Finance & Tax Council

Friday, April 9, 2010
11:30 AM
404 HOB

Larry Cretul
Speaker

Ellyn Setnor Bogdanoff
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Finance & Tax Council

Start Date and Time: Friday, April 09, 2010 11:30 am

End Date and Time: Friday, April 09, 2010 03:30 pm

Location: 404 HOB
Duration: 4.00 hrs

Consideration of the following bill(s):

CS/HB 159 Guaranty Associations by Insurance, Business & Financial Affairs Policy Committee, Legg
CS/HB 163 Prepaid Wireless Telecommunications Service by Energy & Utilities Policy Committee, Gibbons
HB 579 Admissions Tax by Holder
HB 843 Rural Enterprise Zones by Boyd
HB 1065 Biodiesel Fuel by Precourt
CS/HB 1095 Special Districts by Military & Local Affairs Policy Committee, Pafford
HB 1279 Assessment of Property for Back Ad Valorem Taxes by Rivera
HB 1295 City of Lauderhill, Broward County by Porth
PCS for HB 1387 -- Ad Valorem Tax Assessments
CS/HB 1389 Space and Aerospace Infrastructure by Economic Development Policy Committee, Crisafulli
HB 7179 Qualifying Improvements to Real Property by Energy & Utilities Policy Committee, Precourt

Consideration of the following proposed council bill(s):

PCB FTC 10-08 -- Property Tax
PCB FTC 10-10 -- Corporate Income Tax

Pursuant to rule 7.13, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Thursday, April 8, 2010.

By request of the Chair, all council members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Thursday, April 8, 2010.

NOTICE FINALIZED on 04/07/2010 16:09 by BAI

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 159 Guaranty Associations
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee, Legg and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2232

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	14 Y, 0 N, As CS	Callaway	Cooper
2)	Finance & Tax Council		Wilson	Langston
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The bill makes changes to the Florida Insurance Guaranty Association (FIGA), the Florida Life and Health Insurance Guaranty Association (FLAHIGA), and the Florida Workers' Compensation Insurance Guaranty Association (FWCIGA). Guaranty associations are non-profit corporations that assume responsibility for settling claims and refunding unearned premiums to policyholders of insolvent and liquidated insurance companies. Insurance companies are required by law to participate in guaranty associations as a condition of transacting business in Florida.

The bill combines the two automobile accounts in FIGA and changes the assessment recoupment process insurance companies use to recoup assessments levied by FIGA from their policyholders. If an insurance company becomes insolvent, FIGA can issue two types of assessments against property and casualty insurance companies to raise funds to pay the claims of the insolvent insurer – regular and emergency assessments. FIGA assesses member insurance companies directly for both assessments and the insurance company is allowed by law to pass the assessment on to their policyholders. This bill also exempts the recoupment of regular assessments levied by FIGA from the insurance premiums tax.

Regarding FLAHIGA, the bill increases the coverage limits for some types of claims covered by FLAHIGA, permits insurance agents to discuss the existence of FLAHIGA with potential or current life and health insurance policyholders or annuity purchasers, and makes numerous statutory changes to conform the FLAHIGA statutes with the National Association of Insurance Commissioners 2009 Model Act for life and health insurance guaranty associations.

The bill makes FWCIGA, rather than FIGA, responsible for covering employment liability claims of insolvent workers' compensation insurers.

The 2010 Revenue Estimating Conference has estimated that the insurance premiums tax exemption provided in this bill will have a recurring -$1.68M impact on state and local government revenues beginning in fiscal year 2010-2011.

The increased FLAHIGA coverage limits will enable policyholders of insolvent life and health insurance companies or purchasers annuities from insolvent life and health insurance companies to obtain a greater claim payment from FLAHIGA. Greater claims payments by FLAHIGA, however, could lead to a greater likelihood of a deficit in FLAHIGA and resulting assessments on member insurers because FLAHIGA is funded by assessments against member insurers if FLAHIGA does not have sufficient funds to pay claims.

The bill is effective on July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Guaranty Associations - Background

Chapter 631, F.S., relates to insurer insolvency and guaranty payments and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy.[1] Instead, they are either "rehabilitated" or "liquidated" by the state. In Florida, the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) is responsible for rehabilitating or liquidating insurance companies.[2]

Florida operates five insurance guaranty funds to ensure policyholders of liquidated insurers are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law.[3] A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance company. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums[4] to policyholders. Insurers are required by law to participate in guaranty associations as a condition of transacting business in Florida.

The bill makes changes to the Florida Insurance Guaranty Association which is the guaranty association for property and casualty insurance, the Florida Life and Health Insurance Guaranty Association which is the guaranty association for life and health insurance and annuities, and the

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[1] The Bankruptcy Code expressly provides that "a domestic insurance company" may not be the subject of a federal bankruptcy proceeding. 11 U.S.C. § 109(b)(2). The exclusion of insurers from the federal bankruptcy court process is consistent with federal policy generally allowing states to regulate the business of insurance. See 15 U.S.C. § 1012 (McCarran-Ferguson Act).

[2] Typically, insurers are put into liquidation when the company is insolvent whereas insurers are put into rehabilitation for numerous reasons, one of which is an unsound financial condition. The goal of rehabilitation is to return the insurer to a sound financial condition. The goal of liquidation, however, is to dissolve the insurer. *See* s. 631.051, F.S., for the grounds for rehabilitation and s. 631.061, F.S., for the grounds for liquidation.

[3] The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of an insolvent Health Maintenance Organization (HMO) and the Florida Workers' Compensation Insurance Guaranty Association is directed by law to protect policyholders of insolvent workers' compensation insurers. The Florida Self-Insurers Guaranty Association protects policyholders of insolvent individual self-insured employers for workers' compensation claims. The Florida Insurance Guaranty Association is responsible for paying claims for insolvent insurers for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

[4] The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for six months or one year, and which is still owed on the unexpired potion of the policy.

Florida Workers' Compensation Insurance Guaranty Association which is the guaranty association for workers' compensation insurance.

Florida Insurance Guaranty Association (FIGA)

Statutory provisions relating to FIGA, which was created in 1970, are contained in part II of chapter 631, F.S. FIGA operates under a board of directors and is a nonprofit corporation. FIGA is composed of all insurers licensed to sell property and casualty insurance in the state.

When a property and casualty insurance company becomes insolvent, FIGA is required by law to take over the claims of the insurer and pay the claims of the company's policyholders. This ensures policyholders that have paid premiums for insurance are not left without valid claims being paid. FIGA is responsible for claims on residential and commercial property insurance, automobile insurance, and liability insurance, among others.

The maximum claim amount FIGA will cover is $300,000 but special limits apply to damages to structure and contents on homeowners', condominium, and homeowners' association claims. For damages to structure and contents on homeowners' claims FIGA covers an additional $200,000, for a total of $500,000. For condominium and homeowners' association claims FIGA covers the lesser of policy limits or $100,000 multiplied by the number of units in the association. All claims are subject to a $100 FIGA deductible in addition to any deductible in the insurance policy.

FIGA obtains funds to pay claims of insolvent insurance companies primarily from the liquidation of assets of these companies done by the Division of Rehabilitation and Liquidation in the Department of Financial Services. FIGA also obtains funds from the liquidation of assets of insolvent insurers domiciled in other states but having claims in Florida.

In addition, after insolvency occurs, FIGA can issue two types of assessments against property and casualty insurance companies to raise funds to pay claims – regular and emergency[5] assessments. FIGA assesses member insurance companies directly for both assessments and the insurance company is allowed by law (s. 631.57(3)(a), F.S.) to pass the assessment on to their policyholders.

By law, FIGA is divided into three accounts:

- the auto liability account;
- the auto physical damage account; and
- the account for all other included insurance lines (the all-other account).[6]

FIGA has had two separate auto accounts since its inception. In 2008, 7 insurers wrote auto liability policies but no auto physical damage policies and 4 insurers wrote auto physical damage policies but no auto liability policies whereas 216 insurers wrote both auto liability and auto physical damage policies.[7] Thus, the large majority of auto insurers write both policies. Additionally, the National Association of Insurance Commissioners Property and Casualty Insurance Guaranty Association Model Act (Model Act) does not provide for two auto accounts. In the Model Act, all auto claims are paid from a single auto account.[8] Likewise, guaranty funds in other states do not separate the auto account into two accounts.[9]

Changes to FIGA Proposed by the Bill

The bill combines the two FIGA automobile accounts: the automobile liability account and the automobile physical damage account. According to representatives of FIGA, combining these accounts

[5] Emergency assessments can only be issued to pay claims of insurers rendered insolvent due to a hurricane.
[6] Section 631.55(2), F.S.
[7] Information obtained from the Office of Insurance Regulation on January 13, 2010 on file with the Insurance, Business, & Financial Affairs Policy Committee.
[8] Model Act on file with the Insurance, Business, & Financial Affairs Policy Committee.
[9] Information obtained from representative of FIGA.

will provide greater efficiencies for FIGA and will align FIGA with the Model Act and the guaranty funds of other states.[10]

The bill also changes the way insurance companies assessed by FIGA for deficits pass the assessment to their policyholders. The procedure used by FIGA to levy assessments against member insurance companies and the procedure used by member insurance companies to pass the assessment levied on to their policyholders are found in s. 631.57(3), F.S. Under current law, once FIGA's board determines an assessment is needed to pay claims, pay claim administration costs, or to pay bonds issued in accordance with the FIGA governing statute, the board certifies the need for an assessment levy to the Office of Insurance Regulation (OIR). The OIR reviews the certification submitted by FIGA to support the assessment levy need and amount. If the certification is sufficient, the OIR issues an order to all insurance companies subject to the FIGA assessment ordering the companies to pay the assessment to FIGA within 30 days.[11] Insurance companies paying the assessment can recoup the assessment amount from their policyholders. To do so, for regular assessments, the company must submit a rate filing to the OIR that raises rates in an amount that corresponds to the assessment amount paid by the insurer and to be recouped from the policyholders.[12] Once OIR approves the insurance company's rate filing, the rates are increased in an amount that results in a pass through of the assessment to the company's policyholders. This allows the insurance company to recoup the assessment from policyholders throughout the year upon renewal or issuance of a new policy. Once an insurer recoups the assessment amount from its policyholders, the insurer files another rate filing with the OIR reducing rates in an amount that corresponds to the regular assessment recouped.

The bill removes the requirement that insurance companies must do a rate filing to pass through a FIGA assessment to the companies' policyholders. Instead, the companies are allowed to apply a recoupment factor to the premium of the policies subject to the FIGA assessment. The recoupment factor is not approved by the OIR, but the companies must submit an informational statement to the OIR 15 days before they begin to recoup assessments that sets out the amount of the recoupment factor and an explanation as to how the recoupment factor will be applied to policyholders. The recoupment factor must be calculated so that assessments are recouped over a year at the minimum. The insurer can recoup assessments over a longer period if it wants. The recoupment factor can only apply to the types of policies that are subject to the FIGA assessment. If the insurer does not recoup the full amount of the assessment the company paid to FIGA during the initial 12 month recoupment period, the insurer can recoup over another 12 month period but must recalculate the recoupment factor so that only the amount of the assessment remaining is recouped. If the insurer recoups from its policyholders more than 15 percent of the assessment amount the insurer paid to FIGA, the insurer must refund the excess funds to its policyholders. Excess funds recouped that are 15 percent or less than the total assessment paid are given to FIGA. Within 90 days after the company completes its assessment recoupment, the company must file an informational statement with the OIR setting forth an accounting of the recoupment.

Under current law, an insurer's recoupment of regular assessments levied by FIGA are considered premium and thus the insurance company pays the insurance premium tax on the amount the company recoups for FIGA regular assessments. However, an insurer's recoupment of emergency assessments, also levied by FIGA, are not considered premium for the insurance company recouping the emergency assessments. Thus, the recoupment of emergency assessments is not premium for the insurance company and is not subject to the insurance premium tax. This bill provides FIGA regular assessment recoupments made by an insurance company for insolvencies on or after July 1, 2010 are not considered premium. Thus, insurance companies no longer will pay the insurance premium tax on the recoupment of either regular or emergency assessments.

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[10] Information on file with the Insurance, Business, & Financial Affairs Policy Committee.

[11] Emergency assessments are payable at the end of the month after the assessment is levied and can be paid in a single payment or in 12 monthly installments (s. 631.57(3)(e)1.c., F.S.).

[12] Emergency assessments are not recouped in a rate filing. Rather, these assessments are a separate charge that is added to the policy premium and delineated as such in the premium notice. These assessments are recouped at policy issuance or renewal.

Florida Life and Health Insurance Guaranty Association (FLAHIGA)

Statutory provisions relating to FLAHIGA, which was created in 1979, are contained in part III of chapter 631, F.S. FLAHIGA is governed by a board of directors composed of nine insurance companies and is a nonprofit corporation. All insurance companies (with limited exceptions) licensed to write life and health insurance or annuities in Florida are required, as a condition of doing business in Florida, to be a member of FLAHIGA.

By law, FLAHIGA is divided into three accounts:

- the health insurance account;
- the life insurance account; and
- the annuity account.

In the event a member insurer is found to be insolvent and is ordered to be liquidated by a court, FLAHIGA provides protection (up to the limits spelled out in the statute) to Florida residents who are holders of life and health insurance policies and certain annuities with the insolvent insurer.[13] Generally, direct individual or direct group life and health insurance policies as well as individual and allocated annuity contracts issued by FLAHIGA's member insurers are covered by FLAHIGA.[14]

When a FLAHIGA member insurer is found to be insolvent and is ordered liquidated, a receiver takes over the insurer under court supervision and processes the assets and liabilities through liquidation. Upon liquidation, FLAHIGA automatically becomes liable for the policy obligations the liquidated insurer owed to its Florida policyholders.[15] FLAHIGA services the policies, collects premiums and pays valid claims under the policies. FLAHIGA's rights under the policies are those that applied to the insurer prior to liquidation. FLAHIGA may cancel the policy if the insurer could have done so, but normally FLAHIGA continues the policies until the association can transfer (or substitute) the policies to a new, stable insurer with approval of the State.

Current law specifies life and health policies and annuity contracts from non-licensed insurers are not covered by FLAHIGA.[16] In addition, s. 631.713(3), F.S., excludes all of the following from coverage by FLAHIGA:

- any portion or part of a variable life insurance contract or a variable annuity contract that is not guaranteed by a licensed insurer;
- any portion or part of any policy or contract under which the risk is borne by the policyholder;
- any policy or contract or part thereof assumed by the failed insurer under a contract of reinsurance, unless assumption certificates were issued;
- fraternal benefit society products;
- health maintenance insurance;
- dental service plan insurance;
- pharmaceutical service plan insurance;
- optometric service plan insurance;
- ambulance service association insurance;
- preneed funeral merchandise or service contract insurance;
- prepaid health clinic insurance;
- certain federal employees group policies;
- any annuity contract or group annuity contract that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed directly and not through an intermediary to an individual by an insurer under such contract or certificate.

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[13] Non-residents of Florida and beneficiaries of covered persons are covered by FLAHIGA under limited circumstances (s. 631.713(2), F.S.).

[14] Allocated annuity contracts are directly issued to and owned by individuals or annuities that directly guarantee benefits to individuals by the insurer.

[15] Generally, FLAHIGA covers only policyholders and certificate holders that were valid Florida residents on the date that a member insurer is declared insolvent and liquidated. However, non-residents of Florida and beneficiaries of covered persons are covered by FLAHIGA under limited circumstances (s. 631.713(2), F.S.).

[16] s. 631.713, F.S.

FLAHIGA maximum coverage limits for any one person are set by statute and are:

- Life Insurance Death Benefit: $300,000 per insured life;
- Life Insurance Cash Surrender: $100,000 insured life;
- Health Insurance Claims: $300,000 per insured life;
- Annuity Cash Surrender: $100,000 per contract owner; and
- Annuity in Benefit: $300,000 per contract owner.

Changes to FLAHIGA Proposed by the Bill

The bill increases some of the coverage limits for FLAHIGA. The coverage limit for life insurance cash surrender is unchanged at $100,000 but is clarified to be based on net cash surrender and net cash withdrawal to codify the calculation method of the coverage limit for life insurance cash surrender that has always been used by FLAHIGA. The coverage limit for deferred annuities is set at $250,000 for net cash surrender and net cash withdrawal and is an increase from the $100,000 limit under current law. This limit only applies to annuities in the accumulation phase (i.e. while the deferred annuity is being invested and is not in the payout phase). However, if an annuity is in the payout phase, the coverage limit is unchanged and is $300,000.

The bill also allows licensed insurance agents to explain FLAHIGA to policyholders, applicants for insurance coverage, or prospective policyholders. A similar provision was enacted relating to FIGA in 2009.[17] Current law prohibits advertisement for insurance to use the existence of FLAHIGA for the purpose of the sale of insurance.[18]

The bill makes numerous changes to current law governing FLAHIGA in order to achieve more uniformity with the National Association of Insurance Commissioners 2009 Model Act for life and health insurance guaranty associations and to facilitate the administration of multi-state insolvencies through the National Organization of Life and Health Guaranty Associations. These changes are as follows:

Non-Resident Coverage: Generally, FLAHIGA only covers claims made by Florida residents.[19] However, current law allows life insurance, health insurance, or annuity policy owners not living in Florida when an insurance company domiciled in Florida becomes insolvent to have their life, health, or annuity claims covered by FLAHIGA under certain circumstances.[20]

FLAHIGA covers claims by an owner of a life or health insurance policy or an annuity that does not live in Florida at the time the insurer becomes liquidated, in part, if the liquidated Florida insurer was never licensed in the state where the policy owner resides at the time of the insurer's liquidation.[21] Accordingly, in instances where the liquidated insurer was previously licensed in the state where the policy owner currently lives but is not licensed at the time of liquidation, the policy owner cannot obtain payment of a life or health insurance or annuity claim by FLAHIGA. Moreover, the policy owner is not likely to obtain payment of a claim by the guaranty association in the state where the policy owner resides because the liquidated insurance company is domiciled in Florida and not in that state. Thus, the policy owner is not able to obtain payment of a claim from FLAHIGA or any other state guaranty association upon the insolvency of the insurance company, despite owning a valid insurance policy or annuity issued by the liquidated insurer.

Under the bill, a life insurance, health insurance, or annuity policy owner not living in Florida when their insurance company is liquidated will be able to have FLAHIGA pay their claim if the insurance company that issued the insurance policy was not licensed in the state where the policy owner currently lives during the time which is required by that state's guaranty association to mandate coverage of the claim by that state's guaranty association. The other three requirements in current law for coverage by FLAHIGA for claims of policy owners not living in Florida at the time the insurance company is

[17] Section 14, Ch. 2009- 140, L.O.F.
[18] s. 631.735, F.S.
[19] s. 631.713(2), F.S.
[20] s. 631.713(2), F.S.
[21] A policy owner not living in Florida at the time the insurance company becomes insolvent is covered by FLAHIGA only if these other conditions are met too: the insurer that issued the policy and that is now insolvent is domiciled in Florida at the time of insolvency and if the state where the policy owner resides has a guaranty association but the policy owner is not covered by that state's guaranty association.

liquidated are not changed (see footnote #21). Thus, non-resident policy owners have to also meet these three requirements in order to get FLAHIGA coverage of their claim.

Coverage Exclusion Based on Interest and Crediting Rates: A new kind of insurance policy or portion of an insurance policy is added to the list of policies excluded from coverage by the FLAHIGA. Policies or parts of policies are excluded from FLAHIGA coverage if they are based on an interest rate, crediting rate or an index that calculates interest in an amount greater than an amount calculated in accordance with parameters set forth in the bill.

Coverage Exclusion for Indexed Products: A new kind of insurance policy or portion of an insurance policy is added to the list of policies excluded from coverage by the FLAHIGA. The bill excludes from coverage by FLAHIGA any interest credited to a life or health insurance policy or annuity or changes in value to those types of policies if the interest is credited to the policy or the policy value changes after the date the policy is liquidated. This exclusion is needed because changing the value of policies of insolvent insurers after liquidation is inconsistent with current law providing the liquidation date sets the value of the policy.[22] But, if the insurance policy allows interest to be credited to the policy more frequently than annually, then the bill allows any interest that would accrue to the policy as of the date of impairment or insolvency of the insurance company issuing the policy to be credited to the policy.[23] Thus, the policy amount covered by FLAHIGA will be the amount set by the policy terms at the date of impairment or insolvency, whichever date is earlier.

Coverage Exclusion for Medicare Advantage Policies: A new kind of insurance policy is added to the list of policies excluded from coverage by the FLAHIGA. Insurance policies that provide health care benefits under Medicare Part C or D[24] or under regulations issued pursuant to Medicare Part C or D are not covered by FLAHIGA.

Coverage for Structured Settlement Annuities: The bill specifies structured annuities are covered by FLAHIGA up to a maximum of $300,000 if the payee or beneficiary under the annuity contract does not live in Florida and the neither the payee, beneficiary or annuity contract owner can obtain coverage for the structured annuity from the guaranty association in the state where the annuity contract owner lives.

Insolvent Insurer Definition Change: Under current law, in order for an insurance company to meet the statutory definition of "insolvent insurer" a court order of liquidation with a finding of insolvency is required and all appellate review of the order must be complete. The bill removes the requirement that all appellate review of a court order of liquidation must be complete before an insurer can be found to be insolvent. According to representatives of FLAHIGA, only five or six guaranty associations have the appellate exhaustion requirement. They further contend this requirement makes coordination of nationwide liquidation plans difficult. Additionally, because court orders of liquidation are frequently appealed on collateral matters and not on the finding of insolvency, FLAHIGA representatives believe removal of the appellate exhaustion requirement is not problematic. In fact, removal of the requirement will allow FLAHIGA to cover policyholders of the insolvent insurance company during the pendency of an appeal.

Resident Definition Change: The bill amends the definition of "resident" to provide clarification as to what state is a business's residence and what state is the residence of a person living abroad. Generally, FLAHIGA only covers Florida residents who are owners of life and health insurance policies

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[22] ss. 631.192, F.S. 631.351, F.S., and 631.252, F.S.

[23] The pertinent date is the earlier date of the date of impairment or the date of insolvency. Impairment occurs when the minimum surplus required under s. 624.408, F.S., has been dissipated and the insurer does not have assets at least equal to all its liabilities including its total issued and outstanding capital stock; or, when the surplus of an insurer does not comply with s. 624.408, F.S. (s. 631.011(12) and (13), F.S.). Insolvency occurs when all of the assets of an insurer, if made immediately available, are insufficient to discharge all its liabilities or the insurer is unable to pay its debts as they become due (s. 631.011(14), F.S.).

[24] Medicare is the United State's health insurance program for people age 65 or older. Medicare has four parts: hospital insurance (Part A) that helps pay for inpatient care in a hospital or skilled nursing facility (following a hospital stay), some home health care and hospice care; medical insurance (Part B) that helps pay for doctors' services and many other medical services and supplies that are not covered by hospital insurance; Medicare Advantage (Part C) plans that are available for people with Medicare Parts A and B that choose to receive all of their health care services through one of the provider organizations under Part C; and prescription drug coverage (Part D) that helps pay for medications prescribed for treatment. (http://www.ssa.gov/pubs/10043.html#part1 (last viewed March 3, 2010)).

and certain annuities of an insolvent insurer.[25] The bill specifies businesses are residents of the state in which they have their principle place of business. The bill specifies persons living abroad are residents of the state of domicile of the insurance company that issued the insurance policy or contract as long as the place where the person living abroad lives does not have a guaranty association. This ensures citizens living abroad who purchase life or health insurance or annuities have their claims covered by a guaranty association if the insurance company insuring the policy or selling the annuity becomes insolvent.

Issuance of Substitute Coverage for Indexed Products: Section 631.717(12), F.S., authorizes FLAHIGA to substitute life and health insurance policies in place of life and health policies issued by an insolvent insurance company as long as the Department of Financial Services approves the substitution. Current law, however, does not allow FLAHIGA to substitute policies for policies of an insolvent insurance company that are indexed and accrue interest or crediting in accordance with the index. The bill allows FLAHIGA to substitute policies for indexed life insurance policies, indexed health insurance policies, or indexed annuities as long as the substituted policies are substantially similar to the replaced policy. The bill also places requirements on the policies that are substituted, such as requiring these policies to have a fixed interest rate or payment of dividends with minimum guaranteed dividends, or a different method for calculating interest. Approval by the receivership court is required before FLAHIGA can substitute policies for indexed products.

FLAHGA Coverage By An Insolvent Insurer's Reinsurance: Section 631.205, F.S., allows an insolvent insurers' receiver (usually the Division of Rehabilitation and Liquidation of the Department of Financial Services) to be paid under the insolvent insurer's reinsurance contract unless the reinsurance contract contains a clause naming the insolvent insurer a direct beneficiary of the reinsurance contract.

If an insolvent insurance company has reinsurance[26] on their book of business, the bill allows FLAHIGA to continue coverage under the insolvent insurer's reinsurance policy as long as FLAHIGA pays all unpaid premiums on the reinsurance contract. This will allow FLAHIGA to assume the role of the insolvent insurer in any reinsurance contracts the insurer has at liquidation. Thus, FLAHIGA will be able to collect payments owed to the insolvent insurer by the reinsurer.

Florida Workers' Compensation Insurance Guaranty Association (FWCIGA)

The Florida Workers' Compensation Insurance Guaranty Association (FWCIGA) was created in 1997 by merging the workers' compensation account in FIGA with the Florida Self-Insurance Fund Guaranty Association.[27] The FWCIGA pays workers' compensation claims of insolvent insurers and group self-insurance funds licensed in Florida, as well as unearned premium claims.[28] FWCIGA does not have a coverage limit for workers' compensation claims of insolvent insurers.

Claims under the employer's liability part of a workers' compensation insurance policy are not covered by the FWCIGA.[29] Employer's liability claims of insolvent workers' compensation insurers are covered by FIGA. According to representatives of FIGA, when a workers' compensation insurer becomes insolvent, it is difficult for FIGA to administer the employer's liability claims under the workers' compensation policies of the insolvent insurer. Specifically, FIGA has difficulty assessing workers' compensation insurance companies a portion of their workers' compensation premium for the

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[25] s. 631.713(2)(b)1., F.S.

[26] Reinsurance is insurance bought by insurers. A reinsurer assumes part of the risk and part of the premium originally taken by the insurer, known as the primary company. Reinsurers don't pay policyholder claims. Instead, they reimburse insurers for claims paid. (http://www2.iii.org/glossary/R/ last viewed on March 7, 2010).

[27] Ch. 97-262, L.O.F.

[28] FWCIGA does not pay claims for insolvent self-insured employers, which are covered by a separate guaranty association (s. 440.385, F.S.)

[29] A workers' compensation insurance policy is divided into Part A and Part B. Part A provides workers' compensation coverage to cover medical expenses, lost income wages, rehabilitation costs and, if needed, death benefits for employees who sustain an injury, illness and/or contract a disease as a result of their employment. Part B provides employer's liability coverage to cover the employer in the event the employee elects not to accept the coverage offered under Part A of the policy. In such case, the employee exercises his/her right to sue the employer and part B defends and protects the employer's interests.

assessment needed to pay the insolvent insurer's claims under the employer's liability part of the worker's compensation policy.

Changes to FWCIGA Proposed by the Bill

The bill remedies FIGA's difficulty administering employer's liability claims due to the insolvency of a workers' compensation insurer by giving FWCIGA responsibility for covering these claims. Under the bill, the maximum amount FWCIGA will pay for employer's liability claims is $300,000. This amount is the same as the FIGA's coverage limit on these claims.[30]

B. SECTION DIRECTORY:

Section 1: Amends s. 631.52, F.S., relating to the scope of the FIGA part of ch. 631, F.S.

Section 2: Amends s. 631.54, F.S., relating to definitions used for FIGA.

Section 3: Amends s. 631.55, F.S. relating to creation of FIGA.

Section 4: Amends s. 631.57, F.S., relating to the powers and duties of FIGA.

Section 5: Amends s. 631.713, F.S., relating to the application of the FLAHIGA part of ch. 631, F.S.

Section 6: Amends s. 631.714, F.S., relating to definitions used for FLAHIGA.

Section 7: Amends s. 631.717, F.S., relating to the powers and duties of FLAHIGA.

Section 8: Creates s. 631.7295, F.S., relating to reinsurance purchased by insolvent insurers and FLAHIGA.

Section 9: Amending s. 631.735, F.S., relating to prohibited advertisement of FLAHIGA in the sale of insurance.

Section 10: Amending s. 631.904, F.S., relating to definitions used for FWCIGA.

Section 11: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS.

2. Expenditures:

   None.

[30] s. 631.57(1)(a)2., F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The increased coverage limits for FLAHIGA will allow policyholders having life, health, or annuity claims against insolvent insurers to obtain greater funds for payment of claims. The increased coverage limits for FLAHIGA, however, also result in greater claims payments by FLAHIGA. Greater claims payments by FLAHIGA could lead to a greater likelihood of a deficit in FLAHIGA and resulting assessments on member insurers because FLAHIGA is funded by assessments against member insurers if FLAHIGA does not have sufficient funds to pay claims.[31]

D. FISCAL COMMENTS:

On March 26, 2010, the Revenue Estimating Conference estimated that the bill will have a recurring -$1.68 million impact on state and local government revenues. This exemption will have a -$1.15 million impact on General Revenue and -$.09M on state trust funds in fiscal year 2010-2011. The bill will also have a -$.44 million impact on local government revenues in fiscal year 2010-11. The reduction to local government revenues is due to reduced insurance premiums tax distributions to the Police and Firefighter's Premiums Tax Trust Fund.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill reduces the authority that municipalities or counties have to raise revenue. The Revenue Estimating Conference determined that the bill would have a -$.44 million fiscal impact on local government revenues. However, an exemption applies to the mandates provision when the impact is insignificant. The fiscal impact to local governments in this bill does not meet or exceed the $1.9 million threshold, as established by legislative policy. Therefore, the bill's impact to local governments is insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the Insurance, Business & Financial Affairs Policy Committee considered a proposed committee substitute and reported the proposed committee substitute favorably with a committee substitute. The staff analysis was updated to reflect the committee substitute.

[31] Section 631.718, F.S., limits the annual assessment amount against member insurers. Class A assessments which are used to meet administrative costs, general expenses, and insurer examination costs are limited to $250 per member insurer per year. Class B assessments which are used to pay the claims of the insolvent insurer are limited to one percent of the member insurer's premiums written in Florida. A portion of any assessment paid by a member insurer can be credited against the insurer's premium or corporate income tax. (See s. 631.72, F.S.) FLAHIGA assessments are not passed through to policyholders by member insurers.

