags;  
providing a short title; creating ss. 125.564 and  
166.0481, F.S.; prohibiting a county or municipality from  
enacting or enforcing an ordinance or regulation that  
would prohibit the display of a United States flag by  
certain persons in a respectful manner or require a permit  
or payment of any fee to authorize such display; providing  
an effective date.

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

Section 1. This act may be cited as the "Florida Flies the  
Flag Act."

Section 2. Section 125.564, Florida Statutes, is created  
to read:

125.564 United States flag display regulation.--No county  
shall enact or enforce any ordinance or regulation that would  
prohibit the display of a United States flag by a property owner  
or tenant in a respectful manner or require a permit or payment  
of any fee to authorize such display.

Section 3. Section 166.0481, Florida Statutes, is created  
to read:

166.0481 United States flag display regulation.--No  
municipality shall enact or enforce any ordinance or regulation  
that would prohibit the display of a United States flag by a  
property owner or tenant in a respectful manner or require a  
permit or payment of any fee to authorize such display.

HB 871

2007

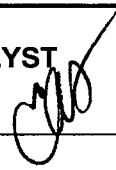

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Section 4. This act shall take effect July 1, 2007.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HM 931 Darfur  
SPONSOR(S): Gelber and others  
TIED BILLS: IDEN./SIM. BILLS: SM 1698

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Military &amp; Veterans' Affairs</u>	_____	Shaffer 	Camechis 
2) <u>Government Efficiency &amp; Accountability Council</u>	_____	_____	_____
3) <u>Rules &amp; Calendar Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The memorial provides a historical overview of the situation in Darfur. On May 8, 2006, President Bush stated, "we will call genocide by its rightful name, and we will stand up for the innocent until the peace of Darfur is secured." On May 15, 2006 then United Nations Secretary-General Kofi Annan described the ongoing crisis in Darfur as "the world's worst humanitarian crisis," hundreds of thousands of people have died and more than 2.5 million have been displaced in Darfur since 2003.

The memorial indicates that the Legislature supports the principles of the Addis Ababa Agreement of November 17, 2006; the deployment of an African Union-United Nations peacekeeping force under the command and control of the United Nations as the minimum acceptable effort of the international community; and the strengthening of the African Union peacekeeping mission in Sudan.

The memorial indicates that the Legislature calls upon the government of Sudan to allow the implementation of the United Nations light and heavy support packages as provided for in the Addis Ababa Agreement; work with the United Nations and the international community to deploy United Nations peacekeepers to Darfur; and adhere to the Joint Statement issued by Governor Bill Richardson and President Omar Hassan Al-Bashir on January 10, 2007.

The memorial indicates that the Legislature urges the President to continue work with other members of the international community; ensure the ability of any peacekeeping force deployed to Darfur to carry out its mandate; vigorously pursue, in cooperation with other members of the international community, strong punitive action against those persons responsible for crimes against humanity; and make all necessary efforts to address the widespread incidents of gender-based violence in Darfur.

The memorial indicates that the Legislature calls upon Congress, the leadership in Congress, and the Florida delegation to provide all necessary funding and support for United Nations and African Union peacekeeping operations in Darfur and affected areas of Chad and the Central African Republic; conduct sufficient oversight of actions by the United States administration continue to monitor the conflict and political processes.

The memorial states that the Florida Legislature urges Congress to do all in its power to further the goals expressed in this memorial in order to bring lasting peace to the people of Darfur.

Copies of the memorial are to be sent to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

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

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DATE: 3/13/2007

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House principles.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Background**

In an article in the Financial Times on May 15, 2006 then United Nations Secretary-General Kofi Annan described the ongoing crisis in Darfur as "the world's worst humanitarian crisis," hundreds of thousands of people have died and more than 2.5 million have been displaced in Darfur since 2003.

The United States Congress declared on July 22, 2004, that the atrocities in Darfur constituted genocide. On June 30, 2005, President Bush confirmed that "the violence in the Darfur region is clearly genocide and the human cost is beyond calculation," and on May 8, 2006, President Bush stated, "we will call genocide by its rightful name, and we will stand up for the innocent until the peace of Darfur is secured."

On May 5, 2006, the Government of Sudan and the largest rebel faction in Darfur, the Sudan Liberation Movement, led by Minni Minnawi, signed the Darfur Peace Agreement (DPA).

On August 30, 2006, the United Nations Security Council passed Security Council Resolution 1706 (2006), asserting that the existing United Nations Mission in Sudan (UNMIS) "shall take over from the African Union Mission in Sudan (AMIS) responsibility for supporting the implementation of the Darfur Peace Agreement (DPA) upon the expiration of AMIS's mandate but in any event no later than 31 December 2006," and that UNMIS "shall be strengthened by up to 17,300 military personnel...up to 3,300 civilian police personnel and up to 16 Formed Police Units," which "shall begin to be deployed no later than 1 October 2006."

On November 16, 2006, high-level consultations led by Kofi Annan, Secretary General of the United Nations, and Alpha Oumar Konare, Chairperson of the African Union Commission, and including representatives of the Arab League, the European Union, the Government of Sudan, and other national governments, produced the "Addis Ababa Agreement." The Agreement stated that the DPA must be made more inclusive, and "called upon all parties - Government and DPA nonsignatories - to immediately commit to a cessation of hostilities in Darfur in order to give the peace process the best chances for success." The Agreement also included a plan to establish a United Nations-African Union peacekeeping operation that would consist of no fewer than 17,000 military troops and 3,000 civilian police, and would have a primarily African character, and the peacekeeping operation must be logistically and financially sustainable, with support coming from the United Nations.

On January 10, 2007, New Mexico Governor Bill Richardson met with Sudanese President Omar Hassan Al-Bashir; their meeting resulted in the issuance of a Joint Statement calling for "a 60-day cessation of hostilities by all parties within the framework of the Darfur Peace Agreement." The Joint Statement called for the initiation of African Union/United Nations diplomatic efforts within the framework of the DPA, and for two projected meetings - a Government of Sudan-sponsored field commanders' conference to be attended by representatives of the African Union and the United Nations, and a subsequent African Union/United Nations-sponsored peace summit, again within the framework of the DPA, to be held no later than March 15, 2007. The Joint Statement also stated the need to disarm all armed groups, including the Janjaweed, pursuant to the provision of the DPA.

##### **Effects of Proposed Changes**

The memorial indicates that the Legislature supports:

- Given the rapidly deteriorating situation on the ground in Darfur, the Legislature supports the principles of the Addis Ababa Agreement of November 17, 2006, in order to increase security and stability for the people of Darfur.
- The memorial declares that the deployment of an African Union-United Nations peacekeeping force under the command and control of the United Nations, as laid out in the Addis Ababa Agreement, is the minimum acceptable effort on the part of the international community to protect the people of Darfur.
- The Legislature supports the strengthening of the African Union peacekeeping mission in Sudan so that it may improve its performance with regard to civilian protection as the African Union peacekeeping mission begins to transfer responsibility for protecting the people of Darfur to the United Nations-African Union peacekeeping force under the command and control of the United Nations, as laid out in the Addis Ababa Agreement.