A bill to be entitled

An act relating to guaranty associations; amending s. 631.52, F.S.; expanding an exemption from the applicability of certain provisions of state law to include workers' compensation claims under employer liability coverage; amending s. 631.54, F.S.; conforming the definition of "account" to changes made by the act; amending s. 631.55, F.S.; revising the separate accounts of the association; amending s. 631.57, F.S.; conforming cross-references; providing a legislative finding and declaration; authorizing insurers to recoup certain assessments levied by the Office of Insurance Regulation by applying certain recoupment factors; deleting provisions relating to classification and payment of emergency assessments; providing guidelines and a methodology for the calculation of recoupment factors for recouping certain assessments; authorizing an insurer to apply a recalculated recoupment factor under certain conditions; providing for the return of excess assessments and recoupment charges; providing that amounts recouped are not premium and not subject to premium taxes, fees, or commissions; requiring that insurers treat failure to pay a recoupment charge as failure to pay the premium; requiring that an insurer file with the office a statement containing certain information within a specified period before applying a recoupment factor to any policies; authorizing an insurer to use a recoupment factor after the expiration of such period; providing that an insurer

need submit only one such statement for all lines of business; requiring that an insurer file with the office an accounting report containing certain information within a specified period after the completion of the recoupment process; providing that an insurer need submit only one such report for all lines of business; amending s. 631.713, F.S.; expanding the application of certain provisions of state law to certain residents of other states who own certain insurance policies; expanding the list of contracts and policies to which life and health insurance guaranty of payments provisions do not apply; providing for application to coverage under certain structured settlement annuities under certain circumstances; amending s. 631.714, F.S.; revising certain definitions; amending s. 631.717, F.S.; revising a guaranty association's aggregate liability for life insurance and deferred annuity contracts; authorizing an association to issue alternative policies or contracts to certain policies or contracts under certain circumstances; subjecting such alternative policies or contracts to specified requirements; creating s. 631.7295, F.S.; authorizing an association to succeed to the rights of an insolvent insurer arising after an order of liquidation or rehabilitation with regard to certain contracts of reinsurance; requiring that such an association pay all unpaid premiums due under the contract; amending s. 631.735, F.S.; specifying that certain advertisement prohibitions do not prohibit certain activities of a

licensed insurance agent; amending s. 631.904, F.S.; revising the definition of the term "covered claim"; providing an effective date.

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

Section 1. Subsection (14) of section 631.52, Florida Statutes, is amended to read:

631.52 Scope.—This part shall apply to all kinds of direct insurance, except:

(14) Workers' compensation, including claims under employer liability coverage;

Section 2. Subsection (1) of section 631.54, Florida Statutes, is amended to read:

631.54 Definitions.—As used in this part:

(1) "Account" means ~~any~~ one of the ~~three~~ accounts created by s. 631.55.

Section 3. Subsection (2) of section 631.55, Florida Statutes, is amended to read:

631.55 Creation of the association.—

(2) For the purposes of administration and assessment, the association shall be divided into two ~~three~~ separate accounts:

(a) The auto liability and ~~account;~~

~~(b) The~~ auto physical damage account.~~; and~~

(b) ~~(c)~~ The account for all other insurance to which this part applies.

Section 4. Subsection (3) of section 631.57, Florida Statutes, is amended to read:

631.57 Powers and duties of the association.—

(3)(a) To the extent necessary to secure the funds for the respective accounts for the payment of covered claims, to pay the reasonable costs to administer the same, and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(b) ~~(c)~~ or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy assessments in the proportion that each insurer's net direct written premiums in this state in the classes protected by the account bears to the total of said net direct written premiums received in this state by all such insurers for the preceding calendar year for the kinds of insurance included within such account. Assessments shall be remitted to and administered by the board of directors in the manner specified by the approved plan. Each insurer so assessed shall have at least 30 days' written notice as to the date the assessment is due and payable. Every assessment shall be made as a uniform percentage applicable to the net direct written premiums of each insurer in the kinds of insurance included within the account in which the assessment is made. The assessments levied against any insurer shall not exceed in any one year more than 2 percent of that insurer's net direct written premiums in this state for the kinds of insurance included within such account during the calendar year next

preceding the date of such assessments.

(b) If sufficient funds from such assessments, together with funds previously raised, are not available in any one year in the respective account to make all the payments or reimbursements then owing to insurers, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.

(c) The Legislature finds and declares that all assessments paid by an insurer or insurer group as a result of a levy by the office, including regular and emergency assessments, constitute advances of funds from the insurer to the association. An insurer may fully recoup such advances by applying a separate recoupment factor to the premium of policies of the same kind, line, or type as were considered by the office in determining the assessment liability of the insurer or insurer group. ~~Assessments shall be included as an appropriate factor in the making of rates.~~

(d) No state funds of any kind shall be allocated or paid to said association or any of its accounts.

(e)1.a. In addition to assessments otherwise authorized in paragraph (a) and to the extent necessary to secure the funds for the account specified in s. 631.55(2)(b) ~~(c)~~ for the direct payment of covered claims of insurers rendered insolvent by the effects of a hurricane and to pay the reasonable costs to administer such claims, or to retire indebtedness, including, without limitation, the principal, redemption premium, if any, and interest on, and related costs of issuance of, bonds issued under s. 631.695 and the funding of any reserves and other

payments required under the bond resolution or trust indenture pursuant to which such bonds have been issued, the office, upon certification of the board of directors, shall levy emergency assessments upon insurers holding a certificate of authority. The emergency assessments payable under this paragraph by any insurer shall not exceed in any single year more than 2 percent of that insurer's direct written premiums, net of refunds, in this state during the preceding calendar year for the kinds of insurance within the account specified in s. 631.55(2)(b)~~(c)~~.

b. Any emergency assessments authorized under this paragraph shall be levied by the office upon insurers referred to in sub-subparagraph a., upon certification as to the need for such assessments by the board of directors. In the event the board of directors participates in the issuance of bonds in accordance with s. 631.695, emergency assessments shall be levied in each year that bonds issued under s. 631.695 and secured by such emergency assessments are outstanding, in such amounts up to such 2-percent limit as required in order to provide for the full and timely payment of the principal of, redemption premium, if any, and interest on, and related costs of issuance of, such bonds. The emergency assessments provided for in this paragraph are assigned and pledged to the municipality, county, or legal entity issuing bonds under s. 631.695 for the benefit of the holders of such bonds, in order to enable such municipality, county, or legal entity to provide for the payment of the principal of, redemption premium, if any, and interest on such bonds, the cost of issuance of such bonds, and the funding of any reserves and other payments required

under the bond resolution or trust indenture pursuant to which such bonds have been issued, without the necessity of any further action by the association, the office, or any other party. To the extent bonds are issued under s. 631.695 and the association determines to secure such bonds by a pledge of revenues received from the emergency assessments, such bonds, upon such pledge of revenues, shall be secured by and payable from the proceeds of such emergency assessments, and the proceeds of emergency assessments levied under this paragraph shall be remitted directly to and administered by the trustee or custodian appointed for such bonds.

c. Emergency assessments under this paragraph may be payable in a single payment or, at the option of the association, may be payable in 12 monthly installments with the first installment being due and payable at the end of the month after an emergency assessment is levied and subsequent installments being due not later than the end of each succeeding month.

d. If emergency assessments are imposed, the report required by s. 631.695(7) shall include an analysis of the revenues generated from the emergency assessments imposed under this paragraph.

e. If emergency assessments are imposed, the references in sub-subparagraph (1)(a)3.b. and s. 631.695(2) and (7) to assessments levied under paragraph (a) shall include emergency assessments imposed under this paragraph.

~~2. In order to ensure that insurers paying emergency assessments levied under this paragraph continue to charge rates~~

~~that are neither inadequate nor excessive, within 90 days after being notified of such assessments, each insurer that is to be assessed pursuant to this paragraph shall submit a rate filing for coverage included within the account specified in s. 631.55(2)(c) and for which rates are required to be filed under s. 627.062. If the filing reflects a rate change that, as a percentage, is equal to the difference between the rate of such assessment and the rate of the previous year's assessment under this paragraph, the filing shall consist of a certification so stating and shall be deemed approved when made. Any rate change of a different percentage shall be subject to the standards and procedures of s. 627.062.~~

2.~~3.~~ If ~~In the event~~ the board of directors participates in the issuance of bonds in accordance with s. 631.695, an annual assessment under this paragraph shall continue while the bonds issued with respect to which the assessment was imposed are outstanding, including any bonds the proceeds of which were used to refund bonds issued pursuant to s. 631.695, unless adequate provision has been made for the payment of the bonds in the documents authorizing the issuance of such bonds.

3.~~4.~~ Emergency assessments under this paragraph are not premium and are not subject to the premium tax, to any fees, or to any commissions. An insurer is liable for all emergency assessments that the insurer collects and shall treat the failure of an insured to pay an emergency assessment as a failure to pay the premium. An insurer is not liable for uncollectible emergency assessments.

(f) The recoupment factor applied to policies in

accordance with paragraph (c) shall be selected by the insurer or insurer group so as to provide for the probable recoupment of both regular and emergency assessments over a period of 12 months, unless the insurer or insurer group, at its option, elects to recoup the assessment over a longer period. The recoupment factor shall apply to all policies of the same kind, line, or type as were considered by the office in determining the assessment liability of the insurer or insurer group issued or renewed during a 12-month period. If the insurer or insurer group does not collect the full amount of the assessment during one 12-month period, the insurer or insurer group may apply recalculated recoupment factors to policies issued or renewed during one or more succeeding 12-month periods. If, at the end of a 12-month period, the insurer or insurer group has collected from the combined kinds, lines, or types of policies subject to assessment more than the total amount of the assessment paid by the insurer or insurer group, the excess amount shall be disbursed as follows:

1. If the excess amount does not exceed 15 percent of the total assessment paid by the insurer or insurer group, the excess amount shall be remitted to the association within 60 days after the end of the 12-month period in which the excess recoupment charges were collected.

2. If the excess amount exceeds 15 percent of the total assessment paid by the insurer or insurer group, the excess amount shall be returned to the insurer's or insurer group's current policyholders by refunds or premium credits. The association shall use any remitted excess recoupment amounts to

reduce future assessments.

(g) Amounts recouped under this subsection for assessments levied under paragraph (a) due to insolvencies on or after July 1, 2010, are not premium and are not subject to premium taxes, fees, or commissions. However, insurers shall treat the failure of an insured to pay a recoupment charge as a failure to pay the premium.

(h) At least 15 days before applying the recoupment factor to any policies, the insurer or insurer group shall file with the office a statement for informational purposes only setting forth the amount of the recoupment factor and an explanation of how the recoupment factor will be applied. Such statement shall include documentation of the assessment paid by the insurer or insurer group and the arithmetic calculations supporting the recoupment factor. The insurer or insurer group may use the recoupment factor at any time after the expiration of the 15-day period. The insurer or insurer group need submit only one informational statement for all lines of business using the same recoupment factor.

(i) No later than 90 days after the insurer or insurer group has completed the recoupment process, the insurer or insurer group shall file with the office, for information purposes only, a final accounting report documenting the recoupment. The report shall provide the amounts of assessments paid by the insurer or insurer group, the amounts and percentages recouped by year from each affected line of business, and the direct written premium subject to recoupment by year. The insurer or insurer group need submit only one

report for all lines of business using the same recoupment factor.

Section 5. Paragraph (b) of subsection (2) of section 631.713, Florida Statutes, is amended, paragraphs (n), (o), and (p) are added to subsection (3) of that section, and subsection (5) is added to that section, to read:

631.713 Application of part.—

(2) Coverage under this part shall be provided to:

(b) Persons who are owners of or certificateholders under such policies or contracts, and who:

1. Are residents of this state; or

2. Are residents of other states, but only if:

a. The insurers which issued such policies or contracts are domiciled in this state;

b. Such insurers were not licensed ~~never held a license or certificate of authority~~ in the states in which such persons reside at the time specified in a state's guaranty association law as necessary for coverage by that state's association;

c. Such other states have associations similar to the association created by this part; and

d. Such persons are not eligible for coverage by such associations.

(3) This part does not apply to:

(n) A portion of a policy or contract, to the extent that the rate of interest on which the policy or contract is based, or the interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or

changes in value:

1. Averaged over the period of 4 years immediately preceding the date on which the member insurer becomes an impaired or insolvent insurer under this part, whichever is earlier, exceeds the rate of interest determined by subtracting 2 percentage points from Moody's Corporate Bond Yield Average averaged for that same 4-year period or for such lesser period if the policy or contract was issued less than 4 years before the member insurer becomes an impaired or insolvent insurer under this part, whichever is earlier; and

2. On and after the date on which the member insurer becomes an impaired or insolvent insurer under this part, whichever is earlier, exceeds the rate of interest determined by subtracting 3 percentage points from the most current version of Moody's Corporate Bond Yield Average.

(o) A portion of a policy or contract to the extent the policy or contract provides for interest or other changes in value to be determined by the use of an index or other external reference stated in the policy or contract, but which has not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this part. However, if the interest or change in value is credited less frequently than annually as determined by using the procedures defined in the policy or contract, interest or change in value shall be credited by using the procedure defined in the policy or contract as if the contractual date of crediting interest or changing values was the date of impairment

or insolvency, whichever is earlier, and shall not be subject to forfeiture.

(p) A policy or contract providing any hospital, medical, prescription drug, or other health care benefits pursuant to Medicare Part C or Part D or any regulations issued pursuant to Medicare Part C or Part D.

(5) Notwithstanding any other provisions of this part, this part applies to coverage of a person who is a payee under a structured settlement annuity, or a beneficiary if the payee is deceased, with a coverage limit of $300,000 by the association, if:

(a) The payee is a resident of this state, regardless of where the contract owner resides.

(b) Neither the payee, the beneficiary, nor the contract owner is eligible for coverage by the association of the state in which the contract owner resides.

Section 6. Subsections (6) and (10) of section 631.714, Florida Statutes, are amended to read:

631.714 Definitions.—As used in this part, the term:

(6) "Insolvent insurer" means a member insurer authorized to transact insurance in this state, either at the time the policy was issued or when the insured event occurred, and against which an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction~~, if such order has become final by the exhaustion of appellate review~~.

(10) "Resident" means any person who resides in this state at the time a member insurer is determined to be an impaired or

insolvent insurer and to whom contractual obligations are owed by such impaired or insolvent member insurer. A person may be a resident of only one state, which in the case of a person other than an individual shall be the person's principal place of business. Citizens of the United States who are residents of foreign countries or United States possessions, territories, or protectorates that do not have an association similar to the guaranty association created by this part shall be deemed residents of the state of domicile of the insurer issuing the policies or contracts.

Section 7. Subsection (9) of section 631.717, Florida Statutes, is amended, and paragraph (g) is added to subsection (12) of that section, to read:

631.717 Powers and duties of the association.—

(9) The association's liability for the contractual obligations of the insolvent insurer shall be as great as, but no greater than, the contractual obligations of the insurer in the absence of such insolvency, unless such obligations are reduced as permitted by subsection (4), but the aggregate liability of the association shall not exceed $100,000 in net cash surrender and net cash withdrawal values for life insurance, $250,000 in net cash surrender and net cash withdrawal values for deferred annuity contracts, or $300,000 for all benefits including cash values, with respect to any one life. In no event shall the association be liable for any penalties or interest.

(12)

(g) In carrying out its duties in connection with

guaranteeing, assuming, or reinsuring policies or contracts under subsections (2) and (3), the association may, subject to approval of the receivership court, issue substitute coverage for a policy or contract that provides an interest rate, crediting rate, or similar factor determined by use of an index or other external reference stated in the policy or contract employed in calculating returns or changes in value by issuing an alternative policy or contract. In lieu of the index or other external reference provided for in the original policy or contract, the alternative policy or contract must provide for a fixed interest rate, payment of dividends with minimum guarantees, or a different method for calculating interest or changes in value. In such case:

1. There is no requirement for evidence of insurability, waiting period, or other exclusion that would not have applied under the replaced policy or contract.

2. The alternative policy or contract shall be substantially similar to the replaced policy or contract in all other material terms.

Section 8. Section 631.7295, Florida Statutes, is created to read:

631.7295 Reinsurance.—With respect to covered policies for which the association becomes obligated after an entry of an order of liquidation or rehabilitation, the association may elect to succeed to the rights of the insolvent insurer arising after the order of liquidation or rehabilitation under any contract of reinsurance to which the insolvent insurer was a party, to the extent such contract provides coverage for losses

occurring after the date of the order of liquidation or rehabilitation. As a condition to making such election, the association must pay all unpaid premiums due under the contract for coverage relating to periods before and after the date on which the order of liquidation or rehabilitation was entered.

Section 9. Section 631.735, Florida Statutes, is amended to read:

631.735 Prohibited advertisement of Florida Life and Health Insurance Guaranty Association Act in sale of insurance.—A ~~No~~ person may not ~~shall~~ make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement which uses the existence of the Insurance Guaranty Association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Florida Life and Health Insurance Guaranty Association Act. However, this section does ~~shall~~ not apply to the Florida Life and Health Insurance Guaranty Association or any other entity that ~~which~~ does not sell or solicit insurance. This section does not prohibit a licensed insurance agent from explaining the existence or function of the association to policyholders, prospects, or applicants for coverage.

Section 10. Subsection (2) of section 631.904, Florida Statutes, is amended to read:

631.904 Definitions.—As used in this part, the term:

(2) "Covered claim" means an unpaid claim, including a claim for return of unearned premiums, which arises out of, is within the coverage of, and is not in excess of the applicable limits of, an insurance policy to which this part applies, which policy was issued by an insurer and which claim is made on behalf of a claimant or insured who was a resident of this state at the time of the injury. The term "covered claim" includes unpaid claims under any employer liability coverage of a workers' compensation policy limited to the lesser of $300,000 or the limits of the policy. The term "covered claim" does not include any amount sought as a return of premium under any retrospective rating plan; any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise; any claim that would otherwise be a covered claim that has been rejected by any other state guaranty fund on the grounds that the insured's net worth is greater than that allowed under that state's guaranty fund or liquidation law, except this exclusion from the definition of covered claim shall not apply to employers who, prior to April 30, 2004, entered into an agreement with the corporation preserving the employer's right to seek coverage of claims rejected by another state's guaranty fund; or any return of premium resulting from a policy that was not in force on the date of the final order of liquidation. Member insurers have no right of subrogation against the insured of any insolvent insurer. This provision shall be applied retroactively to cover claims of an insolvent self-insurance fund resulting from

accidents or losses incurred prior to January 1, 1994, regardless of the date the petition in circuit court was filed alleging insolvency and the date the court entered an order appointing a receiver.

Section 11. This act shall take effect July 1, 2010.

Amendment No. 1

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	_____

Council/Committee hearing bill: Finance & Tax Council

Representative(s) Snyder offered the following:

Amendment

Remove line 126 and insert:

of the same kind or line as were considered by the office

Amendment No. 2

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	_____

Council/Committee hearing bill: Finance & Tax Council

Representative(s) Snyder offered the following:

Amendment

Remove lines 230-259 and insert:

recoupment factor shall apply to all policies of the same kind or line as were considered by the office in determining the assessment liability of the insurer or insurer group issued or renewed during a 12-month period. If the insurer or insurer group does not collect the full amount of the assessment during one 12-month period, the insurer or insurer group may apply recalculated recoupment factors to policies issued or renewed during one or more succeeding 12-month periods. If, at the end of a 12-month period, the insurer or insurer group has collected from the combined kinds or lines of policies subject to assessment more than the total amount of the assessment paid by the insurer or insurer group, the excess amount shall be disbursed as follows:

1. If the excess amount does not exceed 15 percent of the

total assessment paid by the insurer or insurer group, the excess amount shall be remitted to the association within 60 days after the end of the 12-month period in which the excess recoupment charges were collected.

2. If the excess amount exceeds 15 percent of the total assessment paid by the insurer or insurer group, the excess amount shall be returned to the insurer's or insurer group's current policyholders by refunds or premium credits. The association shall use any remitted excess recoupment amounts to reduce future assessments.

(g) Amounts recouped pursuant to this subsection for assessments levied under paragraph (a) due to insolvencies on or after July 1, 2010, are considered premium solely for premium tax purposes and are not subject to fees or commissions. However, insurers shall treat the failure of an insured to pay a recoupment charge as a failure to pay the premium.

Amendment No. 3

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	_____

Council/Committee hearing bill: Finance and Tax

Representative(s) Snyder offered the following:

Amendment

Remove lines 443-446 and insert:

sell or solicit insurance. This section shall also not prohibit the furnishing of written information that is in a form prepared by the association, which summarizes the claim, cash value, and annuity cash value limits of the association, upon request of the policyholder or applicant for insurance.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 163 Prepaid Wireless Telecommunications Service
SPONSOR(S): Energy & Utilities Policy Committee and Gibbons
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1202

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Energy & Utilities Policy Committee	9 Y, 0 N, As CS	Keating	Collins
2)	Finance & Tax Council		Aldridge	Langston
3)	Government Operations Appropriations Committee			
4)	General Government Policy Council			
5)				

SUMMARY ANALYSIS

The Wireless Emergency Communications Act established a statewide E911 system for wireless telephone users. To fund the E911 system, the act imposed a fee, capped at $ .50, on voice communications services. This fee funds costs incurred by local governments to install and operate 911 systems and reimburses providers for costs incurred to provide 911 or E911 services. Section 365.171(8), F.S., requires voice communications services providers to collect the E911 fee from the subscribers of voice communications services on a service identifier basis. The fee is imposed upon local exchange service, wireless service, and other services that have access to E911 service, such as Voice over Internet Protocol, but is not currently collected on prepaid wireless services.

The E911 Board, formerly the Wireless 911 Board, helps implement and oversee the E911 system and administers the funds derived from the E911 fee. The primary function of the E911 Board (Board) is to make disbursements from the E911 Trust Fund to county governments and wireless providers according to s. 365.173, F.S. The Board has the authority to adjust the level of the fee, within the $.50 cap, once annually.

CS/HB 163 provides that the E911 fee shall not, before July 1, 2013, be assessed on or collected from providers with respect to prepaid calling arrangements subject to s. 212.05(1)(e), F.S. The bill further provides that the Board shall collect the fee from the sale of prepaid wireless service, beginning July 1, 2013, if it determines that a fee should be collected from the sale of such service. The bill strikes obsolete language requiring the Board to conduct a study concerning the feasibility of collecting E911 fees from the sale of prepaid wireless service, as the Board has already completed such a study.

The Revenue Estimating Conference estimates that the bill will have no impact on General Revenue or direct impacts on local government revenues. The estimated negative indeterminate impact on state trust funds in FY 2010-2011, will have an indirect negative impact on revenues received by local governments.

The effective date of the bill is July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Wireless Emergency Communications Act[1] established a statewide E911 system for wireless telephone users. To fund the E911 system, the act imposed a fee, capped at $ .50, on voice communications services. This fee funds costs incurred by local governments to install and operate 911 systems and reimburses providers for costs incurred to provide 911 or E911 services. As of March 31, 2008, all 67 counties reported capability to receive a call back number and location provided for the cellular caller from the service provider.[2]

Section 365.171(8), F.S., requires voice communications services providers to collect the E911 fee from the subscribers of voice communications services on a service identifier basis. The fee is imposed upon local exchange service, wireless service, and other services that have access to E911 service, such as Voice over Internet Protocol, but is not currently imposed on prepaid wireless services[3].

The E911 Board, formerly the Wireless 911 Board, helps implement and oversee the E911 system and administers the funds derived from the E911 fee. The primary function of the E911 Board (Board) is to make disbursements from the E911 Trust Fund to county governments and wireless providers according to s. 365.173, F.S. The Board has the authority to adjust the level of the fee, within the $.50 cap, once annually.

In 2006, the Board was required[4] to evaluate the 911 system revenues and services costs to determine the date that the wireless E911 fee could be reduced to a level that still funds all counties' E911 costs, service provider costs, and Board administration costs. In its report, the Board concluded that there were insufficient fee revenues collected to cover all county and service provider E911 costs.[5]

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[1] Chapter 99-367, L.O.F., codified in s. 365.172, F.S. Today the statute is cited as the "Emergency Communications Number E911 Act." Section 365.172(1), F.S.

[2] Florida Dep't of Management Services, *Florida Enhanced 911,* http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911 (last visited Apr. 7, 2010).

[3] Prepaid wireless service is defined as "the right to access telecommunications services that must be paid for in advance and is sold in predetermined units or dollars enabling the originator to make calls such that the number of units or dollars declines with use in a known amount." See s. 365.172(8)(a)2.b.(I), F.S.

[4] See proviso language accompany specific appropriation 2946 of the Fiscal Year 2006-07 General Appropriations Act (HB 5001).

[5] Florida Dep't of Management Services, E911 Board, *2006 Wireline and Wireless 911 Fee Evaluation Legislative Report* (Sept. 29, 2006).

In its report, the Board also recommended that the Legislature consider changing the provisions relating to prepaid calling services so that fees are imposed on users in a fair and consistent manner. At that time, E911 fees for prepaid wireless service were remitted based upon each prepaid wireless telephone associated with this state, for each wireless service customer that had a sufficient positive balance as of the last day of each month. Recognizing that direct billing may not be possible, the law provided that the surcharge amount, or an equivalent number of minutes, may be reduced from the prepaid wireless subscriber's account.

In 2007, the Legislature suspended collection of E911 fees on prepaid wireless service until July 1, 2009, and required the board to conduct a study on the collection of E911 fees on the sale of prepaid wireless service.[6] The resulting report[7] concluded that it is feasible to collect E911 fees from the sale of prepaid wireless service on an equitable, competitively neutral, and nondiscriminatory basis. The report deemed two potential collection methods to be tentatively feasible: the Best Practice Menu Flat Fee Collection Method and the Best Practice Statewide Point of Sale Flat Fee Collection Method.

The Best Practice Menu Flat Fee Collection Method (Menu Collection Method) collects prepaid wireless service E911 fees from end users on a monthly basis. The Menu Collection Method allows for a service provider's selection of one collection method from two provided options. Under the first option, the E911 fee is calculated by dividing the total earned prepaid revenue received by the service provider within the monthly 911 reporting period by $50.00 and then multiplying that number by the amount of the state 911 charge of $.50 per month[8]. The second option would calculate the fee by multiplying the amount of the state 911 charge for each active prepaid account of the service provider.

The Best Practice Statewide Point of Sale Flat Fee Collection Method (Point of Sale Collection Method) collects prepaid wireless service E911 fees at the point of sale on each transaction involving sales of Florida-based prepaid wireless service by assessing a $.25 flat fee sales tax surcharge over and beyond sales taxes otherwise due at the point of sale.

Distribution of E911 Funds

Funds generated from the E911 fees levied on subscribers are accounted for in the Emergency Communications Number E911 System Fund and segregated into two separate categories: wireless and nonwireless.[9] Sixty-seven percent of the moneys in the wireless category shall be distributed monthly to counties, based on the total number of service identifiers in each county. The county may use these funds to pay for expenditures related to establishing or providing E911 services and contracting for E911 services, as well as to pay for complying with the requirements for E911 service contained in specified Federal Communications Commission orders.[10] Ninety-seven percent of the moneys in the nonwireless category shall be distributed monthly to counties based on the total number of service identifiers in each county. The county may use these funds exclusively to pay for expenditures related to establishing or providing E911 services and contracting for E911 services.[11]

A county receiving these moneys must establish a fund to be used exclusively for the receipt and expenditure of the moneys. The county commission shall appropriate the moneys and interest in the fund and incorporate them into the county budget. A county may carry forward up to 20 percent of the moneys disbursed to the county during a calendar year for capital outlay, capital improvements, or equipment replacement, provided expenditures are made for the authorized purposes.[12]

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[6] Chapter 2007-78, Laws of Fla., codified as s. 365.172(8)(a), F.S.

[7] Florida Dep't of Management Services, E911 Board, *E911 Prepaid Wireless Fee Collection and E911 Fee Exemptions: A Feasibility Analysis*, 106 (Dec. 31, 2008), *available at* http://dms.myflorida.com/suncom/public_safety_bureau/florida_e911/e911_board_prepaid_study (last visited Apr. 7, 2010).

[8] Section 365.172, F.S.

[9] Section 365.173(1), F.S.

[10] Section 365.173(2)(a), F.S. See also s. 365.172(9), F.S.

[11] Section 365.173(2)(b), F.S.

[12] Section 365.173(2)(c), F.S.

Effect of Proposed Changes

CS/HB 163 provides that the E911 fee shall not, before July 1, 2013, be assessed on or collected from providers with respect to prepaid calling arrangements subject to s. 212.05(1)(e), F.S. The bill further provides that the Board shall collect the fee from the sale of prepaid wireless service, beginning July 1, 2013, if it determines that a fee should be collected from the sale of such service. The bill strikes obsolete language requiring the Board to conduct a study concerning the feasibility of collecting E911 fees from the sale of prepaid wireless service, as the Board has already completed such a study.

B. SECTION DIRECTORY:

Section 1. Amends s. 365.172, F.S., relating to the emergency communications number "E911."

Section 2. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference estimates that the bill will have no impact on General Revenue and a negative indeterminate impact on state trust funds in FY 2010-2011.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference estimates that the bill will have no impact on local government revenues. However, the impact on state trust funds will result in an indirect impact on funds received by counties.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Revenues from collection of the E911 fee are distributed by the Board to counties to cover authorized E911 system costs. Although the Board has not collected this fee from the sale of prepaid wireless service since 2007, users of prepaid wireless service are provided access to the E911 system. Prepaid wireless service has grown significantly as a segment of the telecommunications market since the first quarter of 2007 and is expected to continue to grow.[13] As more customers move away from voice communications services that are assessed the E911 fee, the E911 system will likely see funding reductions.

[13] *Report on the Status of Competition in the Telecommunications Industry (as of December 31, 2008)*, Florida Public Service Commission, pp. 37-39.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the Energy & Utilities Policy Committee adopted an amendment to the bill to remove the requirement that a prepaid wireless E911 fee be collected from consumers by retailers at the point of sale. The amendment:

- Establishes a moratorium on collecting E911 fees from the sale of prepaid wireless until no sooner than July 1, 2013.
- Provides that the Board shall collect the fee from the sale of prepaid wireless service, beginning July 1, 2013, if it determines that a fee should be collected from the sale of such service.
- Strikes obsolete language requiring the Board to conduct a study concerning the feasibility of collecting E911 fees from the sale of prepaid wireless service.

A bill to be entitled

An act relating to prepaid wireless telecommunications service; amending s. 365.172, F.S.; removing provisions for a study of the feasibility of collecting an E911 fee on the sale of prepaid wireless telecommunications service; providing for assessment or collection of the fee after a certain date; providing an effective date.

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

Section 1. Paragraph (a) of subsection (8) of section 365.172, Florida Statutes, is amended to read:

365.172 Emergency communications number "E911."—

(8) E911 FEE.—

(a) Each voice communications services provider shall collect the fee described in this subsection. Each provider, as part of its monthly billing process, shall bill the fee as follows. The fee shall not be assessed on any pay telephone in the state.

1. Each local exchange carrier shall bill the fee to the local exchange subscribers on a service-identifier basis, up to a maximum of 25 access lines per account bill rendered.

2. Except in the case of prepaid wireless service, each wireless provider shall bill the fee to a subscriber on a per-service-identifier basis for service identifiers whose primary place of use is within this state. Before July 1, 2013 ~~2009~~, the fee shall not be assessed on or collected from a provider with respect to an end user's service if that end user's service is a

prepaid calling arrangement that is subject to s. 212.05(1)(e).

a. ~~The board shall conduct a study to determine whether it is feasible to collect E911 fees from the sale of prepaid wireless service. If, based on the findings of the study, the board determines that a fee should not be collected from the sale of prepaid wireless service, it shall report its findings and recommendation to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2008.~~ If the board determines that a fee should be collected from the sale of prepaid wireless service, the board shall collect the fee beginning July 1, 2013 ~~2009~~.

b. For purposes of this section, the term:

(I) "Prepaid wireless service" means the right to access telecommunications services that must be paid for in advance and is sold in predetermined units or dollars enabling the originator to make calls such that the number of units or dollars declines with use in a known amount.

(II) "Prepaid wireless service providers" includes those persons who sell prepaid wireless service regardless of its form, either as a retailer or reseller.

~~c. The study must include an evaluation of methods by which E911 fees may be collected from end users and purchasers of prepaid wireless service on an equitable, efficient, competitively neutral, and nondiscriminatory basis and must consider whether the collection of fees on prepaid wireless service would constitute an efficient use of public funds given the technological and practical considerations of collecting the fee based on the varying methodologies prepaid wireless service~~

~~providers and their agents use in marketing prepaid wireless service.~~

~~d. The study must include a review and evaluation of the collection of E911 fees on prepaid wireless service at the point of sale within the state. This evaluation must be consistent with the collection principles of end user charges such as those in s. 212.05(1)(e).~~

~~e. No later than 90 days after this section becomes law, the board shall require all prepaid wireless service providers, including resellers, to provide the board with information that the board determines is necessary to discharge its duties under this section, including information necessary for its recommendation, such as total retail and reseller prepaid wireless service sales.~~

~~f. All subscriber information provided by a prepaid wireless service provider in response to a request from the board while conducting this study is subject to s. 365.174.~~

~~g. The study shall be conducted by an entity competent and knowledgeable in matters of state taxation policy if the board does not possess that expertise. The study must be paid from the moneys distributed to the board for administrative purposes under s. 365.173(2)(f) but may not exceed $250,000.~~

3. All voice communications services providers not addressed under subparagraphs 1. and 2. shall bill the fee on a per-service-identifier basis for service identifiers whose primary place of use is within the state up to a maximum of 25 service identifiers for each account bill rendered.

The provider may list the fee as a separate entry on each bill, in which case the fee must be identified as a fee for E911 services. A provider shall remit the fee to the board only if the fee is paid by the subscriber. If a provider receives a partial payment for a monthly bill from a subscriber, the amount received shall first be applied to the payment due the provider for providing voice communications service.

Section 2. This act shall take effect July 1, 2010.

Amendment No. 1

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	_____

Council/Committee hearing bill: Finance & Tax Council

Representative(s) Gibbons offered the following:

Amendment (with title amendment)

Between lines 91 and 92, insert:

Section 2. Paragraph (c) of subsection (2) of section 365.173, Florida Statutes, is amended to read:

365.173 Emergency Communications Number E911 System Fund.—

(2) As determined by the board pursuant to s. 365.172(8)(h), and subject to any modifications approved by the board pursuant to s. 365.172(6)(a)3. or (8)(i), the moneys in the fund shall be distributed and used only as follows:

(c) Any county that receives funds under paragraphs (a) and (b) shall establish a fund to be used exclusively for the receipt and expenditure of the revenues collected under paragraphs (a) and (b). All fees placed in the fund and any interest accrued shall be used solely for costs described in subparagraphs (a)1. and 2. The money collected and interest earned in this fund shall be appropriated for these purposes by

the county commissioners and incorporated into the annual county budget. The fund shall be included within the financial audit performed in accordance with s. 218.39. A county may carry forward up to 30 ~~20~~ percent of the total funds disbursed to the county by the board during a calendar year for expenditures for capital outlay, capital improvements, or equipment replacement, if such expenditures are made for the purposes specified in subparagraphs (a)1. and 2.; however, the 30 percent ~~20 percent~~ limitation does not apply to funds disbursed to a county under s. 365.172(6)(a)3., and a county may carry forward any percentage of the funds, except that any grant provided shall continue to be subject to any condition imposed by the board. In order to prevent an excess recovery of costs incurred in providing E911 service, a county that receives funds greater than the permissible E911 costs described in s. 365.172(9), including the 30 ~~20~~ percent carryforward allowance, must return the excess funds to the E911 board to be allocated under s. 365.172(6)(a).

The Legislature recognizes that the fee authorized under s. 365.172 may not necessarily provide the total funding required for establishing or providing the E911 service. It is the intent of the Legislature that all revenue from the fee be used as specified in this subsection.

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

Amendment No. 1

Remove line 7 and insert:

after a certain date; amending s. 365.173, F.S.; revising the percentage of total funds that a county may carry forward to pay certain costs associated with the county's E911 or 911 system, to contract for E911 services, and to reimburse wireless telephone service providers for costs incurred to provide such services; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 579 Admissions Tax
SPONSOR(S): Holder
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Economic Development Policy Committee	11 Y, 0 N	Tecler	Kruse
2)	Finance & Tax Council		Aldridge	Langston
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The bill retroactively reinstates an exemption in s. 212.04(2)(a)2.b., F.S., that prohibited taxing admission charges to certain events sponsored by a governmental entity, non-profit sports authority, or non-profit sports commission. To qualify, 100% of the risk of failure of an event lies with the sponsor and 100% of the funds at risk for the event belong to the sponsor. The exemption was repealed by operation of law on July 1, 2009. The bill amends s. 212.04(2)(a)2.b., F.S., to retroactively reinstate the exemption without expiration.

The Revenue Estimating Conference estimates that the bill will reduce General Revenue by -$0.2 million in FY 2010-2011 (-$0.2 million annual recurring) and will reduce state trust revenues by an insignificant amount. The bill will have a negative insignificant impact on local government revenues.

The bill will take effect upon becoming law and will operate retroactively to July 1, 2009.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Section 212.04, F.S., establishes a taxable privilege for selling or receiving anything of value by way of admissions. Admissions are taxed at 6 percent of the sales price or actual value received. The sales price or actual value of admission is the price remaining after deducting federal taxes, state and local seat surcharges, taxes, or fees imposed upon admission. The sales price or actual value does not include separately stated ticket service charges that are imposed by a facility ticket office or a ticketing service and added to a separately stated, established ticket price.

Prior to July 1, 2009, s. 212.04(2)(a)2.b., F.S., provided that no tax shall be levied on admission charges to events that are sponsored by a governmental entity, sports authority, or sports commission when held in a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility. The governmental entity, sports authority, or sports commission was responsible for 100 percent of the risk of success or failure of the event and was required to own 100 percent of the funds at risk for the event. Student or faculty talent could not be exclusively used for the event.

The terms "sports authority" and "sports commission" meant a nonprofit organization that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and contracted with a county or municipal government for the purpose of promoting and attracting sports-tourism events to the community with which it contracts.

Section 212.04(2)(a)2.b., F.S., was repealed on July 1, 2009.

Effect of Proposed Changes

The bill retroactively reinstates an exemption in s. 212.04(2)(a)2.b., F.S., which prohibits taxing admission charges to certain events. The exemption was repealed by operation of law on July 1, 2009. The bill amends s. 212.04(2)(a)2.b., F.S., to retroactively reinstate the exemption without expiration.

The bill will take effect upon becoming law and will operate retroactively to July 1, 2009.

B. SECTION DIRECTORY:

Section 1. The bill amends s. 212.04(2)(a)2.b., F.S., to retroactively reinstate the exemption without expiration.

Section 2. The bill will take effect upon becoming law and will operate retroactively to July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimates that the bill will reduce General Revenue by -$0.2 million in FY 2010-2011 (-$0.2 million annual recurring) and will reduce state trust revenues by an insignificant amount.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference estimates that the bill will have a negative insignificant impact on local government revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill, if passed, would lower the cost of attending certain events sponsored by a governmental entity, sports authority, or sports commission.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill reduces the authority that counties or municipalities have to raise revenues in the aggregate; however an exemption applies because the Revenue Estimating Conference estimated that this bill will have an insignificant fiscal impact on local governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the admissions tax; amending s. 212.04, F.S.; reenacting and amending an exemption of admission charges to certain events to continue the exemption; providing for retroactive operation; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 212.04, Florida Statutes, is reenacted and amended to read:

212.04 Admissions tax; rate, procedure, enforcement.—

(2)(a)1. No tax shall be levied on admissions to athletic or other events sponsored by elementary schools, junior high schools, middle schools, high schools, community colleges, public or private colleges and universities, deaf and blind schools, facilities of the youth services programs of the Department of Children and Family Services, and state correctional institutions when only student, faculty, or inmate talent is used. However, this exemption shall not apply to admission to athletic events sponsored by a state university, and the proceeds of the tax collected on such admissions shall be retained and used by each institution to support women's athletics as provided in s. 1006.71(2)(c).

2.a. No tax shall be levied on dues, membership fees, and admission charges imposed by not-for-profit sponsoring organizations. To receive this exemption, the sponsoring organization must qualify as a not-for-profit entity under the

provisions of s. 501(c)(3) of the Internal Revenue Code of 1954, as amended.

b. No tax shall be levied on admission charges to an event sponsored by a governmental entity, sports authority, or sports commission when held in a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility and when 100 percent of the risk of success or failure lies with the sponsor of the event and 100 percent of the funds at risk for the event belong to the sponsor, and student or faculty talent is not exclusively used. As used in this sub-subparagraph, the terms "sports authority" and "sports commission" mean a nonprofit organization that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and that contracts with a county or municipal government for the purpose of promoting and attracting sports-tourism events to the community with which it contracts. ~~This sub-subparagraph is repealed July 1, 2009.~~

3. No tax shall be levied on an admission paid by a student, or on the student's behalf, to any required place of sport or recreation if the student's participation in the sport or recreational activity is required as a part of a program or activity sponsored by, and under the jurisdiction of, the student's educational institution, provided his or her attendance is as a participant and not as a spectator.

4. No tax shall be levied on admissions to the National Football League championship game, on admissions to any semifinal game or championship game of a national collegiate

tournament, or on admissions to a Major League Baseball all-star game.

5. A participation fee or sponsorship fee imposed by a governmental entity as described in s. 212.08(6) for an athletic or recreational program is exempt when the governmental entity by itself, or in conjunction with an organization exempt under s. 501(c)(3) of the Internal Revenue Code of 1954, as amended, sponsors, administers, plans, supervises, directs, and controls the athletic or recreational program.

6. Also exempt from the tax imposed by this section to the extent provided in this subparagraph are admissions to live theater, live opera, or live ballet productions in this state which are sponsored by an organization that has received a determination from the Internal Revenue Service that the organization is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code of 1954, as amended, if the organization actively participates in planning and conducting the event, is responsible for the safety and success of the event, is organized for the purpose of sponsoring live theater, live opera, or live ballet productions in this state, has more than 10,000 subscribing members and has among the stated purposes in its charter the promotion of arts education in the communities which it serves, and will receive at least 20 percent of the net profits, if any, of the events which the organization sponsors and will bear the risk of at least 20 percent of the losses, if any, from the events which it sponsors if the organization employs other persons as agents to provide services in connection with a sponsored event. Prior to March 1

of each year, such organization may apply to the department for a certificate of exemption for admissions to such events sponsored in this state by the organization during the immediately following state fiscal year. The application shall state the total dollar amount of admissions receipts collected by the organization or its agents from such events in this state sponsored by the organization or its agents in the year immediately preceding the year in which the organization applies for the exemption. Such organization shall receive the exemption only to the extent of $1.5 million multiplied by the ratio that such receipts bear to the total of such receipts of all organizations applying for the exemption in such year; however, in no event shall such exemption granted to any organization exceed 6 percent of such admissions receipts collected by the organization or its agents in the year immediately preceding the year in which the organization applies for the exemption. Each organization receiving the exemption shall report each month to the department the total admissions receipts collected from such events sponsored by the organization during the preceding month and shall remit to the department an amount equal to 6 percent of such receipts reduced by any amount remaining under the exemption. Tickets for such events sold by such organizations shall not reflect the tax otherwise imposed under this section.

7. Also exempt from the tax imposed by this section are entry fees for participation in freshwater fishing tournaments.

8. Also exempt from the tax imposed by this section are participation or entry fees charged to participants in a game, race, or other sport or recreational event if spectators are

charged a taxable admission to such event.

9. No tax shall be levied on admissions to any postseason collegiate football game sanctioned by the National Collegiate Athletic Association.

Section 2. This act shall take effect upon becoming a law and shall operate retroactively to July 1, 2009.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 843 Rural Enterprise Zones
SPONSOR(S): Boyd and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1724

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Economic Development Policy Committee	12 Y, 0 N	Wintering	Kruse
2)	Finance & Tax Council		Aldridge	Langston
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The Florida Enterprise Zone Program was created in 1982 to encourage economic development in economically distressed areas of the state by providing financial incentives and inducing private investment. Businesses and individuals located within enterprise zones qualify for various state and local tax incentives, among other benefits. Over the last 5 years, 17,325 new businesses have moved into or were created in enterprise zones and 54,000 new jobs have been created.

HB 843 provides that any catalyst site that is not located in a rural enterprise zone must be designated as a rural enterprise zone by the Office of Tourism, Trade, and Economic Development (OTTED) upon request from the site's host county. "Catalyst site" is defined in s. 288.0656, F.S., as a parcel or parcels of land within a rural area of critical economic concern that has been prioritized as a geographic site for economic development through partnerships with state, regional, and local organizations.

There are currently four Rural Catalyst Sites, with two, Highlands and Calhoun Counties, already located in rural enterprise zones. Suwannee County and Columbia County are not currently located in a Rural Enterprise Zone. The bill provides that upon request from the host county of a catalyst site that is not located in an enterprise zone for rural enterprise zone designation, OTTED must provide such designation. The two catalyst sites will be granted access to the incentives provided by the Florida Enterprise Zone Program, once they acquire the Rural Enterprise Zone designation.

The Revenue Estimating Conference estimates that the bill will have a negative insignificant impact on General Revenue, state trust fund and local government revenue.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Catalyst Sites- Rural Areas of Critical Economic Concern

Catalyst Sites are defined in s. 288.0656, F.S., as a parcel or parcels of land within a rural area of critical economic concern that has been prioritized as a geographic site for economic development through partnerships with state, regional, and local organizations. The site must be reviewed by the Rural Economic Development Initiative (REDI) and approved by OTTED for the purpose of locating a catalyst project within its boundaries.

No provision currently exists regarding the designation of catalyst sites not located in rural enterprise zones.

Based on the most recent population estimates, thirty-two Florida counties are presently categorized as "rural" pursuant to the statutory definition in s. 288.0656, F.S.[1] Most of these rural counties have been categorized into one of three Rural Areas of Critical Economic Concern (North Central, Northwest, and South Central). The Rural Areas of Critical Economic Concern (RACECs) are defined by OTTED based on measures of economic interdependence among the rural counties in each of the three geographic regions.[2]

REDI was created[3] to encourage and align critical state agency participation and investment around important rural issues and opportunities. The Rural Economic Development Catalyst Project (catalyst project) is designed to further goals set forth in REDI by gathering economic intelligence and perspectives for Florida's three Rural Areas of Critical Economic Concern (RACEC). The catalyst project is intended to identify, improve and market regional physical sites to facilitate the location of significant job creation opportunities within the RACECs.

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[1] *Florida Estimates of Population- 2008*. Prepared by the University of Florida's Bureau of Economic and Business Research. Pages 30-31.

[2] More background and updated information about the RACECs is available at http://www.eflorida.com/Floridas_Future.aspx?id=8188. Color map of the three RACECs is available at http://www.eflorida.com/FloridasRegions/racec_map.html. Last visited April 2, 2010. (Free registration is required.)

[3] Created in s. 288.0656, F.S. REDI's website can be accessed at http://www.florida-redi.com/Default.aspx. Last visited April 7, 2010.

In May 2007 each RACEC, in conjunction with Enterprise Florida, (EFI) and OTTED, engaged in the identification and selection of possible sites for their respective catalyst project. Additionally, each RACEC had identified industries of catalytic opportunity and has begun to gear site selection and marketing activities central to the identified industries.

Under current law, catalyst sites and enterprise zones are independent statutory recognitions of areas in need of economic development. While catalyst sites are rural areas of critical economic concern that merit attention from EFI and OTTED, catalyst sites currently have no direct statutory link to the Florida Enterprise Zone Program.

The Florida Enterprise Zone Project

Basic statistics

The Florida Enterprise Zone Program was created in 1982 to encourage economic development in economically distressed areas of the state by providing incentives and inducing private investment. Currently, Florida has 57 enterprise zones. OTTED reports that between October 1, 2008, and September 30, 2009, new businesses numbering 3,104 moved into or were created in enterprise zones and 9,073 new jobs were created by businesses in enterprise zones.[4] More than $45 million in state and nearly $11.6 million in local-government financial incentives were approved during that same period.

Over the last 5 years, 17,325 new businesses have moved into or were created in enterprise zones and 54,000 new jobs have been created.[5]

Designation process

Sections 290.001-290.016, F.S., authorize the creation of enterprise zones and establish criteria and goals for the program. Prior to submitting an application for an enterprise zone, a local government body must determine that an area:

- Has chronic extreme and unacceptable levels of poverty, unemployment, physical deterioration, and economic disinvestment;
- Needs rehabilitation or redevelopment for the public health, safety, and welfare of the residents in the county or municipality; and
- Can be revitalized through the inducement of the private sector.

OTTED is responsible for approving applications for enterprise zones, and also approves changes in enterprise zone boundaries when authorized by the Florida Legislature. As part of the application process for an enterprise zone, the county or municipality in which the designation will be located also is responsible for creating an Enterprise Zone Development Agency and an enterprise zone development plan.

As outlined in s. 290.0056, F.S., an Enterprise Zone Development Agency is required to have a board of commissioners of at least eight, and no more than 13, members. The agency has the following powers and responsibilities:

- Assisting in the development, implementation and annual review of the zone and updating the strategic plan or measurable goals;
- Identifying ways to remove regulatory burdens;
- Promoting the incentives to residents and businesses;
- Recommending boundary changes;
- Working with nonprofit development organizations; and
- Ensuring the enterprise zone coordinator receives annual training and works with Enterprise Florida, Inc.

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[4] Florida Enterprise Zone Program Annual Report, October 1, 2008 - September 30, 2009. Published March 1, 2010. On file with the House Economic Development Policy Committee.

[5] Ibid, page 3.

Pursuant to s. 290.0057, F.S., an enterprise zone development plan (or strategic plan) must accompany an application. At a minimum this plan must:

- Describe the community's goal in revitalizing the area;
- Describe how the community's social and human resources—transportation, housing, community development, public safety, and education and environmental concerns—will be addressed in a coordinated fashion;
- Identify key community goals and barriers;
- Outline how the community is a full partner in the process of developing and implementing this plan;
- Describe the commitment from the local governing body in enacting and maintaining local fiscal and regulatory incentives;
- Identify the amount of local and private resources available and the private/public partnerships;
- Indicate how local, state, and federal resources will all be utilized;
- Identify funding requested under any state or federal program to support the proposed development; and
- Identify baselines, methods, and benchmarks for measuring success of the plan.

Available incentives

Florida's enterprise zones qualify for various incentives from corporate income tax and sales and use tax liabilities. As noted above, OTTED reported that $45.3 million in state incentives were approved by the Department of Revenue (DOR), between October 1, 2008, and September 30, 2009, for all state enterprise zones. During that same time period, $11.5 million in incentives were provided by local governing bodies, half of the FY 07-08 total. Examples of local incentives include: utility tax abatement, reduction of occupational license fees, reduced building permit fees or land development fees, and local funds for capital projects.[6]

Available state sales tax incentives for enterprise zones include:

- Building Materials Used in the Rehabilitation of Real Property Located in an Enterprise Zone: Provides a refund for sales taxes paid on the purchase of certain building materials, up to $5,000 or 97 percent of the tax paid.
- Business Equipment Used in Enterprise Zones: Provides a refund for sales taxes paid on the purchase of certain equipment, up to $5,000 or 97 percent of the tax paid.
- Rural Enterprise Zone Jobs Credit against Sales Tax: Provides a sales and use tax credit for 30 or 45 percent of wages paid to new employees who live within a rural county.
- Urban Enterprise Zone Jobs Credit against Sales Tax: Provides a sales and use tax credit for 20 or 30 percent of wages paid to new employees who live within the enterprise zone.
- Business Property Used in an Enterprise Zone: Provides a refund for sales taxes paid on the purchase of certain business property, up to $5,000 or 97 percent of the tax paid per parcel of property, which is used exclusively in an enterprise zone for at least 3 years.
- Community Contribution Tax Credit: Provides 50 percent sales tax refund for donations made to local community development projects.
- Electrical Energy Used in an Enterprise Zone: Provides 50 percent sales tax exemption to qualified businesses located within an enterprise zone on the purchase of electrical energy.

[6] Ibid, page 11.

Summary of state incentives offered in the Florida Enterprise Zone Program[7]

CATEGORY	FY 08-09	FY 07-08	FY 06-07	FY 05-06	FY 04-05	FY 03-04	FY 02-03	FY 01-02
Jobs Tax Credit (SUT)	$5,227,245	$5,732,605	$6,087,843	$6,777,250	$4,729,834	$2,579,512	$1,444,543	$970,148
Jobs Tax Credit (CIT)	$5,072,555	$5,507,311	$5,919,236	$4,253,621	$2,080,397	$1,086,747	$800,029	$1,965,920
Property Tax Credit (CIT)	$1, 910,708	$2,184,036	$2,291,961	$1,267,999	$1,668,168	$507,022	$272,942	$303,542
Building Materials (SUT Refund)	$30,994,860	$25,665,025	$18,855,129	$7,415,711	$3,878,421	$1,356,462	$533,673	$456,551
Business Equipment (SUT Refund)	$1,139,066	$1,269,955	$1,771,396	$2,940,864	$1,618,721	$1,182,582	$1,874,145	$2,813,601
Electrical Energy (SUT exempt)	$1,007,007	$606	$793,179	$778,090	$84,516	$488,937	$476,251	$229,789
Total Value of State Incentives	$45,351,441	$40,359,538	$35,718,744	$23,433,535	$14,060,057	$7,201,262	$5,401,583	$6,739,551
# of EZs	56[8]	56	56	55	53	51	51	47

Available state corporate income tax incentives for enterprise zones include:

- Rural Enterprise Zone Jobs Credit against Corporate Income Tax: Provides a corporate income tax credit for 30 or 45 percent of wages paid to new employees who live within a rural county.
- Urban Enterprise Zone Jobs Credit against Corporate Income Tax: Provides a corporate income tax credit for 20 or 30 percent of wages paid to new employees who live within the enterprise zone.
- Enterprise Zone Property Tax Credit: Provides a credit against Florida corporate income tax equal to 96 percent of ad valorem taxes paid on the new or improved property.
- Community Contribution Tax Credit: Provides a 50-percent credit on Florida corporate income tax or insurance premium tax, or a sales tax refund, for donations made to local community development projects.

Effect of Proposed Changes

HB 843 provides that catalyst sites which are not located in a rural enterprise zone must be designated as a rural enterprise zone by OTTED upon request from the site's host county. The host county's

[7] Information compiled from several editions of the Florida Enterprise Zone Program annual report.
[8] Ocala's enterprise zone designation wasn't approved by OTTED until January 2010, so its activity will be displayed next year.

request must include a legal description of the site and contact information for the filing entity. The reporting criteria for a rural catalyst site designated as a rural enterprise zone is the same as for other rural enterprise zones, with the host economic development organization serving as the reporting entity.

There are currently four Rural Catalyst Sites with two already located in rural enterprise zones, Highlands County and Calhoun County. Suwannee County and Columbia County are not currently located in a Rural Enterprise Zone.

Upon request from Suwannee County and Columbia County to OTTED for rural enterprise zone designation, these two sites will be granted access to the incentives provided by the Florida Enterprise Zone Program.[9]

B. SECTION DIRECTORY:

Section 1. Provides that OTTED must designate catalyst sites as defined in s. 288.0656, F.S., as a rural enterprise zone upon request of the host county. Provides that catalyst sites designated as rural enterprise zones must receive the same benefits as enterprise zones designated under s. 290.0065, F.S.

Section 2. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference estimated a negative insignificant impact on General Revenue and state trust fund revenues.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference estimated a negative insignificant impact to local government revenues.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact to the businesses and indviduals that locate or already are located within the new rural enterprise zones, due to the incentives provided. Also, job-seekers could benefit from opportunities afforded them by businesses within the new rural enterprise zones.

D. FISCAL COMMENTS:

None.

[9] Confirmed as 500 acres per site by Enterprise Florida personnel (03/19/2010).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill reduces the authority that counties or municipalities have to raise revenues in the aggregate, however an exemption applies because the Revenue Estimating Conference estimated the fiscal impact on local government to be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to rural enterprise zones; requiring the Office of Tourism, Trade, and Economic Development to designate certain rural catalyst sites as rural enterprise zones upon request of a host county; specifying request requirements; specifying effect of designation; specifying reporting requirements for rural catalyst sites designated as a rural enterprise zone; specifying a reporting entity; providing an effective date.

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

Section 1. Notwithstanding s. 290.0065(1), Florida Statutes, the Office of Tourism, Trade, and Economic Development shall designate as a rural enterprise zone any catalyst site as defined in s. 288.0656, Florida Statutes, that is not located in a rural enterprise zone designated pursuant to s. 290.0065, Florida Statutes, upon request of the host county. The request from the host county must include the legal description of the rural catalyst site together with the name and contact information for the entity responsible for filing all required reports. The designation shall provide businesses locating on the rural catalyst site the same access to the benefits of a rural enterprise zone as designated under s. 290.0065, Florida Statutes. The reporting criteria for a rural catalyst site designated as a rural enterprise zone under this section is the same as for other rural enterprise zones, with the host economic development organization serving as the reporting entity.

Section 2. This act shall take effect July 1, 2010.

Amendment No. 1

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 _____

Council/Committee hearing bill: Finance & Tax Council

Representative Boyd offered the following:

Amendment (with title amendment)

Remove lines 13-28 and insert:

Section 1. Notwithstanding s. 290.0065(1), Florida Statutes, the Office of Tourism, Trade, and Economic Development, upon request of the host county, shall designate as a rural enterprise zone any catalyst site as defined in s. 288.0656(2)(b), Florida Statutes, that was approved prior to January 1, 2010, and that is not located in an existing rural enterprise zone. The request from the host county must include the legal description of the catalyst site and the name and contact information for the county development authority responsible for managing the catalyst site. The designation shall provide businesses locating within the catalyst site the same eligibility for economic incentives and other benefits of a rural enterprise zone designated under s. 290.0065, Florida Statutes. The reporting criteria for a catalyst site designated

Amendment No. 1

as a rural enterprise zone under this section are the same as for other rural enterprise zones. Host county development authorities may enter into memoranda of agreement, as necessary, to coordinate their efforts to implement this section.

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

Remove line 8 and insert:

as a rural enterprise zone; authorizing host county development authorities to enter into memoranda of agreement for certain purposes;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1065 Biodiesel Fuel
SPONSOR(S): Precourt
TIED BILLS: **IDEN./SIM. BILLS:** SB 1730

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Policy Council	17 Y, 0 N	Liepshutz	Ciccone
2)	Finance & Tax Council		Aldridge	Langston
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Biodiesel fuel is a renewable energy source that can be used to operate motor vehicles and other machinery that is designed to operate with petroleum based diesel fuel. It is produced from feedstock, most notably vegetable oils and animal based fats. This bill provides two exemptions to a public or private secondary school that manufactures less than 1000 gallons of biodiesel fuel for its sole use or the sole use of its employees or students.

The first exemption accords tax-free status to a limited production of biodiesel by the school and, thus, relieves the school from payment of monthly motor fuel taxes on its production of biodiesel and from the recordkeeping and filing of forms necessarily required for the payment of taxes or the claiming of tax refunds or credits.

The second exemption relieves the secondary school from having to:

- Register with the Florida Department of Revenue (DOR),
- Pay the fees for the initial application and annual renewals,
- Secure a bond and file it with the DOR,

The Revenue Estimating Conference estimates the bill to have a negative insignificant impact on state General Revenue, state trust fund and local government revenues.

The bill provides an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Biodiesel fuel is a renewable energy source that can be used to operate motor vehicles and other machinery that is designed to operate with petroleum based diesel fuel. It is produced or manufactured from feedstock, most notably vegetable oils and animal-based fats. However, it is most often manufactured from soybeans or recycled restaurant grease through a process called transesterification, which uses an alcohol reactant such as methanol to separate the fatty acid alky esters (the biodiesel) from glycerin. Biodiesel is both biodegradable and cleaner burning than petroleum diesel fuel and is usually blended with petroleum diesel in different concentrations, most commonly in a mixture of 20% biodiesel and 80% petroleum diesel (B20).[1]

This bill provides two exemptions to a public or private secondary school that manufactures less than 1000 gallons of biodiesel fuel for its sole use or the sole use of its employees or students. The first exemption accords tax-free status to a limited production of biodiesel by the school and, thus, relieves the school from payment of monthly taxes on its production and from the recordkeeping and filing of forms necessarily required for the payment of taxes or the claiming of tax refunds or credits[2]. Biodiesel falls within Florida's statutory definition of diesel fuel[3] and is subject to the same array of fuel taxes as petroleum based diesel. The total amount of fuel tax on a gallon of biodiesel is currently 29.6 cents and breaks down as follows:

- Excise Tax 4 cents (constitutional 2 cents, county 1 cent, municipality 1 cent)
- Sales Tax 12 cents
- Ninth-cent 1 cent
- Local Option 6 cents
- SCETS Tax 6.6 cents
  Total 29.6 cents[4]

[1] Information about biodiesel, including its production, is accessible on the website of the Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy at: http://www1.eere.energy.gov/biomass/abcs_biofuels.html#biodprod

[2] ss. 206.874, F.S. and 206.8745, F.S. describe the conditions a taxpayer must meet for tax refund or credit eligibility.

[3] s. 206.86(1), F.S.

[4] These taxes are levied on diesel fuel pursuant to s. 206.87(1)(a)-(d) and are allocated primarily, but not exclusively, for state and local transportation purposes. Both the sales tax and SCETS tax (State Comprehensive Enhanced Transportation System Tax) are adjusted annually by the percentage change in the Consumer Price Index; consequently, the current rate per gallon for each tax is greater than the base amount of 6.9 cents specified in s. 206.87(1)(e)1., F.S. for the sales tax and the 6.0 cents specified in ss. 206.87(1)(d) and 206.41(1)(f), F.S. for the SCETS tax.

The second exemption relieves the school from having to register as a wholesaler[5] with the DOR, the $30 fees for initial registration and annual renewal, and the need to file with DOR a bond[6] executed by a licensed surety company. Although the bill does not specifically define the term "secondary school" or refer to Florida's Education Code for a definition of the term, secondary schools are commonly understood to serve students in grades 6 through 12.[7] Also, while the term "private school" is not defined in the bill, Florida's Education Code provides a definition that includes nonpublic secondary schools that meet the intent of the state's regular school attendance requirements.[8]

The bill does not exempt a school whose production exceeds more than 1000 gallons from having to pay taxes, maintain the appropriate records, or file for credits or refunds on the first 1000 gallons of biodiesel produced. Also, the bill, by implication, indicates that current law requires a secondary school to become properly registered with the DOR whenever its biodiesel production exceeds 1000 gallons in any particular year.

B. SECTION DIRECTORY:

Section 1: Amends s. 206.874, F.S., creating a new subsection (7) that grants exemptions from taxation and registration requirements related to the manufacture of limited amounts of biodiesel fuel by a public or private secondary school.

Section 2: Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference estimates the bill to have a negative insignificant impact on state General Revenue and state trust fund revenues.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference estimates the bill to have a negative insignificant impact on local government revenues.

2. Expenditures:

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[5] DOR does not have a registration category specifically designated as "manufacturer" or "producer." Instead, s. 206.02(5), F.S. requires a biodiesel manufacturer to meet the reporting, bonding, and licensing requirements prescribed for wholesalers. The requirements for registration as a wholesaler, including the fees for the initial application and renewal, are specified in s. 206.02(4).

[6] s. 206.05(1), F.S. specifies the amount and nature of the bond required of a wholesaler. The subsection also authorizes DOR to accept an assigned time deposit or irrevocable letter of credit in lieu of a surety bond.

[7] See, *The Florida Secondary School Redesign Act,* s. 1003.413(1), F.S., stating that secondary schools primarily serve students in grades 6 through 12.

[8] s. 1002.01(2), F.S. provides, in pertinent part, that a "private school," is a nonpublic school defined as an individual, association, co partnership, or corporation, . . . that designates itself as an educational center that includes . . . secondary [schools]. . . . A private school may be a parochial, religious, denominational, for-profit, or nonprofit school. This definition does not include home education programs. . . .