The memorial indicates that the Legislature calls upon the Government of the Sudan to:

- Allow the implementation of the United Nations light and heavy support packages as provided for in the Addis Ababa Agreement.
- Work with the United Nations and the international community to deploy United Nations peacekeepers to Darfur in keeping with the United Nations Security Council Resolution 1706 passed on August 31, 2006.
- Calls upon all parties to the conflict to immediately adhere to the Joint Statement issued by Governor Bill Richardson and President Omar Hassan Al-Bashir on January 10, 2007; observe the cease-fire contained therein; and respect the impartiality and neutrality of humanitarian agencies so that relief workers can have unfettered access to their beneficiary populations and deliver desperately needed assistance.

The memorial indicates that the Legislature urges the President to:

- Continue work with other members of the international community, including the permanent members of the United Nations Security Council, the African Union, the European Union, the Arab League, Sudan's trading partners, and the Government of Sudan to facilitate the implementation of the Addis Ababa Agreement and the subsequent Richardson-Bashir Joint Statement.
- Ensure the ability of any peacekeeping force deployed to Darfur to carry out its mandate by providing adequate funding and by working with our international partners to provide technical assistance, logistical support and intelligence-gathering capabilities, and military assets.
- Vigorously pursue, in cooperation with other members of the international community, strong punitive action against those persons responsible for crimes against humanity as previously authorized in the Darfur Peace and Accountability Act of 2006 (Public Law 109-344), United Nations Security Council Resolution 1591 (2005), and the Comprehensive Peace in Sudan Act of 2004 (Public Law 108-497, 118 Stat. 4012).
- Make all necessary efforts to address the widespread incidents of gender-based violence in Darfur, including working with the Government of Sudan to help institute a zero-tolerance policy for gender-based violence as agreed to in the Richardson-Bashir Joint Statement.

The memorial indicates that the Legislature calls upon Congress, the leadership in Congress, and the Florida delegation to:

- o Provide all necessary funding and support for United Nations and African Union peacekeeping operations in Darfur.
- o Provide all necessary funding and support for humanitarian aid in Darfur and affected areas of Chad and the Central African Republic.
- o Conduct sufficient oversight of actions by the United States administration to ensure that no opportunities for furthering the peace are missed.
- o Continue to monitor the conflict and political processes and, if necessary, examine imposing additional punitive sanctions against the Government of Sudan, officials within the Government of Sudan, rebel leaders, and any other individual or group obstructing the ongoing peace process or in violation of agreed-upon cease-fires and the Darfur Peace Agreement.

The memorial states that the "Florida Legislature urges Congress to do all in its power to further the goals expressed in this memorial in order to bring lasting peace to the people of Darfur."

Copies of the memorial are to be sent to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

C. SECTION DIRECTORY: N/A

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

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

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

2. Other: None.

B. **RULE-MAKING AUTHORITY:** This memorial does not grant any agency a specific power, impose a duty that must be implemented by an agency, or require an agency to adopt rules to facilitate implementation.

C. **DRAFTING ISSUES OR OTHER COMMENTS:** None.

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

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

N/A



House Memorial

A memorial to the Congress of the United States, urging Congress, with the support of the President, to engage the international community to take action in the effort to bring a just and lasting peace to the people of Darfur.

WHEREAS, United Nations officials have described the ongoing crisis in Darfur as "the world's worst humanitarian crisis," and

WHEREAS, hundreds of thousands of people have died and more than 2.5 million have been displaced in Darfur since 2003, and

WHEREAS, the Government of Sudan has failed in its responsibility to protect the many peoples of Darfur, and

WHEREAS, the United States Congress declared on July 22, 2004, that the atrocities in Darfur constituted genocide, and

WHEREAS, on September 9, 2004, Secretary of State Colin Powell and President George W. Bush described the crisis in Darfur as genocide, and

WHEREAS, on June 30, 2005, President Bush confirmed that "the violence in the Darfur region is clearly genocide and the human cost is beyond calculation," and

WHEREAS, on May 8, 2006, President Bush stated, "we will call genocide by its rightful name, and we will stand up for the innocent until the peace of Darfur is secured," and

WHEREAS, on May 5, 2006, the Government of Sudan and the largest rebel faction in Darfur, the Sudan Liberation Movement, led by Minni Minnawi, signed the Darfur Peace Agreement (DPA), and

HM 931

2007

29 WHEREAS, violence in Darfur escalated in the months  
 30 following the signing of the DPA, with increased attacks against  
 31 civilians and humanitarian workers, and

32 WHEREAS, violence has spread to the neighboring states of  
 33 Chad and the Central African Republic, threatening regional  
 34 peace and security, and

35 WHEREAS, in July 2006, more humanitarian aid workers were  
 36 killed than in the previous 3 years combined, and

37 WHEREAS, violence has forced some humanitarian  
 38 organizations to suspend operations, leaving 40 percent of the  
 39 population of Darfur inaccessible to aid workers, and

40 WHEREAS, on August 30, 2006, the United Nations Security  
 41 Council passed Security Council Resolution 1706 (2006),  
 42 asserting that the existing United Nations Mission in Sudan  
 43 (UNMIS) "shall take over from the African Union Mission in Sudan  
 44 (AMIS) responsibility for supporting the implementation of the  
 45 Darfur Peace Agreement (DPA) upon the expiration of AMIS's  
 46 mandate but in any event no later than 31 December 2006," and  
 47 that UNMIS "shall be strengthened by up to 17,300 military  
 48 personnel...up to 3,300 civilian police personnel and up to 16  
 49 Formed Police Units," which "shall begin to be deployed no later  
 50 than 1 October 2006," and

51 WHEREAS, on September 19, 2006, President Bush announced  
 52 the appointment of Andrew Nastios as Presidential Special Envoy  
 53 to lead United States efforts to bring peace to the Darfur  
 54 region in Sudan, and

55 WHEREAS, on November 16, 2006, high-level consultations led  
 56 by Kofi Annan, Secretary General of the United Nations, and

HM 931

2007

57 Alpha Oumar Konare, Chairperson of the African Union Commission,  
 58 and including representatives of the Arab League, the European  
 59 Union, the Government of Sudan, and other national governments,  
 60 produced the "Addis Ababa Agreement," and

61 WHEREAS, the Agreement stated that the DPA must be made  
 62 more inclusive, and "called upon all parties - Government and  
 63 DPA nonsignatories - to immediately commit to a cessation of  
 64 hostilities in Darfur in order to give the peace process the  
 65 best chances for success," and

66 WHEREAS, the Agreement included a plan to establish a  
 67 United Nations-African Union peacekeeping operation that would  
 68 consist of no fewer than 17,000 military troops and 3,000  
 69 civilian police, and would have a primarily African character,  
 70 and

71 WHEREAS, the Agreement stated that the peacekeeping  
 72 operation must be logistically and financially sustainable, with  
 73 support coming from the United Nations, and

74 WHEREAS, it is imperative that a peacekeeping force in  
 75 Darfur have sufficient strength and the mandate to provide  
 76 adequate security to the people of Darfur, and

77 WHEREAS, on January 10, 2007, New Mexico Governor Bill  
 78 Richardson met with Sudanese President Omar Hassan Al-Bashir;  
 79 their meeting resulted in the issuance of a Joint Statement  
 80 calling for "a 60-day cessation of hostilities by all parties  
 81 within the framework of the Darfur Peace Agreement," and

82 WHEREAS, the Joint Statement called for the initiation of  
 83 African Union/United Nations diplomatic efforts within the  
 84 framework of the DPA, and for two projected meetings - a

HM 931

2007

85 Government of Sudan-sponsored field commanders' conference to be  
 86 attended by representatives of the African Union and the United  
 87 Nations, and a subsequent African Union/United Nations-sponsored  
 88 peace summit, again within the framework of the DPA, to be held  
 89 no later than March 15, 2007, and

90 WHEREAS, the Joint Statement stated the need to disarm all  
 91 armed groups, including the Janjaweed, pursuant to the provision  
 92 of the DPA, NOW, THEREFORE,

93

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

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96 That the Florida Legislature:

97 (1) Supports, given the rapidly deteriorating situation on  
 98 the ground in Darfur, the principles of the Addis Ababa  
 99 Agreement of November 17, 2006, in order to increase security  
 100 and stability for the people of Darfur.