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

An indeterminate amount of savings may accrue to any privately operated secondary school that is already producing biodiesel or any privately operated secondary school that is incentivized to produce biodiesel because of the exemptions this bill provides. The savings will result from the schools not having to pay registration fees, annual renewal fees, or monthly taxes. Schools may also realize savings from not having to maintain records needed for the payment of taxes or the filing for refunds.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill reduces the authority that counties or municipalities have to raise revenues in the aggregate, however an exemption applies because the Revenue Estimating Conference estimated the fiscal impact on local government to be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

This bill was filed at the behest of four Oak Hall[9] high school students who, as part of a science project at the Gainesville school, processed used vegetable oil into biodiesel. As reported by the Newspaper in Education (NIE) of the Gainesville Sun, the students encountered a problem they believe the Legislature needs to address:

> As the students forged ahead with the development of their program, they encountered what they feel is a somewhat burdensome requirement of state law, which they believe could dissuade other students from pursuing similar biodiesel production products, even as the state looks for alternative energy initiatives to ween (sic) itself off fossil fuels. . . .
>
> The students' issue is with Florida Statute 206, which deals with biodiesel production and taxes on the fuel paid to the state Department of Revenue. . . .
>
> . . . [U]nder the law, schools such as Oak Hall must fill out and submit to the state monthly production reports and pay taxes to the state, but then receive back a tax rebate. Students feel that is a cumbersome, bureaucratic process that could be an obstacle in expanding biodiesel production to other schools.[10]

[9] Oak Hall is a private school duly registered and listed as a non-profit corporation on the Department of State's website as Oak Hall Private School Inc. : http://www.sunbiz.org/scripts/cordet.exe?action=DETFIL&inq_doc_number=N96000000468&inq_came_from=NAMFWD&cor_web_names_seq_number=0000&names_name_ind=N&names_cor_number=&names_name_seq=&names_name_ind=&names_comp_name=OAKHALL&names_filing_type= The school is also listed on the DOR website as a registered blender: http://dor.myflorida.com/dor/taxes/fuel/fuel_2.html

[10] *Students look to cut red tape on Project,* September 16, 2009; available on-line: http://www.gainesville-nie.com/?p=399

The Alachua County Commission has expressed support for this legislation:

> By providing an exemption from these requirements for educational institutions pursuing a science curriculum, the Legislature could help to foster alternative energy development and practice applications for science curricula across the state of Florida.[11]

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

[11] *Alachua County, Florida FY 2010 Draft State Legislative Program, Board of County Commissioners;* available on-line: http://www.alachuacounty.us/documents/bocc/agendas/2009-10-27/afe79c40-ad0f-4c92-936a-cf975f174bac.pdfhttp://www.alachuacounty.us/documents/bocc/agendas/2009-10-27/afe79c40-ad0f-4c92-936a-cf975f174bac.pdf

A bill to be entitled

An act relating to biodiesel fuel; amending s. 206.874, F.S.; exempting biodiesel fuel manufactured by a public or private secondary school from taxation under certain circumstances; specifying the circumstances under which a public or private secondary school that manufactures biodiesel fuel is exempt from certain registration requirements; providing an effective date.

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

Section 1. Section 206.874, Florida Statutes, is amended to read:

206.874 Exemptions.—

(1) The provisions of this part requiring the payment of taxes do not apply to any of the following:

(a) The removal from a terminal or refinery of, or the entry or sale of, any diesel fuel if all of the following apply:

1. The person otherwise liable for tax is a diesel fuel registrant;

2. In the case of a removal from a terminal, the terminal is an approved terminal; and

3. The diesel fuel satisfies the dyeing and marking requirements of s. 206.8741.

(b) Any entry by a licensed importer into this state of diesel fuel on which taxes have been imposed by this chapter on a diesel fuel registrant pursuant to an agreement entered into with the department as provided by s. 206.872.

(c) The removal of diesel fuel if all of the following apply:

1. The diesel fuel is removed by rail car from an approved refinery or terminal and is received at an approved refinery or terminal; and

2. The refinery and the terminal are operated by the same diesel fuel registrant.

(d) Diesel fuel which, pursuant to the contract of sale, is required to be shipped and is shipped to a point outside of this state by a supplier by means of any of the following:

1. Facilities operated by the supplier.

2. Delivery by the supplier to a carrier, customs broker, or forwarding agent, whether hired by the purchaser or not, for shipment to such out-of-state point.

3. Delivery by the supplier to any vessel clearing from a port of this state for a port outside of this state and actually exported from this state in the vessel.

(e) Diesel fuel which is destined for delivery to a location outside of this state on which the diesel fuel registrant is required to collect the taxes of the destination state pursuant to an agreement with the state of destination.

(2) Backup tax does not apply to delivery in this state of diesel fuel into the fuel tank of a diesel-powered motor vehicle as provided in s. 206.873 for use on a farm for farming purposes.

(3) Dyed diesel fuel may be purchased and used only for the following purposes:

(a) Use on a farm for farming purposes.

(b) Exclusive use of a local government.

(c) Use in a vehicle owned by an aircraft museum.

(d) Exclusive use of the American Red Cross.

(e) Use in a vessel employed in the business of commercial transportation of persons or property or in commercial fishing.

(f) Use in a bus engaged in the transportation of students and employees of schools.

(g) Use in a local bus service that is open to the public and travels regular routes.

(h) Exclusive use of a nonprofit educational facility.

(i) Use in a motor vehicle owned by the United States Government which ~~that~~ is not used on a highway.

(j) Use in a vessel of war.

(k) Use of diesel fuel for home heating.

(l) Use in self-propelled off-road equipment or stationary equipment subject to tax under s. 212.0501.

(m) Use by a noncommercial vessel.

(4)(a) Notwithstanding the provisions of this section allowing local governments and school districts to use dyed or otherwise untaxed diesel fuel in motor vehicles, each county, municipality, and school district, to qualify for such use, must first register with the department as a local government user of diesel fuel.

(b) Local government users of diesel fuel shall be required to file a return accounting for diesel fuel acquisitions, inventory, and use, and remit a tax equal to 3 cents of the 4-cent tax required under s. 206.87(1)(a), plus the taxes required under s. 206.87(1)(b), (c), and (d) each month to

the department.

(c) Any county, municipality, or school district not licensed as a local government user of diesel fuel shall be liable for the taxes imposed by s. 206.87(1) directly to the department for any highway use of untaxed diesel fuels.

(d) Each county, municipality, or school district may receive a credit for additional taxes paid under s. 206.87 for the highway use of diesel fuel, provided the purchases of diesel fuel meet the requirements relating to refunds for motor fuel purchases under s. 206.41.

(5)(a) Notwithstanding the provisions of this section allowing local bus transit systems to use dyed or otherwise untaxed diesel fuel in qualifying motor vehicles providing local public transportation over regular routes, each qualifying mass transit provider, to qualify for such use, must first register with the department as a mass transit system.

(b) Mass transit system providers shall be required to file a return accounting for diesel fuel acquisitions, inventory, and use, and remit a tax equal to the taxes required under s. 206.87(1)(a) and (b) each month to the department.

(c) Any local provider not licensed as a mass transit system shall be liable directly to the department for any highway use of untaxed diesel fuels.

(d) Each licensed mass transit system may receive a credit for additional taxes paid under s. 206.87 for the highway use of diesel fuel, provided the purchases of diesel fuel meet the requirements relating to refunds for motor fuel purchases under s. 206.41.

(6) Diesel fuel contained in the fuel tanks of any motor vehicle entering this state and used to propel such motor vehicle into Florida from another state shall be exempt from the taxes imposed by this part but may be taxed under the provisions of chapter 207. Diesel fuel supplied by a vehicle manufacturer and contained in the fuel tanks of a new and untitled motor vehicle shall be exempt from the taxes imposed by this part. "Fuel tanks" means the reservoir or receptacle attached to the motor vehicle by the manufacturer as the container for fuel used to propel the vehicle.

(7) Biodiesel fuel manufactured by a public or private secondary school that produces less than 1,000 gallons annually for the sole use of the school, its employees, or its students is exempt from the tax imposed by this part. A public or private secondary school that produces less than 1,000 gallons a year of biodiesel is exempt from the registration requirements of this chapter.

Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1095 Special Districts
SPONSOR(S): Military & Local Affairs Policy Committee and Pafford
TIED BILLS: **IDEN./SIM. BILLS:** SB 1568

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	12 Y, 2 N, As CS	Fudge	Hoagland
2)	Finance & Tax Council		Diez-Arguelles	Langston
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Section 189.4042, F.S., provides the method for merger and dissolution of dependent and independent special districts. Any dependent or independent district created by special act may only be merged or dissolved by the Legislature unless otherwise provided by general law. An independent district created by a county or municipality through a referendum or any other procedure, may be merged or dissolved by the same procedure by which the district was created.

The bill revises the merger and dissolution procedures for independent special districts by requiring a referendum for most dissolutions. The bill preempts any special acts to the contrary.

The bill also provides for the allocation of indebtedness and the transfer of property title when a special district is dissolved.

Inactive special districts may be merged or dissolved by special act without a referendum under certain circumstances.

The bill is effective July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Unlike units of general-purpose government such as counties and municipalities, special districts are units of special-purpose government, meaning they have authority to do only the things set out in their creation document. A special district may be created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.

There are currently 1,622 special districts in Florida, 1,007 independent and 615 dependent. From January 1, 2005, through December 31, 2009, sixty-one districts were dissolved.

Merger and Dissolution Procedures for Special Districts

Article VIII, section 4 of the Florida Constitution governs the transfer of powers between governing bodies and states that

> "by law or by resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality or special district may be transferred to or contracted to be performed by another county, municipality or special district, after approval by vote of the electors of the transferee, or as otherwise provided by law."

Section 189.4042, F.S., provides the method for merger and dissolution of dependent and independent special districts. Any dependent or independent district created by special act may only be merged or dissolved by the Legislature unless otherwise provided by general law. An independent district created by a county or municipality through a referendum or any other procedure, may be merged or dissolved by the same procedure by which the district was created. However, "for any independent district that has ad valorem taxation powers, the same procedure required to grant such independent district ad valorem taxation powers shall also be required to dissolve or merge the district."

Under certain circumstances, the Department of Community Affairs (DCA) may declare a special district inactive and take steps to dissolve a district. In particular, DCA may take steps to dissolve a district if the district fails to file with the appropriate state agency the following:

- Retirement related reports with the Department of Management Services (DFS)
- Annual Financial Report with the Department of Financial Services
- Annual Financial Audit Report with the Auditor General and DFS
- Bond related reports with the State Board of Administration, Division of Bond Finance

Effect of Proposed Changes

The bill revises the merger and dissolution procedures for independent special districts. Unless otherwise provided by general law, an independent special district created by special act may only be dissolved by the Legislature and a referendum of the resident electors of the district, if the district contains resident electors.

An independent special district, created by special act, may only be merged with another political subdivision by the Legislature and a referendum of the resident electors of the political subdivision and of the district, provided the political subdivision and the district contain resident electors.

The bill also clarifies that independent special districts created by a county or municipality by referendum must also be merged or dissolved by referendum. Likewise, any independent special district with ad valorem taxation powers, created by a county or municipality by referendum or any other procedure, may be merged or dissolved by the procedure by which it was granted that taxing authority.

The bill also provides that the government formed as a result of a merger shall assume all indebtedness of, and receive title to all property owned by, the preexisting independent special district or districts. The proposed charter must determine the proper allocation of the indebtedness and the manner in which the debt will be retired. When an independent special district is dissolved, all title to property owned by the district shall be transferred to the county, which shall assume all indebtedness of the district, unless otherwise provided in the dissolution plan.

If the governing body of a special district unanimously adopts a resolution declaring the district inactive, and no appeal is filed, the district may be dissolved without a referendum. In addition, any special district that has been declared inactive may be dissolved by special act without a referendum.

B. SECTION DIRECTORY:

Section 1: Amends the merger and dissolution procedures for special districts contained in s. 189.4042, F.S.

Section 2: Amends s. 189.4044, F.S., to authorize the merger or dissolution of inactive special districts by special law without a referendum under certain circumstances.

Section 3: Provides an effective date of July 1, 2010.

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:

   There will be costs associated with the calling of a referendum.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because the bill requires counties or municipalities to take an action, the calling of a referendum, requiring the expenditure of funds; however, the amount of the expenditures is insignificant, and therefore an exemption applies. Accordingly, the bill may not be a mandate requiring a two-thirds vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill refers to a "proposed charter" which determines the proper allocation of the indebtedness assumed by the government formed by the merger. This term is not defined. Likewise, subsection (4) refers to a dissolution plan, which is not defined.

The bill does not specify which entity is responsible for calling the referendum and who is responsible for the costs of the referendum.

While the bill preempts any special act to the contrary, this provision would only affect existing special districts. Special districts created pursuant to a subsequently enacted special law may exempt itself from this requirement.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2010, the Military & Local Affairs Policy Committee adopted an amendment that authorizes the merger or dissolution of inactive special districts without a referendum under certain circumstances.

The bill was reported favorably and the analysis has been updated to reflect the committee substitute.

A bill to be entitled

An act relating to special districts; amending s. 189.4042, F.S.; revising provisions relating to merger and dissolution procedures for special districts; requiring certain merger and dissolution procedures to include referenda; providing that such provisions preempt prior special acts; providing for a local government to assume the indebtedness of, and receive the title to property owned by, a special district under certain circumstances; providing charter requirements for the assumption of such indebtedness and transfer of such title to property; amending s. 189.4044, F.S.; clarifying dissolution procedures for special districts declared inactive by a governing body; authorizing dissolution of inactive special districts without a referendum; providing an effective date.

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

Section 1. Section 189.4042, Florida Statutes, is amended to read:

189.4042 Merger and dissolution procedures.—

(1)(a) The merger or dissolution of dependent special districts may be effectuated by an ordinance of the general-purpose local governmental entity wherein the geographical area of the district or districts is located. However, a county may not dissolve a special district that is dependent to a municipality or vice versa, or a dependent district created by

special act.

(b) A copy of any ordinance and of any changes to a charter affecting the status or boundaries of one or more special districts shall be filed with the Special District Information Program within 30 days of such activity.

(2)(a) Unless otherwise provided by general law, the merger or dissolution of ~~an independent special district or~~ a dependent special district created and operating pursuant to a special act may only be effectuated by the Legislature ~~unless otherwise provided by general law~~.

(b) Unless otherwise provided by general law:

1. The dissolution of an independent special district created and operating pursuant to a special act may only be effectuated by the Legislature and a referendum of the resident electors of the district, provided the district contains resident electors.

2. The merger of an independent special district created and operating pursuant to a special act with another political subdivision may only be effectuated by the Legislature and a referendum of the resident electors of the political subdivision and of the district, provided the political subdivision and the district contain resident electors.

(c) If an inactive independent special district was created by a county or municipality through a referendum, the county or municipality that created the district may dissolve the district after publishing notice as described in s. 189.4044.

(d) If an independent special district was created by a

county or municipality by referendum or any other procedure, the county or municipality that created the district may merge or dissolve the district pursuant to a referendum and any other ~~the same~~ procedure by which the independent district was created.

(e) If an ~~However, for any~~ independent special district that has ad valorem taxation powers was created by a county or municipality by referendum or any other procedure, the county or municipality that created the district may merge or dissolve the district pursuant to a referendum, any other procedure by which the district was created, and the ~~same~~ procedure by which the ~~required to grant such independent~~ district was granted ad valorem taxation powers ~~shall also be required to dissolve or merge the district~~.

(f) This subsection preempts any special act to the contrary.

(3) The government formed by merger of an existing independent special district or districts with another government shall assume all indebtedness of, and receive title to all property owned by, the preexisting independent special district or districts. The proposed charter shall provide for the determination of the proper allocation of the indebtedness so assumed and the manner in which the debt shall be retired.

(4) The dissolution of an independent special district shall transfer the title to all property owned by the preexisting independent special district to the county government, which shall also assume all indebtedness of the preexisting independent special district, unless otherwise provided in the dissolution plan.

(5) ~~(3)~~ The provisions of this section shall not apply to community development districts implemented pursuant to chapter 190 or to water management districts created and operated pursuant to chapter 373.

Section 2. Subsection (4) of section 189.4044, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

189.4044 Special procedures for inactive districts.—

(4) The entity that created a special district declared inactive under this section must dissolve the special district by repealing its enabling laws or by other appropriate means. Notwithstanding this subsection or any other section of law, if the governing body of a special district unanimously adopts a resolution declaring the district inactive pursuant to paragraphs (1)(b) and (c), and no administrative appeals were timely filed, the special district may be dissolved without a referendum.

(5) Independent and dependent special districts that meet any criteria to be declared inactive, or that have already been declared inactive, may be dissolved or merged by special act without a referendum.

Section 3. This act shall take effect July 1, 2010.

Amendment No.

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	_____

Council/Committee hearing bill: Policy Council

Representative(s) Pafford offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 189.4042, Florida Statutes, is amended to read:

189.4042 Merger and dissolution procedures.—

(1)(a) The merger or dissolution of dependent special districts may be effectuated by an ordinance of the general-purpose local governmental entity wherein the geographical area of the district or districts is located. However, a county may not dissolve a special district that is dependent to a municipality or vice versa, or a dependent district created by special act.

(b) A copy of any ordinance and of any changes to a charter affecting the status or boundaries of one or more special districts shall be filed with the Special District Information Program within 30 days of such activity.

(2)(a) Dependent District Merger/dissolution. Unless otherwise provided by general law, the merger or dissolution of ~~an independent special district or~~ a dependent special district created and operating pursuant to a special act may only be effectuated by the Legislature ~~unless otherwise provided by general law~~.

(b) Involuntary Dissolution of Independent District Created by the Legislature. If a local general-purpose government seeks to dissolve an active independent special district created and operating pursuant to a special act whose board objects by resolution to the dissolution, the dissolution of the active independent special district is not effective until a special act of the Legislature is approved by a majority of the resident electors of the district or landowners voting in the same manner that the independent special district's governing board is elected. This subsection shall also apply if an independent special district's governing board elects to dissolve the district by less than a supermajority vote of the board.

(c) Involuntary Merger of Independent District Created by the Legislature. If a local general-purpose government seeks to merge an active independent special district created and operating pursuant to a special act whose board objects by resolution to the merger with the local general-purpose government, a separate local general-purpose government or an independent special district or districts ("impacted local government"), the merger of the active independent special district is not effective until a plan of merger that addresses

transition issues such as the effective date of the merger, governance, administration, powers, pensions and assumption of all assets and liabilities is approved by the impacted political subdivision, special district and the Legislature, and the special act of the Legislature is approved at separate referendums of the political subdivision and district by a majority of the resident electors or landowners voting in the same manner that the independent special district's governing board is elected.

(d) Voluntary Merger of Independent Districts Created by the Legislature. Two independent special districts with similar functions and elected governing boards may elect to merge into one independent special, hereinafter called the "merged district" pursuant to the following procedure:

1. The governing body of each district must adopt a resolution providing for a plan of merger that addresses transition issues such as the effective date of the merger, administration, the assumption of all assets and liabilities by the merged district and the referendum question to be presented for approval. The resolutions must be adopted at least three months prior to any general election or special election on the subject. Upon notification to the Supervisor of Elections of the applicable county by the districts of their adoption of the resolutions, the Supervisor of Elections shall schedule a referendum. The referendum shall be held pursuant to the Florida Election Code and may be held pursuant to sections 101.6101-101.6107. All costs of the referendum shall be borne by the districts participating in the referendum. Upon the receipt of

approval at separate referendums of each district by a majority of the resident electors or landowners voting in the same manner that the independent special district's governing board is elected, the two districts shall merge upon the effective date provided for in the adopted merger plan and all assets and liabilities of the districts shall transfer to the merged district upon such effective date. Each district shall be considered a subunit of the merged independent special district.

2. Until such time as a unified charter is approved by the Legislature, the merged district shall be limited in its powers and financing capabilities within each subunit to those powers that existed within the boundaries of each subunit that were previously granted to the associated special district by its special acts prior to the merger. The districts may not, solely by reason of the merger, increase its powers or financing capability. The intent is to preserve and transfer all authority to the merged district within each subunit that were previously granted by the Legislature and, if applicable, approved at referendum.

3. Until such time as a unified charter is approved by the Legislature, the merged district shall only exercise the legislative authority to levy and collect revenues within the boundaries of each subunit that were previously granted to the associated special district by its special acts, including the ability to levy non-ad valorem assessments, ad valorem millage, impact fees and charges. The intent is to preserve and transfer all authority to the merged district to levy ad valorem taxes upon the property within each subunit up to the millage rate,

and non-ad valorem assessments, if applicable, that were previously approved by referendum. The districts may not, solely by reason of the merger, increase ad valorem taxes on property within the original limits of a district beyond the maximum ad valorem rate approved by the electors of that district. For purposes of Article VII, section 2 of the State Constitution, each subunit may be considered a separate taxing unit. The merged district may only levy an ad valorem millage rate within a subunit, if applicable, up to the millage rate that was previously approved by the electors of the associated special district unless an increase in the millage rate is approved pursuant to state law. The merged district may not, solely by reason of the merger, charge non-ad valorem assessments, impact fees or other new fees within a subunit that were not otherwise previously authorized to be charged.

4. From the effective date of the merger and until the next general election, the merged district's governing board shall be comprised of the members of the districts' governing boards, with such members serving until the governing board members that are elected at the next general election take office. Beginning with the next general election following the effective date of the merger, the merged district's governing board shall be comprised of five members, with the office of each member of the board being designated as a seat on the board distinguished from each of the other seats by a numeral: 1, 2, 3, 4, or 5. The governing board members initially elected in the general elections following the effective date of the merger shall serve unequal terms of two and four years in order to

create staggered membership of the governing board, with seats 1, 3 and 5 being designated for 4-year terms and seats 2 and 4 being designated for 2-year terms. Thereafter, all terms shall be for four years.

5. Within 30 days of the effective date of the merger, the merged district's governing board shall meet for an organizational meeting and shall determine the name of the merged district, which shall then be sent to the Florida Department of State and the Department of Community Affairs.

6. The effective date of the merger shall be as provided for in the merger plan and is not contingent upon future act of the Legislature. However, as soon as practicable, the merged district shall submit, at its own expense, to the Legislature a unified charter for the merged district for approval. The unified charter shall make the powers of the district consistent within the merged district and shall also repeal the special acts of the two districts that merged.

(e) Costs of Involuntary Merger/Dissolution. The political subdivision or subdivisions proposing the involuntary dissolution or merger of an active independent special district shall be responsible for payment of any expenses associated with the referendum required under (b)1. or (b)2. above.

(f) Inactive Districts. Independent and dependent special districts that meet any criteria to be declared inactive pursuant to section 189.4044, or that have already been declared inactive pursuant to section 189.4044, may be dissolved or merged by special act without a referendum.

(g) Dissolution of Independent District Created by a Local General-Purpose Government. If an inactive independent special district was created by a county or municipality through a referendum, the county or municipality that created the district may dissolve the district after publishing notice as described in s. 189.4044. If an independent special district was created by a county or municipality by referendum or any other procedure, the county or municipality that created the district may merge or dissolve the district pursuant to a referendum and any other ~~the same~~ procedure by which the independent district was created. If the ~~However, for any~~ independent special district that has ad valorem taxation powers, the ~~same~~ procedure by which the ~~required to grant such independent~~ district was granted ad valorem taxation powers shall also be followed ~~required to dissolve or merge the district~~.

(h) This subsection preempts any special act to the contrary unless a specific dissolution date of the independent district is provided in the special act.

(3) The government formed by merger of an existing independent special district or districts with another government shall assume all indebtedness of, and receive title to all property owned by, the preexisting independent special district or districts.

(4) Financial allocations of the assets and indebtedness of a dissolved independent special district shall be pursuant to s. 189.4045.

(5) ~~(3)~~ The provisions of this section shall not apply to community development districts implemented pursuant to chapter

190 or to water management districts created and operated pursuant to chapter 373.

Section 2. Subsection (4) of section 189.4044, Florida Statutes, is amended to read:

189.4044 Special procedures for inactive districts.—

(4) The entity that created a special district declared inactive under this section must dissolve the special district by repealing its enabling laws or by other appropriate means. Notwithstanding this subsection or any other section of law, if the governing body of a special district unanimously adopts a resolution declaring the district inactive pursuant to subsection (1)(b) and (c), and no administrative appeals were timely filed, the special district may be dissolved without a referendum. The special district shall be responsible for payment of any expenses associated with its dissolution.

Section 3. Subsection (3) of section 191.014, Florida Statutes, is repealed.

Section 4. This act shall take effect July 1, 2010.

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

Remove the entire title and insert:

A bill to be entitled

An act relating to special districts; amending s. 189.4042, F.S.; revising provisions relating to merger and dissolution procedures for special districts; requiring certain merger and dissolution procedures to include

referenda; providing that such provisions preempt prior special acts; providing procedures for the merger of certain independent special districts; providing for a local government to assume the indebtedness of, and receive the title to property owned by, a special district under certain circumstances; providing charter requirements for the assumption of such indebtedness and transfer of such title to property; amending s. 189.4044, F.S.; clarifying procedures for a special district declared inactive by its governing board; repealing s. 191.014(3), F.S; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1279 Assessment of Property for Back Ad Valorem Taxes
SPONSOR(S): Rivera
TIED BILLS: **IDEN./SIM. BILLS:** SB 2450

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	13 Y, 0 N	Fudge	Hoagland
2)	Finance & Tax Council		Diez-Arguelles	Langston
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Section 193.092, F.S., requires property appraisers to assess back taxes, for up to three years, on all property that should have been assessed and levied upon but was not.

The bill provides that the retroactive assessment and collection of ad valorem taxes is not applicable if:

- The owner of a building, structure or improvement that has not been previously assessed complied with all necessary permitting requirements when the improvement was completed; or
- The owner of real property voluntarily discloses to the property appraiser the existence of the property before January 1 of the year the property is first assessed.

The Revenue Estimating Conference has estimated that the provisions of this bill will have a negative indeterminate fiscal impact on local government revenues.

This bill may be a mandate requiring a two-thirds vote of the membership to be enacted. See Mandates section of the analysis.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 4, Article VII, of the Florida Constitution, requires the 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.

Section 193.023, F.S., provides, in part, that property appraisers must 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 the assessment of all property. This section provides that in making the assessment of 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.

Section 193.092, F.S., provides that when the property appraiser discovers property that should have been assessed and levied upon but was not, the property appraiser must assess the property for each year in which it escaped taxation, for up to three years.

The bill provides that the retroactive assessment and collection of ad valorem taxes is not applicable if:

- The owner of a building, structure or improvement that has not been previously assessed complied with all necessary permitting requirements when the improvement was completed; or

- The owner of real property voluntarily discloses to the property appraiser the existence of the property before January 1 of the year the property is first assessed.

B. SECTION DIRECTORY:

Section 1: Amends s. 193.092, F.S.

Section 2: Provides an effective date of July 1, 2010.

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:

   The Revenue Estimating Conference has estimated that the provisions of this bill will have a negative indeterminate fiscal impact on local government revenues.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce the tax burden on some property owners who would have otherwise been subject to the back taxes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The mandates provision appears to apply because the bill reduces the authority that municipalities and counties have to raise revenue as that authority existed on February 1, 1989. The reduction in authority comes from the decline in back taxes. It has not been determined whether the decline in back taxes will remain below the $1.9 million threshold for a mandate. Consequently, at this time the bill does not appear to qualify for an exemption.

   If the mandates provision applies, and in the absence of an applicable exemption, Article VII, section 18(b), of the Florida Constitution provides that, "except upon approval by a two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989."

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to assessment of property for back ad valorem taxes; amending s. 193.092, F.S.; providing for nonapplication of retroactive assessment and collection of taxes on certain property under certain circumstances; providing criteria; providing an effective date.

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

Section 1. Section 193.092, Florida Statutes, is amended to read:

193.092 Assessment of property for back taxes.—

(1) When it shall appear that any ad valorem tax might have been lawfully assessed or collected upon any property in the state, but that such tax was not lawfully assessed or levied, and has not been collected for any year within a period of 3 years next preceding the year in which it is ascertained that such tax has not been assessed, or levied, or collected, then the officers authorized shall make the assessment of taxes upon such property in addition to the assessment of such property for the current year, and shall assess the same separately for such property as may have escaped taxation at and upon the basis of valuation applied to such property for the year or years in which it escaped taxation, noting distinctly the year when such property escaped taxation and such assessment shall have the same force and effect as it would have had if it had been made in the year in which the property shall have escaped taxation, and taxes shall be levied and collected

thereon in like manner and together with taxes for the current year in which the assessment is made. But no property shall be assessed for more than 3 years' arrears of taxation, and all property so escaping taxation shall be subject to such taxation to be assessed in whomsoever's hands or possession the same may be found, except that property acquired by a bona fide purchaser who was without knowledge of the escaped taxation shall not be subject to assessment for taxes for any time prior to the time of such purchase, but it is the duty of the property appraiser making such assessment to serve upon the previous owner a notice of intent to record in the public records of the county a notice of tax lien against any property owned by that person in the county. Any property owned by such previous owner which is situated in this state is subject to the lien of such assessment in the same manner as a recorded judgment. Before any such lien may be recorded, the owner so notified must be given 30 days to pay the taxes, penalties, and interest. Once recorded, such lien may be recorded in any county in this state and shall constitute a lien on any property of such person in such county in the same manner as a recorded judgment, and may be enforced by the tax collector using all remedies pertaining to same; provided, that the county property appraiser shall not assess any lot or parcel of land certified or sold to the state for any previous years unless such lot or parcel of lands so certified or sold shall be included in the list furnished by the Chief Financial Officer to the county property appraiser as provided by law; provided, if real or personal property be assessed for taxes, and because of litigation delay ensues and the assessment be held invalid the

taxing authorities, may reassess such property within the time herein provided after the termination of such litigation; provided further, that personal property acquired in good faith by purchase shall not be subject to assessment for taxes for any time prior to the time of such purchase, but the individual or corporation liable for any such assessment shall continue personally liable for same. As used in this subsection, the term "bona fide purchaser" means a purchaser for value, in good faith, before certification of such assessment of back taxes to the tax collector for collection.

(2) This section applies to property of every class and kind upon which ad valorem tax is assessable by any state or county authority under the laws of the state.

(3) Notwithstanding subsection (2), the provisions of this section requiring the retroactive assessment and collection of ad valorem taxes shall not apply if:

(a) The owner of a building, structure, or other improvement to land that has not been previously assessed complied with all necessary permitting requirements when the improvement was completed; or

(b) The owner of real property that has not been previously assessed voluntarily discloses to the property appraiser the existence of such property before January 1 of the year the property is first assessed. The disclosure must be made on a form provided by the property appraiser.

Section 2. This act shall take effect July 1, 2010.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1295 City of Lauderhill, Broward County
SPONSOR(S): Porth
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	14 Y, 0 N	Nelson	Hoagland
2)	Finance & Tax Council		Wilson	Langston
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

This bill enlarges the corporate limits of the City of Lauderhill in Broward County to include one commercial property, a gas station. The bill provides for: an effective date of the annexation; land use and zoning governance of the annexed area; continuation of uses; and preservation of existing contracts.

According to the Economic Impact Statement, the bill will provide the city with $8,951.13 in additional revenue for Fiscal Year 2011-2012.

The bill is effective upon becoming law.

Pursuant to House Rule 5.5(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.5(b) appear to apply to this bill.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Constitutional/Statutory Provisions Relating to Annexation[1]

Section 2 (c), of Art. VIII of the State Constitution provides that "[m]unicipal annexation of unincorporated territory, merger of municipalities, and exercise of extra-territorial powers by municipalities shall be as provided by general or special law." This provision authorizes the Legislature to annex unincorporated property into a municipality by special act.[2] It also authorizes the Legislature to establish procedures in general law for the annexation of property.

The Legislature established local annexation procedures by general law in 1974, with the enactment of ch. 171, F. S., the "Municipal Annexation or Contraction Act." Chapter 171, F.S., describes the ways that property can be annexed or deannexed by cities without passage of an act by the Legislature. In 2006, this chapter was expanded to provide an alternative process for annexation that allows counties and municipalities to jointly determine how services are provided to residents and property.[3]

Requirements for Annexation

Before local annexation procedures may begin, pursuant to s. 171.042, F.S., the governing body of the municipality must prepare a report containing plans for providing urban services to any area to be annexed. A copy of the report must be filed with the board of county commissioners where the municipality is located. This report must include appropriate maps, plans for extending municipal services, timetables and financing methodologies. It must certify that the area proposed to be annexed is appropriate for annexation because it meets the following standards and requirements described by s. 171.043, F.S.:

- The area to be annexed must be an unincorporated area that is contiguous to the boundary of the annexing municipality.[4]

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[1] The term "annexation" is defined in the Florida Statutes to mean "the adding of real property to the boundaries of an incorporated municipality, such addition making such real property in every way a part of the municipality." See, s. 171.031(1), F.S.

[2] Miami-Dade County, however, has exclusive jurisdiction over its municipal annexations under ss. 11(1)(c), (5) and (6), Art. VIII of the 1885 State Constitution, as adopted by reference in s. 6(e), Art. VIII of the State Constitution.

[3] See, part II of ch. 171, F.S., the "Interlocal Service Boundary Agreement Act."

[4] This means that a substantial part of the boundary of the area to be annexed has a common boundary with the municipality. There are specified exceptions for cases in which an area is separated from the city's boundary by a publicly owned county park, right-of-way or body of water.

- The area to be annexed must be reasonably compact.[5]
- No part of the area to be annexed may fall within the boundary of another incorporated municipality.
- Part or all of the land to be annexed must be developed for urban purposes.[6]
- Alternatively, if the proposed area is not developed for urban purposes, it can either border at least 60 percent of a developed area, or provide a necessary bridge between two urban areas for the extension of municipal services.

Annexed areas are declared to be subject to taxation (and existing indebtedness) for the current year on the effective date of the annexation, unless the annexation takes place after the municipal governing body levies such tax for that year. In the case of municipal contractions, the city and county must reach agreement on the transfer of indebtedness or property—the amount to be assumed, its fair value and the manner of transfer and financing.[7]

Types of Annexations

Voluntary Annexation

If the property owners of a reasonably compact, unincorporated area desire annexation into a contiguous municipality, they can initiate voluntary annexation proceedings. Section 171.044 (4), F. S., provides that the procedures for voluntary annexation are "supplemental to any other procedure provided by general law or special law." The following process governs voluntary annexations in every county, except for those counties with charters providing an exclusive method for municipal annexation:

- submission of a petition—signed by all property owners in the area proposed to be annexed—to the municipal governing body; and
- adoption of an ordinance by the governing body of the municipality to annex the property after publication of a notice—which sets forth the proposed ordinance in full—at least once a week for two consecutive weeks.

The governing body of the municipality also must provide a copy of the notice to the board of county commissioners of the county where the municipality is located.

Land cannot be annexed through voluntary annexation when the process results in the creation of an enclave.[8]

Involuntary Annexation

A municipality may annex property where the property owners have not petitioned for annexation pursuant to s. 171.0413, F. S. This process is referred to as "involuntary" annexation. In general, the requirements for an involuntary annexation are:

- the adoption of an annexation ordinance by the annexing municipality's governing body;
- at least two advertised public hearings held by the governing body of the municipality prior to the adoption of the ordinance, with the first hearing on a weekday at least seven days after the

[5] Section 171.031(12), F.S., defines "compactness" as concentration of a piece of property in a single area and precludes any action which would create enclaves, pockets, or finger areas in serpentine patterns. Any annexation proceeding in any county in the state is required to be designed in such a manner as to ensure that the area will be reasonably compact.

[6] An area developed for urban purposes is defined as an area which meets any one of the following standards: (a) a total resident population equal to at least two persons per acre; (b) a total resident population equal to at least one person per acre, with at least 60 percent of subdivided lots one acre or less; or (c) at least 60 percent of the total lots used for urban purposes, with at least 60 percent of the total urban residential acreage divided into lots of five acres or less.

[7] See, s. 171.061, F.S.

[8] An enclave is: (a) any unincorporated, improved or developed area that is enclosed within and bounded on all sides by a single municipality; or (b) any unincorporated, improved or developed area that is enclosed within and bounded by a single municipality and a natural or manmade obstacle that allows the passage of vehicular traffic to that unincorporated area only through the municipality. Section 171.031(13), F.S.

first advertisement and the second hearing held on a weekday at least five days after the first advertisement; [9] and

- submission of the ordinance to a vote of the registered electors of the area proposed for annexation once the governing body has adopted the ordinance.[10]

Any parcel of land which is owned by one individual, corporation or legal entity, or owned collectively by one or more individuals, corporations or legal entities, proposed to be annexed cannot be severed, separated, divided or partitioned by the provisions of the ordinance, unless the owner of such property waives this requirement.

If there is a majority vote in favor of annexation in the area proposed to be annexed, the area becomes part of the city. If there is no majority vote, the area cannot be made the subject of another annexation proposal for two years from the date of the referendum.

If more than 70 percent of the land in an area proposed to be annexed is owned by individuals, corporations or legal entities which are not registered electors of such area, the area cannot be annexed unless the owners of more than 50 percent of the land in such area consent to the annexation. This consent must be obtained by the parties proposing the annexation prior to the referendum.

If the area proposed to be annexed does not have any registered electors on the date the ordinance is finally adopted, a vote of electors of the area proposed to be annexed is not required. The area may not be annexed unless the owners of more than 50 percent of the parcels of land in the area proposed to be annexed consent to the annexation. If the governing body does not choose to hold a referendum of the annexing municipality, then the property owner consents must be obtained by the parties proposing the annexation prior to the final adoption of the ordinance.

Effect of Annexation on an Area

Upon the effective date of an annexation, the area becomes subject to all laws, ordinances and regulations in force in the annexing municipality. An exception occurs pursuant to s. 171.062(2), F.S., in that if the area annexed was subject to a county land use plan and county zoning or subdivision regulations, these regulations remain in effect until the municipality adopts a comprehensive plan amendment that includes the annexed area. In contractions, excluded territory is immediately subject to county laws, ordinances and regulations.

Any changes in municipal boundaries require revision of the boundary section of the municipality's charter. Such changes must be filed as a charter revision with the Department of State within 30 days of the annexation or contraction.[11]

Appeal of Annexation or Contraction

Affected persons who believe they will suffer material injury because of the failure of a city to comply with annexation or contraction laws as applied to their property can appeal the annexation ordinance. They may file a petition within 30 days following the passage of the ordinance with the circuit court for the county in which the municipality is located seeking the court's review by certiorari. If an appeal is won, the petitioner is entitled to reasonable costs and attorney's fees.[12]

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[9] This new requirement was passed by the 1999 Legislature.

[10] In 1999, the Florida Legislature removed the requirement of a dual referendum in specific circumstances. Previously, in addition to a vote by the electors in the proposed annexed area, the annexation ordinance was submitted to a separate vote of the registered electors of the annexing municipality if the total area annexed by a municipality during any one calendar year period cumulatively exceeded more than five percent of the total land area of the municipality or cumulatively exceeded more than five percent of the municipal population. The holding of a dual referendum is now at the discretion of the governing body of the annexing municipality.

[11] Section 171.091, F.S.

[12] Section 171.081, F.S.

Broward County Annexations

Broward County is located on Florida's South Atlantic coast and consists of nearly 1,200 square miles with a population of approximately 1.8 million residents. Broward County currently contains 31 municipalities, the majority of which achieved their current corporate boundaries through a multitude of annexations.

The 1996 Florida Legislature adopted a special act[13] which describes Broward County has having "numerous scattered unincorporated pockets which reflect the haphazard manner in which annexation into municipalities has taken place over the years by the application of general annexation laws of the state...." This law requires that any annexation of unincorporated property within Broward County proposed to be accomplished pursuant to ch. 171, F.S., first must be considered at a public hearing conducted by the Broward County Legislative Delegation, pursuant to its adopted rules. The annexation is not effective until the 15th day of September following adjournment sine die of the next regular legislative session following the completion of all necessary procedures for annexation.

That same year, in cooperation with the Broward County Board of County Commissioners, the Broward County Legislative Delegation created the "Ad Hoc Committee on Annexation Policy." The delegation charged the committee with the responsibility of developing and recommending policy regarding future annexations. The committee recommended that annexation of all unincorporated areas of Broward County be encouraged to occur by the year 2010, and that any remaining unincorporated areas would be subject to annexation by the Florida Legislature. In 2001, this goal was changed to the year 2005.

The Broward County Legislative Delegation sponsors several local annexation bills each year.

Effect of Proposed Changes

The City of Lauderhill was incorporated in 1959, and has an estimated population of 64,000.[14] HB 1295 provides for the annexation of one commercial parcel, a gas station located on the northwest corner of Sunrise Boulevard and N.W. 31st Avenue, into the municipality. This corner parcel is surrounded by the city on three sides. The city has attempted to annex this parcel since 2005. On October 27, 2009, the city sent the owner of the property a letter requesting that he voluntarily annex. On January 20, 2010, the Executive Director of the Broward Legislative Delegation sent a letter to the owner which indicated that the delegation would be meeting to discuss the annexation of his property pursuant to a proposed local bill and that he would be able to give public testimony at the meeting. The owner has not responded to either the city or the delegation.

The annexation is effective on September 15, 2010. Upon annexation into the City of Lauderhill, the area will be governed as follows:

(1) The annexed property will be subject to the relevant land use and zoning provisions of the City of Lauderhill's Code of Ordinances.

(2) Any change of zoning districts or land use designations may only be accomplished by a supermajority vote of the full governing body of the City of Lauderhill.

(3) Any use, building or structure that is legally in existence at the time of annexation may not be made a prohibited use by the City of Lauderhill, as long as the use continues and is not voluntarily abandoned.

[13] Chapter 96-542, L.O.F, as amended by ch. 99-447, L.O.F.

[14] Florida Estimates of Population 2009; Warrington College of Business Administration; Bureau of Economic and Business Research, University of Florida.

The bill further provides that nothing in it shall be construed to affect or abrogate the rights of parties to any contract which is in effect prior to the annexation, whether the contract be between Broward County and a third party or the City of Lauderhill and a third party or between nongovernmental entities.

The act takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Provides a legal description of the area to be annexed.

Section 2: Provides an effective date for the annexation.

Section 3: Provides for land use and zoning governance, and continued use.

Section 4; Provides for continuation of existing contracts.

Section 5: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? January 26, 2010

WHERE? The *Sun-Sentinel*, a daily newspaper published in Broward County, Florida.

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [x] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

According to the Economic Impact Statement, the bill will provide the city with $8,951.13 in additional revenue for Fiscal Year 2011-2012. The annexation of this property is a logical annexation due to location of the property and the surrounding city boundaries. It prevents the creation of an enclave and clarifies jurisdiction for police and fire responders.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

House Rule 5.5(b) states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill may create an exemption to s. 171.062(1), F.S., which provides that an area annexed to a municipality shall be subject to all laws, ordinances and regulations in force in that municipality, via the "continued use" provisions contained in section 3.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the City of Lauderhill, Broward County; extending and enlarging the corporate limits of the city to include specified unincorporated lands; providing an effective date of annexation; providing an effective date.

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

Section 1. The legal description of the area referred to in this act is as follows:

That portion of Section 31, Township 49 South, Range 42 East, Broward County, Florida described as follows:

Begin at the point of intersection of the East line of said Section 31 with the centerline of Sunrise Boulevard, as shown on the plat of THUNDERBIRD SWAP SHOP I, according to the plat thereof, as recorded in Plat Book 139, Page 2, of the Public Records of Broward County Florida;

Thence Westerly along said centerline to a point of the Southerly prolongation of the West line of EXXON-SUNRISE BOULEVARD, according to the plat thereof, as recorded in Plat Book 141, Page 38, of the Public records of Broward County, Florida, said point being on the municipal boundary of the City of Lauderhill, as established by Ordinance No. 04-10-217;

Thence Northerly along said Southerly prolongation and the West line of said plat and along said municipal boundary to the Northwest corner of said plat;

Thence Easterly along the North line of said plat and the Easterly prolongation thereof and along said municipal boundary to a point of intersection with the East line of said Section 31;

Thence Southerly along said East line to the POINT OF BEGINNING.

Section 2. The area described in section 1 shall be deemed a part of the City of Lauderhill on September 15, 2010, subject to section 171.062, Florida Statutes, except as provided for in this act.

Section 3. Upon annexation into the City of Lauderhill, the area described in section 1 shall be governed as follows:

(1) The annexed property shall be governed by the relevant land use and zoning provisions of the City of Lauderhill's Code of Ordinances. Any change of the zoning districts or land use designations may only be accomplished by enactment of the vote of a majority plus one of the full governing body of the City of Lauderhill.

(2) Notwithstanding subsection (1), any use, building, or structure that is legally in existence at the time of annexation shall become a part of the City of Lauderhill. Such use shall

not be made a prohibited use by the City of Lauderhill, on the property of such use, for as long as the use shall continue and not be voluntarily abandoned.

Section 4. Nothing in this act shall be construed to affect or abrogate the rights of parties to any contract, whether the contract be between Broward County and a third party or the City of Lauderhill and a third party, or between nongovernmental entities, which contracts are in effect prior to the effective date of the annexation.

Section 5. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1387 Ad Valorem Tax Assessments
SPONSOR(S): Finance & Tax Council
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Finance & Tax Council		Diez-Arguelles	Langston
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

This bill makes a number of changes to the statutory provisions dealing with the operation of Value Adjustment Boards (VABs). The bill also makes one change to the Department of Revenue's (DOR) oversight of each county's assessment rolls. The bill:

- Expands the information that must be included in a petition to the VAB to include the petitioner's estimate of the property's market value and a declaration of whether the petitioner is an agent having written consent to represent the owner.
- Requires that persons representing property owners before the VAB for compensation must be licensed brokers, appraisers or attorneys.
- Provides that the decision by the VAB to accept late filed petitions must not extend the deadlines for filing a circuit court challenge.
- Changes the filing fee structure for petitions that cover multiple parcels.
- Allows the VAB clerk to grant more than one rescheduling at the request of the petitioner, so long as the rescheduling does not extend the scheduled end of the VAB proceedings.
- Provides that a written decision by the VAB is not required when the petitioner or agent fails to appear at the hearing.
- Reduces the amount of information the VAB must publish in a newspaper detailing the tax impact of the VAB's decisions, and requires the DOR to prepare a report of the information currently required.
- Requires that the Department of Revenue's in-depth review of a county's assessment rolls include the actions of the VAB.
- Make other minor changes.

The bill authorizes the Department of Revenue to adopt emergency rules to implement the provisions of the bill.

The provisions of the bill will cause an insignificant reduction in local government revenues and an insignificant increase in state government expenditures.

The bill has an effective date of July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Under current law, property owners that object to the assessment placed on their property by the property appraiser may request an informal conference with the property appraiser[1] may file a petition with the Value Adjustment Board in the county where the property is located,[2] or may file an action in circuit court[3] to contest the assessment.

This bill makes a number of changes to the statutory provisions dealing with the operation of the Value Adjustment Boards (VABs). The bill also makes one change to the Department of Revenue's oversight of each county's assessment rolls.

Contents of Petition

A petition to a VAB must include the parcel number of the property and an estimate of the time needed by the petitioner to present and argue the petition before the board, and must be sworn to by the petitioner.[4] The bill adds two items that must be included in the petition: (1) if the petition challenges the valuation of the property, an estimate of the market value of the property on January 1 of the current year, and (2) a declaration that the petitioner is the owner of the property or a person having the written consent of the owner to represent the owner.

Attorneys and Agents

Property owners may be represented before the VAB by attorneys or agents and the attorney or agent may file the petition.[5] The bill requires that persons filing a petition or representing the property owner for compensation must be licensed as a broker or appraiser under Chapter 475, F.S. or be a member of the Florida Bar in good standing.

Late-filed Petitions

Filing deadlines for petitions to the VAB vary depending on the subject of the petition. If the petition deals with a valuation issue, it must be filed on or before the 25th day following the mailing of the Notice of Proposed Property Taxes. If the petition deals with the denial of an exemption or a classification, it must be filed on or before the 30th day following the mailing of the notice denying the application for exemption or classification.[6] Current law is silent regarding late-filed petitions. The bill provides that if

[1] S. 194.011(2), F.S.
[2] S. 194.011(3), F.S.
[3] S. 194.171, F.S.
[4] S. 194.011(3), F.S.
[5] S. 194.034 and s. 194.011(3)(g), F.S.
[6] S. 194.011(d), F.S.

the VAB accepts late-filed petitions, the VAB may not extend the deadlines for the filing of a circuit court action under s. 194.171(2), F.S.

Filing Fees
The VAB may require a petition filing fee of up to $15 for each separate parcel of property. However, a condominium association; a cooperative association; a homeowners' association; and the owner of contiguous undeveloped parcels may file a single petition covering multiple parcels, if certain conditions are met.[7] The filing fee for these joint petitions must be calculated as the cost of the special magistrate for the time involved in hearing the joint petition, not to exceed $5 per parcel. The bill deletes the calculation for determining the joint petition fee and replaces it with fee of $15 for the first parcel and $5 for each additional parcel.

Board Meetings
Current law states that the VAB may not meet unless counsel to the VAB is present.[8] The bill makes an exception to this requirement for the VAB meeting to appoint or hire counsel.

Rescheduling Appearances
Petitioners to the VAB have the right to reschedule the hearing a single time by submitting to the clerk of the VAB a written request no less than 5 days before the date of the originally scheduled hearing.[9] The bill provides that, at the discretion of the VAB clerk, additional rescheduling may be made, but they may not extend the scheduled end of the VAB's proceedings.

Wait Time
Current law provides that if a petition is not heard within 4 hours of the scheduled time, the petitioner may report to the chairperson of the meeting that he or she intends to leave. If he or she is not heard immediately, the petitioner's administrative remedies will be exhausted, and he or she may seek further relief as he or she deems appropriate.[10] The bill deletes this provision from the statutes.

Written Decisions
The VAB is required to render a written decision in each case, except when a petition is withdrawn by the petitioner.[11] The bill provides that a written decision is not needed when the petitioner or agent fails to appear.

Training
Under current law, the Department of Revenue is required to conduct training for VAB special magistrates at least once each state fiscal year in at least five locations throughout the state.[12] The bill provides the department may provide the training online, as an alternative to this requirement. This statutory change codifies the department's current practice.

Notice of VAB Tax Impact
Once the VAB hearings are completed, the VAB clerk is required to publish a notice of the result of the VAB's actions.[13] The notice must be published in a newspaper of general interest and must meet specified size requirements. The notice must include information displayed in columnar form for the following types of property: Improved residential; improved commercial; improved industrial, utility, and other property not attributable to other listed classes; agricultural property; high water recharge property; historic property; tangible personal property; and vacant land and nonagricultural acreage. For each type of property, the columns must show: the number of parcels for which exemptions were granted; the number of parcels for which exemption petitions were filed; the number of parcels for which the VAB reduced the assessment made by the property appraiser; the number of parcels for which petitions were not considered because they were withdrawn; the number of parcels for which

[7] S. 194.013, F.S.
[8] S.194.015, F.S.
[9] S. 194.032, F.S.
[10] Id.
[11] S. 194.034, F.S.
[12] S. 194.035, F.S.
[13] S. 194.037, F.S.

petitions were filed requesting a change in assessed value, including changes in assessment classifications; the net change in taxable value from the appraiser's initial roll resulting from the VAB's decisions; the net shift in taxes to parcels not granted relief by the VAB.

The bill removes the requirement that the notice contain information on each of the specified classes of property, and continues the requirement for the notice to contain the required information, in columnar form, for all actions of the VAB. Also, the number of parcels where the petitioner or agent failed to appear must be included with the number of parcels that were withdrawn.

Finally, the bill requires the VAB clerk to prepare and submit to the Department of Revenue the information, by class of property, currently required to be published in a newspaper. The department must prepare a report containing the information provided by the VAB clerk and a statewide compilation of the information. The department's report must be posted in the department's website.

Review of Assessment Rolls

The Department of Revenue conducts in-depth reviews of each county's assessment rolls once every two years.[14] Currently, the reviews may include proceedings of the VAB. The bill provides that the reviews must include VAB proceedings.

B. SECTION DIRECTORY:

Section 1 amends s. 194.011, F.S.
Section 2 amends s. 194.013, F.S.
Section 3 amends s. 194.015, F.S.
Section 4 amends s. 194.032, F.S.
Section 5 amends s. 194.034, F.S.
Section 6 amends s. 194.035, F.S.
Section 7 amends s. 194.037, F.S.
Section 8 amends s. 195.096, F.S.
Section 9 amends s. 192.0105, F.S., to update a cross-reference.
Section 10 authorizes the Department of revenue to adopt emergency rules.
Section 11 provides an effective date of July 1, 2010

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   The Department of Revenue will incur insignificant costs to promulgate rules and forms.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The loss of revenues due to the change in filing fees is expected to be insignificant.

2. Expenditures:

   The VABs should experience some savings from the reduction in the amount of information that must be published in a newspaper and from the change in the requirement for written decisions.

[14] S. 195.096, F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons who currently represent property owners before the VAB who are not licensed brokers, appraisers or attorneys will no longer be able to do so.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appears to apply because this bill reduces the authority that counties have to raise revenues (the change to filing fee structure); however, an exemption applies because the reduction in revenues is expected to be insignificant.

2. Other:

None

B. RULE-MAKING AUTHORITY:

The Department of Revenue is authorized to adopt emergency rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to ad valorem tax assessments; amending s. 194.011, F.S.; providing that participation in an informal conference is not a prerequisite to administrative or judicial review of property assessments; requiring that a petition before the value adjustment board challenging an ad valorem assessment contain certain information relating to the property and the petitioner; prohibiting the value adjustment board from extending certain deadlines under certain circumstances; requiring that persons representing property owners before the value adjustment board be licensed brokers, appraisers or attorneys; amending s. 194.013, F.S.; revising certain parcel petition filing fees; amending s. 194.015, F.S.; providing an exception to a prohibition against board meetings without counsel being present; amending s. 194.032, F.S.; authorizing rescheduling of board hearings; providing an exception; deleting certain procedural requirements relating to petitioners being heard by the board; amending s. 194.034, F.S.; revising requirements for a written decision; amending s. 194.035, F.S.; authorizing the Department of Revenue to provide certain special magistrate training online; amending s. 194.037, F.S.; revising requirements for disclosure of tax impact notice forms; providing additional notice requirements for clerks; requiring the department to compile a report on the information received from the clerks and post it on its website; amending s. 195.096, F.S.; requiring the department to include

proceedings of value adjustment boards in certain in-depth reviews; amending s. 192.0105, F.S.; conforming references; authorizing the Department of Revenue to adopt emergency rules; providing an effective date.

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

Section 1. Subsections (2)and (3) of section 194.011, Florida Statutes, are amended to read:

194.011 Assessment notice; objections to assessments.—

(2) Any taxpayer who objects to the assessment placed on any property taxable to him or her, including the assessment of homestead property at less than just value under s. 193.155(8), may request the property appraiser to informally confer with the taxpayer. Upon receiving the request, the property appraiser, or a member of his or her staff, shall confer with the taxpayer regarding the correctness of the assessment. At this informal conference, the taxpayer shall present those facts considered by the taxpayer to be supportive of the taxpayer's claim for a change in the assessment of the property appraiser. The property appraiser or his or her representative at this conference shall present those facts considered by the property appraiser to be supportive of the correctness of the assessment. However, participation in an informal conference is not ~~nothing herein shall be construed to be~~ a prerequisite to administrative or judicial review of property assessments.

(3) A petition to the value adjustment board must be in substantially the form prescribed by the department.

Notwithstanding s. 195.022, a county officer may not refuse to accept a form provided by the department for this purpose if the taxpayer chooses to use it. ~~A petition to the value adjustment board shall describe the property by parcel number and shall be filed as follows:~~

(a) The property appraiser shall have available and shall distribute forms prescribed by the Department of Revenue on which the petition shall be made. ~~Such petition shall be sworn to by the petitioner.~~

(b) The completed petition shall be filed with the clerk of the value adjustment board of the county. The clerk~~, who~~ shall acknowledge receipt of the petition ~~thereof~~ and promptly furnish a copy of the petition ~~thereof~~ to the property appraiser.

(c) The completed petition shall:

1. Identify the property by parcel number;

2. Contain the estimate of the market value of the property on January 1 of the current year, if the petition is challenging the valuation of the property;

3. State the approximate time anticipated by the taxpayer to present and argue his or her petition before the board;

4. Contain a declaration that the petitioner is the owner of the property or a person having the written consent of the owner to represent the owner; and

5. Be sworn to by the petitioner.

(d) The petition may be filed, as to valuation issues, at any time during the taxable year on or before the 25th day following the mailing of notice by the property appraiser as

provided in subsection (1). With respect to an issue involving the denial of an exemption, an agricultural or high-water recharge classification application, an application for classification as historic property used for commercial or certain nonprofit purposes, or a deferral, the petition must be filed at any time during the taxable year on or before the 30th day following the mailing of the notice by the property appraiser under s. 193.461, s. 193.503, s. 193.625, or s. 196.193 or notice by the tax collector under s. 197.253. <u>If the value adjustment board accepts late-filed petitions, the board may not extend the deadlines in s. 194.171(2).</u>

(e) A condominium association, cooperative association, or any homeowners' association as defined in s. 723.075, with approval of its board of administration or directors, may file with the value adjustment board a single joint petition on behalf of any association members who own parcels of property which the property appraiser determines are substantially similar with respect to location, proximity to amenities, number of rooms, living area, and condition. The condominium association, cooperative association, or homeowners' association as defined in s. 723.075 shall provide the unit owners with notice of its intent to petition the value adjustment board and shall provide at least 20 days for a unit owner to elect, in writing, that his or her unit not be included in the petition.

(f) An owner of contiguous, undeveloped parcels may file with the value adjustment board a single joint petition if the property appraiser determines such parcels are substantially similar in nature.

(g) The individual, agent, or legal entity that signs the petition becomes an agent of the taxpayer for the purpose of serving process to obtain personal jurisdiction over the taxpayer for the entire value adjustment board proceedings, including any appeals of a board decision by the property appraiser pursuant to s. 194.036.

(h) If the person filing a petition or representing the property owner before the value adjustment board receives compensation, the person must be licensed as a broker or appraiser under chapter 475 or be a member of the Florida Bar in good standing.

Section 2. Subsection (1) of section 194.013, Florida Statutes, is amended to read:

194.013 Filing fees for petitions; disposition; waiver.—

(1) If so required by resolution of the value adjustment board, a petition filed pursuant to s. 194.011 shall be accompanied by a filing fee to be paid to the clerk of the value adjustment board in an amount determined by the board not to exceed $15 for each separate parcel of property, real or personal, covered by the petition and subject to appeal. However, no such filing fee may be required with respect to an appeal from the disapproval of homestead exemption under s. 196.151 or from the denial of tax deferral under s. 197.253. Only a single filing fee shall be charged under this section as to any particular parcel of property despite the existence of multiple issues and hearings pertaining to such parcel. For joint petitions filed pursuant to s. 194.011(3)(e) or (f), a single filing fee shall be charged. Such fee shall be $15 for

the first parcel and ~~calculated as the cost of the special magistrate for the time involved in hearing the joint petition and shall not exceed~~ $5 for each additional ~~per~~ parcel. ~~Said fee is to be proportionately paid by affected parcel owners.~~

Section 3. Section 194.015, Florida Statutes, is amended to read:

194.015 Value adjustment board.—There is hereby created a value adjustment board for each county, which shall consist of two members of the governing body of the county as elected from the membership of the board of said governing body, one of whom shall be elected chairperson, and one member of the school board as elected from the membership of the school board, and two citizen members, one of whom shall be appointed by the governing body of the county and must own homestead property within the county and one of whom must be appointed by the school board and must own a business occupying commercial space located within the school district. A citizen member may not be a member or an employee of any taxing authority, and may not be a person who represents property owners in any administrative or judicial review of property taxes. The members of the board may be temporarily replaced by other members of the respective boards on appointment by their respective chairpersons. Any three members shall constitute a quorum of the board, except that each quorum must include at least one member of said governing board, at least one member of the school board, and at least one citizen member and no meeting of the board shall take place unless a quorum is present. Members of the board may receive such per diem compensation as is allowed by law for state

employees if both bodies elect to allow such compensation. The clerk of the governing body of the county shall be the clerk of the value adjustment board. The board shall appoint private counsel who has practiced law for over 5 years and who shall receive such compensation as may be established by the board. The private counsel may not represent the property appraiser, the tax collector, any taxing authority, or any property owner in any administrative or judicial review of property taxes. A ~~No~~ meeting of the board may not ~~shall~~ take place unless counsel to the board is present, except for a meeting to appoint or hire counsel. Two-fifths of the expenses of the board shall be borne by the district school board and three-fifths by the district county commission.

Section 4. Subsection (2) of section 194.032, Florida Statutes, is amended to read:

194.032 Hearing purposes; timetable.—

(2) The clerk of the governing body of the county shall prepare a schedule of appearances before the board based on completed petitions timely filed with him or her. The clerk shall notify each petitioner of the scheduled time of his or her appearance no less than 25 calendar days prior to the day of such scheduled appearance. Upon receipt of this notification, the petitioner shall have the right to reschedule the hearing a single time by submitting to the clerk of the governing body of the county a written request to reschedule, no less than 5 calendar days before the day of the originally scheduled hearing. Additional hearing reschedulings may be made at the discretion of the clerk but may not extend the scheduled end of

proceedings of the value adjustment board. A copy of the property record card containing relevant information used in computing the taxpayer's current assessment shall be included with such notice, if such ~~said~~ card was requested by the taxpayer. Such request shall be made by checking an appropriate box on the petition form. ~~No petitioner shall be required to wait for more than 4 hours from the scheduled time; and, if his or her petition is not heard in that time, the petitioner may, at his or her option, report to the chairperson of the meeting that he or she intends to leave; and, if he or she is not heard immediately, the petitioner's administrative remedies will be deemed to be exhausted, and he or she may seek further relief as he or she deems appropriate.~~ Failure on three occasions with respect to any single tax year to convene at the scheduled time of meetings of the board shall constitute grounds for removal from office by the Governor for neglect of duties.

Section 5. Subsection (2) of section 194.034, Florida Statutes, is amended to read:

194.034 Hearing procedures; rules.—

(2) In each case, except when a petition ~~complaint~~ is withdrawn by the petitioner or when the petitioner or agent fails to appear, the value adjustment board shall render a written decision. All such decisions shall be issued within 20 calendar days of the last day the board is in session under s. 194.032. The decision of the board shall contain findings of fact and conclusions of law and shall include reasons for upholding or overturning the determination of the property appraiser. When a special magistrate has been appointed, the

recommendations of the special magistrate shall be considered by the board. The clerk, upon issuance of the decisions, shall, on a form provided by the Department of Revenue, notify by first-class mail each taxpayer, the property appraiser, and the department of the decision of the board.