101 (2) Declares that the deployment of an African Union-  
 102 United Nations peacekeeping force under the command and control  
 103 of the United Nations, as laid out in the Addis Ababa Agreement,  
 104 is the minimum acceptable effort on the part of the  
 105 international community to protect the people of Darfur.

106 (3) Supports the strengthening of the African Union  
 107 peacekeeping mission in Sudan so that it may improve its  
 108 performance with regard to civilian protection as the African  
 109 Union peacekeeping mission begins to transfer responsibility for  
 110 protecting the people of Darfur to the United Nations-African  
 111 Union peacekeeping force under the command and control of the  
 112 United Nations, as laid out in the Addis Ababa Agreement.

HM 931

2007

- 113 (4) Calls upon the Government of Sudan to immediately:  
 114 (a) Allow the implementation of the United Nations light  
 115 and heavy support packages as provided for in the Addis Ababa  
 116 Agreement; and  
 117 (b) Work with the United Nations and the international  
 118 community to deploy United Nations peacekeepers to Darfur in  
 119 keeping with the United Nations Security Council Resolution 1706  
 120 passed on August 31, 2006.
- 121 (5) Calls upon all parties to the conflict to immediately:  
 122 (a) Adhere to the Joint Statement issued by Governor Bill  
 123 Richardson and President Omar Hassan Al-Bashir on January 10,  
 124 2007;  
 125 (b) Observe the cease-fire contained therein; and  
 126 (c) Respect the impartiality and neutrality of  
 127 humanitarian agencies so that relief workers can have unfettered  
 128 access to their beneficiary populations and deliver desperately  
 129 needed assistance.
- 130 (6) Urges the President to:  
 131 (a) Continue work with other members of the international  
 132 community, including the permanent members of the United Nations  
 133 Security Council, the African Union, the European Union, the  
 134 Arab League, Sudan's trading partners, and the Government of  
 135 Sudan to facilitate the implementation of the Addis Ababa  
 136 Agreement and the subsequent Richardson-Bashir Joint Statement;  
 137 (b) Ensure the ability of any peacekeeping force deployed  
 138 to Darfur to carry out its mandate by providing adequate funding  
 139 and by working with our international partners to provide

HM 931

2007

140 technical assistance, logistical support and intelligence-  
 141 gathering capabilities, and military assets;

142 (c) Vigorously pursue, in cooperation with other members  
 143 of the international community, strong punitive action against  
 144 those persons responsible for crimes against humanity as  
 145 previously authorized in the Darfur Peace and Accountability Act  
 146 of 2006 (Public Law 109-344), United Nations Security Council  
 147 Resolution 1591 (2005), and the Comprehensive Peace in Sudan Act  
 148 of 2004 (Public Law 108-497, 118 Stat. 4012); and

149 (d) Make all necessary efforts to address the widespread  
 150 incidents of gender-based violence in Darfur, including working  
 151 with the Government of Sudan to help institute a zero-tolerance  
 152 policy for gender-based violence as agreed to in the Richardson-  
 153 Bashir Joint Statement.

154 (7) Calls upon the Speaker of the United States House of  
 155 Representatives, the Majority Leader of the United States  
 156 Senate, and the Florida delegation to the United States Congress  
 157 to:

158 (a) Provide all necessary funding and support for United  
 159 Nations and African Union peacekeeping operations in Darfur;

160 (b) Provide all necessary funding and support for  
 161 humanitarian aid in Darfur and affected areas of Chad and the  
 162 Central African Republic;

163 (c) Conduct sufficient oversight of actions by the United  
 164 States administration to ensure that no opportunities for  
 165 furthering the peace are missed; and

166 (d) Continue to monitor the conflict and political  
 167 processes and, if necessary, examine imposing additional

HM 931

2007

168 | punitive sanctions against the Government of Sudan, officials  
 169 | within the Government of Sudan, rebel leaders, and any other  
 170 | individual or group obstructing the ongoing peace process or in  
 171 | violation of agreed-upon cease-fires and the Darfur Peace  
 172 | Agreement.

173 |         BE IT FURTHER RESOLVED that the Florida Legislature urges  
 174 | Congress to do all in its power to further the goals expressed  
 175 | in this memorial in order to bring lasting peace to the people  
 176 | of Darfur.

177 |         BE IT FURTHER RESOLVED that copies of this memorial be  
 178 | dispatched to the President of the United States, to the  
 179 | President of the United States Senate, to the Speaker of the  
 180 | United States House of Representatives, and to each member of  
 181 | the Florida delegation to the United States Congress.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

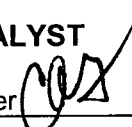

**BILL #:** HB 1159  
**Forces for Business Purposes**

Unauthorized Use of the Name or Image of a Member of the Armed

**SPONSOR(S):** Grimsley

**TIED BILLS:**

**IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Military &amp; Veterans' Affairs</u>	_____	Shaffer 	Camechis 
2) <u>Government Efficiency &amp; Accountability Council</u>	_____	_____	_____
3) <u>Policy &amp; Budget Council</u>	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

**SUMMARY ANALYSIS**

Since 1967, Florida law has prohibited the use of a person's name or likeness "for purposes of trade or for any commercial or advertising purpose" without express consent of the person or the person's lawful representative. This provision has long been interpreted by the courts to prohibit the unauthorized use of a person's name or likeness to directly promote a product or service because of the way that the use associates the person's name or personality with something else. The current law lists specific exceptions to the prohibition, including exceptions for uses protected by the First Amendment of the United States Constitution. The statute creates a civil cause of action against any person violating the statute, and allows the courts to award a prevailing plaintiff damages for any loss or injury, reasonable royalties, and punitive damages.

The Florida courts have long recognized the right of privacy, and the tort of common law invasion of privacy, both of which provide protections for the use of private individuals' names and images in certain circumstances.

This bill prohibits "use of the name or image of a member of the armed forces for the purpose of advertising goods or services, or for solicitation of patronage by a business enterprise" without the service member's consent. Use of the name or image of a service member killed in the line of duty is also prohibited unless prior consent is obtained from the surviving spouse, personal representative, or closest living relative by blood or marriage. Violation of the prohibition is a first degree misdemeanor punishable by up to 1 year in jail or a \$1,000 fine.

This bill may have an indeterminate but minimal fiscal impact on state and local governments.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility: This bill imposes a criminal penalty for using the name or image of a member of the armed forces for commercial purposes without consent.