Section 6. Subsection (3) of section 194.035, Florida Statutes, is amended to read:

194.035 Special magistrates; property evaluators.—

(3) The department shall provide and conduct training for special magistrates at least once each state fiscal year in at least five locations throughout the state or may provide such training online. Such training shall emphasize the department's standard measures of value, including the guidelines for real and tangible personal property. Notwithstanding subsection (1), a person who has 3 years of relevant experience and who has completed the training provided by the department under this subsection may be appointed as a special magistrate. The training shall be open to the public. The department shall charge tuition fees to any person attending this training in an amount sufficient to fund the department's costs to conduct all aspects of the training. The department shall deposit the fees collected into the Certification Program Trust Fund pursuant to s. 195.002(2).

Section 7. Section 194.037, Florida Statutes, is amended to read:

194.037 Disclosure of tax impact.—

(1) After hearing all petitions, complaints, appeals, and disputes, the clerk shall make public notice of the findings and

results of the board in at least a quarter-page size advertisement of a standard size or tabloid size newspaper, and the headline shall be in a type no smaller than 18 point. The advertisement shall not be placed in that portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall be published in a newspaper of general paid circulation in the county. The newspaper selected shall be one of general interest and readership in the community, and not one of limited subject matter, pursuant to chapter 50. The headline shall read: TAX IMPACT OF VALUE ADJUSTMENT BOARD. The public notice shall list the members of the value adjustment board and the taxing authorities to which they are elected. The form shall show, in columnar form~~, for each of the property classes listed under subsection (2), the following information, with appropriate column totals~~:

(a) In the first column, the number of parcels for which the board granted exemptions that had been denied or that had not been acted upon by the property appraiser.

(b) In the second column, the number of parcels for which petitions were filed concerning a property tax exemption.

(c) In the third column, the number of parcels for which the board considered the petition and reduced the assessment from that made by the property appraiser on the initial assessment roll.

(d) In the fourth column, the number of parcels for which petitions were filed but not considered by the board because such petitions were withdrawn or the petitioner or agent failed to appear.

(e) In the fifth column, the number of parcels for which petitions were filed requesting a change in assessed value, including requested changes in assessment classification.

(f) In the sixth column, the net change in taxable value from the assessor's initial roll which results from board decisions.

(g) In the seventh column, the net shift in taxes to parcels not granted relief by the board. The shift shall be computed as the amount shown in column 6 multiplied by the applicable millage rates adopted by the taxing authorities in hearings held pursuant to s. 200.065(2)(d) or adopted by vote of the electors pursuant to s. 9(b) or s. 12, Art. VII of the State Constitution, but without adjustment as authorized pursuant to s. 200.065(6). If for any taxing authority the hearing has not been completed at the time the notice required herein is prepared, the millage rate used shall be that adopted in the hearing held pursuant to s. 200.065(2)(c).

~~(2) There must be a line entry in each of the columns described in subsection (1), for each of the following property classes:~~

~~(a) Improved residential property, which must be identified as "Residential."~~

~~(b) Improved commercial property, which must be identified as "Commercial."~~

~~(c) Improved industrial property, utility property, leasehold interests, subsurface rights, and other property not properly attributable to other classes listed in this section, which must be identified as "Industrial and Misc."~~

~~(d) Agricultural property, which must be identified as "Agricultural."~~

~~(e) High-water recharge property, which must be identified as "High-Water Recharge."~~

~~(f) Historic property used for commercial or certain nonprofit purposes, which shall be identified as "Historic Commercial or Nonprofit."~~

~~(g) Tangible personal property, which must be identified as "Business Machinery and Equipment."~~

~~(h) Vacant land and nonagricultural acreage, which must be identified as "Vacant Lots and Acreage."~~

(2)~~(3)~~ The form of the notice, including appropriate narrative and column descriptions, shall be prescribed by department rule and shall be brief and nontechnical to minimize confusion for the average taxpayer.

(3) The clerk shall submit a copy of the notice to the Department of Revenue. In addition, the clerk shall prepare and submit to the department, on a form provided by the department, the same information contained in the notice for the following property classes: improved residential property, improved commercial property, improved industrial or utility property and other property not properly attributable to other classes listed in this subsection, agricultural property, high-water recharge property, historic property used for commercial or certain nonprofit purposes, tangible personal property, vacant land, and nonagricultural acreage. The department shall prepare a report containing the information provided by each clerk and a statewide compilation of the information. The report shall be

posted on the department's website.

Section 8. Subsection (2) of section 195.096, Florida Statutes, is amended to read:

195.096 Review of assessment rolls.—

(2) The department shall conduct, no less frequently than once every 2 years, an in-depth review of the assessment rolls of each county. The department need not individually study every use-class of property set forth in s. 195.073, but shall at a minimum study the level of assessment in relation to just value of each classification specified in subsection (3). Such in-depth review shall ~~may~~ include proceedings of the value adjustment board and may include the audit or review of procedures used by the counties to appraise property.

(a) The department shall, at least 30 days prior to the beginning of an in-depth review in any county, notify the property appraiser in the county of the pending review. At the request of the property appraiser, the department shall consult with the property appraiser regarding the classifications and strata to be studied, in order that the review will be useful to the property appraiser in evaluating his or her procedures.

(b) Every property appraiser whose upcoming roll is subject to an in-depth review shall, if requested by the department on or before January 1, deliver upon completion of the assessment roll a list of the parcel numbers of all parcels that did not appear on the assessment roll of the previous year, indicating the parcel number of the parent parcel from which each new parcel was created or "cut out."

(c) In conducting assessment ratio studies, the department

must use all practicable steps, including stratified statistical and analytical reviews and sale-qualification studies, to maximize the representativeness or statistical reliability of samples of properties in tests of each classification, stratum, or roll made the subject of a ratio study published by it. The department shall document and retain records of the measures of representativeness of the properties studied in compliance with this section. Such documentation must include a record of findings used as the basis for the approval or disapproval of the tax roll in each county pursuant to s. 193.1142. In addition, to the greatest extent practicable, the department shall study assessment roll strata by subclassifications such as value groups and market areas for each classification or stratum to be studied, to maximize the representativeness of ratio study samples. For purposes of this section, the department shall rely primarily on an assessment-to-sales-ratio study in conducting assessment ratio studies in those classifications of property specified in subsection (3) for which there are adequate market sales. The department shall compute the median and the value-weighted mean for each classification or subclassification studied and for the roll as a whole.

(d) In the conduct of these reviews, the department shall adhere to all standards to which the property appraisers are required to adhere.

(e) The department and each property appraiser shall cooperate in the conduct of these reviews, and each shall make available to the other all matters and records bearing on the preparation and computation of the reviews. The property

appraisers shall provide any and all data requested by the department in the conduct of the studies, including electronic data processing tapes. Any and all data and samples developed or obtained by the department in the conduct of the studies shall be confidential and exempt from the provisions of s. 119.07(1) until a presentation of the findings of the study is made to the property appraiser. After the presentation of the findings, the department shall provide any and all data requested by a property appraiser developed or obtained in the conduct of the studies, including tapes. Direct reimbursable costs of providing the data shall be borne by the party who requested it. Copies of existing data or records, whether maintained or required pursuant to law or rule, or data or records otherwise maintained, shall be submitted within 30 days from the date requested, in the case of written or printed information, and within 14 days from the date requested, in the case of computerized information.

(f) Within 120 days following the receipt of a county assessment roll by the executive director of the department pursuant to s. 193.1142(1), or within 10 days after approval of the assessment roll, whichever is later, the department shall complete the review for that county and forward its findings, including a statement of the confidence interval for the median and such other measures as may be appropriate for each classification or subclassification studied and for the roll as a whole, employing a 95-percent level of confidence, and related statistical and analytical details to the Senate and the House of Representatives committees with oversight responsibilities

for taxation, and the appropriate property appraiser. Upon releasing its findings, the department shall notify the chairperson of the appropriate county commission or the corresponding official under a consolidated charter that the department's findings are available upon request. The department shall, within 90 days after receiving a written request from the chairperson of the appropriate county commission or the corresponding official under a consolidated charter, forward a copy of its findings, including the confidence interval for the median and such other measures of each classification or subclassification studied and for all the roll as a whole, and related statistical and analytical details, to the requesting party.

Section 9. Paragraphs (d) and (g) of subsection (2) of section 192.0105, Florida Statutes, are amended to read:

192.0105 Taxpayer rights.—There is created a Florida Taxpayer's Bill of Rights for property taxes and assessments to guarantee that the rights, privacy, and property of the taxpayers of this state are adequately safeguarded and protected during tax levy, assessment, collection, and enforcement processes administered under the revenue laws of this state. The Taxpayer's Bill of Rights compiles, in one document, brief but comprehensive statements that summarize the rights and obligations of the property appraisers, tax collectors, clerks of the court, local governing boards, the Department of Revenue, and taxpayers. Additional rights afforded to payors of taxes and assessments imposed under the revenue laws of this state are provided in s. 213.015. The rights afforded taxpayers to assure

that their privacy and property are safeguarded and protected during tax levy, assessment, and collection are available only insofar as they are implemented in other parts of the Florida Statutes or rules of the Department of Revenue. The rights so guaranteed to state taxpayers in the Florida Statutes and the departmental rules include:

(2) THE RIGHT TO DUE PROCESS.—

(d) The right to prior notice of the value adjustment board's hearing date ~~and the right to the hearing within 4 hours of scheduled time~~ (see s. 194.032(2)).

(g) The right to be mailed a timely written decision by the value adjustment board containing findings of fact and conclusions of law and reasons for upholding or overturning the determination of the property appraiser, and the right to advertised notice of all board actions, including appropriate narrative and column descriptions, in brief and nontechnical language (see ss. 194.034(2) and 194.037(2)~~(3)~~).

Section 10. The executive director of the Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules under ss.120.536(1) and 120.54(4),Florida Statutes, for the purpose of implementing this act. Notwithstanding any other provision of law, such emergency rules shall remain in effect for 6 months after the date of adoption and may be renewed during the pendency of procedures to adopt rules addressing the subject of the emergency rules.

Section 11. This act shall take effect July 1, 2010.

Amendment No. 1

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	_____

Council/Committee hearing bill: Finance and Tax

Representative(s) Schultz offered the following:

Amendment

Remove line 217 and insert:

withdrawn by the petitioner or when the petitioner or agent ~~is acknowledged as correct by the property appraiser~~

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1389 Space and Aerospace Infrastructure
SPONSOR(S): Economic Development Policy Committee, Crisafulli and others
TIED BILLS: HB 1391 **IDEN./SIM. BILLS:** SB 2500

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Economic Development Policy Committee	10 Y, 0 N, As CS	Kruse	Kruse
2)	Finance & Tax Council		Aldridge	Langston
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Space Florida is responsible for promoting the development of a sustainable aerospace industry, space infrastructure, and educational opportunities for people interested in working in the space and aerospace industry. Numerous changes have occurred in the space industry as NASA has moved towards the end of the space shuttle program, and President Obama has recently outlined a new vision for the agency which has drastically altered the future of human space flight. These changes have serious economic consequences for the space industry in the state and associated jobs in those businesses. Members of Congress, the Governor, Space Florida, Brevard County, economic development organizations, as well as many others have been looking for solutions to alleviate those consequences, including the expected loss in jobs, and the changes made to NASA's human space flight plans.

The bill creates the Space Transition and Revitalization Act. The bill modifies the Quick Action Closing Fund to emphasize the importance of the transition from the end of the space shuttle program, and provides tools to Space Florida to make plans for capital assistance and financing services for aerospace business expansion, economic development, and infrastructure financing in the state. Additionally, the bill revises a previous appropriation to Space Florida to provide Space Florida with some flexibility in the use of the funds originally targeted to Space Launch Complex 36.

The bill has no revenue impacts.

The bill provides an effective date of July 1, 2010, if HB 1391 or similar legislation is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Space Florida's Mission

In 2006, the legislature created Space Florida within Chapter 331, Florida Statutes, as the successor organization to the Florida Space Authority, the Florida Space Research Institute and the Florida Aerospace Finance Corporation. Space Florida is responsible for promoting the development of a sustainable aerospace industry, space infrastructure, and educational opportunities for people interested in working in the space and aerospace industry. Commercial space flight is an important part of Space Florida's vision for space and aerospace operations for Florida's future. Space Florida's 2010 Spaceport Master Plan details the current commercial space flight landscape in the state. "Over the past ten years about 32% of all successful commercial orbital launches in the world occurred within the US. In the same time only 37% of all successful orbital commercial launches from the US occurred in Florida."[1] Space Florida believes the state is uniquely positioned to become a more dominant player in the commercial space industry.

Space Florida's latest strategic master plan is titled "Vision 2020." It lays out Space Florida's overall strategic plan to position Florida as the world's leader in space activity.[2] "Vision 2020" is an extensive document that thoroughly describes Space Florida's plan for space in the state. The following goals are a small portion of the document and do not reflect every facet of Space Florida's plan:

- Increasing space activity in the state three-fold before 2020
- Capturing key initiatives and markets during the next decade to position Florida as a powerhouse in the global aerospace market
- Leading active partnerships to foster bold economic development activities to expand domestic and international aerospace activities
- Supporting workforce talent development
- Growing core aerospace capabilities to manufacture, assemble, provide and launch aeronautical instruments, rockets, spacecraft and satellite communications equipment and services

[1] Space Florida 2010 Spaceport Master Plan. Found at: http://www.spaceflorida.gov/docs/Space%20Florida%20-%20Spaceport%20Master%20Plan%202010.pdf (last visited 1/28/2010)

[2] Space Florida Strategic Master Plan. Vision 2020. http://www.spaceflorida.gov/vision2020.php (last visited 1/28/2010)

Some of the sectors Space Florida sees as expanding are:

- Launch Systems and Support
- Satellite Systems and Payloads
- Ground Operations and Support Systems
- Agriculture, Climate and Environmental Monitoring
- Civil Protection and Emergency Management
- International Space Station and Human Life Sciences
- Communications, Cybersecurity and Robotics
- Adventure Tourism
- Clean Energy
- Advanced Materials and New Products

Members of Congress, the Governor, Space Florida, Brevard County, economic development organizations, as well as many others have been looking for solutions to alleviate the expected loss in jobs associated with the end of the space shuttle program and the changes made to NASA's human space flight plans.

Quick Action Closing Fund

Section 288.1088, F.S., provides the requirements that the Office of Tourism, Trade and Economic Development (OTTED) and Enterprise Florida, Inc., (EFI) must follow in order to approve a Quick Action Closing Fund project for funding:

- The company must be in an industry eligible for the Qualified Target Industry Tax Rebate program as referenced in s. 288.106. By law, the list of eligible industries is established by OTTED and EFI, and is updated annually.

- The project must have a positive payback ratio of at least 5 to 1. The project's economic impact must be at least 5 times that of the cost of the incentive. EFI uses an economic model of their choosing that in effect calculates this number based on location, jobs, capital investment, etc. There is no minimum capital investment or minimum number of jobs, but these amounts would affect this ratio.

- The incentive must be deemed an inducement to the company's decision to locate, retain jobs, or expand in the state.

- The project must pay an average annual wage of at least 125 percent of the area-wide or statewide private sector average wage. This is the average wage of all jobs being incentivized or guaranteed to be added to or kept in the state by the company.

- The project must be supported by the local community in which the project is to be located. This is usually demonstrated through a resolution of either the county or city commission which may include local financial or in-kind support.

There are no restrictions as to what, if any, other incentive programs can be combined with the Quick Action Closing fund.

Effect of Proposed Changes

The bill creates the Space Transition and Revitalization Act.

Quick Action Closing Fund

The bill adds to the list of the Quick Action Closing Fund's (QAC) findings and declarations by describing the end of the shuttle program, the gap in civil human space flight, the subsequent negative

workforce impacts, and that up to twenty percent of available resources may be used for projects to diversify the state's space industry.

The bill makes specific changes to EFI's criteria for waiving QAC requirements (see Current Situation).The bill adds a waiver category if the project would mitigate the impact of the conclusion of the space shuttle program. This change would allow projects that could not have previously been approved for QAC funds to now qualify.

Space Business and Financial Services Initiative

The bill provides a mechanism to use a to-be-created trust fund (see HB 1391 Space Business and Financial Services Trust Fund) to provide capital assistance and financing services for aerospace business expansion, economic development, and infrastructure. With final review and approval by its board of directors, Space Florida's president must develop a 5 year plan for the management and goals of the trust fund. The plan must be updated and approved annually by the board, and included in the financing assistance plan established in s. 331.305(6), F.S. However, s. 331.306(5), F.S., states that Space Florida may lend money for its purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds loaned. Space Florida must submit a quarterly report to OTTED on the use and status of the trust fund. In addition, Space Florida must provide an annual report to the Governor and the Legislature beginning January 1, 2011.

Although Space Florida has authority to lend money and make investments, previous state programs that have allowed for direct loans to businesses have provided greater guidance in statute. Florida Aerospace Finance Corp. (FAFC), a predecessor entity to Space Florida, had to close its operations, in large part, because its loan criteria, statutorily allowed to be established and adopted by its board, failed to provide sufficient protections to the amount that could be lent for any single loan. However, the current president of Space Florida is familiar with the events that occurred with FAFC and has expressed that the appropriate lessons have been learned to prevent a repeat of that experience.

Launch Complex 36

The bill provides Space Florida with flexibility in current appropriations available for Launch Complex 36 to be used for a variety of purposes such as: other launch complexes; intermodal issues; the development of joint-use facilities and technologies. CS/HB 969 contains similar language.

The bill provides an effective date of July 1, 2010, if HB 1391 or similar legislation creating the Space Business and Financial Services Trust Fund is adopted in the same legislative session or extension thereof and becomes law.

B. SECTION DIRECTORY:

Section 1. Creates the Space Transition and Revitalization Act.

Section 2. Amends s. 288.1088 Quick Action Closing Fund to add additional findings and declaration and to provide an additional waiver category related to the end of the space shuttle program.

Section 3. Creates s. 331.370, F.S., to establish the Space Business Investment and Financial Services Initiative.

Section 4. Provides Space Florida flexibility in the use of a current appropriation.

Section 5. Provides an effective date of July 1, 2010, if HB 1391 or similar legislation creating the Space Business and Financial Services Trust Fund is adopted in the same legislative session or extension thereof and becomes 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:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The additional programs and flexible funding provided for in the bill may allow Space Florida to attract or help expand space and aerospace businesses which may alleviate the expected job losses due to the end of the space shuttle program.

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 county or municipal government.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 17, 2010, the Economic Development Policy Committee adopted a strike-all amendment, which:

- Removed the appropriations sections of the bill.
- Revised the language providing Space Florida with flexibility in Launch Complex 36 expenditures to nearly match CS/HB 969, except for creating a new statute.

The bill was reported favorably and the analysis has been updates to reflect the committee substitute.

A bill to be entitled

An act relating to space and aerospace infrastructure; providing a short title; amending s. 288.1088, F.S.; providing legislative findings; authorizing the use of a specified amount of resources for projects to retain or create high-technology jobs directly associated with developing a more diverse aerospace economy in the state; authorizing Enterprise Florida, Inc., to waive eligibility criteria for projects receiving funds from the Quick Action Closing Fund which would mitigate the impact of the conclusion of the space shuttle program; creating s. 331.370, F.S.; providing legislative findings; requiring the president of Space Florida to develop a strategy and plan for the management and goals for the Space Business Investment and Financial Services Trust Fund; providing requirements for the strategy and plan; requiring Space Florida's board of directors to adopt procedures for the approval of all proposed expenditures and investments from the fund; requiring the president of Space Florida to submit a quarterly financial report on the use and status of the fund to the Office of Tourism, Trade, and Economic Development within the Executive Office of the Governor; requiring Space Florida to submit an annual report to the Governor and the Legislature; revising authorized uses of specified Space Florida appropriations; providing a contingent effective date.

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

Section 1. This act may be cited as the "Space Transition and Revitalization Act."

Section 2. Section 288.1088, Florida Statutes, is amended to read:

288.1088 Quick Action Closing Fund.—

(1)(a) The Legislature finds that attracting, retaining, and providing favorable conditions for the growth of certain high-impact business facilities, privately developed critical rural infrastructure, or key facilities in economically distressed urban or rural communities which provide widespread economic benefits to the public through high-quality employment opportunities in such facilities or in related facilities attracted to the state, through the increased tax base provided by the high-impact facility and related businesses, through an enhanced entrepreneurial climate in the state and the resulting business and employment opportunities, and through the stimulation and enhancement of the state's universities and community colleges. In the global economy, there exists serious and fierce international competition for these facilities, and in most instances, when all available resources for economic development have been used, the state continues to encounter severe competitive disadvantages in vying for these business facilities. Florida's rural areas must provide a competitive environment for business in the information age. This often requires an incentive to make it feasible for private investors to provide infrastructure in those areas.

(b) The Legislature finds that the conclusion of the space

shuttle program and the gap in civil human space flight will result in significant job losses that will negatively impact families, companies, the state and regional economies, and the capability level of this state's aerospace workforce. Thus, the Legislature also finds that this loss of jobs is a matter of state interest and great public importance. The Legislature further finds that it is in the state's interest for provisions to be made in incentive programs for economic development to maximize the state's ability to mitigate these impacts and to develop a more diverse aerospace economy.

(c) ~~(b)~~ The Legislature therefore declares that sufficient resources shall be available to respond to extraordinary economic opportunities and to compete effectively for these high-impact business facilities, critical private infrastructure in rural areas, and key businesses in economically distressed urban or rural communities, and that up to 20 percent of these resources may be used for projects to retain or create high-technology jobs that are directly associated with developing a more diverse aerospace economy in this state.

(2) There is created within the Office of Tourism, Trade, and Economic Development the Quick Action Closing Fund. Projects eligible for receipt of funds from the Quick Action Closing Fund shall:

(a) Be in an industry as referenced in s. 288.106.

(b) Have a positive payback ratio of at least 5 to 1.

(c) Be an inducement to the project's location or expansion in the state.

(d) Pay an average annual wage of at least 125 percent of

the areawide or statewide private sector average wage.

(e) Be supported by the local community in which the project is to be located.

(3)(a) Enterprise Florida, Inc., shall review applications pursuant to s. 288.061 and determine the eligibility of each project consistent with the criteria in subsection (2). Enterprise Florida, Inc., in consultation with the Office of Tourism, Trade, and Economic Development, may waive these criteria:

1. Based on extraordinary circumstances;

2. In order to mitigate the impact of the conclusion of the space shuttle program; or

3. In rural areas of critical economic concern if the project would significantly benefit the local or regional economy.

(b) Enterprise Florida, Inc., shall evaluate individual proposals for high-impact business facilities and forward recommendations regarding the use of moneys in the fund for such facilities to the director of the Office of Tourism, Trade, and Economic Development. Such evaluation and recommendation must include, but need not be limited to:

1. A description of the type of facility or infrastructure, its operations, and the associated product or service associated with the facility.

2. The number of full-time-equivalent jobs that will be created by the facility and the total estimated average annual wages of those jobs or, in the case of privately developed rural infrastructure, the types of business activities and jobs

stimulated by the investment.

3. The cumulative amount of investment to be dedicated to the facility within a specified period.

4. A statement of any special impacts the facility is expected to stimulate in a particular business sector in the state or regional economy or in the state's universities and community colleges.

5. A statement of the role the incentive is expected to play in the decision of the applicant business to locate or expand in this state or for the private investor to provide critical rural infrastructure.

6. A report evaluating the quality and value of the company submitting a proposal. The report must include:

a. A financial analysis of the company, including an evaluation of the company's short-term liquidity ratio as measured by its assets to liability, the company's profitability ratio, and the company's long-term solvency as measured by its debt-to-equity ratio;

b. The historical market performance of the company;

c. A review of any independent evaluations of the company;

d. A review of the latest audit of the company's financial statement and the related auditor's management letter; and

e. A review of any other types of audits that are related to the internal and management controls of the company.

(c) ~~(b)~~ Within 22 calendar days after receiving the evaluation and recommendation from Enterprise Florida, Inc., the director shall recommend to the Governor approval or disapproval of a project for receipt of funds from the Quick Action Closing

Fund. In recommending a project, the director shall include proposed performance conditions that the project must meet to obtain incentive funds. The Governor shall provide the evaluation of projects recommended for approval to the President of the Senate and the Speaker of the House of Representatives and consult with the President of the Senate and the Speaker of the House of Representatives before giving final approval for a project. The Executive Office of the Governor shall recommend approval of a project and the release of funds pursuant to the legislative consultation and review requirements set forth in s. 216.177. The recommendation must include proposed performance conditions that the project must meet in order to obtain funds.

(d) ~~(c)~~ Upon the approval of the Governor, the director of the Office of Tourism, Trade, and Economic Development and the business shall enter into a contract that sets forth the conditions for payment of moneys from the fund. The contract must include the total amount of funds awarded; the performance conditions that must be met to obtain the award, including, but not limited to, net new employment in the state, average salary, and total capital investment; demonstrate a baseline of current service and a measure of enhanced capability; the methodology for validating performance; the schedule of payments from the fund; and sanctions for failure to meet performance conditions. The contract must provide that payment of moneys from the fund is contingent upon sufficient appropriation of funds by the Legislature and upon sufficient release of appropriated funds by the Legislative Budget Commission.

(e) ~~(d)~~ Enterprise Florida, Inc., shall validate contractor

performance. Such validation shall be reported within 6 months after completion of the contract to the Governor, President of the Senate, and the Speaker of the House of Representatives.

Section 3. Section 331.370, Florida Statutes, is created to read:

331.370 Space Business Investment and Financial Services Initiative.—

(1) The Legislature finds that there is a critical need for capital assistance and financing services for aerospace business expansion, economic development, and infrastructure financing within the state. The Legislature further finds that it is in the state's economic interest to provide initial investment funding and to establish dedicated investment funding during the period of transition from the space shuttle program to provide financial and investment services consistent with the powers and duties of the Space Florida Act to new and expanding aerospace and space-enabled businesses, programs, and projects in order to offset job losses and promote economic growth.

(2) The president of Space Florida shall develop a 5-year strategy and plan for the management and goals of the Space Business Investment and Financial Services Trust Fund, which must be submitted to the board of directors and approved before any investment or expenditure is made. This strategy and plan must be updated and approved annually by the board of directors, and included in the financing assistance plan established in s. 331.305(6). The board of directors may adopt procedural rules for the approval of all proposed expenditures and investments from this fund. The president of Space Florida shall submit a

quarterly financial report on the use and status of the fund to the Office of Tourism, Trade, and Economic Development within the Executive Office of the Governor. Beginning January 1, 2011, and every year thereafter, Space Florida shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report summarizing the activities and accomplishments of the recipients of assistance from the Space Business Investment and Financial Services Trust Fund during the previous 12 months.

Section 4. Notwithstanding any other provisions of law, funds provided in Specific Appropriation 2649 of chapter 2008-152, Laws of Florida, for Space and Aerospace Infrastructure to make improvements to Launch Complex 36 on the 45th Space Wing property may also be used by Space Florida for improvements to other launch complexes and space transportation facilities in order to attract new space vehicle testing and launch business to the state; to address intermodal requirements and impacts of the launch ranges, spaceports, and other space transportation facilities; to advance aerospace technology to meet the current and future needs of the United States commercial space transportation industry; and to assist in the development of joint-use facilities and technology that support aviation and aerospace operations, including high-altitude and suborbital flights and range technology development.

Section 5. This act shall take effect July 1, 2010, if HB 1391, or similar legislation creating the Space Business Investment and Financial Services Trust Fund, is adopted in the

same legislative session or an extension thereof and becomes law.

Amendment No. 1

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 _____

Council/Committee hearing bill: Finance & Tax Council

Representative Crisafulli offered the following:

Amendment (with title amendment)

Remove lines 172-225 and insert:

Section 3. Notwithstanding any other provisions of law, funds provided in Specific Appropriation 2649 of chapter 2008-152, Laws of Florida, for Space and Aerospace Infrastructure to make improvements to Launch Complex 36 on the 45th Space Wing property may also be used by Space Florida for improvements to other launch complexes and space transportation facilities in order to attract new space vehicle testing and launch business to the state; to address intermodal requirements and impacts of the launch ranges, spaceports, and other space transportation facilities; to advance aerospace technology to meet the current and future needs of the United States commercial space transportation industry; and to assist in the development of joint-use facilities and technology that support aviation and

aerospace operations, including high-altitude and suborbital flights and range technology development.

Section 4. This act shall take effect July 1, 2010.

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

Remove lines 11-26 and insert:

conclusion of the space shuttle program; revising authorized uses of specified Space Florida appropriations; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7179 PCB EUP 10-03 Qualifying Improvements to Real Property
SPONSOR(S): Energy & Utilities Policy Committee and Precourt
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 2322

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Energy & Utilities Policy Committee	13 Y, 0 N	Whittier	Collins
1)	Finance & Tax Council		Diez-Arguelles	Langston
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

In recent years, the Florida Legislature has placed an increasing emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency in Florida. The Property Assessed Clean Energy (PACE) Program is a model that has recently become popular as an innovative way for local governments to encourage property owners to reduce energy consumption and increase energy efficiency. The PACE model allows individual residential, commercial, or industrial property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects, and the local government provides the upfront funding for the project through proceeds of a revenue bond issuance, which is repaid through an assessment on participating property owners' tax bills. There are no provisions in the Florida Statutes expressly providing for a program whereby local governments issue bonds to finance energy projects for property owners and repay the bonds through special assessments on participating property owners' property tax bills.

The bill creates s. 163.08, F.S., providing supplemental authority to local governments regarding qualified improvements to real property. The bill provides that if a local government passes an ordinance or adopts a resolution to create a program to provide up-front financing for energy conservation and efficiency, renewable energy, or wind resistance improvements, a property owner within the jurisdiction of that local government may apply to the local government for funding to finance a qualifying improvement and voluntarily enter into a financing agreement with the local government. The qualifying improvement must be affixed to an existing building or facility that is part of the property and if the work requires a license, it must be performed by a properly certified or registered contractor. The program does not cover projects in buildings or facilities under new construction. Qualifying improvements[1] include energy conservation and efficiency improvements; renewable energy improvements; and wind resistance improvements. The bill provides that, at least 30 days before entering into the financing agreement, the property owner must provide notice to the mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment that will be required to repay the amount. The bill provides that, "A provision in any agreement between a mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable." However, the bill clarifies that the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

The bill authorizes a local government to: partner with one or more local governments for the purpose of providing and financing qualifying improvements; levy a non-ad valorem assessment to fund a qualifying improvement; incur debt to provide financing for qualifying improvements; and collect costs incurred from financing qualifying improvements through a non-ad valorem assessment, a municipal or county lien, or through any other lawful method. The bill provides that no provision in any agreement between a local government and an energy, power, or utility provider shall limit or prohibit any local government from exercising its authority under the section and that the section is additional and supplemental to county and municipal home rule authority.

The bill provides authority for a local government to adopt a program, but does not mandate participation. The bill has no direct fiscal impact on state or local governments.

[1] These improvements are expanded upon in the Effect of Proposed Changes section of the analysis.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

2008 Legislation

In recent years, the Florida Legislature has placed an increasing emphasis on promoting renewable energy, energy conservation, and enhanced energy efficiency in Florida. During the 2008 Legislative Session, the Legislature passed significant energy policies - HB 7135 (Chapter 2008-227, L.O.F.) - which built on, among many other areas, goals of energy affordability and reliability, including the promotion of renewable energy, energy conservation, and enhanced energy efficiency.