#### B. EFFECT OF PROPOSED CHANGES:

##### CURRENT SITUATION

###### Background

Sales of t-shirts and other merchandise with the names and/or pictures of deceased service members, particularly those killed in the recent Iraq War, have prompted the introduction of legislation to prohibit these activities. In recent years, several state legislatures<sup>1</sup> have either enacted or proposed laws that would limit the use, without consent, of service members' and former or deceased service members' names, images, portraits, and/or pictures for certain commercial purposes. In addition, similar legislation has been filed in the U.S. Congress.<sup>2</sup>

###### Current Florida Statutory Prohibitions on Unauthorized Use of Name or Image

The Florida Statutes have prohibited the unauthorized use of a persons name or image for commercial purposes since 1967. Under, s. 540.08, F.S., the "commercial misappropriation law", a person may not publish, print, display or otherwise publicly use for purposes of trade or for any commercial or advertising purpose, the name, portrait, photograph, or other likeness of any natural person without the express written or oral consent to such use given by:

- Such person; or
- Any other person, firm or corporation authorized in writing by such person to license the commercial use of her or his name or likeness; or
- If such person is deceased, any person, firm or corporation authorized in writing to license the commercial use of her or his name or likeness, or if no person, firm or corporation is so authorized, then by any one from among a class composed of her or his surviving spouse and surviving children.

A person's "surviving spouse" is defined as the person's surviving spouse under the law of her or his domicile at the time of her or his death, whether or not the spouse has later remarried; and a person's "children" are her or his immediate offspring and any children legally adopted by the person. Consent must be given on behalf of a minor by the guardian of her or his person or by either parent.

The provisions of the commercial misappropriation law do not apply to:

- The publication, printing, display, or use of the name or likeness of any person in any newspaper, magazine, book, news broadcast or telecast, or other news medium or publication as part of any bona fide news report or presentation having a current and legitimate public interest and where such name or likeness is not used for advertising purposes;

<sup>1</sup> Oklahoma has passed similar legislation; Louisiana passed a memorial urging Congress to pass similar legislation; similar bills are pending in at least the following states: Arizona, Georgia, and Texas. North Dakota has legislation pending that proposes a study to review the issue.

<sup>2</sup> Oklahoma Congressman Dan Boren recently introduced H.R. 269 in the U.S. Congress, which provides prohibitions similar to those proposed in this bill and legislation proposed in other states. H.R. 5772 and H.R. 5755 were proposed in 2006.

- The use of such name, portrait, photograph, or other likeness in connection with the resale or other distribution of literary, musical, or artistic productions or other articles of merchandise or property where such person has consented to the use of her or his name, portrait, photograph, or likeness on or in connection with the initial sale or distribution thereof; or
- Any photograph of a person solely as a member of the public and where such person is not named or otherwise identified in or in connection with the use of such photograph.
- Use of the name or likeness of a person occurring 40 years after the death of such person.

If the required consent is not obtained, the person whose name, portrait, photograph, or other likeness is used, or any person, firm, or corporation authorized by the person in writing to license the commercial use of her or his name or likeness, or, if the person whose likeness is used is deceased, any person, firm, or corporation having the right to give consent may bring a civil action to enjoin unauthorized publication, printing, display or other public use, and to recover damages for any loss or injury sustained by reason thereof, including an amount which would have been a reasonable royalty, and punitive or exemplary damages.

The remedies provided for in the commercial misappropriation law are in addition to and not in limitation of the remedies and rights of any person under the common law against the invasion of her or his privacy.

This provision has long been interpreted by the courts to prohibit the unauthorized use of a person's name or likeness to directly promote a product or service because of the way that the use associates the person's name or personality with something else.<sup>3</sup> In 2002, a federal court in Florida noted that "[t]he names, likeness, and other indicia of a person's identity are used 'for the purposes of trade'... if they... are placed on merchandise marketed by the user".<sup>4</sup> However, in 2005, the Florida Supreme Court noted that an interpretation that the statute absolutely bars the use of an individual's name without consent for any purpose would raise grave questions as to its constitutionality.<sup>5</sup> The court also noted that the common usage of the term "commercial" in the commercial misappropriation context is limited to the promotion of a product or service and that "expressive works", such as a motion picture or work of art, should be protected by the First Amendment.<sup>6</sup>

### **Department of Defense Regulations**

The U.S. Department of Defense (DOD), Joint Ethics Regulation 5500-7R, s. 3-209, prohibits DOD employees, in their official capacities, from stating or implying endorsement of a nonfederal entity, event, product, service, or enterprise. DOD employees include any active duty member of the Army, Navy, Air Force or Marine Corps and any Reserve or National Guard member while performing official duties. Purely personal, unofficial volunteer efforts to support fundraising outside the federal government workplace are not prohibited where the efforts do not imply DOD endorsement.<sup>7</sup>

### **Constitutional Protection**

The Florida courts have long recognized the right of privacy, violation of which is redressed by the courts. The right of privacy is defined as the right of an individual to be let alone and to live a life free from unwarranted publicity. However, the court has also noted that:

[T]he right of privacy has its limitations. Society also has its rights. The right of the general public to the dissemination of news and information must be protected and conserved. Freedom of speech and of the press must be protected....The right of privacy does not prohibit the publication

<sup>3</sup> Tyne v. Time Warner Entertainment Co., L.P., 901 So.2d 802, 807 (Fla. 2005).

<sup>4</sup> Lane v. MRA Holdings, LLC, 242 F.Supp.2d 1205 (M.D.Fla.2002).

<sup>5</sup> Tyne v. Time Warner Entertainment Co., L.P., 901 So.2d 802, 807 (Fla. 2005); quoting Valentine v. C.B.S., Inc., 698 F.2d 430 (11th Cir.1983).

<sup>6</sup> Tyne v. Time Warner Entertainment Co., L.P., 901 So.2d 802, 809 (Fla. 2005).

<sup>7</sup> DOD 5500.7R, s.3-300, a (1).

of matter which is of legitimate public or general interest. At some point the public interest in obtaining information becomes dominant [ ] over the individual's desire for privacy. It has been said that the truth may be spoken, written, or printed about all matters of a public nature, as well as matters of a private nature in which the public has a legitimate interest.<sup>8</sup>

### **Common Law Tort of Invasion of Privacy**

In 1996, the Florida Supreme Court established the four categories included within the common law tort of invasion of privacy: (1) appropriation-the unauthorized use of a person's name or likeness to obtain some benefit; (2) intrusion-physically or electronically intruding into one's private quarters; (3) public disclosure of private facts-the dissemination of truthful private information which a reasonable person would find objectionable; and (4) false light in the public eye-publication of facts which place a person in a false light even though the facts themselves may not be defamatory.<sup>9</sup>

One of the wrongs constituting the tort of invasion of privacy is appropriation, that is, the unauthorized use of a person's name or likeness to obtain some benefit, or, as otherwise stated, the commercial exploitation of the property value of one's name, or the unwarranted appropriation or exploitation of one's personality. The elements of common-law invasion of privacy based on the commercial misappropriation of a person's likeness coincide with the elements of the unauthorized publication of a name or likeness in violation of the s. 540.08, F.S., the Florida commercial misappropriation statute.<sup>10</sup> The remedies provided under the statute are in addition to and not in limitation of the remedies and rights of any person under the common law against the invasion of his or her privacy.

The Florida courts also recognize the tort of invasion of privacy by public disclosure of private facts,<sup>11</sup> and define the tort as follows: One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that: (a) would be highly offensive to a reasonable person, and (b) is not a legitimate concern to the public.

### **EFFECT OF PROPOSED CHANGES**

This bill prohibits use of the name or image of a member of the armed forces for the purpose of advertising goods or services, or for solicitation of patronage by a business enterprise, without the service member's consent. Use of the name or image of a service member killed in the line of duty is also prohibited unless prior consent is obtained from the surviving spouse, personal representative, or closest living relative by blood or marriage. Violation of the prohibition is a first degree misdemeanor punishable by up to 1 year in jail<sup>12</sup> or a \$1,000 fine.<sup>13</sup>

The bill defines the term "member of the armed forces" as an officer or enlisted member of the Army, Navy, Air Force, Marine Corps, or Coast Guard including members of the National Guard, United States Reserve Forces, and any member who was killed in the line of duty.

It appears that s. 540.08, F.S., currently protects the names and images of military personnel in a manner consistent with this bill and to the extent permissible under the U.S. Constitution. That section does not, however, impose a criminal penalty for violations as does this bill. This bill imposes a criminal penalty for violations, but it is uncertain that the provisions of the bill are sufficient to support a criminal prosecution for violation of the law created by the bill.

<sup>8</sup> Cape Publications, Inc. v. Hitchner, 549 So.2d 1374, 1377 (Fla. 1989); quoting Cason v. Baskin, 20 So.2d 243, 251 (1944) (quoting 41 Am.Jur. 935).

<sup>9</sup> Allstate Ins. Co. v. Ginsberg, 863 So.2d 156 (Fla. 2003).

<sup>10</sup> Lane v. MRA Holdings, LLC, 242 F. Supp. 2d 1205 (M.D. Fla. 2002).

<sup>11</sup> Doe v. Univision Television Group, Inc., 717 So.2d 63 (Fla. 3rd DCA 1998); See Cape Publications, Inc. v. Hitchner, 549 So.2d 1374, 1377 (Fla. 1989), appeal dismissed, 493 U.S. 929, 110 S.Ct. 296, 107 L.Ed.2d 276 (1989).

<sup>12</sup> s. 775.082, F.S.

<sup>13</sup> s. 775.083, F.S.

It appears that this bill will not affect a service member's ability to bring a civil lawsuit alleging violation of his or her right of privacy, invasion of privacy, or commercial misappropriation under s. 540.08, F.S.

**C. SECTION DIRECTORY:**

Section 1. Prohibits use of the name or image of a member of the armed services under certain circumstances; imposes a criminal penalty for violations; provides a definition of a member of the armed services.

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

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

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

1. Revenues: None.

2. Expenditures: The bill appears to have an indeterminate but minimal fiscal impact.

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

1. Revenues: None.

2. Expenditures: The bill appears to have indeterminate but minimal fiscal impact.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.**

**D. FISCAL COMMENTS:** This bill may result in a small number of additional prosecutions, which may have an insignificant fiscal impact on the state and local governments responsible for paying the costs of prosecutions and incarcerating violators.

**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 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:** This bill does not affect any agency required to adopt administrative rules pursuant to ch. 120, F.S., the Florida Administrative Procedure Act.

**C. DRAFTING ISSUES OR OTHER COMMENTS:** The activity this bill seeks to prohibit appears to be prohibited by current law, specifically s. 540.08, F.S., which was first enacted in 1967. That section does not, however, impose a criminal penalty for violations. This bill imposes a criminal penalty but it is unclear whether the provisions of the bill are sufficient to support a criminal prosecution for violation of the new law without extensive judicial interpretation.

Adria Harper, Director of the First Amendment Foundation offered the following comment in response to a staff request: "It is our understanding that the statute you cite, Section 540.08, F.S., already

prohibits the type of activity provided by the bill. Thus, HB 1159 is redundant and could result in a conflict with the current law and presumably, unintended litigation.”

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

#### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

N/A

A bill to be entitled

An act relating to the unauthorized use of the name or image of a member of the armed forces for business purposes; prohibiting a person from using the name or image of a member of the armed forces; providing exceptions; defining the term "member of the armed forces"; providing criminal penalties; providing an effective date.

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

Section 1. Unauthorized use of the name or image of a member of the armed forces prohibited.--

(1) (a) A person may not use the name or image of a member of the armed forces for the purpose of advertising for the sale of goods, wares, services, or merchandise, or for the solicitation of patronage by any business enterprise, except as provided in paragraph (b).

(b) A person may use the name or image of a member of the armed forces if the person obtains the prior consent of the member of the armed forces or, if the member is deceased, the prior consent of the surviving spouse, personal representative, or closest living relative by blood or marriage of the deceased.

(2) As used in this section, the term "member of the armed forces" means an officer or enlisted member of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States, including the Florida National Guard and United States Reserve Forces, including any member who was killed in the line of duty.

HB 1159

2007

29           (3) A person who violates paragraph (1)(a) commits a  
30 misdemeanor of the first degree, punishable as provided in s.  
31 775.082 or s. 775.083, Florida Statutes.

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



HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

Bill No. **HB 1159**

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: Committee on Military &  
2 Veterans' Affairs  
3 Representative Grimsley offered the following:  
4

**Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Unauthorized use of the name or image of a  
8 member of the armed forces prohibited.-

9 (1) (a) A person may not use the name, portrait,  
10 photograph, or other image of a member of the armed forces for  
11 the purpose of trade or for any commercial or advertising  
12 purpose, except as provided in paragraph (b). For purpose of  
13 this subsection, the phrase "commercial or advertising purpose"  
14 does not include the publication of a name, portrait,  
15 photograph, or other image when used in connection with a news  
16 story or editorial commentary in a print or electronic version  
17 of a newspaper or magazine.

18 (b) A person may use the name, portrait, photograph, or  
19 other image of a member of the armed forces if the person  
20 obtains the prior consent of the member of the armed forces or,  
21 if the member is deceased, the prior consent of the surviving

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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

22 spouse, personal representative, or closest living relative by  
23 blood or marriage of the deceased.

24 (2) As used in this section, the term "member of the armed  
25 forces" means an officer or enlisted member of the Army, Navy,  
26 Air Force, Marine Corps, or Coast Guard of the United States,  
27 including the Florida National Guard and United States Reserve  
28 Forces, including any member who was killed in the line of duty.

29 (3) A person from whom consent is required by this section  
30 shall have a right of action against any person using a name,  
31 portrait, photograph, or other image in violation of this  
32 section. In such action, the plaintiff shall be entitled to:

33 (a) An injunction preventing further use of the name,  
34 portrait, photograph, or other image without consent. In such  
35 action, damage to the plaintiff shall be presumed and it is not  
36 necessary for the plaintiff to prove irreparable harm.

37 (b) A judgment in the amount of the gross revenue received  
38 by the defendant in connection with use of the name, portrait,  
39 photograph, or other image in violation of this section.

40 (4) This section does not apply to the name, portrait,  
41 photograph, or image of an historical figure who has been  
42 deceased for 50 years or more.

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

44  
45 ===== T I T L E A M E N D M E N T =====

46 The title is amended as follows:

47 On page 1, line 7, delete that line and insert:

48 Forces"; providing for a civil right of action for injunctive  
49 relief and monetary damages; providing an

**DRAFT PCB**  
**GEAC 07-26**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: DRAFT ANALYSIS OF DRAFT PCB GEAC 07-26  
SPONSOR(S):  
TIED BILLS: IDEN./SIM. BILLS: CS/SB 1026

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

---

**SUMMARY ANALYSIS**

This Proposed Council Bill (PCB) codifies an amendment to s. 6, Art. VII of the State Constitution, which was approved by the voters in the November 2006 general election. Consistent with the constitutional provision, the PCB provides that each partially or totally disabled veteran who is age 65 or older shall receive an ad valorem discount on homestead property if the veteran: has a disability that is combat related, was a resident of the state of Florida when entering military service, and was honorably discharged from military service. The discount shall be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs.