The 2008 legislation recognized that in many instances improved energy efficiency and conservation are the cheapest and most effective way to accomplish the Legislature's related goals of energy affordability and reliability while also addressing concerns with climate change. Regarding the promotion of enhanced energy efficiency and conservation, the bill:

- Added "energy" and "global climate change" to the program areas that the Executive Office of the Governor may include in the State Comprehensive Plan. It also amended goals related to energy to require Florida to reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources and low-carbon-emitting electric power plants and amended the policies related to energy to provide that it is a policy under the State Comprehensive Plan to promote low-carbon-emitting electric power plants.

- Made significant changes to require public utilities to develop and implement approved programs to promote energy conservation and demand-side management.

    - The bill required the Public Service Commission to adopt and enforce goals for each public utility to increase and promote cost-effective demand-side and supply-side efficiency and conservation programs and demand-side renewable energy systems. Under prior law, public utility companies already offered cash incentive programs to encourage purchasing energy efficient equipment for new installations or retrofits, such as heating, air cooling, water heating, and lighting equipment. The bill revised the program to essentially require public utilities to provide incentives for conservation, increased energy efficiency, and demand-side renewable energy, such as solar energy,

when doing so is less costly for utility customers, as a whole, than constructing new generating capacity.

- Provided for a phased 50 percent increase in energy efficiency standards in the Florida Building Code by the Year 2020. Those increases are relative to the 2004 Florida Building Code, as amended on October 31, 2007:

    - By 2010, efficiency increases of at least 20 percent.
    - By 2013, efficiency increases of at least 30 percent.
    - By 2016, efficiency increases of at least 40 percent.
    - By 2019, efficiency increases of at least 50 percent.

- Required the Florida Building Commission to identify within code support and compliance documentation the specific building options and elements available to meet energy performance goals. The bill included a list of energy-efficiency performance options and elements such as solar water heating, energy-efficient appliances, and energy efficient lighting systems.

- Required the Florida Building Commission, prior to implementing the increases in energy performance of new buildings, to adopt by rule and implement a cost-effectiveness test to ensure that increases in energy efficiency result in a positive net financial impact.

- Revised current law governing guaranteed energy, water, and wastewater performance savings contracting to facilitate improving the efficiency of government-owned buildings.

- Adopted Climate Friendly Public Business requirements for the use of "green" products, lodging, vehicles, and fuel.

- Established enhanced energy standards for the construction of new state, county, municipal, school district, state university, community college, state court, and water management district buildings.

- Created the "Florida Green Government Grants Act" to provide grants to local governments to develop programs that achieve green standards.

CS/HB 697 (Chapter 2008-191, L.O.F.) addressed a wide range of building construction issues including Florida Building Code standards, the Florida Building Commission, and energy efficiency standards relating to planning and construction. With regard to energy planning and conservation practices, the bill did the following:

- Revised requirements relating to the installation of energy devices based on renewable resources on buildings.

- Required that the Florida Building Code must facilitate and promote the use of cost-effective energy conserving, energy demand-management, and renewable energy technologies in buildings.

- Integrated energy efficiency issues into several components of the local government comprehensive plan, which will be due at the next evaluation and appraisal update of each local government's comprehensive plan:

    - The future land use element must address reduction in urban sprawl and energy efficient land use patterns in relation to existing and future electric power generation and transmission systems, as well as greenhouse gas reduction strategies.

    - The traffic circulation element must address strategies to reduce greenhouse gases.

- The conservation element must address factors that affect energy conservation.
- The housing element must contain standards and principals for energy efficiency in new houses.

- Allowed the Florida Building Commission to select the most current version of the International Energy Conservation Code as a foundation code.
- Added declarations to the list of deed restrictions, covenants, or other binding agreements which may not prohibit the installation of energy devices based on renewable resources.
- Specified that condominium units are residential dwellings for purposes of installation of solar collectors or other energy devices, and removed the three-story height restriction for installation of solar collectors or other energy devices on such residential dwellings.
- Directed the Department of Community Affairs, in consultation with the Florida Energy Affordability Coalition, to identify and review issues relating to improving the effectiveness of the Low-Income Home Energy Assistance Program and the Weatherization Assistance Program.

Property Assessed Clean Energy (PACE) Programs

The Property Assessed Clean Energy (PACE) Program is a model that recently has become popular as an innovative way for local governments to encourage property owners to reduce energy consumption and increase energy efficiency. According to Pacenow.org, "PACE is a program designed to allow property owners to install small-scale renewable energy systems and make energy efficiency improvements to their buildings and pay for the cost over its functional life (e.g., 20 years for solar PV) through an on-going assessment on property tax bills."

Participation in the program is voluntary. The PACE model allows individual residential, commercial, or industrial property owners to contract directly with qualified contractors for energy efficiency and renewable energy projects, and the local government provides the upfront funding for the project from proceeds of a revenue bond, which is repaid through an assessment on participating property owners' property tax bills. A lien could be placed on the property in the event that the loan is not timely repaid. If the property is sold prior to the end of the repayment period, the new owner takes over the remaining special assessment payments as part of the property's annual tax bill.[2]

Many states require legislation to authorize local governments to adopt PACE programs. According to Vote Solar, currently there are proposals in over 18 states[3] for PACE enabling legislation, and 16 states have PACE enabling legislation in place.[4]

Currently, there are no provisions in the Florida Statutes expressly providing for a program whereby local governments issue bonds to finance energy projects for property owners and repay the bonds through special assessments on participating property owner's property tax bills. However, under existing county and municipal home rule authority, counties and cities may already have the basic authority to implement a PACE or similar program. Special districts, on the other hand, only have those powers granted to them by law.

[2] Vote Solar website: www.votesolar.org.
[3] Ibid.
[4] California, Colorado, Illinois, Louisiana, Maryland, Nevada, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Texas, Vermont, Virginia, and Wisconsin.

Local Governments

Counties[5]

The following information was obtained from The Local Government Formation Manual 2009-2010, produced by the Military & Local Affairs Policy Committee, House of Representatives.

In Florida, counties historically were created as subdivisions of the state to carry out central (i.e., state) government purposes at the local level.[6] Article VIII, section 1 of the State Constitution contains provisions specifically related to the county form of government in Florida, and requires the state to be divided by law into political subdivisions called "counties." The Florida Constitution recognizes two types of county government in Florida: 1) counties that are not operating under a county charter and 2) counties that are operating under a county charter. Article VIII, sections 1(f) and (g) of the State Constitution, respectively provide as follows:

> Non-Charter Government: Counties not operating under county charters shall have such powers of self-government as is provided by general and/or special law. The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the extent of such conflict.
>
> Charter Government: Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors. The governing body of a county operating under a charter may enact county ordinances not inconsistent with general law. The charter shall provide which shall prevail in the event of conflict between county and municipal ordinances.

Section 125.01, F.S., outlines the powers and duties of chartered and non-chartered counties. This section provides that the county commission shall have the power to carry on county government to the extent not inconsistent with general or special law. Specific to this bill, county government authority includes the power to:

- Enter into agreements with other governmental agencies within or outside the boundaries of the county for joint performance, or performance by one unit in behalf of the other, of any of either agency's authorized functions.
- Levy and collect taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit, and special assessments; borrow and expend money; and issue bonds, revenue certificates and other obligations of indebtedness. This power must be exercised according to general law. A referendum is not required for the levy by a county of ad valorem taxes for county purposes or for the providing of municipal services within any municipal service taxing unit.
- Adopt ordinances and resolutions necessary for the exercise of its powers and prescribe fines and penalties for the violation of ordinances in accordance with law.
- Enforce the Florida Building Code and adopt and enforce local technical amendments.
- Perform any other acts which are in the common interest of the people of the county and are not inconsistent with law.

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[5] *The Local Government Formation Manual 2009-2010*, House Military & Local Affairs Policy Committee, pp. 6-10.
[6] Ibid., p. 17.

The governing body of a county also has the power to establish, and subsequently merge or abolish, dependent special districts that include both incorporated and unincorporated areas. Inclusion of an incorporated area is subject to the approval of the governing body of the affected incorporated area. Municipal services and facilities may be provided from funds derived from service charges, special assessments or taxes within the district.

Municipal Governments[7]

The following information was obtained from The Local Government Formation Manual 2009-2010, produced by the Military & Local Affairs Policy Committee, House of Representatives.

As noted above, in Florida, counties historically were created as subdivisions of the state to carry out central (i.e., state) government purposes at the local level. Municipalities were created to perform additional functions and provide additional services for the particular benefit of the population within the municipality.

A municipality is a local government entity located within a county and created to perform additional functions and provide additional services for the particular benefit of the population within the municipality. A municipality is constitutionally and statutorily granted all governmental, corporate and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services. A municipality may exercise any power for municipal purposes except as otherwise provided by general or special law. Although a municipality may enact local ordinances to govern municipal affairs, the power to tax can be granted only by general law.

Article VIII, section 2 of the State Constitution authorizes the Legislature to establish or abolish municipalities or amend their charters by general or special law. The Constitution grants municipalities all governmental, corporate and proprietary powers necessary to conduct municipal government, perform municipal functions, and render municipal services. Municipalities may exercise any power for municipal purposes except as otherwise provided by general or special law. Each municipal legislative body must be elected by qualified voters.

The Municipal Home Rule Powers Act acknowledges that the State Constitution grants municipalities governmental, corporate and proprietary power necessary to conduct municipal government, functions and services, and authorizes municipalities to exercise any power for municipal purposes, except when expressly prohibited by general or special law.

Special Districts[8]

The following information was obtained from The Local Government Formation Manual 2009-2010, produced by the Military & Local Affairs Policy Committee, House of Representatives.

Special district governments are special purpose government units that exist as separate entities, have substantial fiscal independence and have administrative independence from general purpose governments.

In Florida, special districts perform a wide variety of functions and are typically funded through ad valorem taxes, special assessments, user fees or impact fees. The Uniform Special District Accountability Act found in chapter 189, F.S., generally governs the creation and operations of special districts; however, other general laws may more specifically govern the operations of certain special districts. As of October 29, 2009, there were 616 active dependent special districts and 1,003 active independent special districts in Florida.[9]

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[7] Ibid., pp. 17-20.
[8] Ibid., pp. 76-87.
[9] Ibid., p. 76.

Special district governments provide specific services that are not being supplied by existing general-purpose governments. Most of these entities perform a single function, but, in some instances, their enabling legislation allows them to provide several, usually related, types of services.

A "special district" is defined in s. 189.403(1), F.S., as 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." A special district has only those powers expressly provided by, or which can be reasonably implied from, the authority provided in the district's charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.

Special Assessments

Special assessments are a home rule revenue source that may be used by a local government to fund certain services and construct and maintain capital facilities. As established by Florida case law, two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the improvement or service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. If a local government's special assessment ordinance withstands these two legal requirements, the assessment is not considered a tax, which is levied for the general benefit of residents and property rather than for a specific benefit to property.

The applied legal test used to evaluate whether or not a special benefit is conferred on property by the provision of a service is if there is a logical relationship between the provided service and the benefit to property. This test defines the line between those services that can be funded by special assessments versus those failing to satisfy the special benefit test. Examples of services that possess this logical relationship to property and can be funded wholly or partially by special assessments include solid waste collection and disposal, stormwater management, and fire rescue. Once the service or capital facility satisfies the special benefit test, the assessment must be fairly apportioned among the benefited property in a manner consistent with the logical relationship embodied in the special benefit requirement.

The authority to levy special assessments is based primarily on county and municipal home rule powers granted in the Florida Constitution. In addition, statutes authorize explicitly the levy of special assessments for county and municipal governments. Special districts derive their authority to levy special assessments through general law or special act.

Non-Ad Valorem Assessments

Chapter 197, F.S., governs tax collections, sales and liens. "Non-ad valorem assessment" is defined in s. 197.3632, F.S., as "only those assessments that are not based upon millage and which can become a lien against a homestead as permitted in s. 4, Art. X of the State Constitution." Section 4(a), Art. X of the State Constitution provides, in pertinent part, "There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon...."

Section 197.3632(3)(a), F.S., requires local governments electing to use the uniform method of collecting assessments for the first time to adopt a resolution at a public hearing prior to January 1, or March 1 if the property appraiser and tax collector agree. The resolution must state the need for the levy and include a legal description of the property subject to the levy. In addition, the local government must publish notice of its intent to use the uniform method for collecting such assessment.

Section 197.3632(4)(a), F.S., requires a local government to adopt a non-ad valorem assessment roll at a public hearing held between January 1 and September 15 if:

- The non-ad valorem assessment is levied for the first time;
- The non-ad valorem assessment is increased beyond the maximum rate authorized by law or judicial decree at the time of initial imposition;
- The local government's boundaries have changed, unless all newly affected property owners have provided written consent for such assessment to the local governing board; or
- There is a change in the purpose for such assessment or in the use of the revenue generated by such assessment.

Section 197.3632(4)(b), F.S., requires that at least 20 days prior to the public hearing, the local government must notice the hearing by mail and by publication in a newspaper generally circulated within each county contained in the boundaries of the local government. The notice must be sent to each person owning property subject to the assessment and must include the following information:

- The purpose of the assessment;
- The total amount to be levied against each parcel;
- The unit of measurement to be applied against each parcel to determine the assessment;
- The number of such units contained within each parcel;
- The total revenue the local government will collect by the assessment;
- A statement that failure to pay the assessment will cause a tax certificate to be issued against the property which may result in a loss of title;
- A statement that all affected property owners have a right to appear at the hearing and to file written objections with the local governing board within 20 days of the notice; and
- The date, time, and place of the hearing.

However, notice by mail is not required if notice by mail is otherwise required by general or special law governing the taxing authority and the notice is served at least 30 days prior to the authority's public hearing. The published notice must contain at least the following information:

- The name of the local governing board;
- A geographic depiction of the property subject to the assessment;
- The proposed schedule of the assessment;
- The fact that the assessment will be collected by the tax collector; and
- A statement that all affected property owners have the right to appear at the public hearing and the right to file written objections within 20 days of the publication of the notice.

Section 197.3632(4)(c), F.S., provides that at the public hearing, the local governing board is required to receive written objections and hear testimony from all interested persons. If the local governing board adopts the non-ad valorem assessment roll, it must specify the unit of measurement for the assessment and the amount of the assessment. The board may adjust the assessment or the application of the assessment to any affected property based on the benefit which the board will provide or has provided to the property with the revenue generated by the assessment.

Renewable Energy and Wind Resistance Property Assessment Constitutional Amendment

In the November 2008 General Election, Florida's voters approved a constitutional amendment (Amendment #3) placed on the ballot by the Taxation and Budget Reform Commission. This amendment added the following language to Article VII, Section 4 of the Florida Constitution (Taxation; assessments):

(i) The legislature, by general law and subject to conditions specified therein, may prohibit the consideration of the following in the determination of the assessed value of real property used for residential purposes:

(1) Any change or improvement made for the purpose of improving the property's resistance to wind damage.

(2) The installation of a renewable energy source device.

During the 2009 Legislative Session, the House passed CS/HB 7113, which implemented the constitutional provision regarding the assessed value of real property. The bill died in Senate Messages.

The bill provided that, when determining the assessed value of real property used for residential purposes, for both new and existing construction, the property appraiser may not consider the following:

- Changes or improvements made for the purpose of improving a property's resistance to wind damage, which include any of the following:
    - Improving the strength of the roof deck attachment.
    - Creating a secondary water barrier to prevent water intrusion.
    - Installing hurricane-resistant shingles.
    - Installing gable-end bracing.
    - Reinforcing roof-to-wall connections.
    - Installing storm shutters.
    - Installing impact-resistant glazing.
    - Installing hurricane-resistant doors.
- The installation and operation of a renewable energy source device, which means any of the following equipment which collects, transmits, stores, or uses solar energy, wind energy, or energy derived from geothermal deposits:
    - Solar energy collectors, photovoltaic modules, and inverters.
    - Storage tanks and other storage systems, excluding swimming pools used as storage tanks.
    - Rockbeds.
    - Thermostats and other control devices.
    - Heat exchange devices.
    - Pumps and fans.
    - Roof ponds.
    - Freestanding thermal containers.
    - Pipes, ducts, refrigerant handling systems, and other equipment used to interconnect such systems; however, conventional backup systems of any type are not included in this definition.
    - Windmills and wind turbines.
    - Wind-driven generators.
    - Power conditioning and storage devices that use wind energy to generate electricity or mechanical forms of energy.
    - Pipes and other equipment used to transmit hot geothermal water to a dwelling or structure from a geothermal deposit.

Hurricane Mitigation Discounts and Premium Credits

Since 2003, insurers have been required to provide premium credits or discounts for residential property insurance for properties on which construction techniques which reduce the amount of loss in a windstorm have been installed. To facilitate insurer compliance with the windstorm mitigation discounts required by statute, the Department of Community Affairs in cooperation with the Department of Insurance contracted with Applied Research Associates, Inc., for a public domain study to provide

insurers data and information on estimated loss reduction for wind resistive building features in single-family residences. The study, entitled Development of Loss Relativities for Wind Resistive Features of Residential Structures, was completed in 2002. The study's mathematical results, termed "wind loss relativities," were the basis for calculating the specific mitigation discount amount on the wind premium for mitigation features contained by the property.[10]

Mitigation discounts were initially given at 50 percent of the actuarial value of the discount.[11] In 2006, the Legislature amended the mitigation discount law (s. 627.0629(1)(a), F.S.) to require the Office of Insurance Regulation (OIR) to reevaluate the mitigation discounts and require insurers to give full actuarial value for them.[12] Thus, the OIR amended the mitigation discount administrative rule to require insurers to provide mitigation discounts in an amount equal to 100 percent of the mitigation discount amount as determined by the loss relativities in the 2002 study done by Applied Research Associates, Inc.[13] In 2008, the OIR obtained a new study to evaluate the appropriate mitigation discount amounts; however, the OIR has not changed the mitigation discount amounts or mitigation discount administrative rule due to the results of the 2008 study.

Typically, policyholders are responsible for substantiating to their insurers the existence of loss mitigation features in order to qualify for a mitigation discount. The Financial Services Commission (Governor and Cabinet) adopted a uniform mitigation verification form in 2007 for use by all insurers to corroborate a home's mitigation features. An updated form was approved by the Financial Services Commission on March 9, 2010. The form must be signed by a hurricane mitigation inspector certified by the My Safe Florida Home Program; a building code inspector; a general, building, or residential contractor; a professional engineer meeting specified criteria; a professional architect; or any other individual or entity acceptable to the insurance company. A form certified by the Department of Financial Services must also be accepted by the insurer.

Effect of Proposed Changes

The bill creates s. 163.08, F.S., providing supplemental authority to local governments regarding improvements to real property.

New section 163.08(1), F.S., provides legislative purpose and intent, noting that in 2008, the Legislature declared it the public policy of the state to play a leading role in promoting energy conservation, energy security, and reduction of greenhouse gases. The 2008 Legislature amended the energy goal of the State Comprehensive Plan to require energy requirement reductions through enhanced conservation and efficiency measures in all end-use sectors and reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. It also provided for a schedule of increases in energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction.[14] Also in 2008, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments.[15]

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[10] The relativities applied only to the portion of a policy's wind premium associated with the dwelling, its contents, and loss of use.

[11] In an Informational Memorandum issued on January 23, 2003, the OIR notified insurance companies of its suggested mitigation credits for new and existing construction based on its analysis of a 2002 study completed by Applied Research Associates. However, the OIR tempered the mitigation credits derived from the study by 50 percent. As stated by the OIR in the memorandum, the 50 percent tempering of the credits was due to the large rate decreases that could result from application of the credits, the approximations needed to produce practical results, and the potential for differences in results using different hurricane models. The OIR cautioned in the memorandum that the tempering implemented would be curtailed in the future.

[12] Section 14, Ch. 2006-12, L.O.F.

[13] The rule allowed insurance companies to modify the mitigation discounts if the insurer provided detailed alternate studies supporting the modification and allowed the OIR to review all assumptions used in the studies supporting the modification. To date, no insurer has used an alternate wind mitigation discount study to set mitigation discounts.

[14] Chapter 2008-227, L.O.F.

[15] Chapter 2008-191, L.O.F.

The bill finds that improved properties not using energy conservation strategies contribute to the burden affecting all improved property from fossil fuel energy production; likewise, the bill finds that all improved properties not protected from wind damage by wind resistance improvements contribute to the burden affecting all improved property resulting from potential wind damage. The bill declares improved properties that have been retrofitted with energy-related or wind resistance qualified improvements receive the special benefit of reducing the property's burden from energy consumption or potential wind damage. Further, the bill declares that the installation and operation of qualifying improvements not only benefits the affected properties, but assists in fulfilling the goals of the state's energy and hurricane mitigation policies. The bill states that it is a compelling state interest to make qualifying improvements more affordable and enable property owners, on a voluntary basis, to finance such improvements with local government assistance. It states that the actions authorized under the act are reasonable and necessary to achieve a compelling state interest and are necessary for the prosperity and welfare of the state and its property owners and inhabitants.

The bill defines "local government" as "a county, a municipality, or a special district."

The bill defines a "qualifying improvement" as including any of the following:

- "Energy conservation and efficiency improvement," which means a measure to reduce consumption, through conservation or more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including but not limited to:
    - Air sealing;
    - Installation of insulation;
    - Installation of energy efficient heating, cooling, or ventilation systems;
    - Building modifications to increase the use of daylighting;
    - Replacement of windows;
    - Installation of energy controls or energy recovery systems; and
    - Installation of efficient lighting equipment.
- "Renewable energy improvement," which means the installation of any system whose electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources:
    - Hydrogen;
    - Solar energy;
    - Geothermal energy;
    - Bioenergy; and
    - Wind energy.
- "Wind resistance improvement," which includes, but is not limited to:
    - Improving the strength of the roof deck attachment;
    - Creating a secondary water barrier to prevent water intrusion;
    - Installing wind-resistant shingles;
    - Installing gable-end bracing;
    - Reinforcing roof-to-wall connections;
    - Installing storm shutters; and
    - Installing opening protections.

The bill provides that if a local government passes an ordinance or adopts a resolution to create a program to provide up-front financing for energy conservation and efficiency, renewable energy, or wind resistance improvements, a property owner within the jurisdiction of that local government may apply to the local government for funding to finance a qualifying improvement and enter into a financing agreement with the local government. The qualifying improvement must be affixed to an existing building or facility that is part of the property and if the work requires a license, it must be performed by

a properly certified or registered contractor.[16] The program does not cover projects in buildings or facilities under new construction.

At least 30 days before entering into the financing agreement, the property owner must provide notice to the mortgage holder or loan servicer of the intent to enter into the agreement, the maximum amount to be financed, and the maximum annual assessment that will be required to repay the amount. The bill provides that, "A provision in any agreement between a mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable." However, the bill clarifies that the mortgage holder or loan servicer may increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

Without the consent of the mortgage holder or loan servicer, the total amount of any non-ad valorem assessment or municipal or county lien for a property cannot exceed 20 percent of the just value of the property, as determined by the county property appraiser. However, if an energy conservation and efficiency or a renewable energy qualifying improvement has been supported by an energy audit, the amount financed does not have to be limited to 20 percent if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the assessment or lien. A local government is authorized to adopt alternate parameters to conform to local needs and conditions following a public hearing and the finding of the need for the changes.

The bill authorizes a local government to do the following when implementing a qualifying improvement financing program:

- Partner with one or more local governments for the purpose of providing and financing qualifying improvements.
- Allow a qualifying improvement program to be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.
- Levy a non-ad valorem assessment to fund a qualifying improvement.
- Incur debt (bonds or loans) to provide financing for qualifying improvements, payable from revenues received from the improved property or any other available lawful revenue source.
- Collect costs incurred from financing qualifying improvements through a non-ad valorem assessment, a municipal or county lien, or through any other lawful method.

Prior to entering into a financing agreement, a local government is required to "reasonably determine" that:

- All property taxes and any other assessments levied on the property tax bill are paid and have not been delinquent for the past three years or the property owner's period of ownership, whichever is less;
- There are no involuntary liens on the property;
- No notices of default or other evidence of property-based debt delinquency have been recorded during the past three years or the property owner's period of ownership, whichever is less; and
- The property owner is current on all mortgage debt on the property.

If utilizing a non-ad-valorem assessment to finance the qualifying improvement, the local government must follow the uniform method for the levy, collection, and enforcement of non-ad valorem assessments, enumerated in s. 197.3632, F.S. This section requires a resolution by the local government, public hearings, published notices in the newspaper, and individual mail notices to property owners informing them of the assessment and their right to attend a public hearing. Under current law, the special assessment process must be initiated prior to January 1 of each year. The bill provides an exception to the provisions in s. 197.3632, F.S., allowing the process to start on or before August 15, if the property appraiser, tax collector, and local government agree. This will allow local governments to begin the necessary special assessment process this calendar year.

[16] Pursuant to ch. 489, Part I and Part II, F.S.

If the local government is financing the qualifying improvement through a surcharge on a utility bill in the form of a municipal lien, the utility provider is authorized to discontinue the delivery of the utility service in the event of nonpayment. The financing agreement must include the terms and costs of the discontinuance.

The bill provides that no provision in any agreement between a local government and an energy, power, or utility provider shall limit or prohibit any local government from exercising its authority under the section and that the section is additional and supplemental to county and municipal home rule authority.

B. SECTION DIRECTORY:

Section 1. Creates s. 163.08, F.S., providing for supplemental authority for local governments regarding improvements to real property. See Effect of Proposed Changes.

Section 2. Provides that the act shall take effect upon becoming a 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:

1. Revenues:

   Indeterminate. See Fiscal Comments.

2. Expenditures:

   Indeterminate. See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive effect on the private sector. Being able to secure up-front capital for qualifying improvements at lower interest rates and for a long repayment period, increases the likelihood that property owners will take advantage of the program, which should stimulate the local economy.

D. FISCAL COMMENTS:

The bill provides authority for, but does not require, a local government to adopt a program. The bill does not mandate the manner in which each local government that chooses to participate structures the program. Therefore, the level of funding for the program is left to the discretion of the local government.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The 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:

The bill provides, in s. 163.08(13), F.S., that, "A provision in any agreement between a mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable."

Article I, Section 10, of the Florida Constitution provides, in relevant part, "No...law impairing the obligation of contracts shall be passed." This provision empowers the courts to strike laws which retroactively burden or alter contractual relations. *In re Advisory Opinion to the Governor*, 509 So.2d 292 (Fla. 1987); *Daytona Beach Racing & Recreational Facilities District v. Volusia County*, 372 So.2d 419 (Fla. 1979); *Dewberry v. Auto-Owners Ins. Co.,* 363 So.2d 1077 (Fla. 1978).

Not all contractual impairments warrant overturning an otherwise valid law. For example, Contract rights are clearly subject to the state's power of taxation. *Straughn v. Camp*, 293 So.2d 689 (Fla. 1974). Also, the state has some ability to modify contractual remedies without transgressing the Contract Clause. *Ruhl v. Perry*, 390 So.2d 353 (Fla. 1980). In *Brooks v. Watchtower Bible and Tract Society of Florida, Inc.*, 706 So.2d 85 (Fla. 4th DCA 1998), the Fourth District Court of Appeal found that a referendum on the sale of city property did not impermissibly impair an existing contract between the city and a prospective purchaser.

State statutes which impair contractual obligations are measured on a sliding scale of scrutiny. The degree of contractual impairment permitted is delineated by the importance of the governmental interests advanced. *Yellow Cab Co. of Dade County v. Dade County*, 412 So.2d 395 (Fla. 3d DCA 1982). The court, in *Pomponio v. Cladridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1980), enumerated several factors it might weigh when making such determinations:

1. Whether the law was enacted to deal with a broad economic or social problem;
2. Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and
3. Whether the effect on the contractual relationship is temporary; not severe, permanent, immediate, and retroactive.

The bill provides, in s. 163.08(1)(c), F.S., that the "Legislature determines that the actions authorized under this section, including, but not limited to, the financing of qualifying improvements through the execution of financing agreements and the related imposition of voluntary assessments or charges, are reasonable and necessary to serve and achieve a compelling state interest and are necessary for the prosperity and welfare of the state and its property owners and inhabitants."

B. RULE-MAKING AUTHORITY:

This does not require rule-making authority on the state level.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to qualifying improvements to real property; creating s. 163.08, F.S.; providing legislative purposes and findings and intent; providing definitions; authorizing a local government to levy non-ad valorem assessments to fund certain improvements; authorizing a property owner to apply for funding and enter into a financing agreement with a local government to finance certain improvements; authorizing a local government to collect moneys for such purposes through non-ad valorem assessments, municipal or county liens, or other lawful methods; providing collection requirements; providing for discontinuance of utility service under certain circumstances; authorizing local governments to partner with other local governments to provide and finance certain improvements; authorizing a qualifying improvement program to be administered by a for-profit entity or not-for-profit organization under certain circumstances; authorizing a local government to incur debt payable from revenues received from the improved property; providing a financing restriction for local governments; specifying responsibilities for local governments before entering into financing agreements; requiring qualifying improvements to be affixed to an existing building or facility on the property and be performed by a properly certified or registered contractor; excluding certain projects from financing agreement coverage; limiting the amount the just value of the property subject to non-ad

valorem assessments or municipal or county liens; providing exceptions; specifying information provision requirements for property owners before entering into financing agreements; prohibiting acceleration of a mortgage under certain circumstances; specifying unenforceability of certain agreement provisions; providing construction preserving a local government's home rule authority; providing an effective date.

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

Section 1. Section 163.08, Florida Statutes, is created to read:

163.08 Supplemental authority for improvements to real property.—

(1)(a) In chapter 2008-227, Laws of Florida, the Legislature amended the energy goal of the state comprehensive plan to provide, in part, that the state shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and shall reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. That act also declared it the public policy of the state to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security, and reduction of greenhouse gases. In addition to establishing policies to promote the use of renewable energy, the Legislature provided for a schedule of increases in energy performance of buildings subject to the Florida Energy

Efficiency Code for Building Construction. In chapter 2008-191, Laws of Florida, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments. In the 2008 general election, the voters of this state approved a constitutional amendment authorizing the Legislature, by general law, to prohibit consideration of any change or improvement made for the purpose of improving a property's resistance to wind damage or the installation of a renewable energy source device in the determination of the assessed value of residential real property.

(b) The Legislature finds that all energy-consuming-improved properties not using energy conservation strategies contribute to the burden affecting all improved property resulting from fossil fuel energy production. Improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption. All improved properties not protected from wind damage by wind resistance qualifying improvements contribute to the burden affecting all improved property resulting from potential wind damage. Improved property that has been retrofitted with wind resistance qualifying improvements receives the special benefit of reducing the property's burden from potential wind damage. Further, the installation and operation of qualifying improvements not only benefit the affected properties for which the improvements are made, but also assist in fulfilling the goals of the state's energy and hurricane mitigation policies. To make qualifying improvements more affordable and assist property owners who wish

to undertake such improvements, there is a compelling state interest in enabling property owners, on a voluntary basis, to finance such improvements with local government assistance.

(c) The Legislature determines that the actions authorized under this section, including, but not limited to, the financing of qualifying improvements through the execution of financing agreements and the related imposition of voluntary assessments or charges, are reasonable and necessary to serve and achieve a compelling state interest and are necessary for the prosperity and welfare of the state and its property owners and inhabitants.

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

(a) "Local government" means a county, municipality, or special district.

(b) "Qualifying improvement" includes any:

1. "Energy conservation and efficiency improvement," which means a measure to reduce consumption, through conservation or more efficient use, of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; building modifications to increase the use of daylight; replacement of windows; installation of energy controls or energy recovery systems; and installation of efficient lighting equipment.

2. "Renewable energy improvement," which means the installation of any system whose electrical, mechanical, or thermal energy is produced from a method that uses one or more

of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bioenergy, and wind energy.