To qualify for the discount, a veteran must, by March 1, submit to the county property appraiser: proof of residency at the time of entering military service, an official letter from the United States Department of Veterans Affairs that states the percentage of the veteran's disability and evidence that the disability is combat-related, a copy of the veteran's honorable discharge, and proof of age. A veteran who is otherwise entitled to the discount but who misses the March 1 deadline may petition the value adjustment board requesting the discount under the same procedure by which someone who misses the deadline may petition for a homestead exemption. The property appraiser must notify the applicant in writing of the reasons for denying an application for the discount by July 1 of the year for which the application was filed. The veteran may reapply in a subsequent year using the same procedure. All notifications from the property appraiser must specify the right to appeal to the value adjustment board.

The PCB provides procedures for property appraisers to apply the discount. It allows a county to waive the requirement that a veteran reapply annually for the discount. If reapplication is waived, the veteran is subject to certain penalties for failing to notify the property appraiser of a change in eligibility for the discount.

This PCB takes effect upon becoming a law and applies retroactively to December 7, 2006.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

#### B. EFFECT OF PROPOSED CHANGES:

##### CURRENT SITUATION

##### A. Property Assessments

Section 4, Art. VII of the State Constitution requires that all property be assessed at its just value for ad valorem tax purposes. Just value has been interpreted to mean fair market value. Section 4 also provides exceptions to this requirement for agricultural land, land producing high water recharge to Florida's aquifers, and land used exclusively for non-commercial recreational purposes, all of which may be assessed solely on the basis of their character or use. Additionally, tangible personal property that is held as inventory may be assessed at a specified percentage of its value or may be totally exempted.

Section 4(c), Art. VII of the State Constitution, popularly known as the "Save Our Homes" amendment, limits increases in the assessment of homestead property. Annual increases in homestead property values are limited to 3 percent or the increase in the Consumer Price Index, whichever is lower. If there is a change in ownership, the property is assessed at its just value on the following January 1. The value of changes, additions, reductions or improvements to the homestead property is assessed as provided by general law.

##### B. Property Tax Exemptions

The Legislature may only grant property tax exemptions that are authorized in the constitution, and modifications to property tax exemptions must be consistent with the constitutional provision authorizing the exemption.<sup>1</sup> Section 6, Art. VII of the State Constitution authorizes an exemption from ad valorem taxation for homestead property owned by a taxpayer and used as the owner's permanent residence or the permanent residence of another who is legally or naturally dependent upon the owner. The value of the homestead exemption is currently \$25,000 of the assessed value of the real estate. Section 196.031, F.S., primarily implements the homestead exemption, although other statutory sections provide specific procedures and conditions, i.e., procedures for application for the exemption (s. 196.011, F.S.), the extent of the exemption (s. 196.041, F.S.), and the effect of rental of homestead property.

Article VII, s. 3(b) of the State Constitution requires that not less than \$500 of property, as established in general law, of widows and widowers and persons who are blind or totally and permanently disabled be exempt from taxation. The widows/widowers exemption is implemented in s. 196.202, F.S.

Section 196.101, F.S., exempts the total value of homesteads used and owned by quadriplegics, paraplegics, hemiplegics, or "other totally and permanently disabled person, as defined in s. 196.012(11), F.S., who must use a wheel chair for mobility or who is legally blind..." Section 196.012(11), F.S., defines a "totally and permanently disabled person" as a person certified as totally and permanently disabled by two licensed physicians, by the U.S. Department of Veterans Affairs, or by the Social Security Administration.

<sup>1</sup>See *Sebring Airport Authority v. McIntyre*, 783 So. 2d 238 (Fla. 2001). See also, *Archer v. Marshall*, 355 So. 2d 781, 784. (Fla. 1978). See also, *Am Fi Inv. Corp. v. Kinney*, 360 So. 2d 415 (Fla. 1978). *Sparkman v. State*, 58 So. 2d 431, 432 (Fla. 1952).

### C. Exemptions for Disabled Ex-Service Members

Chapter 196, F.S., establishes a number of specific exemptions for disabled ex-service members. Section 196.081, F.S., provides that an honorably discharged veteran with a service-connected total and permanent disability, surviving spouses of qualifying veterans, and spouses of Florida resident veterans who died from service-connected causes while on active duty as a member of the United States Armed Forces are entitled to an exemption on real estate used and owned as a homestead less any portion used for commercial purposes. To be eligible for this exemption, the applicant must own, occupy and have been a permanent resident of this state as of January 1st of the tax year for which the exemption is being claimed. The applicant must provide a letter from the United States Government or United States Department of Veterans Affairs as proof of service-connected total and permanent disability or the death of the spouse while on active duty. The Department of Revenue indicated that approximately 29,912 exemptions were issued under this section during 2005.

Section 196.091, F.S., provides any real estate used and owned as a homestead by an ex-service member who has been honorably discharged with a service-connected total disability and who has a certificate from the United States Government or United States Department of Veterans Affairs certifying that the ex-service member is receiving or has received special pecuniary assistance due to disability requiring specially adapted housing and required to use a wheelchair for his or her transportation is exempt from taxation. The applicant must provide a certificate of disability from the United States Government or the United States Department of Veterans Affairs in order to qualify for this exemption. The Department of Revenue estimated that approximately 241 exemptions were issued under this section during 2005.

Section 196.24, F.S., provides a \$5,000 reduction in taxable value to any resident, "ex-service member"<sup>2</sup> who has been disabled to a degree of 10 percent or more while serving during a period of wartime service or by misfortune while in active service.<sup>3</sup> To qualify, the applicant must produce a certificate of disability from the United States Government or the United States Department of Veterans Affairs. On average, each person qualifying for the exemption receives a property tax reduction of \$100 per year. An estimated 89,203 exemptions were granted statewide under this provision in 2005.

### D. Discount on Ad Valorem Tax for Certain Veterans

In the November 2006 general election, voters approved an amendment to s. 6, Art. VII of the State Constitution which allows veterans who are age 65 or older with a combat-related disability to receive a discount from the amount of the ad valorem tax otherwise owed on homestead property. In order to qualify for this discount, the veteran must demonstrate: (1) he or she was a Florida resident at the time of entering the military service; (2) the disability was combat-related; and (3) the veteran was honorably discharged upon separation from military service. The discount is in a percentage equal to the percentage of the veteran's permanent, combat-related disability, as determined by the U.S. Department of Veterans Affairs or its predecessor.

Applicants for this discount are required to submit documentation supporting their eligibility to the county tax appraiser by March 1 of each year. The constitutional amendment also granted authority to

<sup>2</sup> Pursuant to Title 38, USC, sec. 4303 - (13), the term "service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32. Subsection (16) defines the term "uniformed services" as the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency.

<sup>3</sup> This statutory provision was created by ch. 69-55, L.O.F. However, it was preceded by s. 192.11, F.S., as authorized by Art. IX, s. 9 of the State Constitution (1885). That provision in the constitution provided that: "There shall be exempt from taxation property to the value of five hundred dollars to every widow and to every person who is a bona fide resident of the State and has lost a limb or been disabled in war or by misfortune."

the Legislature to waive the requirement for an annual application. Required documentation includes the following: proof of residency at the time of entering military service; proof that the injury was combat-related; an official letter from the United States Department of Veteran's Affairs stating the percentage of the veteran's permanent disability; and a copy of the veteran's honorable discharge. The constitutional amendment also provides that if the property appraiser denies the request for a discount, the appraiser must notify the applicant in writing of the reasons for the denial, and the veteran may reapply.

This constitutional amendment was self-executing and took effect December 7, 2006. Similar self-executing constitutional amendments have been codified in Florida Statutes to avoid confusion in that the relevant information on exemptions from ad valorem taxes may be found in both the State Constitution and chapter 196, Florida Statutes.

### **EFFECT OF PROPOSED CHANGES**

This PCB creates s. 196.082, F.S., to codify an amendment to s. 6, Art. VII of the State Constitution, that was approved by the voters in the November 2006 general election. The constitutional amendment and the PCB provide that each partially or totally disabled veteran who is age 65 or older shall receive an ad valorem discount on homestead property if:

- The veteran's disability is combat related,
- The veteran was a resident of the state of Florida when he or she entered military service, and
- The veteran was honorably discharged from military service.

The constitutional amendment and the PCB require the discount to be in a percentage equal to the percentage of the veteran's permanent, service-connected disability as determined by the United States Department of Veterans Affairs. In order to qualify for the discount, a veteran must submit, by March 1, to the county property appraiser:

- Proof of residency at the time of entering military service;
- An official letter from the United States Department of Veterans Affairs which states the percentage of the veteran's service-connected disability and evidence that the disability is combat-related;
- A copy of the veteran's honorable discharge; and
- Proof of age.

A veteran who is otherwise entitled to the discount but who misses the March 1 deadline may petition the value adjustment board requesting the discount under the same procedure by which someone who misses the deadline may petition for a homestead exemption.

The property appraiser must notify an applicant in writing of the reasons for a denial of the discount by July 1 of the year for which the application was filed. This notification must specify the right to appeal to the value adjustment board. The applicant may reapply in a subsequent year using the same procedure.

The PCB requires property appraisers to apply the discount by reducing the taxable value before certifying the tax roll. The property appraiser is directed to:

- Apply all other exemptions, including local option exemptions, and deduct those exemptions from the assessed value;
- Subtract the percentage discount portion of the remaining value which is attributable to a service-connected disability to yield the discounted taxable value;
- Include the resulting taxable value in the certification for use by taxing authorities in setting millage; and
- Place the discounted amount on the tax roll when it is extended.

The PCB amends s. 196.011(9), F.S., to allow a county, at the request of the property appraiser and by a majority vote of its governing body, to waive the annual application requirement for the veteran's disability discount. If reapplication is waived, the penalties and procedures that apply for failure to notify the property appraiser of a change in eligibility for the homestead exemption also apply to the veteran's disability discount.

This PCB takes effect upon becoming a law and applies retroactively to December 7, 2006.

**C. SECTION DIRECTORY:**

Section 1. Creates s. 196.082, F.S., implementing s. (6)(g), Art. VII of the State Constitution; providing that certain disabled veterans must receive a discount from the amount of the ad valorem tax levied on their homestead property; providing conditions under which the discount applies; providing application procedures; imposing requirements upon a property appraiser who denies such an application; providing for an appeal to the value adjustment board; allowing reapplication in a subsequent year; providing requirements for the property appraiser in applying the discount.

Section 2. Amends s. 196.011, F.S.; authorizing the governing body of a county to waive the requirement that an annual application be made for a veteran's disability discount; requiring a veteran who receives such a discount to notify the property appraiser of any changes in the use of the property or in his or her degree of disability; providing penalties for noncompliance.

Section 3. Provides that the PCB takes effect upon becoming a law and applies retroactively to December 7, 2006.

**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: To the extent that s. 6, Art. VII of the State Constitution, which is codified in this PCB, reduces the property tax base, a local government may experience a reduction in ad valorem tax revenues. The estimated statewide recurring impact is \$20.1 million, assuming no off-setting changes in millage rates by local governments.<sup>4</sup>
2. Expenditures: None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:** Section 6, Art. VII of the State Constitution, which is codified in this PCB, provides a discount on ad valorem tax for homestead property for veterans with a combat-related disability who meet certain eligibility criteria. The percentage of the discount corresponds to the percentage of the veteran's combat-related, service disability.

**D. FISCAL COMMENTS:** None.

<sup>4</sup> See Measures Affecting Revenue and Tax Administration – 2006 Regular Session.  
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### 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 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: Under the provisions of s. 6, Art. VII of the State Constitution, one of the criteria to be eligible for a discount on ad valorem taxes related to homestead property is that a veteran with a combat-related disability must have been a resident of Florida when the veteran entered military service. As such, this provision distinguishes between veterans who entered military service as Florida residents and have a combat-related disability and those veterans who entered military service as residents of other states and now reside in Florida but also have a combat-related disability.

This eligibility criterion potentially raises a constitutional concern related to equal protection. In *Zobel v. Williams*,<sup>5</sup> the U.S. Supreme Court found that the Alaska dividend distribution plan violated the Equal Protection Clause of the Fourteenth Amendment since the state had shown no valid state interests which were rationally served by the distinction made between citizens who established residency before 1959 and those who have become residents since then. In 1985, the United States Supreme Court in *Hooper v. Bernalillo County Assessor* struck down the portion of a New Mexico statute granting a tax exemption limited to Vietnam veterans who resided in that state before May 8, 1976 as violative of the Equal Protection Clause.<sup>6</sup> Relying on *Zobel*, the *Hooper* court found that favoring established residents over new residents to reward some for their prior contributions is not supported by an identifiable state interest.<sup>7</sup> The *Hooper* court also noted that statutes conditioning veterans' benefits on state residence at the time of entering military service have survived challenges under the Equal Protection Clause, but those cases were decided before the *Zobel* decision.<sup>8</sup>

B. RULE-MAKING AUTHORITY: This bill does not grant any agency a specific power, impose a duty that must be implemented by an agency, or require an agency to adopt rules to facilitate implementation.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

D. STATEMENT OF THE SPONSOR:

### IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Not applicable.

<sup>5</sup> 457 U.S. 55 (1982).

<sup>6</sup> 472 U.S. 612 (1985).

<sup>7</sup> See *Hooper*, 472 U.S. at 623.

<sup>8</sup> See *Hooper*, 472 U.S. at 622, FN11.

DRAFT PCB GEAC 07-26

ORIGINAL

YEAR

1 A bill to be entitled  
 2 An act relating to the ad valorem taxation of homestead  
 3 property; creating s. 196.082, F.S.; implementing s.  
 4 (6)(g), Art. VII of the State Constitution; providing that  
 5 certain disabled veterans must receive a discount from the  
 6 amount of the ad valorem tax levied on their homestead  
 7 property; providing conditions under which the discount  
 8 applies; providing application procedures; imposing  
 9 requirements upon a property appraiser who denies such an  
 10 application; providing for an appeal to the value  
 11 adjustment board; allowing reapplication in a subsequent  
 12 year; providing requirements for the property appraiser in  
 13 applying the discount; amending s. 196.011, F.S.;  
 14 authorizing the governing body of a county to waive the  
 15 requirement that an annual application be made for a  
 16 veteran's disability discount; requiring a veteran who  
 17 receives such a discount to notify the property appraiser  
 18 of any changes in the use of the property or in his or her  
 19 degree of disability; providing penalties for  
 20 noncompliance; providing for retroactivity; providing an  
 21 effective date.