3. "Wind resistance improvement," which includes, but is not limited to:

a. Improving the strength of the roof deck attachment;

b. Creating a secondary water barrier to prevent water intrusion;

c. Installing wind-resistant shingles;

d. Installing gable-end bracing;

e. Reinforcing roof-to-wall connections;

f. Installing storm shutters; or

g. Installing opening protections.

(3) A local government may levy non-ad valorem assessments to fund qualifying improvements.

(4) Subject to local government ordinance or resolution, a property owner may apply to the local government for funding to finance a qualifying improvement and enter into a financing agreement with the local government. Costs incurred by the local government for such purpose may be collected as a non-ad valorem assessment, by means of a municipal or county lien, or by any other lawful method.

(a) A non-ad valorem assessment shall be collected pursuant s. 197.3632. However, the notice and adoption requirements of s. 197.3632(4) do not apply if this section is used and complied with, and the initial resolution, publication of notice, and mailed notices to the property appraiser, tax collector, and Department of Revenue required by s. 197.3632(3)(a) may be provided on or before August 15 in

conjunction with any non-ad valorem assessment authorized by this section, if the property appraiser, tax collector, and local government agree.

(b) If the financing agreement provides for repayment through a surcharge on a utility or other municipal service bill in the form of a municipal lien, the utility provider may discontinue the delivery of all utility service for nonpayment of the surcharge. However, the financing agreement must set forth the terms and costs of such discontinuance of service, including the period of time of nonpayment of the surcharge after which the discontinuance of service will be imposed.

(5) Pursuant to this chapter or as otherwise provided by law or pursuant to a local government's home rule power, a local government may partner with one or more local governments for the purpose of providing and financing qualifying improvements.

(6) A qualifying improvement program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.

(7) A local government may incur debt for the purpose of providing such improvements, payable from revenues received from the improved property, or any other available revenue source authorized by law.

(8) A local government may enter into a financing agreement only with the record owner of the affected property.

(9) Before entering into a financing agreement, the local government shall reasonably determine that all property taxes and any other assessments levied on the same bill as property taxes are paid and have not been delinquent for the preceding 3

years or the property owner's period of ownership, whichever is less; that there are no involuntary liens, including, but not limited to, construction liens on the property; that no notices of default or other evidence of property-based debt delinquency have been recorded during the preceding 3 years or the property owner's period of ownership, whichever is less; and that the property owner is current on all mortgage debt on the property.

(10) A qualifying improvement shall be affixed to an existing building or facility that is part of the property and shall constitute an improvement to the building or facility or a fixture attached to the building or facility. An agreement between a local government and a qualifying property owner may not cover projects in buildings or facilities under new construction or construction for which a certificate of occupancy or similar evidence of substantial completion of new construction or improvement has not been issued.

(11) Any work requiring a license under any applicable law to make a qualifying improvement shall be performed by a contractor properly certified or registered pursuant to part I or part II of chapter 489.

(12)(a) Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by the property, the total amount of any non-ad valorem assessment or municipal or county lien for a property under this section may not exceed 20 percent of the just value of the property as determined by the county property appraiser.

(b) Notwithstanding paragraph (a), a non-ad valorem assessment or municipal or county lien for a qualifying

improvement defined in subparagraph (2)(b)1. or subparagraph (2)(b)2. that is supported by an energy audit is not subject to the limits in this subsection if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the non-ad valorem assessment or municipal or county lien.

(c) A local government may adopt alternate parameters to those specified in this subsection to conform to local needs and conditions after a public hearing and the finding of the need for such changes due to local needs and conditions.

(13) At least 30 days before entering into a financing agreement, the property owner shall provide to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a notice of the owner's intent to enter into a financing agreement together with the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount. A provision in any agreement between a mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable. This subsection does not limit the authority of the holder or loan servicer to increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

(14) A provision in any agreement between a local government and a public or private power or energy provider or

other utility provider is not enforceable to limit or prohibit any local government from exercising its authority under this section.

(15) This section is additional and supplemental to county and municipal home rule authority and not in derogation of such authority or a limitation upon such authority.

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

Amendment No.

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	_____

Council/Committee hearing bill: Finance and Tax

Representative(s) Precourt offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 163.08, Florida Statutes, is created to read:

163.08 Supplemental authority for improvements to real property.—

(1)(a) In chapter 2008-227, Laws of Florida, the Legislature amended the energy goal of the state comprehensive plan to provide, in part, that the state shall reduce its energy requirements through enhanced conservation and efficiency measures in all end-use sectors and shall reduce atmospheric carbon dioxide by promoting an increased use of renewable energy resources. That act also declared it the public policy of the state to play a leading role in developing and instituting energy management programs that promote energy conservation, energy security, and reduction of greenhouse gases. In addition

to establishing policies to promote the use of renewable energy, the Legislature provided for a schedule of increases in energy performance of buildings subject to the Florida Energy Efficiency Code for Building Construction. In chapter 2008-191, Laws of Florida, the Legislature adopted new energy conservation and greenhouse gas reduction comprehensive planning requirements for local governments. In the 2008 general election, the voters of this state approved a constitutional amendment authorizing the Legislature, by general law, to prohibit consideration of any change or improvement made for the purpose of improving a property's resistance to wind damage or the installation of a renewable energy source device in the determination of the assessed value of residential real property.

(b) The Legislature finds that all energy-consuming-improved properties not using energy conservation strategies contribute to the burden affecting all improved property resulting from fossil fuel energy production. Improved property that has been retrofitted with energy-related qualifying improvements receives the special benefit of alleviating the property's burden from energy consumption. All improved properties not protected from wind damage by wind resistance qualifying improvements contribute to the burden affecting all improved property resulting from potential wind damage. Improved property that has been retrofitted with wind resistance qualifying improvements receives the special benefit of reducing the property's burden from potential wind damage. Further, the installation and operation of qualifying improvements not only benefit the affected properties for which the improvements are

made, but also assist in fulfilling the goals of the state's energy and hurricane mitigation policies. To make qualifying improvements more affordable and assist property owners who wish to undertake such improvements, there is a compelling state interest in enabling property owners, on a voluntary basis, to finance such improvements with local government assistance.

(c) The Legislature determines that the actions authorized under this section, including, but not limited to, the financing of qualifying improvements through the execution of financing agreements and the related imposition of voluntary assessments are reasonable and necessary to serve and achieve a compelling state interest and are necessary for the prosperity and welfare of the state and its property owners and inhabitants.

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

(a) "Local government" means a county or municipality.

(b) "Qualifying improvement" includes any:

1. "Energy conservation and efficiency improvement," which means a measure to reduce consumption, through conservation or more efficient use, of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to, air sealing; installation of insulation; installation of energy-efficient heating, cooling, or ventilation systems; building modifications to increase the use of daylight; replacement of windows; installation of energy controls or energy recovery systems; installation of electric vehicle charging equipment; and installation of efficient lighting equipment.

2. "Renewable energy improvement," which means the installation of any system whose electrical, mechanical, or thermal energy is produced from a method that uses one or more of the following fuels or energy sources: hydrogen, solar energy, geothermal energy, bioenergy, and wind energy.

3. "Wind resistance improvement," which includes, but is not limited to:

a. Improving the strength of the roof deck attachment;

b. Creating a secondary water barrier to prevent water intrusion;

c. Installing wind-resistant shingles;

d. Installing gable-end bracing;

e. Reinforcing roof-to-wall connections;

f. Installing storm shutters; or

g. Installing opening protections.

(3) A local government may levy non-ad valorem assessments to fund qualifying improvements.

(4) Subject to local government ordinance or resolution, a property owner may apply to the local government for funding to finance a qualifying improvement and enter into a financing agreement with the local government. Costs incurred by the local government for such purpose may be collected as a non-ad valorem assessment. A non-ad valorem assessment shall be collected pursuant to s. 197.3632. However, the notice and adoption requirements of s. 197.3632(4) do not apply if this section is used and complied with, and the initial resolution, publication of notice, and mailed notices to the property appraiser, tax collector, and Department of Revenue required by s.

197.3632(3)(a) may be provided on or before August 15 in conjunction with any non-ad valorem assessment authorized by this section, if the property appraiser, tax collector, and local government agree.

(5) Pursuant to this chapter or as otherwise provided by law or pursuant to a local government's home rule power, a local government may partner with one or more local governments for the purpose of providing and financing qualifying improvements.

(6) A qualifying improvement program may be administered by a for-profit entity or a not-for-profit organization on behalf of and at the discretion of the local government.

(7) A local government may incur debt for the purpose of providing such improvements, payable from revenues received from the improved property, or any other available revenue source authorized by law.

(8) A local government may enter into a financing agreement only with the record owner of the affected property. Any financing agreement entered into pursuant to this act or a summary memorandum thereof shall be recorded in the public records of the county within which the property is located by the sponsoring unit of local government within 5 days of execution of the agreement. The recorded agreement shall provide constructive notice that the assessment to be levied on the property constitutes a lien of equal dignity to county taxes and assessments from the date of recordation.

(9) Before entering into a financing agreement, the local government shall reasonably determine that all property taxes and any other assessments levied on the same bill as property

taxes are paid and have not been delinquent for the preceding 3 years or the property owner's period of ownership, whichever is less; that there are no involuntary liens, including, but not limited to, construction liens on the property; that no notices of default or other evidence of property-based debt delinquency have been recorded during the preceding 3 years or the property owner's period of ownership, whichever is less; and that the property owner is current on all mortgage debt on the property.

(10) A qualifying improvement shall be affixed to a building or facility that is part of the property and shall constitute an improvement to the building or facility or a fixture thereto. An agreement between a local government and a qualifying property owner may not cover wind-resistance improvements in buildings or facilities under new construction or construction for which a certificate of occupancy or similar evidence of substantial completion of new construction or improvement has not been issued.

(11) Any work requiring a license under any applicable law to make a qualifying improvement shall be performed by a contractor properly certified or registered pursuant to part I or part II of chapter 489.

(12)(a) Without the consent of the holders or loan servicers of any mortgage encumbering or otherwise secured by the property, the total amount of any non-ad valorem assessment for a property under this section may not exceed 20 percent of the just value of the property as determined by the county property appraiser.

(b) Notwithstanding paragraph (a), a non-ad valorem assessment for a qualifying improvement defined in subparagraph (2)(b)1. or subparagraph (2)(b)2. that is supported by an energy audit is not subject to the limits in this subsection if the audit demonstrates that the annual energy savings from the qualified improvement equals or exceeds the annual repayment amount of the non-ad valorem assessment.

(13) At least 30 days before entering into a financing agreement, the property owner shall provide to the holders or loan servicers of any existing mortgages encumbering or otherwise secured by the property a notice of the owner's intent to enter into a financing agreement together with the maximum principal amount to be financed and the maximum annual assessment necessary to repay that amount. A verified copy or other proof of such notice shall be provided to the local government. A provision in any agreement between a mortgagee or other lienholder and a property owner, or otherwise now or hereafter binding upon a property owner, which allows for acceleration of payment of the mortgage, note, or lien or other unilateral modification solely as a result of entering into a financing agreement as provided for in this section is not enforceable. This subsection does not limit the authority of the holder or loan servicer to increase the required monthly escrow by an amount necessary to annually pay the qualifying improvement assessment.

(14) Each contract for the initial sale of a parcel of real property for which a non-ad valorem assessment has been imposed under the authority of this section within the local

government shall include, immediately prior to the space reserved in the contract for the signature of the purchaser, the following disclosure statement in boldfaced and conspicuous type which is larger than the type in the remaining text of the contract: "THE (Name of Local Government) HAS IMPOSED A NON-AD VALOREM ASSESSMENT ON THIS PROPERTY. THIS ASSESSMENT IS IN ADDITION TO OTHER LOCAL GOVERNMENTAL ASSESSMENTS AND ALL OTHER ASSESSMENTS PROVIDED FOR BY LAW."

(15) A provision in any agreement between a local government and a public or private power or energy provider or other utility provider is not enforceable to limit or prohibit any local government from exercising its authority under this section.

(16) This section is additional and supplemental to county and municipal home rule authority and not in derogation of such authority or a limitation upon such authority.

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

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

Remove the entire title and insert:

An act relating to qualifying improvements to real property; creating s. 163.08, F.S.; providing legislative purposes and findings and intent; providing definitions; authorizing a local government to levy non-ad valorem

assessments to fund certain improvements; authorizing a property owner to apply for funding and enter into a financing agreement with a local government to finance certain improvements; authorizing a local government to collect moneys for such purposes through non-ad valorem assessments; providing collection requirements; authorizing local governments to partner with other local governments to provide and finance certain improvements; authorizing a qualifying improvement program to be administered by a for-profit entity or not-for-profit organization under certain circumstances; authorizing a local government to incur debt payable from revenues received from the improved property; providing a financing restriction for local governments; requiring a financial agreement to be recorded in a county's public records within 5 days of execution of the agreement; specifying responsibilities for local governments before entering into financing agreements; requiring qualifying improvements to be affixed to a building or facility on the property and be performed by a properly certified or registered contractor; excluding certain projects from financing agreement coverage; limiting the amount of the non-ad valorem assessment to 20 percent of the just value of the property; providing exceptions; specifying information provision requirements for property owners before entering into financing agreements; prohibiting acceleration of a mortgage under certain circumstances; providing assessment disclosure requirements; specifying

Amendment No.

unenforceability of certain agreement provisions; providing construction preserving a local government's home rule authority; providing an effective date.

PCB FTC 10-08

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 10-08 Property Tax
SPONSOR(S): Finance & Tax Council
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Finance & Tax Council		Diez-Arguelles	Langston
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

This bill makes changes to four areas dealing with property taxation.

- Under current law, non-homestead property that has benefitted from the 10% annual assessment increase limitation must be reassessed when there is a change of ownership or control. One way in which a change of ownership or control occurs is when there is a cumulative transfer of more than 50% of the ownership of the legal entity that owns the property. The bill provides that a change of ownership or control does not occur, for a publicly traded company, when the cumulative transfer of 50% of the ownership of the entity occurs through the buying and selling of shares of the company on a public exchange. This exception does not apply to transfers made through a merger or acquisition. Owners of property to which the 10% limitation applies are required to notify the property appraiser when there is a change of ownership or control. The bill provides that if the change of ownership is recorded by a deed or other instrument in the public records of the county, the recorded instrument serves as notice to the property appraiser.
- The Department of Revenue is directed to produce a form that can be used by a property owner to provide notice to multiple property appraisers of all property in this state for which a transfer of ownership or control has occurred.
- The bill adds structures or improvements used for horticulture production that improve water quality or water conservation, as designated by the Department of Agriculture to the list of items that must be assessed, under the income methodology, as if they were part of the land, as opposed to being assessed as a separate structure.
- Current law states that the rental, after January 1, of an entire homestead during two consecutive years constitutes the abandonment of the homestead, resulting in the loss of the homestead exemption and the Save Our Homes benefit. The bill replaces the words "an entire,' with the phrase "all or substantially all."
- Finally, the bill clarifies that cities and counties can provide ad valorem tax exemptions to new or expanding businesses, with referendum approval, for more than two 10-year periods.

The provisions of this bill will have an overall indeterminate impact on local government revenues. The provisions dealing with change of ownership and with structures used in horticulture have a negative indeterminate impact. The provision dealing with rental of homesteads will have a positive indeterminate impact.

The bill takes effect upon becoming law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

This bill makes changes to four areas dealing with property taxation. Each of these areas is discussed separately below.

Reassessment Due to Change of Ownership

For purposes of determining the value of property for ad valorem taxes, Florida law limits the amount by which assessments can increase from one year to the next for three classes of property. Homestead property annual assessment increases are limited to the lesser of 3% or the percentage change in the Consumer Price Index.[1] For residential property containing 9 or fewer units[2] and for other nonresidential property[3] annual assessment increases are limited to 10%.

Upon the occurrence of certain events, however, properties whose assessments have been limited are reassessed at just value (fair market value). Homestead property is reassessed when it loses homestead status or when its ownership changes.[4] Residential real property containing nine or fewer units is reassessed whenever there is a "change of ownership or control."[5] Other nonresidential real property is reassessed whenever there is a qualifying improvement or a "change of ownership or control."[6]

The phrase "change of ownership or control" means "any sale, foreclosure, transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control of more than 50 percent of the ownership of the legal entity that owned the property when it was most recently assessed at just value . . .."[7]

This bill provides that there is no change of ownership for purposes of reassessing property at just value "if, for a publicly traded company, the cumulative transfer of more than 50% of the ownership of the entity occurs through the buying and selling of shares of the company on a public exchange. This exception does not include a transfer made through a merger with or acquisition by another company, including acquisition by acquiring outstanding shares of the company."

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[1] Art. VII, sec. 4(d), Florida Constitution and s. 193.155, F.S.
[2] Art. VII, sec. 4(g), Florida Constitution and s. 193.1554, F.S.
[3] Art. VII, sec. 4(h), Florida Constitution and s. 193.1555, F.S.
[4] Sec, 193.155, F.S.
[5] Sec. 193.1554(5), F.S.
[6] Sec. 193.1555(5), F.S. A qualifying improvement is one that increases the just value of the property by at least 25%.
[7] Secs. 193.1554(5) and 193.1555(5)(b), F.S.

Notice of Change of Ownership or Control

Owners of property subject to the 10% assessment limitation described above are required to notify the property appraiser of any change of ownership or control.[8] Owners who fail to notify the property are subject to back taxes, interest of 14% per annum and a penalty of 50% of the taxes avoided.[9]

The bill provides that if the change of ownership is recorded by a deed or other instrument in the public records of the county, the recorded instrument serves as notice to the property appraiser.

Also, the bill requires the Department of Revenue to provide a form that can be used by a property owner to provide notice to multiple property appraisers of all property in this state for which a transfer of ownership or control has occurred.

Assessment of Certain Structures Used for Horticulture

Pursuant to section 4, Art. VII, of the State Constitution, agricultural land may be assessed solely on the basis of its character or use. For property to be classified as agricultural land, it must be used "primarily for bona fide agricultural purposes".[10]

Once property is qualified to receive agricultural classification, the property appraiser must assess the land based solely on its agricultural use, considering the following use factors only:

- The quantity and size of the property;
- The condition of the property;
- The present market value of the property as agricultural land;
- The income produced by the property;
- The productivity of land in its present use;
- The economic merchantability of the agricultural product; and
- Such other agricultural factors as may from time to time become applicable, which are reflective of the standard present practices of agricultural use and production.[11]

For purposes of the income methodology approach to the assessment of property used for agricultural purposes, irrigation systems, pumps, or motors physically attached to the land are considered a part of the average yields per acre and have no separately assessable contributory value".[12] Litter containment structures located on producing poultry farms and animal waste nutrient containment structures located on producing dairy farms are similarly treated.

The bill provides that structures or improvements used for horticulture production that improve water quality or water conservation, as designated by the Department of Agriculture's interim measures or best management practices adopted pursuant to s. 570.085 or s. 403.067(7)(c), must be assessed by the same methodology as irrigation systems described above.

Abandonment of Homestead Property

Section 196.061, F.S., provides that the rental, after January 1, of an entire dwelling unit previously claimed as a homestead constitutes abandonment of the dwelling as a homestead, and leads to the loss of the homestead exemption and the Save Our Homes assessment increase limitation. However, rental of the homestead property after January 1 of any year does not affect the homestead exemption so long as the property is not so rented during 2 consecutive years.

The bill deletes the phrase "an entire," and replaces it with the phrase "all or substantially all of a." After this change, Section 196.061 will state that "the rental of all or substantially all of a dwelling previously claimed to be a homestead for tax purposes shall constitute abandonment of said dwelling as a homestead . . .."

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[8] Sec. 193.1556, F.S.
[9] Id.
[10] Section 193.461(3)(b), F.S.
[11] Section 193.461(6), F.S.
[12] Section 193.461(6)(c), F.S.

Economic Development Ad Valorem Tax Exemption

Section 196.1995, F.S., allows a county or municipality to grant an ad tax exemption to new or expanding businesses. The grant of the exemption may only be accomplished pursuant to a referendum and for 10-year periods. The current statute is unclear regarding whether a county or municipality may use it for more than two consecutive 10-year periods.

The bill clarifies that the statute may be used multiple times, so long as each 10-year period is approved by referendum.

B. SECTION DIRECTORY:

Section 1 amends s. 193.1554, F.S.
Section 2 amends s. 193.1555, F.S.
Section 3 amends s. 193.1556, F.S.
Section 4 amends s. 193.461, F.S.
Section 5 amends s. 196.061, F.S.
Section 6 amends s. 196.1995, F.S.
Section 7. provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Department of Revenue will incur expenses to promulgate a form.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The provisions of this bill will have an overall indeterminate impact on local government revenues. The provisions dealing with change of ownership and with structures used in horticulture have a negative indeterminate impact. The provision dealing with rental of homesteads will have a positive indeterminate impact.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Companies that own properties in multiple counties in the state will experience some savings from using the form promulgated by the department and by having recorded instruments serve as notice of change of ownership.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision may apply because this bill affects the authority that counties or municipalities have to raise revenues in the aggregate. However, at this time, whether the impact is positive or negative, and its magnitude, are unknown.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to property tax; amending s. 193.1554, F.S.; revising criteria under which no change of ownership of non-homestead residential property occurs; amending s. 193.1555, F.S.; revising criteria under which no change of ownership of nonresidential property occurs; amending s. 193.1556, F.S.; providing that a recorded deed or other instrument shall serve as notice of a change of ownership; requiring the Department of Revenue to provide a form by which a property owner may notify any property appraiser of a change of ownership; amending s. 193.461, F.S.; providing the methodology for assessing certain agricultural improvements, structures, or equipment located on agricultural land and used for specified purposes; amending s. 196.061, F.S.; providing that the rental of all or a portion of a homestead constitutes abandonment of the homestead; providing a definition; amending s. 196.1995, F.S.; providing that the authority of the governing body of a county or municipality to grant certain ad valorem tax exemptions may be renewed for multiple 10-year periods upon approval by referendum; providing an effective date.

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

Section 1. Paragraph (d) is added to subsection (5) of section 193.1554, Florida Statutes, to read:

193.1554 Assessment of nonhomestead residential property.—

(5) Except as provided in this subsection, property assessed under this section shall be assessed at just value as of January 1 of the year following a change of ownership or control. Thereafter, the annual changes in the assessed value of the property are subject to the limitations in subsections (3) and (4). For purpose of this section, a change of ownership or control means any sale, foreclosure, transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control or of more than 50 percent of the ownership of the legal entity that owned the property when it was most recently assessed at just value, except as provided in this subsection. There is no change of ownership if:

(d) For a publicly traded company, the cumulative transfer of more than 50 percent of the ownership of the entity occurs through the buying and selling of shares of the company on a public exchange. This exception does not include a transfer made through a merger with or acquisition by another company, including acquisition by acquiring outstanding shares of the company.

Section 2. Subsection (5) of section 193.1555, Florida Statutes, is amended to read:

193.1555 Assessment of certain residential and nonresidential real property.—

(5) Except as provided in this subsection, property assessed under this section shall be assessed at just value as of January 1 of the year following a qualifying improvement or change of ownership or control. Thereafter, the annual changes in the assessed value of the property are subject to the

limitations in subsections (3) and (4). For purpose of this section:

(a) A qualifying improvement means any substantially completed improvement that increases the just value of the property by at least 25 percent.

(b) A change of ownership or control means any sale, foreclosure, transfer of legal title or beneficial title in equity to any person, or the cumulative transfer of control or of more than 50 percent of the ownership of the legal entity that owned the property when it was most recently assessed at just value, except as provided in this subsection. There is no change of ownership if:

1. The transfer of title is to correct an error; ~~or~~

2. The transfer is between legal and equitable title; or.

3. For a publicly traded company, the cumulative transfer of more than 50 percent of the ownership of the entity occurs through the buying and selling of shares of the company on a public exchange. This exception does not include a transfer made through a merger with or acquisition by another company, including acquisition by acquiring outstanding shares of the company.

Section 3. Section 193.1556, Florida Statutes, is amended to read:

193.1556 Notice of change of ownership or control required.—

(1) Any person or entity that owns property assessed under s. 193.1554 or s. 193.1555 must notify the property appraiser promptly of any change of ownership or control as defined in ss.

193.1554(5) and 193.1555(5). If the change of ownership is recorded by a deed or other instrument in the public records of the county where the property is located, the recorded deed or other instrument shall serve as notice to the property appraiser. If any property owner fails to so notify the property appraiser and the property appraiser determines that for any year within the prior 10 years the owner's property was not entitled to assessment under s. 193.1554 or s. 193.1555, the owner of the property is subject to the taxes avoided as a result of such failure plus 15 percent interest per annum and a penalty of 50 percent of the taxes avoided. It is the duty of the property appraiser making such determination to record in the public records of the county a notice of tax lien against any property owned by that person or entity in the county, and such property must be identified in the notice of tax lien. Such property is subject to the payment of all taxes and penalties. Such lien when filed shall attach to any property, identified in the notice of tax lien, owned by the person or entity that illegally or improperly was assessed under s. 193.1554 or s. 193.1555. If such person or entity no longer owns property in that county, but owns property in some other county or counties in the state, it shall be the duty of the property appraiser to record a notice of tax lien in such other county or counties, identifying the property owned by such person or entity in such county or counties, and it becomes a lien against such property in such county or counties.

(2) The Department of Revenue shall provide a form by which a property owner may provide notice to any property appraiser of

a change in ownership. This form must allow a property owner to list all property in this state which is owned by the the property owner for which transfer of ownership or control as defined in ss. 193.1554(5) or 193.1555(5) has occurred but has not been previously noticed.

Section 4. Paragraph (c) of subsection (6) of section 193.461, Florida Statutes, is amended to read:

193.461 Agricultural lands; classification and assessment; mandated eradication or quarantine program.—

(6)

(c)1. For purposes of the income methodology approach to assessment of property used for agricultural purposes, irrigation systems, including pumps and motors, physically attached to the land shall be considered a part of the average yields per acre and shall have no separately assessable contributory value.

2. Litter containment structures located on producing poultry farms and animal waste nutrient containment structures located on producing dairy farms shall be assessed by the methodology described in subparagraph 1.

3. Structures or improvements used for horticulture production that improve water quality or water conservation, as designated by the Department of Agriculture's interim measures or best management practices adopted pursuant to s. 570.085 or s. 403.067(7)(c), shall be assessed by the methodology described in subparagraph 1.

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

196.061 Rental of homestead to constitute abandonment.—The rental of all or substantially all of a ~~an entire~~ dwelling previously claimed to be a homestead for tax purposes shall constitute the abandonment of said dwelling as a homestead, and said abandonment shall continue until such dwelling is physically occupied by the owner thereof. However, such abandonment of such homestead after January 1 of any year shall not affect the homestead exemption for tax purposes for that particular year so long as this provision is not used for 2 consecutive years. The provisions of this section shall not apply to a member of the Armed Forces of the United States whose service in such forces is the result of a mandatory obligation imposed by the federal Selective Service Act or who volunteers for service as a member of the Armed Forces of the United States. The term "rental," as used herein, shall mean any rental, lease, license, or other similar agreement by which the owner is compensated for use of the dwelling by tenants or guests.

Section 6. Subsection (7) of section 196.1995, Florida Statutes, is amended to read:

196.1995 Economic development ad valorem tax exemption.—

(7) The authority to grant exemptions under this section expires ~~will expire~~ 10 years after the date such authority was approved in an election, but such authority may be renewed for subsequent ~~another~~ 10-year periods if each 10-year renewal is approved ~~period~~ in a referendum called and held pursuant to this section.

Section 7. This act shall take effect July 1, 2010.

Amendment No. 1

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	_____

Council/Committee hearing PCB: Finance and Tax

Representative(s) Insert Sponsor offered the following:

Amendment

Remove lines 111-117 and insert:

(2) The Department of Revenue shall provide a form by which a property owner may provide notice to all property appraisers of a change of ownership or control. The form must allow the property owner to list all property that it owns or controls in this state for which a change of ownership or control as defined in s. 193.1554(5) or s. 193.1555(5) has occurred, but has not been noticed previously to property appraisers. Providing notice on this form constitutes compliance with the notification requirements in this section.

PCB FTC 10-10

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 10-10 Corporate Income Tax
SPONSOR(S): Finance & Tax Council
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Finance & Tax Council		Diez-Arguelles	Langston
1)				
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

Florida imposes a 5.5% tax on the taxable income of corporations doing business in Florida. The determination of taxable income for Florida tax purposes begins with the taxable income used for Federal income tax purposes. This means that a corporation paying taxes in Florida receives the same treatment in Florida as is allowed in determining its federal taxable income. Florida maintains this relationship by each year adopting the Federal Internal Revenue Code as it exists on January 1 of the year. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income. The bill adopting the federal code is referred to as the "piggyback bill."

This bill updates Florida's Income Tax Code by adopting the Internal Revenue Code as in effect on January 1, 2010.

The Revenue Estimating Conference has not completed an estimate of the fiscal impact of this bill. However, staff estimates that the adoption of the bill will have a small, negative indeterminate impact on state revenues.

The bill has an effective date of upon becoming law and applies retroactively to January 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Florida imposes a 5.5% tax on the taxable income of corporations doing business in Florida.[1] For simplicity's sake, the determination of taxable income for Florida tax purposes begins with the taxable income used for Federal income tax purposes.[2] This means that a corporation paying taxes in Florida receives the same treatment in Florida as is allowed in determining its federal taxable income. With federal taxable income as a starting point, Florida law then requires a variety of additions and subtractions to reflect Florida-specific policies.

Florida maintains this relationship by each year adopting the Federal Internal Revenue Code as it exists on January 1 of the year. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income. The bill adopting the federal code is referred to as the "piggyback bill."

Florida's Constitution does not allow the Legislature to delegate its legislative authority to another body, such as Congress. While the Legislature may adopt by reference a federal law, the Legislature may only adopt the law as it exists when the legislature adopts it. Since the determination of taxable income under the Internal Revenue Code usually changes every year, Florida needs to enact a "piggyback bill" each year.

The bill updates the Florida Income Tax Code to reflect changes made to the U.S. Internal Revenue Code of 1986 by adopting the Internal Revenue Code as in effect on January 1, 2010. The change will apply retroactively to January 1, 2010.

B. SECTION DIRECTORY:

Section 1: Amends s. 220.03, F.S.

Section 2: Provides an effective date of upon becoming law and retroactive application to January 1, 2010.

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[1] Sec. 220.11, F.S.

[2] Secs. 220.12 and 220.13, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference has not completed an estimate of the fiscal impact of this bill. However, staff estimates that the adoption of the bill would result in a small, indeterminate negative impact on state revenues.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill ensures that corporations which are subject to Florida's corporate income tax can base their calculations of taxable income on current federal rules, rather than potentially having to keep two sets of accounts – one to determine Florida's tax and one for federal tax purposes.

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 county or municipal government.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the corporate income tax; amending s. 220.03, F.S.; providing for the adoption of the 2010 version of the Internal Revenue Code; providing for retroactive operation; providing an effective date.

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

Section 1. Paragraph (n) of subsection (1) and paragraph (c) of subsection (2) of section 220.03, Florida Statutes, are amended to read:

220.03 Definitions.—

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

(n) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended and in effect on January 1, 2010 ~~2009~~, except as provided in subsection (3).

(2) DEFINITIONAL RULES.—When used in this code and neither otherwise distinctly expressed nor manifestly incompatible with the intent thereof:

(c) Any term used in this code shall have the same meaning as when used in a comparable context in the Internal Revenue Code and other statutes of the United States relating to federal income taxes, as such code and statutes are in effect on January 1, 2010 ~~2009~~. However, if subsection (3) is implemented, the meaning of any term shall be taken at the time the term is

applied under this code.

Section 2. This act shall take effect upon becoming a law and shall operate retroactively to January 1, 2010.