22  
 23 Be It Enacted by the Legislature of the State of Florida:

24  
 25 Section 1. Section 196.082, Florida Statutes, is created to  
 26 read:

27 196.082 Discounts for disabled veterans.--

28 (1) Each veteran who is age 65 or older and is partially or  
 29 totally permanently disabled shall receive a discount from the

DRAFT PCB GEAC 07-26

ORIGINAL

YEAR

30 amount of the ad valorem tax otherwise owed on homestead property  
 31 that the veteran owns and resides in if:

32 (a) The disability was combat-related;

33 (b) The veteran was a resident of this state at the time of  
 34 entering the military service of the United States; and

35 (c) The veteran was honorably discharged upon separation  
 36 from military service.

37 (2) The discount shall be in a percentage equal to the  
 38 percentage of the veteran's permanent, service-connected  
 39 disability as determined by the United States Department of  
 40 Veterans Affairs.

41 (3) To qualify for the discount granted under this section,  
 42 an applicant must submit to the county property appraiser by  
 43 March 1:

44 (a) Proof of residency at the time of entering military  
 45 service;

46 (b) An official letter from the United States Department of  
 47 Veterans Affairs which states the percentage of the veteran's  
 48 service-connected disability and evidence that reasonably  
 49 identifies the disability as combat-related;

50 (c) A copy of the veteran's honorable discharge; and

51 (d) Proof of age as of January 1 of the year to which the  
 52 discount will apply.

53  
 54 Any applicant who is qualified to receive a discount under this  
 55 section and who fails to file an application by March 1 may file  
 56 an application for the discount and may file, pursuant to s.  
 57 194.011(3), a petition with the value adjustment board requesting  
 58 that the discount be granted. Such application and petition shall

**DRAFT PCB GEAC 07-26**

ORIGINAL

YEAR

59 be subject to the same procedures as for exemptions set forth in  
 60 s. 196.011(8).

61 (4) If the property appraiser denies the request for a  
 62 discount, the appraiser must notify the applicant in writing,  
 63 stating the reasons for denial, on or before July 1 of the year  
 64 for which the application was filed. The applicant may reapply  
 65 for the discount in a subsequent year using the procedure in this  
 66 section. All notifications must specify the right to appeal to  
 67 the value adjustment board and the procedures to follow in  
 68 obtaining such an appeal under s. 196.193(5).

69 (5) The property appraiser shall apply the discount by  
 70 reducing the taxable value before certifying the tax roll to the  
 71 tax collector.

72 (a) The property appraiser shall first ascertain all other  
 73 applicable exemptions, including exemptions provided pursuant to  
 74 local option, and deduct all other exemptions from the assessed  
 75 value.

76 (b) The percentage discount portion of the remaining value  
 77 which is attributable to service-connected disabilities shall be  
 78 subtracted to yield the discounted taxable value.

79 (c) The resulting taxable value shall be included in the  
 80 certification for use by taxing authorities in setting millage.

81 (d) The property appraiser shall place the discounted  
 82 amount on the tax roll when it is extended.

83 Section 2. Subsection (9) of section 196.011, Florida  
 84 Statutes, is amended to read:

85 196.011 Annual application required for exemption.--

86 (9)(a) A county may, at the request of the property  
 87 appraiser and by a majority vote of its governing body, waive the

**DRAFT PCB GEAC 07-26**

ORIGINAL

YEAR

88 | requirement that an annual application or statement be made for  
 89 | exemption of property within the county after an initial  
 90 | application is made and the exemption granted. The waiver under  
 91 | this subsection of the annual application or statement  
 92 | requirement applies to all exemptions under this chapter except  
 93 | the exemption under s. 196.1995. Notwithstanding such waiver,  
 94 | refiling of an application or statement shall be required when  
 95 | any property granted an exemption is sold or otherwise disposed  
 96 | of, when the ownership changes in any manner, when the applicant  
 97 | for homestead exemption ceases to use the property as his or her  
 98 | homestead, or when the status of the owner changes so as to  
 99 | change the exempt status of the property. In its deliberations on  
 100 | whether to waive the annual application or statement requirement,  
 101 | the governing body shall consider the possibility of fraudulent  
 102 | exemption claims which may occur due to the waiver of the annual  
 103 | application requirement. It is the duty of the owner of any  
 104 | property granted an exemption who is not required to file an  
 105 | annual application or statement to notify the property appraiser  
 106 | promptly whenever the use of the property or the status or  
 107 | condition of the owner changes so as to change the exempt status  
 108 | of the property. If any property owner fails to so notify the  
 109 | property appraiser and the property appraiser determines that for  
 110 | any year within the prior 10 years the owner was not entitled to  
 111 | receive such exemption, the owner of the property is subject to  
 112 | the taxes exempted as a result of such failure plus 15 percent  
 113 | interest per annum and a penalty of 50 percent of the taxes  
 114 | exempted. Except for homestead exemptions controlled by s.  
 115 | 196.161, it is the duty of the property appraiser making such  
 116 | determination to record in the public records of the county a

DRAFT PCB GEAC 07-26

ORIGINAL

YEAR

117 notice of tax lien against any property owned by that person or  
 118 entity in the county, and such property must be identified in the  
 119 notice of tax lien. Such property is subject to the payment of  
 120 all taxes and penalties. Such lien when filed shall attach to any  
 121 property, identified in the notice of tax lien, owned by the  
 122 person who illegally or improperly received the exemption. Should  
 123 such person no longer own property in that county, but own  
 124 property in some other county or counties in the state, it shall  
 125 be the duty of the property appraiser to record a notice of tax  
 126 lien in such other county or counties, identifying the property  
 127 owned by such person or entity in such county or counties, and it  
 128 shall become a lien against such property in such county or  
 129 counties.

130 (b) A county may, at the request of the property appraiser  
 131 and by a majority vote of its governing body, waive the  
 132 requirement that an annual application be made for the veteran's  
 133 disability discount granted pursuant to s. 6(g), Art. VII of the  
 134 State Constitution after an initial application is made and the  
 135 discount granted. It is the duty of the disabled veteran  
 136 receiving a discount for which annual application has been waived  
 137 to notify the property appraiser promptly whenever the use of the  
 138 property or the percentage of disability to which the veteran is  
 139 entitled changes. If a disabled veteran fails to notify the  
 140 property appraiser and the property appraiser determines that for  
 141 any year within the prior 10 years the veteran was not entitled  
 142 to receive all or a portion of such discount, the penalties and  
 143 processes in paragraph (a) relating to the failure to notify the  
 144 property appraiser of ineligibility for an exemption shall apply.

145 (c) ~~(b)~~ For any exemption under s. 196.101(2), the statement

DRAFT PCB GEAC 07-26

ORIGINAL

YEAR

146 concerning gross income must be filed with the property appraiser  
 147 not later than March 1 of every year.

148 (d)~~(e)~~ If an exemption for which the annual application is  
 149 waived pursuant to this subsection will be denied by the property  
 150 appraiser in the absence of the refileing of the application,  
 151 notification of an intent to deny the exemption shall be mailed  
 152 to the owner of the property prior to February 1. If the  
 153 property appraiser fails to timely mail such notice, the  
 154 application deadline for such property owner pursuant to  
 155 subsection (1) shall be extended to 28 days after the date on  
 156 which the property appraiser mails such notice.

157 Section 3. This act shall take effect upon becoming a law  
 158 and shall apply retroactively to December 7, 2006.